
# PHILIPPINE REPORTS

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# REPORTS OF CASES

DETERMINED IN THE

# SUPREME COURT

OF THE

# PHILIPPINES

FROM

APRIL 30, 2010 TO MAY 14, 2010

SUPREME COURT
MANILA
2014

*Prepared*
*by*

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**DETERMINED IN THE**

**SUPREME COURT OF THE PHILIPPINES**

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**THIRD DIVISION**

[A.M. No. P-06-2224. April 30, 2010]
(Formerly OCA IPI No. 06-2367-P)

**ATTY. ALBERTO II BORBON REYES,** *complainant, vs.* **CLERK OF COURT V RICHARD C. JAMORA, DEPUTY SHERIFF IV LUCITO ALEJO, and CLERK III EULOGIO T. MONDIDO, all of the Regional Trial Court, Branch 56, Makati City,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES BY COURT OFFICIALS AND PERSONNEL; IN THE ABSENCE OF PROOF, A COMPLAINANT'S BARE ASSERTIONS CANNOT OVERTURN SAID PRESUMPTION.—** [I]n the absence of proof, complainant's bare assertions cannot overturn the presumption of regularity in the performance of official duties by court officials and personnel. x x x It is settled that in administrative proceedings, the complainant has the burden of proving the allegations in his complaint with substantial evidence, and in the absence of evidence to the contrary, the presumption is that respondent has regularly performed his duties. Indeed, in the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity

in the performance of official functions. The Court cannot give credence to charges based on mere suspicion and speculation.

**2. ID.; ID.; ID.; ID.; ID.; CASE AT BAR.—** A review of the records shows that no evidence was presented during the investigation to prove that the acts of respondents amounted to usurpation of authority and grave abuse of authority. Reyes failed to substantiate his accusations. . . . x x x In the instant case, it is apparent that the issuance of the Writ of Execution was within the scope of duties of Jamora as Branch Clerk of Court. It was also proven that the Writ of Execution was indeed issued on June 29, 2005. Significantly, Reyes failed to show proof that there was no writ of execution yet at the time he filed his petition for relief from judgment. Likewise, it was established that it was not Mondido who received the copy of the petition, thus, complainant's allegation that they connived with each other to prejudice the latter's rights is completely baseless.

**3. ID.; CIVIL PROCEDURE; JUDGMENTS; WRIT OF EXECUTION; SHERIFFS; WHEN A WRIT IS PLACED IN THE HANDS OF A SHERIFF, IT BECOMES HIS MINISTERIAL DUTY TO PROCEED WITH REASONABLE CELERITY AND PROMPTNESS TO IMPLEMENT IT IN ACCORDANCE WITH ITS MANDATE.—** [W]hen a writ is placed in the hands of a sheriff, it becomes his ministerial duty to proceed with reasonable celerity and promptness to implement it in accordance with its mandate. This duty, in the proper execution of a valid writ, is not just directory, but mandatory. He has no discretion whether to execute the writ or not. He is mandated to uphold the majesty of the law as embodied in the decision. . . .

**4. ID.; ID.; ID.; ID.; ID.; ID.; CASE AT BAR.—** As to the liability of Alejo in the alleged hasty implementation of the writ of execution, we find the same to be unmeritorious. . . . x x x In the instant case, respondent Sheriff was merely performing his ministerial duty when he implemented the writ of execution issued by the court. Alejo, however, should be reminded that it is required of him to pay the required fees before the implementation of the writ of execution.

## D E C I S I O N

**PERALTA, *J.*:**

Before this Court is a Complaint[1] dated January 16, 2006, filed by Atty. Alberto II Borbon Reyes against respondents Atty. Richard C. Jamora, Branch Clerk of Court; Lucito Alejo, Deputy Sheriff IV; Ely Mondido, Officer-in-Charge of cases, all of the Regional Trial Court of Makati City, Branch 56, for Usurpation of Authority and Grave Abuse of Authority, relative to Civil Case No. 01-887 entitled "*Kevin Ross McDonald v. Dukes and Co. Securities, Inc., et al.*"

The antecedent facts of the case, as culled from the records, are as follows:

Complainant Atty. Alberto II Borbon Reyes is the counsel of Amador Pastrana, one of the defendants in the afore-mentioned civil case. On December 9, 2004, Judge Nemesio Felix, then Presiding Judge of the Regional Trial Court of Makati City, Branch 56, rendered a judgment in the subject case in favor of the plaintiff.[2] On June 17, 2005, said Decision had become final and executory.[3] On June 29, 2005, unknown to Reyes, a Writ of Execution was issued by Jamora relative to the December 9, 2004 decision.[4]

Meanwhile, dissatisfied with the Decision, Reyes, on July 4, 2005, filed a petition for relief from judgment. On November 18, 2005, Judge Reinato Quilala, Pairing Judge of the court *a quo*, granted the petition for relief and ordered the deputy sheriff to desist from implementing the Decision dated December 9, 2004.[5] However, Reyes discovered later that the December 9, 2004 Decision had already been executed by virtue of a writ of execution.

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[1] *Rollo,* pp. 1-3.

[2] *Id*. at 108-111.

[3] *Id*. at 48.

[4] *Id*. at 49.

[5] *Id*. at 8.

Thus, Reyes filed the instant administrative complaint against Jamora, Alejo and Mondido. He insisted that at the time he filed the petition, no writ of execution had been issued yet in the said case. Reyes pointed out that neither the Writ of Execution nor the Sheriff's Return on the service of the writ was attached to the records of the case.

Moreover, Reyes averred that there was an over-levy because the plaintiff's claim amounted to a total of ₱550,000.00 ($10,000.00) only, but Alejo allegedly levied ₱7,000.000.00 worth of real properties of his client.

Finally, Reyes accused Mondido of losing the copy of the petition for relief from judgment he filed in court. Thus, Reyes claimed that Jamora, Alejo and Mondido connived together, as shown by their alleged concerted actions, to prejudice the rights of his client.

On January 31, 2006, the Office of the Court Administrator (OCA) directed respondents Jamora, Mondido and Alejo to file their respective Comments on the instant complaint.[6]

On February 22, 2006, in his Comment,[7] Mondido averred that he was in charged of purely criminal cases only in the RTC of Makati City, Branch 56. He denied that he personally received the copy of the petition for relief from judgment and claimed that it was another court personnel named Ethel who received the same as indicated in the petition. He added that at the time the petition for relief from judgment was lost, a certain Teodorico Duran was the person in charge of the civil cases. Thus, he had nothing to do with the alleged loss of the copy of the petition for relief.

For his part, Alejo, in his Comment[8] dated February 28, 2006, denied that there was collusion among him, Jamora and Mondido to prejudice the rights of the complainant. Alejo clarified that the Writ of Execution had already been issued on June 29,

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[6] *Id*. at 49.

[7] *Id*. at 14-16.

[8] *Id*. at 35-40.

2005 contrary to complainant's claim that there was no writ yet at the time he filed the Petition for Relief from Judgment on July 4, 2005. He explained that he was merely implementing the directive given to him pursuant to the writ to demand from the defendants the immediate payment, in full, of the sum of US$10,282.15 as actual damages with interest; ₱200,000.00 as incidental actual expense; ₱300,000.00 as exemplary damages; and ₱200,000.00 as attorney's fees.

Alejo added that at the time he conducted the public auction on August 3 and 4, 2005 against the properties of the defendants, there was no order or injunction to stay its execution; thus, he proceeded with the execution according to his mandate.

Alejo likewise maintained that there was no over-levy over the defendant's real properties, since in addition to the US$10,282.15 as actual damages with interest at 12% per annum, there were also incidental expenses, exemplary damages and attorney's fees to be levied. In a nutshell, Alejo averred that the defendant's obligation amounted to ₱1,702,663.86 while the levied property in Cavite has a market value of ₱662,949.49 and the Makati property was valued at ₱254,000.00 only. Moreover, Alejo pointed out that the subject judgment stated that the liability of the defendants is solidary.

On the other hand, in his Comment[9] dated March 6, 2006, Jamora stressed that his only involvement in the subject case was solely limited to his issuance of the Writ of Execution dated June 29, 2005 pursuant to the Order of the Court dated June 17, 2005. He controverted Reyes's claim that no writ of execution was issued yet at the time he filed the petition for relief and insisted that he personally signed the Writ of Execution, addressed to Sheriff Alejo on June 29, 2005.

Jamora likewise explained that the task of attaching to the records of the case any pleading or pertinent documents belongs to the person in charge of civil cases. Thus, with regard to the alleged loss of the original copy of the petition for relief from judgment filed by the defendants, Jamora maintained that he

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[9] *Id*. at 53-55.

was totally unaware of such incident, which he came to know only after he received the instant administrative complaint. He averred that even the complainant admitted that he never followed up said petition from him but always dealt directly with then Pairing Judge of Branch 56, Hon. Reinato G. Quilala.

Subsequently, in its Memorandum[10] dated July 7, 2006, the OCA recommended that the instant complaint be re-docketed as a regular administrative complaint and be referred to the Executive Judge of the Regional Trial Court of Makati City for investigation, report and recommendation, due to the conflicting versions of the parties.

In a Resolution[11] dated August 9, 2006, the Court, as recommended by the OCA, resolved to re-docket the instant case as a regular administrative matter and refer the case to the Executive Judge of the Regional Trial Court of Makati City for investigation, report and recommendation.

In his Report dated January 5, 2007, Judge Winlove M. Dumayas, Executive Judge, Regional Trial Court of Makati City, concluded that Reyes's allegations that respondents connived to prejudice the rights of his client were unsubstantiated. He recommended that all the respondents be exonerated from the charges of usurpation of authority and grave abuse of discretion. He, however, recommended that Alejo should be held reprimanded for neglect of duty for his failure to comply with Rule 141 of the Rules of Court.

During the investigation, Judge Dumayas found that indeed Jamora's participation in the subject case was limited only to the issuance of the Writ of Execution on June 29, 2005, which he addressed to Alejo for implementation. As to the liability of Mondido, it was established that he was not remiss in his duties, since in the first place, he was not the one who received the copy of the petition. Mondido was, likewise, not the person in charge of civil cases at that time. Judge Dumayas narrated

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[10] *Id*. at 58-60.

[11] *Id*. at 61.

that when Judge Reinato G. Quilala directed the deputy sheriff to desist from implementing the Writ of Execution, he was unaware that the decision had already been fully executed.

However, Judge Dumayas found Alejo liable for hastily implementing the Writ of Execution without the payment of the required legal fees by the prevailing party in violation of the Rules.

Thus, in a Memorandum dated April 12, 2007, the OCA adopted the findings and recommendation of Judge Dumayas.

We agree with the findings of the Investigating Judge pertaining to the allegations of usurpation of authority and abuse of authority, but with modification as to those relative to the implementation of the writ.

A review of the records shows that no evidence was presented during the investigation to prove that the acts of respondents amounted to usurpation of authority and grave abuse of authority. Reyes failed to substantiate his accusations. In the absence of proof, complainant's bare assertions cannot overturn the presumption of regularity in the performance of official duties by court officials and personnel.

In the instant case, it is apparent that the issuance of the Writ of Execution was within the scope of duties of Jamora as Branch Clerk of Court. It was also proven that the Writ of Execution was indeed issued on June 29, 2005. Significantly, Reyes failed to show proof that there was no writ of execution yet at the time he filed his petition for relief from judgment.

Likewise, it was established that it was not Mondido who received the copy of the petition, thus, complainant's allegation that they connived with each other to prejudice the latter's rights is completely baseless.

As to the liability of Alejo in the alleged hasty implementation of the writ of execution, we find the same to be unmeritorious. When a writ is placed in the hands of a sheriff, it becomes his ministerial duty to proceed with reasonable celerity and promptness to implement it in accordance with its mandate.

This duty, in the proper execution of a valid writ, is not just directory, but mandatory. He has no discretion whether to execute the writ or not. He is mandated to uphold the majesty of the law as embodied in the decision.[12] In the instant case, respondent Sheriff was merely performing his ministerial duty when he implemented the writ of execution issued by the court. Alejo, however, should be reminded that it is required of him to pay the required fees before the implementation of the writ of execution.

It is settled that in administrative proceedings, the complainant has the burden of proving the allegations in his complaint with substantial evidence, and in the absence of evidence to the contrary, the presumption is that respondent has regularly performed his duties. Indeed, in the absence of cogent proof, bare allegations of misconduct cannot prevail over the presumption of regularity in the performance of official functions.[13] The Court cannot give credence to charges based on mere suspicion and speculation.

**WHEREFORE,** the instant administrative complaint filed against respondents Atty. Richard C. Jamora, Sheriff Lucito V. Alejo and Eulogio T. Mondido, of the Regional Trial Court of Makati City, Branch 56, is *DISMISSED* for lack of merit. Respondent Alejo, however, is *ADMONISHED* to be more vigilant in complying with payment of fees as required under Rule 141 of the Rules of Court in the implementation of writs of execution.

**SO ORDERED.**

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

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[12] *Go v. Hortaleza,* A.M. No. P-05-1971, June 26, 2008, 555 SCRA 406, 411.

[13] *Borromeo-Garcia v. Judge Pagayatan,* A.M. No. RTJ-08-2127, September 25, 2008, 566 SCRA 320, 329.

**SECOND DIVISION**

[G.R. No. 166461. April 30, 2010]

**HEIRS OF LORENZO and CARMEN VIDAD and AGVID CONSTRUCTION CO., INC.,** *petitioners, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUE RAISED FOR THE FIRST TIME ON APPEAL VIOLATES CONSTITUTIONAL RIGHT TO DUE PROCESS OF THE OTHER PARTY.**— It is a fundamental rule that this Court will not resolve issues that were not properly brought and ventilated in the lower courts. Questions raised on appeal must be within the issues framed by the parties and, consequently, issues not raised in the trial court cannot be raised for the first time on appeal. An issue, which was neither averred in the complaint nor raised during the trial in the lower courts, cannot be raised for the first time on appeal because it would be offensive to the basic rule of fair play and justice, and would be violative of the constitutional right to due process of the other party.

**2. ID.; ID.; ID.; ID.; CASE AT BAR.**— In its petition for review with the CA, petitioners never put as an issue the alleged existence of a consummated sale between the DAR and the petitioners under RA 6657. What petitioners questioned was SAC's jurisdiction over determination of just compensation cases involving lands covered by RA 6657. Furthermore, petitioners insist that LBP has no legal personality to institute a case for determination of just compensation against landowners with the SAC. It is only in the present petition for review that petitioners raised the alleged existence of a consummated sale between the DAR and petitioners. The argument that a consummated sale between the DAR and petitioners existed upon petitioners' acceptance of the valuation made in the RARAD's decision of 29 March 2000 is an issue being raised for the first time. Section 15, Rule 44 of the 1997 Rules of Court provides that the appellant "may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties."

A perusal of the questions raised in the SAC and the CA shows that the issue on the existence of a consummated sale between the DAR and petitioners was not among the issues therein. Hence, this issue is being raised for the first time on appeal.

**3. POLITICAL LAW; EMINENT DOMAIN; DETERMINATION OF JUST COMPENSATION, PRIMARILY A JUDICIAL FUNCTION.—** It must be emphasized that the taking of property under RA 6657 is an exercise of the State's power of eminent domain. The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies. When the parties cannot agree on the amount of just compensation, only the exercise of judicial power can settle the dispute with binding effect on the winning and losing parties. On the other hand, the determination of just compensation in the RARAD/DARAB requires the voluntary agreement of the parties. Unless the parties agree, there is no settlement of the dispute before the RARAD/DARAB, except if the aggrieved party fails to file a petition for just compensation on time before the RTC.

**4. LABOR LAW AND SOCIAL LEGISLATION; AGRARIAN REFORM; COMPREHENSIVE AGRARIAN REFORM PROGRAM (RA NO. 6657); JUST COMPENSATION; PROCEDURE FOR DETERMINATION.—** The procedure for the determination of just compensation under RA 6657, as summarized by this Court in *Land Bank of the Philippines v. Spouses Banal*, commences with LBP determining the value of the lands under the land reform program. Using LBP's valuation, the DAR makes an offer to the landowner through a notice sent to the landowner, pursuant to Section 16(a) of RA 6657. In case the landowner rejects the offer, the DAR adjudicator conducts a summary administrative proceeding to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land. A party who disagrees with the decision of the DAR adjudicator may bring the matter to the RTC designated as a Special Agrarian Court for final determination of just compensation.

**5. ID.; ID.; ID.; ID.; SPECIAL AGRARIAN COURTS (SAC); HAS ORIGINAL AND EXCLUSIVE JURISDICTION IN JUST COMPENSATION CASES.—** The original and exclusive

jurisdiction of the SAC in just compensation cases is not a novel issue. This has been extensively discussed in *Land Bank of the Philippines v. Belista* x x x. Clearly, under Section 50, DAR has primary jurisdiction to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the DA and the DENR. Further exception to the DAR's original and exclusive jurisdiction are all petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under RA No. 6657, which are within the jurisdiction of the RTC sitting as a Special Agrarian Court. Thus, jurisdiction on just compensation cases for the taking of lands under RA No. 6657 is vested in the courts.

**6. ID.; ID.; ID.; ID.; ID.; SAC MAY VALIDLY ACQUIRE JURISDICTION OVER AN ACTION FOR DETERMINATION OF JUST COMPENSATION EVEN DURING PENDENCY OF DARAB PROCEEDINGS.—** In *Land Bank of the Philippines v. Court of Appeals,* we had the occasion to rule that the SAC acquired jurisdiction over the action for the determination of just compensation even during the pendency of the DARAB proceedings, for the following reason: It is clear from Sec. 57 that the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." This "original and excusive" jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions. Thus, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from Sec. 57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into an appellate jurisdiction would be contrary to Sec. 57 and therefore would be void. Thus, direct resort to the SAC by private respondent is valid.

**7. ID.; ID.; ID.; ID.; ID.; DAR'S LAND VALUATION; ONLY PRELIMINARY.—** In fact, RA 6657 does not make DAR's valuation absolutely binding as the amount payable by LBP. A reading of Section 18 of RA 6657 shows that the courts, and

not the DAR, make the final determination of just compensation. It is well-settled that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. The courts will still have the right to review with finality the determination in the exercise of what is admittedly a judicial function.

**8. ID.; ID.; ID.; ID.; LAND BANK OF THE PHILIPPINES (LBP); HAS LEGAL PERSONALITY TO FILE AN ACTION FOR DETERMINING JUST COMPENSATION.**— Section 18 of RA 6657 states: Sec. 18. *Valuation and Mode of Compensation*.— The LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and the LBP x x x, or as may be finally determined by the court as the just compensation for the land. This provision clearly states that there should be a consensus among the landowner, the DAR, and the LBP on the amount of just compensation. Therefore, LBP is not merely a nominal party in the determination of just compensation. RA 6657 directs LBP to pay the DAR's land valuation only if the landowner, the DAR and LBP agree on the amount of just compensation. The DAR proceedings are but preliminary, and becomes final only when the parties have all agreed to the amount of just compensation fixed by the DAR. However, should a party disagree with the amount fixed by DAR, then the jurisdiction of the SAC may be invoked for the purpose.

**9. ID.; ID.; ID.; ID.; ID.; ID.; MAY FILE SAME INDEPENDENTLY OF THE DEPARTMENT OF AGRARIAN REFORM.**— In *Heirs of Roque F. Tabuena v. Land Bank of the Philippines*, we ruled that the LBP is an indispensable party in expropriation proceedings under RA 6657, and thus, has the legal personality to question the determination of just compensation, independent of the DAR: LBP is an agency created primarily to provide financial support in all phases of agrarian reform pursuant to Section 74 of Republic Act (RA) No. 3844 and Section 64 of RA No. 6657. It is vested with the primary responsibility and authority in the valuation and compensation of covered landholdings to carry out the full implementation of the Agrarian Reform Program. It may agree with the DAR and the land owner as to the amount of just compensation to be paid to the latter and may also disagree with them and bring the matter to court for judicial determination. Once an expropriation proceeding

for the acquisition of private agricultural lands is commenced by the DAR, the indispensable role of LBP begins, which clearly shows that there would never be a judicial determination of just compensation absent respondent LBP's participation. Logically, it follows that respondent is an indispensable party in an action for the determination of just compensation in cases arising from agrarian reform program; as such, it can file an appeal independently of DAR. Hence, in *Land Bank of the Philippines v. AMS Farming Corporation*, we ruled that LBP is a real party-in-interest which could file its own appeal in agrarian reform cases x x x. It is thus beyond question that LBP has the legal personality to file the petition for determination of just compensation with the SAC.

**10. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING; TRIFLES WITH AND MOCKS JUDICIAL PROCESSES; NOT PRESENT IN CASE AT BAR.**— In *Canuto, Jr. v. National Labor Relations Commission*, we held that forum shopping is manifest whenever a party "repetitively avail[s] of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court." It has also been defined as "an act of a party against whom an adverse judgment has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of *certiorari*, or 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." Considered a pernicious evil, it adversely affects the efficient administration of justice since it clogs the court dockets, unduly burdens the financial and human resources of the judiciary, and trifles with and mocks judicial processes. x x x Reviewing the facts of this case, the SAC, after hearing the parties regarding the propriety of issuing the injunctive writ against the execution of the RARAD's decision, found that it had no jurisdiction to resolve the matter. Hence, LBP filed a petition for *certiorari* with the DARAB (DSCA No. 0213) seeking the issuance of a TRO and preliminary injunction. It is thus seen that there is no forum shopping because the SAC had no jurisdiction on the issuance

of an injunctive writ against the RARAD's decision. As the SAC had no jurisdiction over such matter, any ruling it renders is void and of no legal effect. Thus, LBP's act of filing the petition for *certiorari* with the DARAB, which has the correct jurisdiction for the remedy sought, does not amount to forum shopping.

**11. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM (R.A. NO. 6657); JUST COMPENSATION; RTC, SITTING AS A SPECIAL AGRARIAN COURT (SAC), MAKES THE FINAL DETERMINATION THEREOF.—** LBP's valuation of lands covered by the CARP Law is considered only as an initial determination, which is not conclusive, as it is the RTC, sitting as a SAC, that could make the final determination of just compensation, taking into consideration the factors enumerated in Section 17 of RA 6657 and the applicable DAR regulations. LBP's valuation has to be substantiated during an appropriate hearing before it could be considered sufficient in accordance with Section 17 of RA 6657 and the DAR regulations.

**12. ID.; ID.; ID.; ID.; FACTORS TO BE CONSIDERED PURSUANT TO SECTION 17 OF RA 6657 HAD ALREADY BEEN TRANSLATED INTO A BASIC FORMULA BY THE DAR.—** In *Land Bank of the Philippines v. Celada*, the Court ruled that the factors enumerated under Section 17 of RA 6657 had already been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of RA 6657. Thus, the Court held that the formula outlined in DAR AO No. 5, series of 1998, should be applied in computing just compensation.

**13. ID.; ID.; ID.; ID.; ID.; APPLICATION OF THE AFOREMENTIONED GUIDELINES IN DETERMINING JUST COMPENSATION; CASE REMANDED TO SAC FOR RECEPTION OF EVIDENCE.—** In *Land Bank of the Philippines v. Spouses Banal*, we remanded the case to the SAC for further reception of evidence because the trial court based its valuation upon a different formula and did not conduct any hearing for the reception of evidence. The mandatory application of the aforementioned guidelines in determining just compensation has been reiterated recently in *Land Bank of the Philippines v. Lim*, and *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*, where we also ordered

the remand of the cases to the SAC for the determination of just compensation strictly in accordance with the applicable DAR regulations. Thus, the remand of the case is necessary for the parties to present their evidence, as we are not a trier of facts.

**14. ID.; ID.; ID.; ID.; ID.; SPECIAL CIRCUMSTANCES JUSTIFY REMAND OF CASE TO THE COURT OF APPEALS; CASE AT BAR.**— Considering, however, that the land was acquired in 1989 and the only surviving petitioner is now an octogenarian and is in need of urgent medical attention, we find these special circumstances justifying in the acceleration of the final disposition of this case. This Court deems it best *pro hac vice* to commission the CA as its agent to receive and evaluate the evidence of the parties. The CA's mandate is to ascertain the just compensation due in accordance with this Decision, applying Section 17 of RA 6557 and applicable DAR regulations. As explained in *Land Bank of the Philippines v. Gallego, Jr.*, the remand of cases before this Court to the CA for the reception of further evidence is not a novel procedure. It is sanctioned by Section 6, Rule 46 of the Rules of Court. In fact, the Court availed of this procedure in quite a few cases.

**APPEARANCES OF COUNSEL**

*Leonardo N. Salazar* for petitioners.
*The Government Corporate Counsel* for respondent.

**D E C I S I O N**

**CARPIO, *J.*:**

**The Case**

The heirs of Lorenzo and Carmen Vidad and Agvid Construction Co., Inc. (petitioners) filed this Petition for Review[1] assailing the Court of Appeals' (CA) Decision[2] dated 28

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

[2] Penned by Associate Justice Rebecca de Guia-Salvador with Associate Justices Romeo A. Brawner, and Jose C. Reyes, Jr., concurring.

November 2003 in CA-G.R. SP No. 68157 as well as the Resolution[3] dated 20 December 2004 denying the Motion for Reconsideration. In the assailed decision, the CA affirmed the 15 August 2001 Decision[4] of the Regional Trial Court of Santiago City, Branch 21 (RTC), sitting as a Special Agrarian Court (SAC). The SAC fixed the valuation for purposes of just compensation of petitioners' land (land) at ₱5,626,724.47.

**The Facts**

Petitioners are the owners of a land located in Barangay Masipi East, Cabagan, Isabela, with an area of 589.8661 hectares and covered by Original Certificate of Title No. (OCT) 0-458. On 26 September 1989, the land was voluntarily offered for sale to the government under Republic Act No. (RA) 6657 or the Comprehensive Agrarian Reform Law of 1988.[5] Of the entire area, the government only acquired 490.3436 hectares.[6]

Respondent Land Bank of the Philippines (LBP) is a government banking institution designated under Section 64 of RA 6657 as the financial intermediary of the agrarian reform program of the government.[7]

By virtue of Executive Order No. (EO) 405 vesting LBP with primary responsibility to determine the valuation and compensation for all lands covered by RA 6657, LBP computed the initial value of the land at ₱2,961,333.03 for 490.3436 hectares, taking into consideration the factors under Department of Agrarian Reform (DAR) Administrative Order (AO) No. 06,

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[3] Penned by Associate Justice Rebecca de Guia-Salvador with Associate Justices Romeo A. Brawner, and Jose C. Reyes, Jr., concurring.

[4] Penned by RTC Judge Fe Albano Madrid.

[5] *Rollo*, p. 5.

[6] *Id.* at 192.

[7] Section 64. *Financial Intermediary for the CARP*. – The Land Bank of the Philippines shall be the financial intermediary for the CARP, and shall insure that the social justice objectives of the CARP shall enjoy a preference among its priorities.

series of 1992, and the applicable provisions of RA 6657.[8] Petitioners rejected the valuation.[9]

On 17 January 1994, petitioners filed a Petition for Review with the Department of Agrarian Reform Adjudication Board (DARAB). The DARAB dismissed the petition in an Order dated 9 December 1994.[10]

Undaunted, petitioners filed a second petition for review asking for a re-evaluation of the land on 17 December 1998.[11] Acting on the petition, the Provincial Agrarian Reform Adjudicator (PARAD) issued an Order dated 26 January 1999 directing LBP to re-compute the value of the land.[12] In compliance with the PARAD's Order, LBP revalued the land at ₱4,158,947.13 for 402.3835 hectares and ₱1,467,776.34 for 43.8540 hectares.[13] LBP used the guidelines in DAR AO No. 5, series of 1998 for the revaluation.[14] Petitioners similarly rejected this offer.

Still unable to agree on the revalued proposal, petitioners instituted JC RARAD Case No. II-001-ISA-99 before the Regional Agrarian Reform Adjudicator of Tuguegarao (RARAD) for the purpose of determining the just compensation for their land. In a decision dated 29 March 2000, the RARAD fixed the just compensation for the land at ₱32,965,408.46.[15] On 28 April 2000, petitioners manifested their acceptance thereof.[16]

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[8] *Rollo*, p. 77.

[9] *Id.* at 192-193, 214-215.

[10] CA *rollo*, p. 52.

[11] *Id.*

[12] *Id.* at 48.

[13] A total of ₱5,626,723.47 for 446.2375 hectares.

[14] CA *rollo*, p. 49.

[15] *Id.* at 51-54.

[16] *Id.* at 114.

On the other hand, LBP moved for reconsideration. In an Order dated 2 May 2000, the RARAD denied the motion for lack of merit.[17]

On 12 May 2000, pursuant to Section 57[18] of RA 6657, LBP filed a petition for determination of just compensation with the RTC, sitting as a SAC.[19] The case was docketed as CAR Case No. 21-0632.

Petitioners moved to dismiss LBP's petition on the ground that they already accepted the RARAD's decision, which, perforce rendered it final and executory. They alleged that LBP's petition must be considered barred by the RARAD's decision on the ground of *res judicata*. Petitioners secured a certificate of finality of the RARAD's decision and subsequently moved for the execution thereof, over LBP's objection. Petitioners also questioned LBP's legal personality to institute the action.[20]

On 28 August 2000, the SAC issued an Order denying petitioners' motion to dismiss.[21] Petitioners moved to reconsider this Order, which was denied in the Order dated 17 October 2000.[22]

During the pendency of CAR Case No. 21-0632, petitioners would time and again, attempt to execute the RARAD's decision until they were temporarily restrained by the SAC in an Order

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[17] *Id.* at 58.

[18] Section 57. *Special Jurisdiction*. – The Special Agrarian Court shall have original and exclusive jurisdiction over all petitions for the determination of just compensation and the prosecution of all criminal offenses under 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.

[19] CA *rollo*, p. 10.

[20] *Rollo*, pp. 9-10.

[21] *Id.* at 163.

[22] *Id.* at 164.

dated 31 January 2001.[23] However, upon hearing the parties regarding the propriety of issuing the injunctive writ against the execution of the RARAD's decision, the SAC found that it had no jurisdiction to resolve the matter.[24] Forthwith, LBP referred the matter to the DARAB in a petition for *certiorari* docketed as DCSA No. 0213. The DARAB eventually issued a temporary restraining order and, later, a writ of preliminary injunction, directed against the implementation of the RARAD's decision. The propriety of executing the RARAD's decision pending the resolution of CAR Case No. 21-0632 is an issue that is yet to be resolved by the DARAB.[25]

In CAR Case No. 21-0632, petitioners failed to file their answer and, on 30 January 2001, petitioners were held in default and the SAC heard LBP's evidence *ex-parte* on the merits of the case.[26]

On 15 August 2001, the SAC rendered a decision, based on LBP's evidence alone, fixing the just compensation at ₱5,626,724.47 for the 446.2375 hectares of the land.[27] The SAC, in an Order dated 22 November 2001, denied petitioners' motion for reconsideration of the decision.[28]

Petitioners filed an appeal docketed as CA-G.R. SP No. 68157, questioning the authority of the SAC to give due course to the petition of LBP, claiming that the RARAD has concurrent jurisdiction with the SAC over just compensation cases involving lands covered by RA 6657. Furthermore, petitioners insisted that LBP has no legal personality to institute a case for determination of just compensation against landowners with the SAC.[29]

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[23] *Id.* at 216.

[24] *Id.*

[25] *Id.* at 217.

[26] *Id.* at 165.

[27] *Id.* at 63.

[28] *Id.* at 70.

[29] *Id.* at 36-57.

On 28 November 2003, the CA rendered the assailed decision, dismissing the appeal for lack of merit, and affirming the valuation of the SAC in the amount of ₱5,626,724.47.[30]

Petitioners filed a motion for reconsideration, which was denied in a Resolution dated 20 December 2004.[31]

Aggrieved by the CA's Decision and Resolution, petitioner elevated the case before this Court.

**Ruling of the RARAD of Tuguegarao City**

The RARAD took note of the certifications presented as evidence that some 392.2946 hectares were listed as idle land when this portion was already cornland. The RARAD considered the certifications issued by LBP officials, Mr. Andres T. Barican, Jr., AA Specialist, Mr. Jose T. Gacutan, Property Appraiser, and MARO[32] Francisco C. Verzola of Cabagan, Isabela.[33]

The RARAD reclassified 392.2946 hectares from idle land to cornland. Then, the RARAD considered the submitted average valuation per hectare paid by LBP under similar situations for 1996, 1998 and 1999[34] particularly on lands in Region 2:

| Land Use | 1996 | 1998 | 1999 | Average |
|---|---|---|---|---|
| Cornland | 100,140.70 | 62,695.23 | 60,371.31 | 74,402.41 |
| Riceland Irrigated | 137,197.67 | 49,373.99 | | 93,285.83 |
| Riceland Rainfed | | 34,511.66 | | 34,511.66 |
| Riceland Unirrigated | 43,374.44 | 37,582.40 | | 40,748.42 |
| Rice Upland | | 20,271.41 | | 20,271.41 |
| Vegetables | 20,379.20 | | | 20,379.20 |

[30] *Id.* at 26.

[31] *Id.* at 35.

[32] Municipal Agrarian Reform Officer.

[33] *Rollo*, p. 83.

[34] *Id.*

Based on this table, the RARAD made the following computation:

Summary of Valuation of OCT No. 0-458

| Land Use | Area in has. | Land Value Per Ha. (PhP) | Total Land Value PhP |
|---|---|---|---|
| This MOV | | | |
| Upland Rice land | 1.2700 | 20,271.41 | ₱ 25,744.69 |
| Cornland | 8.5889 | 74,402.41 | 639,034.85 |
| Vegetable land | 0.2400 | 20,379.20 | 4,891.01 |
| Cornland (not idle) | 392.2846 | 74,402.41 | 29,186,919.00 |
| Subtotal | 402.3835 | | ₱ 29,856,589.55 |
| For subsequent MOV | | | |
| Riceland irrigated | 3.7940 | 93,285.33 | ₱ 353,924.54 |
| Riceland unirrigated | 6.1289 | 37,582.40 | 230,338.77 |
| Corn land | 33.9311 | 74,402.41 | 2,524,555.60 |
| Sub-total | 43.8540 | | ₱ 3,108,818.91 |
| Total | | | ₱ 32,965,408.46 |

The RARAD directed LBP to pay petitioners ₱32,965,408.46 as just compensation for 446.2375 hectares.

**Ruling of the SAC**

The SAC stated that petitioners were declared in default so LBP adduced its evidence *ex parte*. The SAC evaluated the pieces of evidence submitted by LBP and computed the just compensation for petitioners' land, thus:

| Land Use | Area Acq'd (Ha.) | Average LV/Ha. | Total Land Value |
|---|---|---|---|
| Irrig. Riceland | 3.7940 | 50, 354.07 | ₱ 191,043.34 |
| Unirrig. Riceland | 6.1289 | 20,158.64 | 123,550.29 |

| | | | |
|---|---|---|---|
| Upland Riceland | 1.2700 | 14,401.00 | 18,289.27 |
| Cornland | 42.5200 | 33,986.01 | 1,445,085.15 |
| Vegetable land | 0.2400 | 14,401.00 | 3,456.24 |
| Idleland (below 18% slope) | 392.2846 | 9,802.32 | 3,845,299.18 |
| | 446.2375 | | ₱ 5,626,723.47 |

**Ruling of the Court of Appeals**

The CA stated that RA 6657 mandates that in determining just compensation, there must be a consensus among the landowner, DAR and LBP.[35] The CA explained, thus:

> In the case at bench, petitioners have availed of the summary administrative proceedings in determining the just compensation due for their property under docket of JC RARAD Case No. 11-001-ISA-99. But just because they have agreed to the amount thereof fixed by the RARAD does not, however, mean that his decision has become final and executory. It must be remembered that the law requires the consensus of three (3) parties in the determination of just compensation: the landowner's, the DAR's and the LBP's. Since the LBP did not agree with the DAR's decision, then it had a right to invoke the court a quo's jurisdiction. The RARAD's decision will not serve to bar this subsequent suit for the simple reason that said decision has not attained finality as not all the parties concerned agreed to the amount of just compensation he had fixed.[36]

**The Issues**

Petitioners raise the following arguments:

1. WHETHER THE SUMMARY ADMINISTRATIVE PROCEEDING BEING CONDUCTED BY THE DARAB FOR THE DETERMINATION FOR JUST COMPENSATION OF LANDS PLACED UNDER THE COVERAGE OF CARP IS IN ACTUALITY A SALE TRANSACTION BETWEEN THE LANDOWNERS AND DAR WHICH CAN BE CONCLUDED AND CONSUMMATED BY THE AGREEMENT OF THE PARTIES;

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[35] *Id.* at 25-26.

[36] *Id.*

2. WHETHER THE DECISION OF THE RARAD DATED 29 MARCH 2000 FIXING THE JUST COMPENSATION FOR PETITIONER'S PROPERTY AT ₱32,965,408.46 HAD BECOME FINAL AND EXECUTORY UPON FAILURE OF RESPONDENT LAND BANK TO INTERPOSE AN APPEAL WITH THE SUPREME COURT AS MANDATED BY SECTION 60 OF R.A. NO. 6657;

3. WHETHER RESPONDENT HAS THE PERSONALITY OR CAUSE OF ACTION TO INSTITUTE A CASE AGAINST LANDOWNERS AT THE SAC;

4. WHETHER THE DARAB EXERCISING QUASI-JUDICIAL POWERS HAS CONCURRENT JURISDICTION WITH THE SAC IN THE DETERMINATION OF JUST COMPENSATION CASES INVOLVING LANDS PLACED BY DAR UNDER CARP COVERAGE;

5. WHETHER THE SAC CAN ASSUME JURISDICTION OVER THE PETITION FOR DETERMINATION OF JUST COMPENSATION FILED BY RESPONDENT AFTER THE RARAD HAD RENDERED ITS DECISION OF 29 MARCH 2000 AND A WRIT OF EXECUTION IS ISSUED;

6. WHETHER RESPONDENT LAND BANK IS GUILTY OF FORUM SHOPPING.[37]

**The Ruling of the Court**

Petitioners contend that the CA erred in affirming the decision of the SAC in CAR Case No. 21-0632, which is now barred by the RARAD's decision, more so when together with the DARAB, the SAC exercises concurrent jurisdiction on cases involving determination of just compensation. And since it was the DARAB, through the RARAD, which first assumed jurisdiction on the issue of just compensation for petitioners' land, then the SAC is precluded from assuming jurisdiction on the same issue.[38]

Convinced that only the landowners can invoke the jurisdiction of the SAC when they do not agree to the amount of just

[37] *Id.* at 8a.

[38] *Id.* at 11-12.

compensation proposed by DAR, petitioners also question LBP's personality to institute the petition with the SAC.[39] Petitioners also accuse LBP of forum shopping for trifling with the RARAD's decision which petitioners claim to have attained finality.[40]

As a new theory in this petition for review, petitioners submit that when they accepted the RARAD's decision of 29 March 2000 fixing the just compensation of the land at ₱32,965,408.46, that acceptance was the operative act that consummated the contract/agreement involving the voluntary sale of their property to the Republic of the Philippines under CARP Law.[41]

LBP claims that SAC has original and exclusive jurisdiction in just compensation cases, and, as LBP has timely filed an original action for determination of just compensation with the SAC, the decision of the RARAD was *ipso facto* vacated. In sum, the original action filed by LBP with the SAC automatically barred the RARAD's decision from attaining finality.[42]

***New issues cannot be raised for the first time on appeal***

The records show that petitioners were declared in default in the SAC case for their failure to file an answer to the complaint. Hence, the SAC proceeded on hearing LBP's evidence *ex parte*. After due trial, the SAC rendered its decision dated 15 August 2001, which was the subject of petitioners' appeal to the CA.

In its petition for review with the CA, petitioners never put as an issue the alleged existence of a consummated sale between the DAR and the petitioners under RA 6657. What petitioners questioned was SAC's jurisdiction over determination of just compensation cases involving lands covered by RA 6657. Furthermore, petitioners insist that LBP has no legal personality to institute a case for determination of just compensation against

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[39] *Id.* at 10.

[40] *Id.* at 14.

[41] *Id.* at 8a.

[42] *Id.* at 200-201.

landowners with the SAC. It is only in the present petition for review that petitioners raised the alleged existence of a consummated sale between the DAR and petitioners.

The argument that a consummated sale between the DAR and petitioners existed upon petitioners' acceptance of the valuation made in the RARAD's decision of 29 March 2000 is an issue being raised for the first time. Section 15, Rule 44 of the 1997 Rules of Court provides that the appellant "may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties."

A perusal of the questions raised in the SAC and the CA shows that the issue on the existence of a consummated sale between the DAR and petitioners was not among the issues therein. Hence, this issue is being raised for the first time on appeal.

It is a fundamental rule that this Court will not resolve issues that were not properly brought and ventilated in the lower courts.[43] Questions raised on appeal must be within the issues framed by the parties and, consequently, issues not raised in the trial court cannot be raised for the first time on appeal.[44]

An issue, which was neither averred in the complaint nor raised during the trial in the lower courts, cannot be raised for the first time on appeal because it would be offensive to the basic rule of fair play and justice, and would be violative of the constitutional right to due process of the other party.[45]

***Jurisdiction of the SAC in just compensation cases***

The second, fourth, and fifth issues, being inter-related, will be discussed together, in relation to the jurisdiction of the SAC in just compensation cases.

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[43] *Fuentes v. Caguimbal*, G.R. No. 150305, 22 November 2007, 538 SCRA 12, 25.

[44] *Sanchez v. The Hon. Court of Appeals*, 345 Phil. 155, 186 (1997).

[45] *Dosch v. NLRC, et al.*, 208 Phil. 259, 272 (1983).

Petitioners insist that the RARAD, in exercising quasi-judicial powers, has concurrent jurisdiction with the SAC in just compensation cases. Hence, the RARAD's decision, being a final determination of the appraisal of just compensation by the DARAB, should be appealed to this Court and not the SAC.

For its part, LBP insists that the RARAD/DARAB decision is merely a preliminary valuation, since the courts have the ultimate power to decide the question on just compensation.

The procedure for the determination of just compensation under RA 6657, as summarized by this Court in *Land Bank of the Philippines v. Spouses Banal*,[46] commences with LBP determining the value of the lands under the land reform program. Using LBP's valuation, the DAR makes an offer to the landowner through a notice sent to the landowner, pursuant to Section 16(a)[47] of RA 6657. In case the landowner rejects the offer, the DAR adjudicator[48] conducts a summary administrative proceeding to determine the compensation for the land by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land. A party who disagrees with the decision of the DAR adjudicator may bring the matter to the RTC designated as a Special Agrarian Court for final determination of just compensation.[49]

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[46] 478 Phil. 701 (2004).

[47] Section 16. *Procedure for Acquisition of Private Lands*. – For purposes of acquisition of private lands, the following procedures shall be followed:

a) After having identified the land, the landowners and the beneficiaries, the DAR shall send its notice to acquire the land to the owners thereof, by personal delivery or registered mail, and post the same in a conspicuous place in the municipal building and barangay hall of the place where the property is located. Said notice shall contain the offer of the DAR to pay a corresponding value in accordance with the valuation set forth in Sections 17, 18 and other pertinent provisions hereof.

[48] The Provincial Agrarian Reform Adjudicator (PARAD) or the Regional Agrarian Reform Adjudicator (RARAD), depending on the value of the land within their respective territorial jurisdiction. (Rule II, Sec. 2, DARAB Rules of Procedure).

[49] *Land Bank of the Philippines v. Spouses Banal*, *supra* note 46 at 708-709.

Contrary to petitioners' argument, the PARAD/RARAD/ DARAB do not exercise concurrent jurisdiction with the SAC in just compensation cases. The determination of just compensation is judicial in nature.

The original and exclusive jurisdiction of the SAC in just compensation cases is not a novel issue. This has been extensively discussed in *Land Bank of the Philippines v. Belista*,[50] to wit:

> Sections 50 and 57 of RA No. 6657 provide:
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> > Section 50. *Quasi-judicial Powers of the DAR*. – The DAR is hereby vested with primary jurisdiction to determine and adjudicate agrarian reform matters and shall have exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the Department of Agriculture (DA) and the Department of Environment and Natural Resources (DENR) x x x
> >
> > Section 57. *Special Jurisdiction*. – The Special Agrarian Court 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. x x x
> >
> > The Special Agrarian Courts shall decide all appropriate cases under their special jurisdiction within thirty (30) days from submission of the case for decision.

Clearly, under Section 50, DAR has primary jurisdiction to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation of agrarian reform, except those falling under the exclusive jurisdiction of the DA and the DENR. Further exception to the DAR's original and exclusive jurisdiction are all petitions for the determination of just compensation to landowners and the prosecution of all criminal offenses under RA No. 6657, which are within the jurisdiction of the RTC sitting as a Special Agrarian Court. Thus, jurisdiction on just compensation cases for the taking of lands under RA No. 6657 is vested in the courts.

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[50] G.R. No. 164631, 26 June 2009, 591 SCRA 137, 143-147.

In *Republic v. CA*, the Court explained:

> Thus, Special Agrarian Courts, which are Regional Trial Courts, are given original and exclusive jurisdiction over two categories of cases, to wit: (1) "all petitions for the determination of just compensation to landowners" and (2) "the prosecution of all criminal offenses under [R.A. No. 6657]." The provisions of §50 must be construed in harmony with this provision by considering cases involving the determination of just compensation and criminal cases for violations of R.A. No. 6657 as excepted from the plenitude of power conferred on the DAR. Indeed, there is a reason for this distinction. The DAR is an administrative agency which cannot be granted jurisdiction over cases of eminent domain (for such are takings under R.A. No. 6657) and over criminal cases. Thus, in *EPZA v. Dulay* and *Sumulong v. Guerrero* - we held that the valuation of property in eminent domain is essentially a judicial function which cannot be vested in administrative agencies, while in *Scoty's Department Store v. Micaller,* we struck down a law granting the then Court of Industrial Relations jurisdiction to try criminal cases for violations of the Industrial Peace Act.

In a number of cases, the Court has upheld the original and exclusive jurisdiction of the RTC, sitting as SAC, over all petitions for determination of just compensation to landowners in accordance with Section 57 of RA No. 6657.

In *Land Bank of the Philippines v. Wycoco*, the Court upheld the RTC's jurisdiction over Wycoco's petition for determination of just compensation even where no summary administrative proceedings was held before the DARAB which has primary jurisdiction over the determination of land valuation. The Court held:

> In *Land Bank of the Philippines v. Court of Appeals*, the landowner filed an action for determination of just compensation without waiting for the completion of DARAB's re-evaluation of the land. This, notwithstanding, the Court held that the trial court properly acquired jurisdiction because of its exclusive and original jurisdiction over determination of just compensation, thus –
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> > … It is clear from Sec. 57 that the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." This "original and

> exclusive" jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions. Thus, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from Sec. 57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into an appellate jurisdiction would be contrary to Sec. 57 and, therefore, would be void. Thus, direct resort to the SAC [Special Agrarian Court] by private respondent is valid.
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> x x x x x x x x x

In *Land Bank of the Philippines v. Natividad*, wherein Land Bank questioned the alleged failure of private respondents to seek reconsideration of the DAR's valuation, but instead filed a petition to fix just compensation with the RTC, the Court said:

> At any rate, in *Philippine Veterans Bank v. CA*, we held that there is nothing contradictory between the DAR's primary jurisdiction to determine and adjudicate agrarian reform matters and exclusive original jurisdiction over all matters involving the implementation of agrarian reform, which includes the determination of questions of just compensation, and the original and exclusive jurisdiction of regional trial courts over all petitions for the determination of just compensation. The first refers to administrative proceedings, while the second refers to judicial proceedings.
>
> In accordance with settled principles of administrative law, primary jurisdiction is vested in the DAR to determine in a preliminary manner the just compensation for the lands taken under the agrarian reform program, but such determination is subject to challenge before the courts. The resolution of just compensation cases for the taking of lands under agrarian reform is, after all, essentially a judicial function.
>
> Thus, the trial court did not err in taking cognizance of the case as the determination of just compensation is a function addressed to the courts of justice.

In *Land Bank of the Philippines v. Celada*, where the issue was whether the SAC erred in assuming jurisdiction over respondent's petition for determination of just compensation despite the pendency of the administrative proceedings before the DARAB, the Court stated that:

> It would be well to emphasize that the taking of property under RA No. 6657 is an exercise of the power of eminent domain by the State. The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies. Consequently, the SAC properly took cognizance of respondent's petition for determination of just compensation.

We do not agree with petitioners' submission that the SAC erred in assuming jurisdiction over the petition for determination of just compensation filed by LBP after the RARAD rendered its 29 March 2000 decision. In *Land Bank of the Philippines v. Court of Appeals*,[51] we had the occasion to rule that the SAC acquired jurisdiction over the action for the determination of just compensation even during the pendency of the DARAB proceedings, for the following reason:

> It is clear from Sec. 57 that the RTC, sitting as a Special Agrarian Court, has "original and exclusive jurisdiction over all petitions for the determination of just compensation to landowners." This "original and exclusive" jurisdiction of the RTC would be undermined if the DAR would vest in administrative officials original jurisdiction in compensation cases and make the RTC an appellate court for the review of administrative decisions. Thus, although the new rules speak of directly appealing the decision of adjudicators to the RTCs sitting as Special Agrarian Courts, it is clear from Sec. 57 that the original and exclusive jurisdiction to determine such cases is in the RTCs. Any effort to transfer such jurisdiction to the adjudicators and to convert the original jurisdiction of the RTCs into an appellate jurisdiction would be contrary to Sec. 57 and therefore would be void. Thus, direct resort to the SAC by private respondent is valid.[52]

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[51] 376 Phil. 252 (1999).

[52] *Id.* at 262-263.

In fact, RA 6657 does not make DAR's valuation absolutely binding as the amount payable by LBP. A reading of Section 18 of RA 6657 shows that the courts, and not the DAR, make the final determination of just compensation.[53] It is well-settled that the DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. The courts will still have the right to review with finality the determination in the exercise of what is admittedly a judicial function.[54]

It must be emphasized that the taking of property under RA 6657 is an exercise of the State's power of eminent domain.[55] The valuation of property or determination of just compensation in eminent domain proceedings is essentially a judicial function which is vested with the courts and not with administrative agencies.[56] When the parties cannot agree on the amount of just compensation, only the exercise of judicial power can settle the dispute with binding effect on the winning and losing parties. On the other hand, the determination of just compensation in the RARAD/DARAB requires the voluntary agreement of the parties. Unless the parties agree, there is no settlement of the dispute before the RARAD/DARAB, except if the aggrieved party fails to file a petition for just compensation on time before the RTC.

LBP thus correctly filed a petition for determination of just compensation with the SAC, which has the original and exclusive jurisdiction in just compensation cases under RA 6657. DAR's valuation, being preliminary in nature, could not have attained finality, as it is only the courts that can resolve the issue on just compensation. Consequently, the SAC properly took cognizance of LBP's petition for determination of just compensation.

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[53] *Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, 27 November 2008, 572 SCRA 108, 137.

[54] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform*, G.R. No. 78742, 14 July 1989, 175 SCRA 343, 382.

[55] *Id.* at 373-374.

[56] *Land Bank of the Philippines v. Celada*, G.R. No. 164876, 23 January 2006, 479 SCRA 495, 505.

***Legal personality of LBP to contest the DAR decision***

Petitioners submit that LBP has no legal personality and has no cause of action to institute the agrarian case before the SAC. Petitioners argue that LBP cannot on its own, separate and independent of DAR, file an original action for determination of just compensation against the RARAD and petitioners, because it is a usurpation of the exclusive authority of DAR to initiate and prosecute expropriation proceedings. Petitioners thus insist that in land acquisition cases, the only real parties-in-interest are the landowners and the government, the latter acting through the DAR.

We do not agree.

Section 18 of RA 6657 states:

> Sec. 18. *Valuation and Mode of Compensation.* — The LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and the LBP x x x, or as may be finally determined by the court as the just compensation for the land.

This provision clearly states that there should be a consensus among the landowner, the DAR, and the LBP on the amount of just compensation. Therefore, LBP is not merely a nominal party in the determination of just compensation. RA 6657 directs LBP to pay the DAR's land valuation only if the landowner, the DAR and LBP agree on the amount of just compensation.[57] The DAR proceedings are but preliminary, and becomes final only when the parties have all agreed to the amount of just compensation fixed by the DAR.[58] However, should a party disagree with the amount fixed by DAR, then the jurisdiction of the SAC may be invoked for the purpose.[59]

There is likewise no merit in petitioners' allegation that LBP lacks *locus standi* to file a case with the SAC, separate and

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[57] *Land Bank v. Dumlao, supra* note 53 at 137.

[58] *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform, supra* note 54 at 382.

[59] Sec. 16(f) and Sec. 57, RA 6657.

independent from the DAR. In *Heirs of Roque F. Tabuena v. Land Bank of the Philippines*,[60] we ruled that the LBP is an indispensable party in expropriation proceedings under RA 6657, and thus, has the legal personality to question the determination of just compensation, independent of the DAR:

> LBP is an agency created primarily to provide financial support in all phases of agrarian reform pursuant to Section 74 of Republic Act (RA) No. 3844 and Section 64 of RA No. 6657. It is vested with the primary responsibility and authority in the valuation and compensation of covered landholdings to carry out the full implementation of the Agrarian Reform Program. It may agree with the DAR and the land owner as to the amount of just compensation to be paid to the latter and may also disagree with them and bring the matter to court for judicial determination.
>
> Once an expropriation proceeding for the acquisition of private agricultural lands is commenced by the DAR, the indispensable role of LBP begins, which clearly shows that there would never be a judicial determination of just compensation absent respondent LBP's participation. Logically, it follows that respondent is an indispensable party in an action for the determination of just compensation in cases arising from agrarian reform program; as such, it can file an appeal independently of DAR.[61]

Hence, in *Land Bank of the Philippines v. AMS Farming Corporation*,[62] we ruled that LBP is a real party-in-interest which could file its own appeal in agrarian reform cases, to wit:

> The Court of Appeals was indeed in error for denying LBP its right to file an appeal on the ground that it was not a real party-in-interest, since it did not stand to lose or gain anything from the RTC Decision dated 11 March 2003 in Special Agrarian Case No. 61-2000. It is worthy to note that in making its pronouncement that LBP was a mere depositary of the Agrarian Reform Fund and the financial intermediary for purposes of the CARL, the appellate court was unable to cite any statutory or jurisprudential basis therefor.

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[60] G.R. No. 180557, 26 September 2008, 566 SCRA 557.

[61] *Id.* at 565-566.

[62] G.R. No. 174971, 15 October 2008, 569 SCRA 154.

To the contrary, the Court had already recognized in *Sharp International Marketing v. Court of Appeals* that the LBP plays a significant role under the CARL and in the implementation of the CARP, thus:

> As may be gleaned very clearly from EO 229, the LBP is an **essential part** of the government sector with regard to the payment of compensation to the landowner. It is, after all, the instrumentality that is charged with the disbursement of public funds for purposes of agrarian reform. It is therefore part, an indispensable cog, in the governmental machinery that fixes and determines the amount compensable to the landowner. Were LBP to be excluded from that intricate, if not sensitive, function of establishing the compensable amount, there would be no amount "to be established by the government" as required in Sec. 6, EO 229. This is precisely why the law requires the [Deed of Absolute Sale (DAS)], even if already approved and signed by the DAR Secretary, to be **transmitted still to the LBP for its review, evaluation and approval**.
>
> It needs no exceptional intelligence to understand the implications of this transmittal. It simply means that if LBP agrees on the amount stated in the DAS, after its review and evaluation, it becomes its duty to sign the deed. But not until then. For, it is only in that event that the amount to be compensated shall have been "established" according to law. Inversely, if the LBP, after review and evaluation, refuses to sign, it is because as a party to the contract it does not give its consent thereto. This **necessarily implies the exercise of judgment on the part of LBP, which is not supposed to be a mere rubber stamp in the exercise.** Obviously, were it not so, LBP could not have been made a distinct member of [Presidential Agrarian Reform Council (PARC)], the super body responsible for the successful implementation of the CARP. Neither would it have been given the power to review and evaluate the DAS already signed by the DAR Secretary. If the function of the LBP in this regard is merely to sign the DAS without the concomitant power of review and evaluation, its duty to "review/evaluate" mandated in Adm. Order No. 5 would have been a mere surplus age, meaningless, and a useless ceremony.
>
> x x x x x x x x x

> Even more explicit is R.A. 6657 with respect to the indispensable role of LBP in the determination of the amount to be compensated to the landowner. Under Sec. 18 thereof, "the LBP shall compensate the landowner in **such amount as may be agreed upon by the landowner and the DAR and LBP**, in accordance with the criteria provided in Secs. 16 and 17, and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land."
>
> Without the signature of the LBP President, there was simply no contract between Sharp and the Government. The Deed of Absolute Sale dated January 9, 1989, was incomplete and therefore had no binding effect at all. Consequently, Sharp cannot claim any legal right thereunder that it can validly assert in a petition for *mandamus*. (Emphasis in the original)

The issue of whether LBP can file an appeal on its own, separately and independently of the DAR, in land valuation and just compensation cases, had been squarely addressed by the Court in *Gabatin v. Land Bank of the Philippines, (G.R. No. 148223, 25 November 2004, 444 SCRA 176, 186-188),* where it ruled:

> It must be observed that once an expropriation proceeding for the acquisition of private agricultural lands is commenced by the DAR, the **indispensable role of Land Bank** begins.
>
> x x x x x x x x x

It is evident from the afore-quoted jurisprudence that the role of LBP in the CARP is more than just the ministerial duty of keeping and disbursing the Agrarian Reform Funds. As the Court had previously declared, the LBP is primarily responsible for the valuation and determination of compensation for all private lands. It has the discretion to approve or reject the land valuation and just compensation for a private agricultural land placed under the CARP. In case the LBP disagrees with the valuation of land and determination of just compensation by a party, the DAR, or even the courts, the LBP not only has the right, but the duty, to challenge the same, by appeal to the Court of Appeals or to this Court, if appropriate. x x x[63]

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[63] *Id.* at 174-177.

It is thus beyond question that LBP has the legal personality to file the petition for determination of just compensation with the SAC.

***LBP did not commit forum shopping***

Petitioners also submit that LBP is guilty of forum shopping because after LBP invoked the jurisdiction of the SAC of Santiago City, Isabela, and obtained a Temporary Restraining Order (TRO), LBP filed a petition for *certiorari* with the DARAB (DSCA No. 0213) to prevent the execution of the Order of the RARAD. The DARAB eventually issued a TRO, and later, a writ of preliminary injunction, directed against the implementation of the RARAD's decision.

Petitioners' argument is mislaid.

In *Canuto, Jr. v. National Labor Relations Commission*,[64] we held that forum shopping is manifest whenever a party "repetitively avail[s] of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in, or already resolved adversely by, some other court." It has also been defined as "an act of a party against whom an adverse judgment has been rendered in one forum of seeking and possibly getting a favorable opinion in another forum, other than by appeal or the special civil action of *certiorari*, or 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." Considered a pernicious evil, it adversely affects the efficient administration of justice since it clogs the court dockets, unduly burdens the financial and human resources of the judiciary, and trifles with and mocks judicial processes.[65]

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[64] 412 Phil. 467 (2001).

[65] *Id.* at 474.

In *Veluz v. Court of Appeals*,[66] we held:

> There is forum shopping when, in the two or more cases pending, there is identity of parties, rights or causes of action and relief sought. Forum shopping exists where the elements of *litis pendentia* are present or when a final judgment in one case will amount to *res judicata* in the other. For *litis pendentia* to exist, the following requisites must be present:
>
> 1. Identity of parties, or at least such parties as those representing the same interests in both actions;
> 2. Identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts;
> 3. Identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case.[67]

Reviewing the facts of this case, the SAC, after hearing the parties regarding the propriety of issuing the injunctive writ against the execution of the RARAD's decision, found that it had no jurisdiction to resolve the matter. Hence, LBP filed a petition for *certiorari* with the DARAB (DSCA No. 0213) seeking the issuance of a TRO and preliminary injunction.

It is thus seen that there is no forum shopping because the SAC had no jurisdiction on the issuance of an injunctive writ against the RARAD's decision. As the SAC had no jurisdiction over such matter, any ruling it renders is void and of no legal effect. Thus, LBP's act of filing the petition for *certiorari* with the DARAB, which has the correct jurisdiction for the remedy sought, does not amount to forum shopping.

***Computation of just compensation for the subject lands***

The only question that remains for resolution is the value of just compensation to be paid to petitioners.

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[66] 399 Phil. 539 (2000).

[67] *Id.* at 548-549.

Petitioners maintain that it is the valuation made by RARAD in its decision dated 29 March 2000, fixing the just compensation for the subject property at ₱32,965,408.46, which should be awarded to them considering that the same is supported by substantial evidence. On the other hand, respondent argues that just compensation should be computed on the revalued appraisal of ₱5,626,723.47.

Pertinently, Section 17 of RA 6657 provides:

> Sec. 17. *Determination of Just Compensation.* — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessments made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

LBP's valuation of lands covered by the CARP Law is considered only as an initial determination, which is not conclusive, as it is the RTC, sitting as a SAC, that could make the final determination of just compensation, taking into consideration the factors enumerated in Section 17 of RA 6657 and the applicable DAR regulations.[68] LBP's valuation has to be substantiated during an appropriate hearing before it could be considered sufficient in accordance with Section 17 of RA 6657 and the DAR regulations.

In *Land Bank of the Philippines v. Celada*,[69] the Court ruled that the factors enumerated under Section 17 of RA 6657 had already been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of RA 6657. Thus, the Court held that the formula outlined in DAR AO No. 5, series of 1998, should be applied in

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[68] *Land Bank of the Philippines v. Luciano*, G.R. No. 165428, 25 November 2009.

[69] *Supra* note 56.

computing just compensation.[70] DAR AO No. 5, series of 1998, provides:

A. There shall be one basic formula for the valuation of lands covered by VOS or CA:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value

CNI = Capitalized Net Income

CS = Comparable Sales

MV = Market Value per Tax Declaration

The above formula shall be used if all three factors are present, relevant and applicable.

A1. When the CS factor is not present and CNI and MV are applicable, the formula shall be:

LV = (CNI x 0.9) + (MV x 0.1)

A2. When the CNI factor is not present, and CS and MV are applicable, the formula shall be:

LV = (CS x 0.9) + (MV x 0.1)

A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be:

LV = MV x 2

In no case shall the value of idle land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same *barangay* or municipality (in that order) approved by LBP within one (1) year from receipt of claimfolder.[71]

In *Land Bank of the Philippines v. Spouses Banal*,[72] we remanded the case to the SAC for further reception of evidence because the trial court based its valuation upon a different formula and did not conduct any hearing for the reception of evidence.

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[70] *Id.* at 507.

[71] *Id.* at 508.

[72] *Supra* note 46.

The mandatory application of the aforementioned guidelines in determining just compensation has been reiterated recently in *Land Bank of the Philippines v. Lim*[73] and *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*,[74] where we also ordered the remand of the cases to the SAC for the determination of just compensation strictly in accordance with the applicable DAR regulations.

Thus, the remand of the case is necessary for the parties to present their evidence, as we are not a trier of facts.

Considering, however, that the land was acquired in 1989 and the only surviving petitioner is now an octogenarian and is in need of urgent medical attention,[75] we find these special circumstances justifying in the acceleration of the final disposition of this case. This Court deems it best *pro hac vice* to commission the CA as its agent to receive and evaluate the evidence of the parties.[76] The CA's mandate is to ascertain the just compensation due in accordance with this Decision, applying Section 17 of RA 6557 and applicable DAR regulations. As explained in *Land Bank of the Philippines v. Gallego, Jr.*,[77] the remand of cases before this Court to the CA for the reception of further evidence is not a novel procedure. It is sanctioned by Section 6, Rule 46 of the Rules of Court.[78] In fact, the Court availed of this procedure in quite a few cases.[79]

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[73] G.R. No. 171941, 2 August 2007, 529 SCRA 129.

[74] G.R. No. 175175, 29 September 2008, 567 SCRA 31.

[75] *Rollo*, p. 346.

[76] *Land Bank of the Philippines v. Gallego, Jr.*, G.R. No. 173226, 20 January 2009, 576 SCRA 680, 693.

[77] *Id.*

[78] Sec. 6. Determination of factual issues. – Whenever necessary to resolve factual issues, the court itself may conduct hearings thereon or delegate the reception of the evidence on such issues to any of its members or to an appropriate court, agency or office.

[79] *Land Bank of the Philippines v. Gallego, Jr.*, *supra* at 693. See *Republic v. Court of Appeals*, 359 Phil. 530 (1998); *Manotok Realty, Inc., et al. v. CLT Realty Development Corporation*, G.R. No. 123346, 14 December 2007, 540 SCRA 304.

**WHEREFORE,** we *GRANT* the petition. We *SET ASIDE* the Decision and Resolution of the Court of Appeals in CA-G.R. SP No. 68157. We *REMAND* Agrarian Case No. 21-0632 to the Court of Appeals, which is directed to receive evidence and determine with dispatch the just compensation due petitioners strictly in accordance with this Decision, applying Section 17 of RA 6657, DAR AO No. 5, series of 1998, as amended, and the prevailing jurisprudence. The Court of Appeals is directed to conclude the proceedings and submit to this Court a report on its findings and recommended conclusions within forty-five (45) days from notice of this Decision. The Court of Appeals is further directed to raffle this case immediately upon receipt of this Decision.

**SO ORDERED.**

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

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**THIRD DIVISION**

[G.R. No. 169725. April 30, 2010]

**RICARDO V. CASTILLO,** *petitioner, vs.* **UNIWIDE WAREHOUSE CLUB, INC. and/or JIMMY GOW,** *respondents.*

**SYLLABUS**

**1. COMMERCIAL LAW; CORPORATION CODE; CORPORATE REHABILITATION; PURPOSE; TO ENABLE THE COMPANY TO GAIN A NEW LEASE ON LIFE AND ALLOW ITS CREDITORS TO BE PAID THEIR CLAIMS OUT OF ITS EARNINGS.—** To begin with, corporate rehabilitation connotes the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continued operation is

economically feasible and its creditors can recover by way of the present value of payments projected in the rehabilitation plan, more if the corporation continues as a going concern than if it is immediately liquidated. It contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings.

**2. ID.; ID.; ID.; MECHANISM OF SUSPENSION OF ALL ACTIONS AND CLAIMS AGAINST THE DISTRESSED CORPORATION.—** An essential function of corporate rehabilitation is the mechanism of suspension of all actions and claims against the distressed corporation, which operates upon the due appointment of a management committee or rehabilitation receiver. The governing law concerning rehabilitation and suspension of actions for claims against corporations is P.D. No. 902-A, as amended. Section 6(c) of the law mandates that, upon appointment of a management committee, rehabilitation receiver, board, or body, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board, or body shall be suspended.

**3. ID.; ID.; ID.; ID.; CLAIMS INCLUDE DEMANDS OF WHATEVER NATURE OR CHARACTER AGAINST A DEBTOR OR ITS PROPERTY, WHETHER FOR MONEY OR OTHERWISE.—** In *Finasia Investments and Finance Corporation v. Court of Appeals*, the term "claim" has been construed to refer to debts or demands of a pecuniary nature, or the assertion to have money paid. It was referred to, in *Arranza v. B.F. Homes, Inc.*, as an action involving monetary considerations and in *Philippine Airlines v. Kurangking*, the term was identified as the right to payment, whether or not it is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, and secured or unsecured. Furthermore, the actions that were suspended cover all claims against a distressed corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of a pecuniary nature. More importantly, the new rules on corporate rehabilitation, as well as the interim rules, provide an all-encompassing definition of

the term and, thus, include all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise.

**4. ID.; ID.; ID.; ID.; ID.; THE LAW IS CLEAR AND MAKES NO DISTINCTION AS TO THE CLAIMS THAT ARE SUSPENDED ONCE A MANAGEMENT COMMITTEE IS CREATED OR A REHABILITATION RECEIVER IS APPOINTED.—** Jurisprudence is settled that the suspension of proceedings referred to in the law uniformly applies to "all actions for claims" filed against a corporation, partnership or association under management or receivership, without distinction, except only those expenses incurred in the ordinary course of business. In the oft-cited case of *Rubberworld (Phils.) Inc. v. NLRC*, the Court noted that aside from the given exception, the law is clear and makes no distinction as to the claims that are suspended once a management committee is created or a rehabilitation receiver is appointed. Since the law makes no distinction or exemptions, neither should this Court. *Ubi lex non distinguit nec nos distinguere debemos. Philippine Airlines, Inc. v. Zamora*, declares that the automatic suspension of an action for claims against a corporation under a rehabilitation receiver or management committee embraces all phases of the suit, that is, the entire proceedings of an action or suit and not just the payment of claims.

**5. ID.; ID.; ID.; ID.; ID.; ID.; NECESSITY OF A SUSPENSION OR STAY ORDER IN RELATION TO THE CREDITORS' CLAIMS.—** The reason behind the imperative nature of a suspension or stay order in relation to the creditors' claims cannot be downplayed, for indeed the indiscriminate suspension of actions for claims intends to expedite the rehabilitation of the distressed corporation by enabling the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the rescue of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation, instead of being directed toward its restructuring and rehabilitation.

**6. ID.; ID.; ID.; ID.; ID.; ID.; DATE WHEN THE CLAIM AROSE, HAS NO BEARING AT ALL IN DECIDING WHETHER IT IS**

**COVERED BY THE SUSPENSION ORDER.**— At this juncture, it must be conceded that the date when the claim arose, or when the action was filed, has no bearing at all in deciding whether the given action or claim is covered by the stay or suspension order. What matters is that as long as the corporation is under a management committee or a rehabilitation receiver, all actions for claims against it, whether for money or otherwise, must yield to the greater imperative of corporate revival, excepting only, as already mentioned, claims for payment of obligations incurred by the corporation in the ordinary course of business.

**7. ID.; ID.; ID.; ID.; ID.; ID.; SUSPENSION OF PROCEEDINGS FOR ILLEGAL DISMISSAL BEFORE THE NLRC AGAINST A COMPANY UNDERGOING REHABILITATION PROCEEDINGS, PROPER; CASE AT BAR.—** There is no doubt that petitioner's claim in this case, arising as it does from his alleged illegal dismissal, is a claim covered by the suspension order issued by the SEC, as it is one for pecuniary consideration. x x x It is, thus, not difficult to see why the subject action for illegal dismissal and damages against respondent corporation ought to have been suspended at the first instance respondents submitted before the Labor Arbiter their motion to suspend proceedings in the illegal dismissal case. This, considering that at the time the labor case was filed on August 26, 2002, respondent corporation was undergoing proceedings for rehabilitation and was later on declared to be in a state of suspension of payments. In fact, a Certification issued by the SEC and signed by its General Counsel, Vernette G. Umali-Paco, states that as of August 17, 2006, the petition of Uniwide Sales, Inc. for declaration of suspension of payments and rehabilitations was still pending with it, and that the company was still under its rehabilitation proceedings. Hence, since petitioner's claim was one for wages accruing from the time of dismissal, as well as for benefits and damages, the same should have been suspended pending the rehabilitation proceedings. In other words, the Labor Arbiter should have abstained from resolving the illegal dismissal case and, instead, directed petitioner to present his claim to the rehabilitation receiver duly appointed by the SEC, inasmuch as the stay or suspension order was effective and it subsisted from issuance until the dismissal of the petition for rehabilitation or the termination of the rehabilitation proceedings. The Court of Appeals was thus

correct in directing the suspension of the proceedings in NLRC NCR Case No. 08-06770-2002.

**8. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; CERTIFICATION AGAINST FORUM SHOPPING; THE FAILURE OF RESPONDENT JIMMY GOW TO SIGN THE CERTIFICATION IS NOT A VALID AND SUFFICIENT GROUND FOR THE DENIAL OF THE PETITION, AS HE WAS JUST A NOMINAL PARTY; CASE AT BAR.**— The petitioners before the Court of Appeals, respondents herein, are the company, Uniwide Warehouse Club, Inc., and its president, Jimmy Gow. The latter was impleaded before the Court of Appeals only and simply because he was a co-respondent in the illegal dismissal complaint filed by herein petitioner. It is to be noted that Jimmy Gow has no interest in this case separate and distinct from that of the company, which, for legal purposes was the direct employer of petitioner. Any award of reinstatement, backwages, attorney's fees and damages in favor of petitioner will be enforced against the company as the real party-in-interest in the illegal dismissal case. Respondent Jimmy Gow is clearly a mere nominal party to the case. Therefore, his failure to sign the verification and certification against forum shopping does not constitute a valid and sufficient ground for the Court of Appeals to deny the *certiorari* petition.

**APPEARANCES OF COUNSEL**

*Potenciano A. Flores, Jr.* for petitioner.
*De La Rosa & Nograles* for respondents.

**D E C I S I O N**

**PERALTA, *J.*:**

This is a Petition for Review[1] under Rule 45 of the Rules of Court assailing the April 22, 2005 Decision[2] and the September

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[1] *Rollo*, pp. 11-32.

[2] Penned by Associate Justice Rosalinda Asuncion-Vicente, with Associate Justices Godardo A. Jacinto and Bienvenido L. Reyes, concurring; *rollo*, pp. 37-47.

9, 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 83226. The challenged decision reversed and set aside the resolution of the National Labor Relations Commission (NLRC) denying herein respondents' motion to suspend proceedings in an illegal dismissal case filed by herein petitioner, whereas the subject resolution denied reconsideration.

The case stems from a Complaint[4] for illegal dismissal filed on August 26, 2002 by herein petitioner Ricardo V. Castillo against herein respondents Uniwide Warehouse Club, Inc. and its president, Jimmy N. Gow. The complaint, docketed as NLRC NCR Case No. 08-06770-2002, contained a prayer for the payment of worked Saturdays for the year 2001; holiday pay; separation pay; actual, moral and exemplary damages; and attorney's fees.

However, almost two months from the filing of the Complaint, or on October 18, 2002, respondents submitted a Motion to Suspend Proceedings[5] on the ground that in June 1999, the Uniwide Group of Companies had petitioned the Securities and Exchange Commission (SEC) for suspension of payments and for approval of its proposed rehabilitation plan. It appears that on June 29, 1999, the SEC had ruled favorably on the petition and ordered that all claims, actions and proceedings against herein respondents pending before any court, tribunal, board, office, body or commission be suspended, and that following the appointment of an interim receiver, the suspension order had been extended to until February 7, 2000. On April 11, 2000, the SEC declared the Uniwide Group of Companies to be in a state of suspension of payments and approved its rehabilitation plan.

In an Order[6] dated February 17, 2003, Labor Arbiter Lilia S. Savari denied the Motion to Suspend Proceedings in the present case. Respondents lodged an appeal with the NLRC

[3] *Id.* at 49-52.

[4] *Id.* at 53-54.

[5] *Id.* at 55-59.

[6] *Id.* at 65-66.

which, on September 30, 2003, sustained the Labor Arbiter and held that as early as February 7, 2000 the suspension order of the SEC should be considered lifted already and that with the approval of the rehabilitation plan, the suspension of the proceedings in the instant labor case would no longer be necessary.[7]

Respondents moved for reconsideration, but they were denied relief in the Resolution dated December 30, 2003 of the NLRC.

Respondents elevated the matter to the Court of Appeals in a petition for *certiorari* under Rule 65, in which they raised the issue of whether the Labor Arbiter and the NLRC committed grave error in not suspending the proceedings of this labor case pursuant to the SEC's April 11, 2000 Resolution placing the Uniwide Group of Companies under rehabilitation.[8] The Court of Appeals found merit in the petition and, accordingly, in its April 22, 2005 Decision, it reversed the September 30, 2003 and December 30, 2003 Resolutions of the NLRC and ordered the suspension of the proceedings in this case. The court disposed of the case as follows:

> WHEREFORE, premises considered, the instant petition is hereby GRANTED. The assailed Resolutions dated 30 September 2003 and 30 December 2003 of public respondent NLRC are hereby REVERSED and NULLIFIED and new one entered ordering the suspension of the proceedings before the Arbitration Branch of origin in NLRC NCR Case No. 00-08-06770-2002 entitled *Ricardo V. Castillo, complainant, versus Uniwide Warehouse Club, Inc. and/or Jimmy N. Gow.*
>
> SO ORDERED.[9]

Meantime, on July 9, 2005, Labor Arbiter Savari issued a Decision[10] on the illegal dismissal complaint filed by petitioner declaring valid petitioner's termination, dismissing all other claims for lack of merit and ordering respondents to pay the amount

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[7] *Id.* at 67-69.

[8] *Id.* at 80-81.

[9] *Id.* at 46-47.

[10] *Id.* at 104-108.

of ₱330,000.00 as separation pay. It appears that from this decision, both parties filed their respective appeals with the NLRC.[11]

In his present recourse, petitioner ascribes error to the Court of Appeals in reversing the ruling of the Labor Arbiter and the NLRC. He posits that the suspension of the proceedings in the illegal dismissal case is not in order, because the viability of his claim against respondents and the latter's corresponding liability are yet to be determined, especially in view of the fact that the SEC had approved respondents' rehabilitation plan and that the company had been operating on its own according to said plan. Petitioner believes that for this reason, the NLRC is bound to proceed with the case to determine whether his dismissal was valid and, ultimately, to determine the liability of respondents.[12]

To this, respondents counter that the Court of Appeals was correct in sustaining the suspension of the proceedings in the illegal dismissal case as it is among those actions for claims that are automatically suspended on the appointment of a management committee or receiver according to Section 6 of Presidential Decree (P.D.) No. 902-A. Respondents advance the notion that while said Section 6 expressly referred to suspension of pending claims, the clear and unmistakable intention of the law is to bar the filing of any such claims in order to maintain parity of status among the different creditors of the distressed corporation at least while the rehabilitation efforts are ongoing.

There is merit in respondents' contention.

To begin with, corporate rehabilitation connotes the restoration of the debtor to a position of successful operation and solvency, if it is shown that its continued operation is economically feasible and its creditors can recover by way of the present value of payments projected in the rehabilitation plan, more if the

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[11] *Id.* at 109-133.

[12] *Id.* at 20-28.

corporation continues as a going concern than if it is immediately liquidated.[13] It contemplates a continuance of corporate life and activities in an effort to restore and reinstate the corporation to its former position of successful operation and solvency, the purpose being to enable the company to gain a new lease on life and allow its creditors to be paid their claims out of its earnings.[14]

An essential function of corporate rehabilitation is the mechanism of suspension of all actions and claims against the distressed corporation, which operates upon the due appointment of a management committee or rehabilitation receiver. The governing law concerning rehabilitation and suspension of actions for claims against corporations is P.D. No. 902-A, as amended. Section 6(c) of the law mandates that, upon appointment of a management committee, rehabilitation receiver, board, or body, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board, or body shall be suspended.[15] It materially provides:

> Section 6 (c). x x x
>
> x x x Provided, finally, that upon appointment of a management committee, rehabilitation receiver, board or body, pursuant to this Decree, all actions for claims against corporations, partnerships or associations under management or receivership pending before any court, tribunal, board or body, shall be suspended accordingly.

In *Finasia Investments and Finance Corporation v. Court of Appeals*,[16] the term "claim" has been construed to refer to

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[13] Rule 2, Section 1 of the Rules of Procedure on Corporate Rehabilitation, effective January 19, 2009, supplanting the Interim Rules of Procedure on Corporate Rehabilitation (A.M. No. 00-8-10-SC).

[14] *Malayan Insurance Company, Inc. v. Victorias Milling Company, Inc.*, G.R. No. 167768, April 17, 2009, 586 SCRA 45.

[15] *Pacific Wide and Realty Development Corp. v. Puerto Azul Land, Inc.*, G.R. Nos. 178768 and 180893, November 25, 2009, citing *Philippine Airlines, Inc. v. Zamora*, 514 SCRA 584 (2007).

[16] G.R. No. 107002, October 7, 1994, 237 SCRA 446, 450.

debts or demands of a pecuniary nature, or the assertion to have money paid. It was referred to, in *Arranza v. B.F. Homes, Inc.*,[17] as an action involving monetary considerations and in *Philippine Airlines v. Kurangking*,[18] the term was identified as the right to payment, whether or not it is reduced to judgment, liquidated or unliquidated, fixed or contingent, matured or unmatured, disputed or undisputed, legal or equitable, and secured or unsecured.[19] Furthermore, the actions that were suspended cover all claims against a distressed corporation whether for damages founded on a breach of contract of carriage, labor cases, collection suits or any other claims of a pecuniary nature.[20] More importantly, the new rules on corporate rehabilitation, as well as the interim rules, provide an all-encompassing definition of the term and, thus, include all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise.[21] There is no doubt that petitioner's claim in this case, arising as it does from his alleged illegal dismissal, is a claim covered by the suspension order issued by the SEC, as it is one for pecuniary consideration.

Jurisprudence is settled that the suspension of proceedings referred to in the law uniformly applies to "all actions for claims" filed against a corporation, partnership or association under management or receivership, without distinction, except only those expenses incurred in the ordinary course of business.[22]

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[17] 389 Phil. 318 (2000).

[18] 438 Phil. 375 (2002).

[19] *Id.* at 382.

[20] *Philippine Airlines, Inc. v. Zamora*, G.R. No. 166996, February 6, 2007, 514 SCRA 584, 605.

[21] Rule 2, Sec. 1, both the old and the new rules, defines "claim" as all claims or demands of whatever nature or character against a debtor or its property, whether for money or otherwise.

[22] *Garcia v. Philippine Airlines*, G.R. No. 164856, August 29, 2007, 531 SCRA 574; *Sobrejuanite v. ASB Development Corporation*, G.R. No. 165675, September 30, 2005, 471 SCRA 763; *Rubberworld (Phils.) Inc. v. NLRC*, G.R. No. 126773, April 14, 1999, 305 SCRA 721.

In the oft-cited case of *Rubberworld (Phils.) Inc. v. NLRC,*[23] the Court noted that aside from the given exception, the law is clear and makes no distinction as to the claims that are suspended once a management committee is created or a rehabilitation receiver is appointed. Since the law makes no distinction or exemptions, neither should this Court. *Ubi lex non distinguit nec nos distinguere debemos.*[24] *Philippine Airlines, Inc. v. Zamora*[25] declares that the automatic suspension of an action for claims against a corporation under a rehabilitation receiver or management committee embraces all phases of the suit, that is, the entire proceedings of an action or suit and not just the payment of claims.

The reason behind the imperative nature of a suspension or stay order in relation to the creditors' claims cannot be downplayed, for indeed the indiscriminate suspension of actions for claims intends to expedite the rehabilitation of the distressed corporation by enabling the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the rescue of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation, instead of being directed toward its restructuring and rehabilitation.[26]

At this juncture, it must be conceded that the date when the claim arose, or when the action was filed, has no bearing at all in deciding whether the given action or claim is covered by the stay or suspension order. What matters is that as long as the corporation is under a management committee or a rehabilitation receiver, all actions for claims against it, whether for money or otherwise, must yield to the greater imperative of corporate

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[23] *Supra.*

[24] *Rubberworld (Phils.) Inc. v. NLRC, supra* note 22, at 729.

[25] *Supra* note 20.

[26] *Rubberworld (Phils.) Inc. v. NLRC, supra* note 22.

revival, excepting only, as already mentioned, claims for payment of obligations incurred by the corporation in the ordinary course of business.[27]

It is, thus, not difficult to see why the subject action for illegal dismissal and damages against respondent corporation ought to have been suspended at the first instance respondents submitted before the Labor Arbiter their motion to suspend proceedings in the illegal dismissal case. This, considering that at the time the labor case was filed on August 26, 2002, respondent corporation was undergoing proceedings for rehabilitation and was later on declared to be in a state of suspension of payments.

In fact, a Certification[28] issued by the SEC and signed by its General Counsel, Vernette G. Umali-Paco, states that as of August 17, 2006, the petition of Uniwide Sales, Inc. for declaration of suspension of payments and rehabilitations was still pending with it, and that the company was still under its rehabilitation proceedings. Hence, since petitioner's claim was one for wages accruing from the time of dismissal, as well as for benefits and damages, the same should have been suspended pending the rehabilitation proceedings. In other words, the Labor Arbiter should have abstained from resolving the illegal dismissal case and, instead, directed petitioner to present his claim to the rehabilitation receiver duly appointed by the SEC,[29] inasmuch as the stay or suspension order was effective and it subsisted from issuance until the dismissal of the petition for rehabilitation or the termination of the rehabilitation proceedings.[30] The Court of Appeals was thus correct in directing the suspension of the proceedings in NLRC NCR Case No. 08-06770-2002.

We now turn to the next and final issue. Petitioner submits that the Court of Appeals committed yet another error when

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[27] See *Malayan Insurance Company, Inc. v. Victorias Milling Company, Inc.*, *supra* note 14, at 61.

[28] *Rollo*, p. 211.

[29] See *Garcia v. Philippine Airlines, Inc.*, *supra* note 22, at 582.

[30] *Philippine Airlines, Inc. v. Kurangking*, *supra* note 18.

it did not deny respondents' *certiorari* petition when in fact one of the petitioners therein, Jimmy Gow, did not submit a certification against forum shopping. He points out that the verification and certification attached to the *certiorari* petition filed with the Court of Appeals was executed by one Anicia Bañes, who stated under oath that she was the human resource manager and duly authorized representative of Uniwide Warehouse Club, Inc. and the latter's president, Jimmy Gow. He thus concludes that Anicia Banes was authorized to represent only the corporation, excluding Jimmy Gow.[31] The argument fails.

The petitioners before the Court of Appeals, respondents herein, are the company, Uniwide Warehouse Club, Inc., and its president, Jimmy Gow. The latter was impleaded before the Court of Appeals only and simply because he was a co-respondent in the illegal dismissal complaint filed by herein petitioner. It is to be noted that Jimmy Gow has no interest in this case separate and distinct from that of the company, which, for legal purposes was the direct employer of petitioner. Any award of reinstatement, backwages, attorney's fees and damages in favor of petitioner will be enforced against the company as the real party-in-interest in the illegal dismissal case. Respondent Jimmy Gow is clearly a mere nominal party to the case. Therefore, his failure to sign the verification and certification against forum shopping does not constitute a valid and sufficient ground for the Court of Appeals to deny the *certiorari* petition.[32]

**WHEREFORE,** premises considered, the Petition is *DENIED*. The April 22, 2005 Decision and the September 9, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 83226 are *AFFIRMED*.

**SO ORDERED.**

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

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[31] *Rollo*, p. 28.

[32] *Micro Sales Operation Network v. National Labor Relations Commission*, G.R. No. 155279, October 11, 2005, 472 SCRA 328, 335.

**SECOND DIVISION**

[G.R. No. 170697. April 30, 2010]

**HON. PRIMO C. MIRO, Deputy Ombudsman for the Visayas,** *petitioner, vs.* **REYNALDO M. DOSONO,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL UNDER RULE 45; REVIEW LIMITED TO QUESTIONS OF LAW; EXCEPTION; CASE AT BAR.**— We are loathe to relax the beneficent rule limiting reviews under Rule 45 to questions of law. Nevertheless, we are sometimes called to review rulings which reverse initial factual findings, draw unreasonable inferences or overlook relevant facts, constraining us to widen the scope of review to cover factual questions. This is one such case.

**2. POLITICAL LAW; ADMINISTRATIVE LAW; SUBSTANTIAL EVIDENCE; EVIDENTIARY BAR FOR ADMINISTRATIVE PROCEEDINGS.**— As an administrative proceeding, the evidentiary bar against which the evidence at hand is measured is not the highest quantum of proof beyond reasonable doubt, requiring *moral certainty* to support affirmative findings. Instead, the lowest standard of *substantial evidence*, that is, such relevant evidence as a reasonable mind will accept as *adequate* to support a conclusion, applies. Because administrative liability attaches so long as there is some evidence adequate to support the conclusion that acts constitutive of the administrative offense have been performed (or have not been performed), reasonable doubt does not *ipso facto* result in exoneration unlike in criminal proceedings where guilt must be proven *beyond* reasonable doubt. This hornbook doctrinal distinction undergirds our parallel findings of administrative liability *and* criminal acquittal on reasonable doubt for charges arising from the same facts.

**3. ID.; ID.; ID.; ID.; GRAVE MISCONDUCT; RESPONDENT FOUND LIABLE THEREFOR IN CASE AT BAR.**— Here, no one disputes that complainants, ordinary taxpayers who were

complete strangers to respondent, immediately sought police help for respondent's illegal solicitation. x x x Following the entrapment, respondent was brought to the police headquarters where he was tested and found positive for ultraviolet fluorescent powder in both hands, the same substance dusted on the pay-off envelope. The Ombudsman found substantial evidence to pin respondent. x x x To a reasonable – as opposed to a suspicious – mind, the circumstances leading to the filing of the complaint against respondent, his arrest following his entrapment, and the results from the laboratory tests are more than adequate to support the conclusion that respondent illegally solicited money from complainants and was caught red-handed receiving the pay-off money. This is clear-cut grave misconduct – corrupt conduct inspired by an intention to violate the law, or constituting flagrant disregard of well-known legal rules.

**4. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; PRESUMPTION DISCARDED WITHOUT BASIS IN CASE AT BAR.**— The Court of Appeals found the evidence *inadequate* because it dwelt on the *doubts* respondent conjured to weaken the case against him. In doing so, the Court of Appeals unwittingly mutated this proceeding to a quasi-criminal litigation and employed heightened standard of proof approximating proof beyond reasonable doubt. How else could it explain its invocation of *Formilleza v. Sandiganbayan*, a *criminal* appeal of a verdict rendered by the Sandiganbayan finding the respondent guilty of Indirect Bribery under Article 211 of the Revised Penal Code? In the process, the Court of Appeals discarded without basis the crucial presumption of regularity in the performance of official duties by the arresting policemen and took respondent's word as veritable truth. x x x Indeed, it is a self-evident fact that our law enforcement officers are sworn to uphold the law, not to invent crimes. The imperative of ensuring the smooth functioning of the government machinery grounds the evidentiary presumption that public officers have performed their duties regularly.

**5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; BEING IMBUED WITH PUBLIC INTEREST, SAME SHOULD NOT BE DISMISSED BECAUSE OF COMPLAINANTS' NON-APPEARANCE AT THE HEARING;**

**CASE AT BAR.**— The Court of Appeals' error was compounded when it treated complainants' non-appearance at the hearing as fatal to their case and rendering the testimonies of the arresting policemen baseless. Considering the physical evidence on record and the arresting officers' unimpeached testimonies (proving that (1) they conducted the entrapment based on the complainants' complaint and (2) respondent was the target of the entrapment for his illegal solicitation), the Ombudsman committed no error in proceeding to hear the case and render judgment. Indeed, the Court of Appeals' disposition is akin to a court dismissing an administrative complaint because the complainants desisted. This runs counter to the deeply ingrained policy that disciplinary administrative proceedings are imbued with public interest which cannot be held hostage by fickle-minded complainants. This policy explains our refusal to dismiss the administrative complaint in *Office of the Court Administrator v. Atty. Morante* despite the desistance of the complainants and to use the evidence on record to hold the respondent public officer liable for grave misconduct for extortion, as here.

**6. REMEDIAL LAW; EVIDENCE; SUBSTANTIAL EVIDENCE; EVEN THE LIBERAL STANDARD OF SUBSTANTIAL EVIDENCE DEMANDS *SOME* ADEQUATE EVIDENCE.**— The cases the Court of Appeals invoked for doctrinal support are unavailing. *Tapiador v. Office of the Ombudsman*, rose and fell *exclusively* on the *affidavits* of the complainants: no entrapment was conducted, no arresting officers testified to substantiate its execution, and no physical evidence linked the respondent to the pay-off money. Further, the identity of the pay-off recipient in *Tapiador* was not proven. With the failure of the complainants to testify during the hearings, the Court was left with no choice but to discard the case for insufficiency of evidence. Indeed, even the liberal standard of substantial evidence demands *some* adequate evidence. Suffering from substantially the same defect, *Boyboy v. Yabut*, pitted the bare allegations of the complainants charging the respondent with extortion against the respondent's denial of the charge. Again, unlike here, no entrapment operation was conducted in *Boyboy* and no laboratory findings implicated the respondent there. Thus, we held in *Boyboy* that the failure of the investigating body to hold hearings, which would have tested the parties' credibility, undermined the veracity of the complainants' case.

**7. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICES; PUBLIC TRUST; ADEQUATE EVIDENCE JUSTIFIES REMOVAL OF RESPONDENT FROM THE BUREAUCRACY FOR FORFEITING THE PUBLIC TRUST; CASE AT BAR.**— Unlike private offices which are held largely on the dictates of market forces, public offices are public trust. Public officers are tasked to serve the public interest, thus the excessive burden for their retention in the form of numerous prohibitions. The liberal evidentiary standard of substantial evidence and the freedom of administrative proceedings from technical niceties effectuate the fiduciary nature of public office: they are procedural mechanisms assuring ease in maintaining an efficient bureaucracy, free of rent-seeking officials who exploit government processes to raise easy money. Respondent's hold on his item at the Mandaue City revenue office, which, like our customs offices, is a common situs for corrupt activities, is no more lasting than his fidelity to his trust. Although no criminal verdict deprives respondent of his liberty, adequate evidence justifies his removal from the bureaucracy for forfeiting the public trust.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioner.
*Tormis & Sui Law Office* for respondent.

**D E C I S I O N**

**CARPIO, *J.*:**

**The Case**

This resolves the petition for review on *certiorari*[1] of the Decision[2] of the Court of Appeals absolving respondent Reynaldo M. Dosono, an internal revenue officer, from administrative liability for extortion.

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

[2] Per Associate Justice Enrico A. Lanzanas with Associate Justices Arsenio J. Magpale and Sesinando E. Villon, concurring.

**The Facts**

Respondent Reynaldo M. Dosono (respondent) is an examiner of the Bureau of Internal Revenue (BIR) at its district office in Mandaue City, Cebu. As such, respondent takes care in assessing tax liabilities.

On 14 July 2003, the spouses Vicente G. Igot and Paterna C. Igot (complainants) went to the BIR office in Mandaue City for an assessment of their tax liabilities from the transfer of two parcels of land. The complainants narrated what transpired at the BIR office:

> [A]tty. Reynaldo DOSONO assessed the aforementioned properties at eighty nine thousand eight hundred pesos (₱89,800.00) which we believed that the computation is too much for the capital gains tax of my [sic] two aforementioned lots valued at one hundred thousand pesos per lot. We asked him for a re-computation that [sic] he agreed and told us to follow him to his table. In his re-computation, it turned out that the capital gains tax amounted only to twenty four thousand nine hundred sixty pesos (₱ 24,960.00) x x x. At this point, he told us that from the amount reduced, we have already saved more than sixty thousand pesos wherein he demanded an amount of thirty thousand pesos (₱30,000). We suggested to pay him the said amount after we have paid the taxable amount with the Philippine National Bank x x x the following day which he agreed.[3]

Complainants sought the help of the Cebu City police which arranged an entrapment. As pay-off money, complainants were given eight ₱500 bills and fake notes ("boodle money") placed in a white envelope, with the bills and envelope dusted with ultraviolet fluorescent powder. The policemen who took part in the operation, Police Inspector Joie Pacito P. Yape, Jr. (Yape), PO2 Bernard Calzada (Calzada), and CI-I Douglas C. Castillon, Jr., described how the entrapment unfolded on 15 July 2003:

> 2. After briefing with our Investigation Chief, in the presence of Vicente IGOT, we proceeded to the said BIR office, and arrived thereat at about 10:30 a.m.;

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[3] *Rollo*, p. 63.

3. At the said office particularly at the Capital Gains Tax Division, we saw Vicente IGOT and his wife approached [sic] Atty. Reynaldo DOSONO, an examiner, and who is the subject of the entrapment. Spouses IGOT handed the envelope containing the marked "boodle" money with eight (8) pieces of ₱500 bills;

4. After Atty. Reynaldo DOSONO received the marked "boodle" money and place [sic] it under his drawer, we introduced ourselves and informed him of our purpose and recovered the said marked money, whereby we apprehended and informed him of his offense, and subsequently read him his constitutional rights. x x x[4]

Respondent was brought to the police headquarters in Camp Sotero Cabahug in Cebu City where he was tested and found positive for fluorescent powder in both hands.

The complainants filed with the Office of the Ombudsman Visayas (Ombudsman) an administrative complaint against respondent for Grave Misconduct.[5]

Respondent denied any wrongdoing. Respondent alleged that in assessing complainants' tax liabilities on 14 July 2003, he merely followed the schedule of zonal values prominently displayed at his office and that after informing complainants of their tax liability (₱24,960 for two transfers covering capital gains and documentary stamp taxes), complainants requested an assessment for a third transfer. Because complainants did not have with them a copy of the deed of sale, respondent told complainants to come back with the document. On 15 July 2003, complainants returned and "unceremoniously gave him several documents."[6] Before respondent knew it, several men placed him under arrest and brought him to Camp Sotero Cabahug for booking and testing for fluorescent powder. Respondent denied holding the dusted envelope but surmised that he must have been contaminated at the police headquarters where one of the arresting officers seized his handkerchief and rubbed it against the white envelope containing the marked money and

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[4] *Id.* at 64.

[5] Docketed as OMB-V-A-03-0426-G.

[6] *Id.* at 81.

when he was made to pose before mediamen holding the same white envelope.

As a preventive measure, the Ombudsman suspended respondent from office for six months as the evidence "appear to be strong enough to establish probable guilt x x x for Grave Misconduct x x x."[7]

At the hearings before the Ombudsman, only respondent and the arresting policemen testified as complainants failed to appear.

**The Ruling of the Ombudsman**

In its Decision dated 27 January 2004, the Ombudsman found respondent liable as charged and dismissed him from service. The Ombudsman gave credence to complainants' allegation on respondent's extortion attempt, prompting them to seek police assistance. The Ombudsman found pivotal the presence of fluorescent powder on respondents' hands. The Ombudsman rejected respondent's unsubstantiated frame-up theory as inadequate to overcome the presumption of regularity in the performance of official duties clothing the acts of the arresting policemen. On the complainants' failure to testify, the Ombudsman did not consider this fatal in light of the testimonies of the arresting policemen.

Upon the denial of his motion for reconsideration,[8] respondent appealed to the Court of Appeals.

**The Ruling of the Court of Appeals**

In its Decision dated 18 April 2005, the Court of Appeals reversed the Ombudsman and dismissed the complaint against respondent. The Court of Appeals found the Ombudsman's findings unsupported by substantial evidence. Further, the Court of Appeals held that complainants' failure to testify during the hearings rendered their joint affidavit hearsay and the testimonies of the arresting policemen baseless. Lastly, the Court of Appeals

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[7] Order dated 21 July 2003 (*Rollo*, pp. 70-74).

[8] In the Order dated 17 February 2004.

found merit in respondent's claim of frame-up in light of the testimonies of Yape and Calzada that during the entrapment, the dusted envelope and money were placed inside a folder which respondent immediately placed in his table drawer unopened.

Petitioner's motion for reconsideration was denied in the Resolution dated 30 November 2005.

Hence, this petition.

## The Issue

The question is whether the Court of Appeals erred in exonerating respondent for grave misconduct involving extortion.

## The Ruling of the Court

We hold in the affirmative, grant the petition and reinstate the Ombudsman's ruling.

### *Substantial Evidence Supports Respondent's Liability*

We are loathe to relax the beneficent rule limiting reviews under Rule 45 to questions of law.[9] Nevertheless, we are sometimes called to review rulings which reverse initial factual findings,[10] draw unreasonable inferences[11] or overlook relevant facts,[12] constraining us to widen the scope of review to cover factual questions. This is one such case.

As an administrative proceeding, the evidentiary bar against which the evidence at hand is measured is not the highest quantum of proof beyond reasonable doubt, requiring *moral certainty* to support affirmative findings. Instead, the lowest standard of *substantial evidence*,[13] that is, such relevant evidence as a

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[9] Section 1, Rule 45 of the 1997 Rules of Civil Procedure.

[10] See *Ducusin v. Court of Appeals*, 207 Phil. 248 (1983).

[11] See *Luna v. Linatoc*, 74 Phil. 15 (1942).

[12] See *Abellana v. Dosdos*, 121 Phil. 241 (1965).

[13] We adverted to this fact in a previous ruling, thus:

[T]he settled rule in administrative and quasi-judicial proceedings is that proof beyond reasonable doubt is not required in determining the legality

reasonable mind will accept as *adequate* to support a conclusion, applies.[14] Because administrative liability attaches so long as there is some evidence adequate to support the conclusion that acts constitutive of the administrative offense have been performed (or have not been performed), reasonable doubt does not *ipso facto* result in exoneration unlike in criminal proceedings where guilt must be proven *beyond* reasonable doubt.[15] This hornbook doctrinal distinction undergirds our parallel findings of administrative liability *and* criminal acquittal on reasonable doubt for charges arising from the same facts.[16]

Here, no one disputes that complainants, ordinary taxpayers who were complete strangers to respondent, immediately sought police help for respondent's illegal solicitation. As the joint affidavit of Yape and Calzada attested:

1. [O]n July 15, 2003, we were instructed by our Regional Chief to conduct an entrapment operation at the BIR Office in Subangdaku, Mandaue City, pursuant to the complaint lodged by Mr. Vicente IGOT

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of an employer's dismissal of an employee, and not even a preponderance of evidence is necessary as substantial evidence is considered sufficient. Substantial evidence is more than a mere scintilla of evidence or relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds, equally reasonable, might conceivably opine otherwise. *Thus, substantial evidence is the least demanding in the hierarchy of evidence*. (*Salvador v. Philippine Mining Service Corporation*, 443 Phil. 878, 888-889 [2003]; emphasis supplied; internal citations omitted)

[14] *Ang Tibay v. CIR*, 69 Phil. 635 (1940). This has been statutorily adopted in Rule 133, Section 5 of the Revised Rules on Evidence.

[15] Thus, the substantial evidence standard does not preclude other "equally reasonable minds" from arriving at a contrary conclusion (see *Salvador v. Philippine Mining Service Corporation*, 443 Phil. 878, 888-889 [2003]).

[16] *E.g.*, *Barillo v. Gervacio*, G.R. No. 155088, 31 August 2006, 500 SCRA 561 (finding petitioner liable for Dishonesty despite previous acquittal on reasonable doubt for violation of provisions of Republic Act No. 3019 for misuse of public funds); *Mollaneda v. Umacob*, 411 Phil. 159 (2001) (affirming administrative liability for grave misconduct, oppression, abuse of authority and conduct prejudicial to the best interest of the service despite previous acquittal on reasonable doubt for Acts of Lasciviousness).

of Lapu-Lapu City x x x *for alleged [a]ttempted bribery [sic]*.[17] (Emphasis supplied)

x x x x x x x x x

3. At the said office particularly at the Capital Gains Tax Division, we saw Vicente IGOT and his wife approached [sic] Atty. Reynaldo DOSONO, an examiner, and who is the subject of the entrapment. Spouses IGOT handed the envelope containing the marked "boodle" money with eight (8) pieces of ₱500 bills;

Following the entrapment, respondent was brought to the police headquarters where he was tested and found positive for ultraviolet fluorescent powder in both hands, the same substance dusted on the pay-off envelope. The Ombudsman found substantial evidence to pin respondent:

The taxpayers, upon realizing that the demand was too much and the amount would go to the pocket of the respondent Dosono instead, sought the assistance of the CIDG-7, which in turn set up an entrapment operation against said respondent. After preparation, the CIDG-7, through its investigation Section headed by P/Insp. Enrique Lacerna, created a team composed of P/Insp. Joie Yape, Jr., PO2 Bernard Calzada and CI-1 Douglas Castillon, Jr. which would be tasked to execute the said entrapment operation.

Thus, on July 14, 2003 at about 10:30 o'clock in the morning, the team of P/Insp. Yape, together with Spouses Igot, proceeded to the BIR Mandaue City Office to carry out the entrapment operation which led to the arrest of respondent Dosono who was caught in *flagrante delicto* receiving an envelope containing marked "boodle" money and eight (8) marked ₱500 bills from complainant Vicente Igot. As stipulated by the parties, the envelope, marked "boodle" money and eight (8) marked ₱500 bills all were dusted with ultraviolet fluorescent powder. x x x

x x x x x x x x x

From the facts obtaining, the acts committed by respondent Dosono appeared to have been motivated by bad faith and corruption

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[17] *Rollo*, p. 64. The error in describing respondent's conduct as constituting attempted bribery instead of extortion does not detract from the import of the statement that respondent attempted to solicit grease money from complainants.

and thus, constitute Grave Misconduct x x x and the evidence at hand is found to be substantial enough to convict him as the said offense, the quantum of evidence required in an administrative case.[18] x x x

We affirm the Ombudsman's ruling. To a reasonable – as opposed to a suspicious – mind, the circumstances leading to the filing of the complaint against respondent, his arrest following his entrapment, and the results from the laboratory tests are more than adequate to support the conclusion that respondent illegally solicited money from complainants and was caught red-handed receiving the pay-off money. This is clear-cut grave misconduct – corrupt conduct inspired by an intention to violate the law, or constituting flagrant disregard of well-known legal rules.[19]

The Court of Appeals found the evidence *inadequate* because it dwelt on the *doubts* respondent conjured to weaken the case against him. In doing so, the Court of Appeals unwittingly mutated this proceeding to a quasi-criminal litigation and employed heightened standard of proof approximating proof beyond reasonable doubt. How else could it explain its invocation of *Formilleza v. Sandiganbayan*,[20] a *criminal* appeal of a verdict rendered by the Sandiganbayan finding the respondent guilty of Indirect Bribery under Article 211 of the Revised Penal Code?[21] In the process, the Court of Appeals discarded without

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[18] *Rollo*, pp. 84-86.

[19] *Mitsubishi Motors Phils. Corporation v. Simon*, G.R. No. 164081, 16 April 2008, 551 SCRA 555.

[20] 242 Phil. 519 (1988).

[21] The relevant portion of its ruling reads (*Rollo*, p. 45):

In *Formilleza v. Sandiganbayan*, this Court overruled the finding of acceptance, because it was improbable for the accused to accept bribe money in front of her officemates and in a public place, even if the money had been handed to her under the table. Furthermore, the accused therein shouted at the complainant, "What are you trying to do to me?" That is not the normal reaction of one with a guilty conscience. Furthermore, the Court held in the said case that there must be a clear intention on the part of the public officer to take the gift so offered and consider it as his or her own

basis the crucial presumption of regularity in the performance of official duties[22] by the arresting policemen and took respondent's word as veritable truth. Yet, a considered study of respondent's defense reveals that the so-called doubts respondent conjured are not even reasonable.

The presence of ultraviolet powder in respondent's hands anchors his administrative liability; thus, respondent had to discredit Yape and Calzada's statement in their joint affidavit that complainants "handed [to respondent] the envelope containing the marked 'boodle' money'" and respondent "received the marked 'boodle' money."[23] Respondent does so by alleging frame-up: a rogue member of the arresting team snatched his handkerchief at Camp Sotero Cabahug, rubbed it against the dusted envelope to contaminate it with ultraviolet powder and gave it back to respondent who, in his absentminded state, received the handkerchief. (In an ancillary, less-sinister tale, respondent claimed he was further contaminated when he was later made to pose before mediamen holding the envelope).

Instead of taking respondent's story for a fact, the Court of Appeals should have accorded greater weight to the following findings of the Ombudsman rejecting respondent's untenable story, being the fact-finding body which saw and heard respondent testify:

As to respondent's claim that in the CIDG-7 one of the apprehending police officers snatched his handkerchief and wiped a white envelope with the same and then was asked to pose in front of media holding the said envelope, he is insinuating that said police officer planted ultraviolet powder on his handkerchief so that when he happened to hold either the handkerchief or the envelope, he could

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property from then on. Mere physical receipt unaccompanied by any other sign, circumstance or act to show acceptance is not sufficient to lead the court to conclude that the crime has been committed. To hold otherwise would encourage unscrupulous individuals to frame up public officers by simply putting within their physical custody some gift, money or other property.

[22] Section 3(m), Rule 131 of the Revised Rules on Evidence.

[23] *Rollo*, p. 64.

be tested positive [for] ultraviolet fluorescent powder. 'In order for the defense of frame-up to prosper, the evidence adduced must be clear and convincing.' x x x Moreover, the said contentions are found to be more fictional than real *because during the formal investigation of the case, the respondent could not even identify, when required to do so, who among the apprehending police officers did the same to him*.[24] x x x (Emphasis supplied; internal citations omitted)

Indeed, respondent was arrested not by a battalion of law enforcers but by three policemen who were with him at the BIR office and who transported him from Mandaue City to Cebu City. All respondent had to do to substantiate his claim was point to the erring officer during the hearings before the Ombudsman. This omission and respondent's failure to corroborate his alleged prejudicial picture-taking (by submitting the relevant photograph) undercuts his goal of casting reasonable doubts on complainant's case.

On the testimonies of Yape and Calzada (that upon receiving payment during the entrapment, respondent immediately placed in his table drawer the folder containing the dusted envelope without opening it), it was error for the Court of Appeals to treat this as added proof of respondent's innocence. First, both the bills and the envelope were dusted with ultraviolet fluorescent powder.[25] Anyone who touches the envelope would be contaminated with the powder even if the envelope is not opened. Second, the Court of Appeals overlooked the fact that Yape and Calzada declared under oath in their joint affidavit that complainants "handed [to respondent] the *envelope* containing the marked 'boodle' money" and that respondent "received the marked 'boodle' money." The records do not show that Yape and Calzada were confronted with this statement when they took the stand thus depriving them of the chance to reconcile the seeming variation between their statement and testimonies. As the party seeking to exploit this fact, it was incumbent on

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[24] *Rollo*, p. 85.

[25] Preliminary Conference Order, OMB-V-A-03-0426-G, dated 22 September 2003 (*Rollo*, p. 75).

respondent to have done so. We cannot allow respondent to capitalize on his omission. Yape and Calzada's statement that complainants "handed [to respondent] the envelope containing the marked 'boodle' money" and respondent "received the marked 'boodle' money," coupled with the presence of the fluorescent powder in respondent's hands and the inconceivability of respondent's frame-up defense lead to no other conclusion: respondent was contaminated during the entrapment.

Indeed, it is a self-evident fact that our law enforcement officers are sworn to uphold the law, not to invent crimes. The imperative of ensuring the smooth functioning of the government machinery grounds the evidentiary presumption that public officers have performed their duties regularly. True, this presumption is not conclusive, but it is also not meaningless. It takes more than a bare tale of malfeasance by an unidentified perpetrator to overcome it. To accept as presumption-overcoming dubious tales of the likes respondent purveyed is to leave the smooth functioning of our government to the mercy of the fertile imagination of litigants, free to concoct all sorts of devious plots and attribute them to unnamed civil servants. We could not imagine a more insidious way to slowly paralyze state apparatuses of governance.

The Court of Appeals' error was compounded when it treated complainants' non-appearance at the hearing as fatal to their case and rendering the testimonies of the arresting policemen baseless. Considering the physical evidence on record and the arresting officers' unimpeached testimonies (proving that (1) they conducted the entrapment based on the complainants' complaint and (2) respondent was the target of the entrapment for his illegal solicitation), the Ombudsman committed no error in proceeding to hear the case and render judgment. Indeed, the Court of Appeals' disposition is akin to a court dismissing an administrative complaint because the complainants desisted. This runs counter to the deeply ingrained policy that disciplinary administrative proceedings are imbued with public interest which cannot be held hostage by fickle-minded complainants. This policy explains our refusal to dismiss the administrative complaint

in *Office of the Court Administrator v. Atty. Morante*[26] despite the desistance of the complainants and to use the evidence on record to hold the respondent public officer liable for grave misconduct for extortion, as here.

Lastly, the cases the Court of Appeals invoked for doctrinal support are unavailing. *Tapiador v. Office of the Ombudsman*[27] rose and fell *exclusively* on the *affidavits* of the complainants: no entrapment was conducted, no arresting officers testified to substantiate its execution, and no physical evidence linked the respondent to the pay-off money. Further, the identity of the pay-off recipient in *Tapiador* was not proven. With the failure of the complainants to testify during the hearings, the Court was left with no choice but to discard the case for insufficiency of evidence. Indeed, even the liberal standard of substantial evidence demands *some* adequate evidence.

Suffering from substantially the same defect, *Boyboy v. Yabut*[28] pitted the bare allegations of the complainants charging the respondent with extortion against the respondent's denial of the charge. Again, unlike here, no entrapment operation was conducted in *Boyboy* and no laboratory findings implicated the respondent there. Thus, we held in *Boyboy* that the failure of the investigating body to hold hearings, which would have tested the parties' credibility, undermined the veracity of the complainants' case.

***Public Office Imbued with Highest Trust***

Unlike private offices which are held largely on the dictates of market forces, public offices are public trust.[29] Public officers are tasked to serve the public interest, thus the excessive burden for their retention in the form of numerous prohibitions. The liberal evidentiary standard of substantial evidence and the freedom of administrative proceedings from technical niceties

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[26] 471 Phil. 837 (2004).

[27] 429 Phil. 47 (2002).

[28] 449 Phil. 664 (2003).

[29] Section 1, Article XI, Constitution.

effectuate the fiduciary nature of public office: they are procedural mechanisms assuring ease in maintaining an efficient bureaucracy, free of rent-seeking officials who exploit government processes to raise easy money. Respondent's hold on his item at the Mandaue City revenue office, which, like our customs offices, is a common situs for corrupt activities, is no more lasting than his fidelity to his trust. Although no criminal verdict deprives respondent of his liberty, adequate evidence justifies his removal from the bureaucracy for forfeiting the public trust.

**WHEREFORE,** we *GRANT* petition. We *REVERSE* the Decision dated 18 April 2005 and the Resolution dated 30 November 2005 of the Court of Appeals and *REINSTATE* the Decision dated 27 January 2004 and Order dated 17 February 2004 of the Office of the Ombudsman Visayas in OMB-V-A-03-0426-G.

**SO ORDERED.**

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

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**FIRST DIVISION**

[G.R. No. 164703. May 4, 2010]

**ALLAN C. GO, doing business under the name and style "ACG Express Liner,"** *petitioner, vs.* **MORTIMER F. CORDERO,** *respondent.*

[G.R. No. 164747. May 4, 2010]

**MORTIMER F. CORDERO,** *petitioner, vs.* **ALLAN C. GO, doing business under the name and style "ACG Express Liner," FELIPE M. LANDICHO and VINCENT D. TECSON,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; PARTY-IN-INTEREST; PURPOSES; CASE AT BAR.—** Section 2, Rule 3 of the Rules of Court, which defines such party as the one (1) to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. The purposes of this provision are: 1) to prevent the prosecution of actions by persons without any right, title or interest in the case; 2) to require that the actual party entitled to legal relief be the one to prosecute the action; 3) to avoid a multiplicity of suits; and 4) to discourage litigation and keep it within certain bounds, pursuant to sound public policy. A case is dismissible for lack of personality to sue upon proof that the plaintiff is not the real party-in-interest, hence grounded on failure to state a cause of action. On this issue, we agree with the CA in ruling that it was Cordero and not Pamana who is the exclusive distributor of AFFA in the Philippines as shown by the Certification dated June 1, 1997 issued by Tony Robinson. Petitioner Go mentions the following documents also signed by respondent Robinson which state that "Pamana Marketing Corporation represented by Mr. Mortimer F. Cordero" was actually the exclusive distributor x x x Such apparent inconsistency in naming AFFA's exclusive distributor in the Philippines is of no moment. For all intents and purposes, Robinson and AFFA dealt only with Cordero who alone made decisions in the performance of the exclusive distributorship, as with other clients to whom he had similarly offered AFFA's fast ferry vessels. Moreover, the stipulated commissions from each progress payments made by Go were directly paid by Robinson to Cordero.

**2. ID.; ID.; JURISDICTION OVER THE PERSON; HOW ACQUIRED.—** Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint, while jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them in the manner required by law *or* through their voluntary appearance in court and their submission to its authority.

**3. ID.; ID.; ID.; ID.; INVALID SERVICE OF SUMMONS; SPECIAL APPEARANCE IN COURT, WHEN DEEMED A WAIVER OF COURT'S LACK OF "PERSONAL JURISDICTION"; CASE AT BAR.—** We find no error committed by the trial court in

overruling Robinson's objection over the improper resort to summons by publication upon a foreign national like him and in an *action in personam*, notwithstanding that he raised it in a special appearance specifically raising the issue of lack of jurisdiction over his person x x x A party who makes a special appearance in court challenging the jurisdiction of said court based on the ground of invalid service of summons is not deemed to have submitted himself to the jurisdiction of the court. In this case, however, although the Motion to Dismiss filed by Robinson specifically stated as one (1) of the grounds the lack of "personal jurisdiction," it must be noted that he had earlier filed a Motion for Time to file an appropriate responsive pleading even beyond the time provided in the summons by publication. Such motion did not state that it was a conditional appearance entered to question the regularity of the service of summons, but an appearance submitting to the jurisdiction of the court by acknowledging the summons by publication issued by the court and praying for additional time to file a responsive pleading. Consequently, Robinson having acknowledged the summons by publication and also having invoked the jurisdiction of the trial court to secure affirmative relief in his motion for additional time, he effectively submitted voluntarily to the trial court's jurisdiction. He is now estopped from asserting otherwise, even before this Court.

**4. POLITICAL LAW; CONSTITUTIONAL LAW; PROPERTY RIGHTS; RIGHT TO PERFORM AN EXCLUSIVE DISTRIBUTORSHIP AGREEMENT AND TO REAP THE PROFITS RESULTING FROM SUCH PERFORMANCE ARE PROPRIETARY RIGHTS; CASE AT BAR.—** In *Yu v. Court of Appeals* this Court ruled that the right to perform an exclusive distributorship agreement and to reap the profits resulting from such performance are proprietary rights which a party may protect. Thus, injunction is the appropriate remedy to prevent a wrongful interference with contracts by *strangers* to such contracts where the legal remedy is insufficient and the resulting injury is irreparable. x x x In the case at bar, it was established that petitioner Cordero was not paid the balance of his commission by respondent Robinson. From the time petitioner Go and respondent Landicho directly dealt with respondent Robinson in Brisbane, and ceased communicating through petitioner Cordero as the exclusive distributor of AFFA in the

Philippines, Cordero was no longer informed of payments remitted to AFFA in Brisbane. In other words, Cordero had clearly been cut off from the transaction until the arrival of the first SEACAT 25 which was sold through his efforts. When Cordero complained to Go, Robinson, Landicho and Tecson about their acts prejudicial to his rights and demanded that they respect his exclusive distributorship, Go simply let his lawyers led by Landicho and Tecson handle the matter and tried to settle it by promising to pay a certain amount and to purchase high-speed catamarans through Cordero. However, Cordero was not paid anything and worse, AFFA through its lawyer in Australia even terminated his exclusive dealership insisting that his services were engaged for only one (1) transaction, that is, the purchase of the first SEACAT 25 August 1997. x x x While there was indeed no sufficient evidence that respondents actually purchased a second SEACAT 25 directly from AFFA., this circumstance will not absolve respondents from liability for invading Cordero's rights under the exclusive distributorship. Respondents clearly acted in bad faith in bypassing Cordero as they completed the remaining payments to AFFA without advising him and furnishing him with copies of the bank transmittals as they previously did and directly dealt with AFFA through Robinson regarding arrangements for the arrival of the first SEACAT 25 in Manila and negotiations for the purchase of the second vessel pursuant to the Memorandum of Agreement which Cordero signed in behalf of AFFA. As a result of respondents' actuations, Cordero incurred losses as he was not paid the balance of his commission from the sale of the first vessel and his exclusive distributorship revoked by AFFA.

**5. CIVIL LAW; CIVIL CODE; CONTRACTS; TORT INTERFERENCE; PERSON MAY BE SUED FOR INDUCING ANOTHER TO COMMIT BREACH OF CONTRACT; CASE AT BAR.—** While it is true that a third person cannot possibly be sued for breach of contract because only parties can breach contractual provisions, a contracting party may sue a third person not for breach but for inducing another to commit such breach. Article 1314 of the Civil Code provides: Art. 1314. Any third person who induces another to violate his contract shall be liable for damages to the other contracting party. The elements of tort interference are: (1) existence of a valid contract; (2) knowledge

on the part of the third person of the existence of a contract; and (3) interference of the third person is without legal justification. As to the third element, our ruling in the case of *So Ping Bun v. Court of Appeals* is instructive, to wit: A duty which the law of torts is concerned with is respect for the property of others, and a cause of action *ex delicto* may be predicated upon an unlawful interference by one person of the enjoyment by the other of his private property. This may pertain to a situation where a third person induces a party to renege on or violate his undertaking under a contract. The presence of the first and second elements is not disputed. Through the letters issued by Robinson attesting that Cordero is the exclusive distributor of AFFA in the Philippines, respondents were clearly aware of the contract between Cordero and AFFA represented by Robinson. In fact, evidence on record showed that respondents initially dealt with and recognized Cordero as such exclusive dealer of AFFA high-speed catamaran vessels in the Philippines. In that capacity as exclusive distributor, petitioner Go entered into the Memorandum of Agreement and Shipbuilding Contract No. 7825 with Cordero in behalf of AFFA.

**6. ID.; ID.; ID.; ID.; ID.; MALICE OR BAD FAITH, WHEN PRESENT.—** Malice connotes ill will or spite, and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive. In the case of *Lagon v. Court of Appeals*, we held that to sustain a case for tortuous interference, the defendant must have acted with malice or must have been driven by purely impure reasons to injure the plaintiff; in other words, act of interference cannot be justified.

**7. ID.; ID.; ID.; ID.; ID.; ID.; FINDINGS OF THE RTC AND CA THAT RESPONDENTS ACTED IN BAD FAITH ARE CONCLUSIVE ON THE SUPREME COURT; CASE AT BAR.—** The act of Go, Landicho and Tecson in inducing Robinson and AFFA to enter into another contract directly with ACG Express Liner to obtain a lower price for the second vessel resulted in AFFA's breach of its contractual obligation to pay in full the commission due to Cordero and unceremonious termination of Cordero's appointment as exclusive distributor. Following our pronouncement in *Gilchrist v. Cuddy (supra)*, such act may not be deemed malicious if impelled by a proper business interest

rather than in wrongful motives. The attendant circumstances, however, demonstrated that respondents transgressed the bounds of permissible financial interest to benefit themselves at the expense of Cordero. Respondents furtively went directly to Robinson *after* Cordero had worked hard to close the deal for them to purchase from AFFA two (2) SEACAT 25, closely monitored the progress of building the first vessel sold, attended to their concerns and spent no measly sum for the trip to Australia with Go, Landicho and Go's family members. But what is appalling is the fact that even as Go, Landicho and Tecson secretly negotiated with Robinson for the purchase of a second vessel, Landicho and Tecson continued to demand and receive from Cordero their "commission" or "cut" from Cordero's *earned commission* from the sale of the first SEACAT 25. Cordero was practically excluded from the transaction when Go, Robinson, Tecson and Landicho suddenly ceased communicating with him, without giving him any explanation. While there was nothing objectionable in negotiating for a lower price in the second purchase of SEACAT 25, which is not prohibited by the Memorandum of Agreement, Go, Robinson, Tecson and Landicho clearly connived not only in ensuring that Cordero would have no participation in the contract for sale of the second SEACAT 25, but also that Cordero would not be paid *the balance of his commission from the sale of the first SEACAT 25*. This, despite their knowledge that it was commission already earned by and due to Cordero. Thus, the trial and appellate courts correctly ruled that the actuations of Go, Robinson, Tecson and Landicho were without legal justification and intended solely to prejudice Cordero. The existence of malice, ill will or bad faith is a factual matter. As a rule, findings of fact of the trial court, when affirmed by the appellate court, are conclusive on this Court. We see no compelling reason to reverse the findings of the RTC and the CA that respondents acted in bad faith and in utter disregard of the rights of Cordero under the exclusive distributorship agreement.

**8. CIVIL LAW; CIVIL CODE; HUMAN RELATIONS; TORT INTERFERENCE WITH MALICE; ACTUATIONS OF RESPONDENTS ARE FURTHER PROSCRIBED BY ARTICLE 19 OF THE CIVIL CODE; CASE AT BAR.—** The failure of Robinson, Go, Tecson and Landico to act with fairness, honesty

and good faith in securing better terms for the purchase of high-speed catamarans from AFFA, to the prejudice of Cordero as the duly appointed exclusive distributor, is further proscribed by Article 19 of the Civil Code: Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

**9. ID.; ID.; TORTS (QUASI-DELICTS); RESPONSIBILITY OF TWO OR MORE PERSONS WHO ARE LIABLE FOR THE QUASI-DELICT IS SOLIDARY.—** Petitioner Go's argument that he, Landicho and Tecson cannot be held liable solidarily with Robinson for actual, moral and exemplary damages, as well as attorney's fees awarded to Cordero since no law or contract provided for solidary obligation in these cases, is equally bereft of merit. Conformably with Article 2194 of the Civil Code, the responsibility of two or more persons who are liable for the quasi-delict is solidary.

**10. ID.; ID.; ID.; ID.; THE DEFENDANT FOUND GUILTY OF INTERFERENCE WITH CONTRACTUAL RELATIONS, CANNOT BE HELD LIABLE FOR MORE THAN THE AMOUNT FOR WHICH THE PARTY TO THE CONTRACT IN WHOSE BEHALF HE INTERMEDDLED CAN BE HELD LIABLE; CASE AT BAR.—** The rule is that the defendant found guilty of interference with contractual relations cannot be held liable for more than the amount for which the party who was inducted to break the contract can be held liable. Respondents Go, Landicho and Tecson were therefore correctly held liable for the balance of petitioner Cordero's commission from the sale of the first SEACAT 25, in the amount of US$31,522.09 or its peso equivalent, which AFFA/Robinson did not pay in violation of the exclusive distributorship agreement, with interest at the rate of 6% per annum from June 24, 1998 until the same is fully paid.

**11. ID.; ID.; DAMAGES; EXEMPLARY DAMAGES; REQUIREMENTS; CASE AT BAR.—** The requirements of an award of exemplary damages are: (1) they may be imposed by way of example in addition to compensatory damages, and only after the claimant's right to them has been established; (2) that they cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be

awarded to the claimant; and (3) the act must be accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner. The award of exemplary damages is thus in order.

**12. ID.; ID.; ID.; MORAL DAMAGES; MEANT TO COMPENSATE AND ALLEVIATE THE PHYSICAL SUFFERING, MENTAL ANGUISH, FRIGHT, SERIOUS ANXIETY, BESMIRCHED REPUTATION, WOUNDED FEELINGS, MORAL SHOCK, SOCIAL HUMILIATION, AND SIMILAR INJURIES UNJUSTLY CAUSED; AWARD THEREOF PROPER IN CASE AT BAR.—** Moral damages are meant to compensate and alleviate the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injuries unjustly caused. Although incapable of pecuniary estimation, the amount must somehow be proportional to and in approximation of the suffering inflicted. Moral damages are not punitive in nature and were never intended to enrich the claimant at the expense of the defendant. There is no hard-and-fast rule in determining what would be a fair and reasonable amount of moral damages, since each case must be governed by its own peculiar facts. Trial courts are given discretion in determining the amount, with the limitation that it "should not be palpably and scandalously excessive." Indeed, it must be commensurate to the loss or injury suffered.

**13. ID.; ID.; ID.; ATTORNEY'S FEES; AWARDED WHEN EXEMPLARY DAMAGES ARE AWARDED.—** Because exemplary damages are awarded, attorney's fees may also be awarded in consonance with Article 2208 (1).

**APPEARANCES OF COUNSEL**

*Lawrence L. Fernandez & Associates* for Allan C. Go.
*Tabura & Associates Law Offices* for Mortimer F. Cordero.
*Martinez Martinez Alcudia Law Offices* for Vincent Tecson.
*Landicho and Associates Law Firm* for Felipe M. Landicho.

## D E C I S I O N

**VILLARAMA, JR., *J.*:**

For review is the Decision[1] dated March 16, 2004 as modified by the Resolution[2] dated July 22, 2004 of the Court of Appeals (CA) in CA-G.R. CV No. 69113, which affirmed with modifications the Decision[3] dated May 31, 2000 of the Regional Trial Court (RTC) of Quezon City, Branch 85 in Civil Case No. 98-35332.

The factual antecedents:

Sometime in 1996, Mortimer F. Cordero, Vice-President of Pamana Marketing Corporation (Pamana), ventured into the business of marketing inter-island passenger vessels. After contacting various overseas fast ferry manufacturers from all over the world, he came to meet Tony Robinson, an Australian national based in Brisbane, Australia, who is the Managing Director of Aluminium Fast Ferries Australia (AFFA).

Between June and August 1997, Robinson signed documents appointing Cordero as the exclusive distributor of AFFA catamaran and other fast ferry vessels in the Philippines. As such exclusive distributor, Cordero offered for sale to prospective buyers the 25-meter Aluminium Passenger catamaran known as the SEACAT 25.[4]

After negotiations with Felipe Landicho and Vincent Tecson, lawyers of Allan C. Go who is the owner/operator of ACG Express Liner of Cebu City, a single proprietorship, Cordero was able to close a deal for the purchase of two (2) SEACAT

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[1] Penned by Associate Justice Jose Catral Mendoza (now a Member of this Court) and concurred in by Associate Justices B.A. Adefuin-Dela Cruz and Eliezer R. Delos Santos.

[2] Penned by Associate Justice Jose Catral Mendoza (now a Member of this Court) and concurred in by Associate Justices Delilah Vidallon-Magtolis and Eliezer R. Delos Santos.

[3] Penned by Judge Pedro M. Areola.

[4] Folder of plaintiff's exhibits, pp. 1-34.

25 as evidenced by the Memorandum of Agreement dated August 7, 1997.[5] Accordingly, the parties executed Shipbuilding Contract No. 7825 for one (1) high-speed catamaran (SEACAT 25) for the price of US$1,465,512.00.[6] Per agreement between Robinson and Cordero, the latter shall receive commissions totalling US$328,742.00, or 22.43% of the purchase price, from the sale of each vessel.[7]

Cordero made two (2) trips to the AFFA Shipyard in Brisbane, Australia, and on one (1) occasion even accompanied Go and his family and Landicho, to monitor the progress of the building of the vessel. He shouldered all the expenses for airfare, food, hotel accommodations, transportation and entertainment during these trips. He also spent for long distance telephone calls to communicate regularly with Robinson, Go, Tecson and Landicho.

However, Cordero later discovered that Go was dealing directly with Robinson when he was informed by Dennis Padua of Wartsila Philippines that Go was canvassing for a second catamaran engine from their company which provided the ship engine for the first SEACAT 25. Padua told Cordero that Go instructed him to fax the requested quotation of the second engine to the Park Royal Hotel in Brisbane where Go was then staying. Cordero tried to contact Go and Landicho to confirm the matter but they were nowhere to be found, while Robinson refused to answer his calls. Cordero immediately flew to Brisbane to clarify matters with Robinson, only to find out that Go and Landicho were already there in Brisbane negotiating for the sale of the second SEACAT 25. Despite repeated follow-up calls, no explanation was given by Robinson, Go, Landicho and Tecson who even made Cordero believe there would be no further sale between AFFA and ACG Express Liner.

In a handwritten letter dated June 24, 1998, Cordero informed Go that such act of dealing directly with Robinson violated his exclusive distributorship and demanded that they respect the

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[5] *Id.*, pp. 35-39.

[6] *Id.*, pp. 43-51.

[7] *Id.*, pp. 40-42.

same, without prejudice to legal action against him and Robinson should they fail to heed the same.[8] Cordero's lawyer, Atty. Ernesto A. Tabujara, Jr. of ACCRA law firm, also wrote ACG Express Liner assailing the fraudulent actuations and misrepresentations committed by Go in connivance with his lawyers (Landicho and Tecson) in breach of Cordero's exclusive distributorship appointment.[9]

Having been apprised of Cordero's demand letter, Thyne & Macartney, the lawyer of AFFA and Robinson, faxed a letter to ACCRA law firm asserting that the appointment of Cordero as AFFA's distributor was for the purpose of one (1) transaction only, that is, the purchase of a high-speed catamaran vessel by ACG Express Liner in August 1997. The letter further stated that Cordero was offered the exclusive distributorship, the terms of which were contained in a draft agreement which Cordero allegedly failed to return to AFFA within a reasonable time, and which offer is already being revoked by AFFA.[10]

As to the response of Go, Landicho and Tecson to his demand letter, Cordero testified before the trial court that on the same day, Landicho, acting on behalf of Go, talked to him over the telephone and offered to amicably settle their dispute. Tecson and Landicho offered to convince Go to honor his exclusive distributorship with AFFA and to purchase all vessels for ACG Express Liner through him for the next three (3) years. In an effort to amicably settle the matter, Landicho, acting in behalf of Go, set up a meeting with Cordero on June 29, 1998 between 9:30 p.m. to 10:30 p.m. at the Mactan Island Resort Hotel lobby. On said date, however, only Landicho and Tecson came and no reason was given for Go's absence. Tecson and Landicho proposed that they will convince Go to pay him US$1,500,000.00 on the condition that they will get a cut of 20%. And so it was agreed between him, Landicho and Tecson that the latter would give him a weekly status report and that the matter will be

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[8] *Id.*, pp. 52-53.

[9] *Id.*, pp. 54-56.

[10] *Id.*, pp. 56-57.

settled in three (3) to four (4) weeks and neither party will file an action against each other until a final report on the proposed settlement. No such report was made by either Tecson or Landicho who, it turned out, had no intention to do so and were just buying time as the catamaran vessel was due to arrive from Australia. Cordero then filed a complaint with the Bureau of Customs (BOC) to prohibit the entry of SEACAT 25 from Australia based on misdeclaration and undervaluation. Consequently, an Alert Order was issued by Acting BOC Commissioner Nelson Tan for the vessel which in fact arrived on July 17, 1998. Cordero claimed that Go and Robinson had conspired to undervalue the vessel by around US$500,000.00.[11]

On August 21, 1998, Cordero instituted Civil Case No. 98-35332 seeking to hold Robinson, Go, Tecson and Landicho liable jointly and solidarily for conniving and conspiring together in violating his exclusive distributorship in bad faith and wanton disregard of his rights, thus depriving him of his due commissions (balance of unpaid commission from the sale of the first vessel in the amount of US$31,522.01 and unpaid commission for the sale of the second vessel in the amount of US$328,742.00) and causing him actual, moral and exemplary damages, including ₱800,000.00 representing expenses for airplane travel to Australia, telecommunications bills and entertainment, on account of AFFA's untimely cancellation of the exclusive distributorship agreement. Cordero also prayed for the award of moral and exemplary damages, as well as attorney's fees and litigation expenses.[12]

Robinson filed a motion to dismiss grounded on lack of jurisdiction over his person and failure to state a cause of action, asserting that there was no act committed in violation of the distributorship agreement. Said motion was denied by the trial court on December 20, 1999. Robinson was likewise declared in default for failure to file his answer within the period granted by the trial court.[13] As for Go and Tecson, their motion to dismiss

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[11] TSN, April 5, 2000, pp. 27-35; folder of plaintiff's exhibits, p. 58.

[12] Records, Vol. I, pp. 1-16.

[13] *Id.*, pp. 155-157, 167-171, 186-189, 249-251.

based on failure to state a cause of action was likewise denied by the trial court on February 26, 1999.[14] Subsequently, they filed their Answer denying that they have anything to do with the termination by AFFA of Cordero's authority as exclusive distributor in the Philippines. On the contrary, they averred it was Cordero who stopped communicating with Go in connection with the purchase of the first vessel from AFFA and was not doing his part in making progress status reports and airing the client's grievances to his principal, AFFA, such that Go engaged the services of Landicho to fly to Australia and attend to the documents needed for shipment of the vessel to the Philippines. As to the inquiry for the Philippine price for a Wartsila ship engine for AFFA's other on-going vessel construction, this was merely requested by Robinson but which Cordero misinterpreted as indication that Go was buying a second vessel. Moreover, Landicho and Tecson had no transaction whatsoever with Cordero who had no document to show any such shipbuilding contract. As to the supposed meeting to settle their dispute, this was due to the malicious demand of Cordero to be given US$3,000,000 as otherwise he will expose in the media the alleged undervaluation of the vessel with the BOC. In any case, Cordero no longer had cause of action for his commission for the sale of the second vessel under the memorandum of agreement dated August 7, 1997 considering the termination of his authority by AFFA's lawyers on June 26, 1998.[15]

Pre-trial was reset twice to afford the parties opportunity to reach a settlement. However, on motion filed by Cordero through counsel, the trial court reconsidered the resetting of the pre-trial to another date for the third time as requested by Go, Tecson and Landicho, in view of the latter's failure to appear at the pre-trial conference on January 7, 2000 despite due notice. The trial court further confirmed that said defendants misled the trial court in moving for continuance during the pre-trial conference held on December 10, 1999, purportedly to go abroad for the holiday season when in truth a Hold-Departure Order

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[14] *Id.*, pp. 70-77, 178.

[15] *Id.*, pp. 213-214.

had been issued against them.[16] Accordingly, plaintiff Cordero was allowed to present his evidence *ex parte*.

Cordero's testimony regarding his transaction with defendants Go, Landicho and Tecson, and the latter's offer of settlement, was corroborated by his counsel who also took the witness stand. Further, documentary evidence including photographs taken of the June 29, 1998 meeting with Landicho, Tecson and Atty. Tabujara at Shangri-la's Mactan Island Resort, photographs taken in Brisbane showing Cordero, Go with his family, Robinson and Landicho, and also various documents, communications, vouchers and bank transmittals were presented to prove that: (1) Cordero was properly authorized and actually transacted in behalf of AFFA as exclusive distributor in the Philippines; (2) Cordero spent considerable sums of money in pursuance of the contract with Go and ACG Express Liner; and (3) AFFA through Robinson paid Cordero his commissions from each scheduled payment made by Go for the first SEACAT 25 purchased from AFFA pursuant to Shipbuilding Contract No. 7825.[17]

On May 31, 2000, the trial court rendered its decision, the dispositive portion of which reads as follows:

WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered in favor of Plaintiff and against defendants Allan C. Go, Tony Robinson, Felipe Landicho, and Vincent Tecson. As prayed for, defendants are hereby ordered to pay Plaintiff jointly and solidarily, the following:

1. On the First Cause of Action, the sum total of SIXTEEN MILLION TWO HUNDRED NINETY-ONE THOUSAND THREE HUNDRED FIFTY-TWO AND FORTY-THREE CENTAVOS (₱16,291,352.43) as actual damages with legal interest from 25 June 1998 until fully paid;

2. On the Second Cause of Action, the sum of ONE MILLION PESOS (₱1,000,000.00) as moral damages;

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[16] *Id.*, pp. 298-299.

[17] TSN, April 14, 2000, pp. 2-44.

3. On the Third Cause of Action, the sum of ONE MILLION PESOS (₱1,000,000.00) as exemplary damages; and

4. On the Fourth Cause of Action, the sum of ONE MILLION PESOS (₱1,000,000.00) as attorney's fees;

Costs against the defendants.

SO ORDERED.[18]

Go, Robinson, Landicho and Tecson filed a motion for new trial, claiming that they have been unduly prejudiced by the negligence of their counsel who was allegedly unaware that the pre-trial conference on January 28, 2000 did not push through for the reason that Cordero was then allowed to present his evidence *ex-parte*, as he had assumed that the said *ex-parte* hearing was being conducted only against Robinson who was earlier declared in default.[19] In its Order dated July 28, 2000, the trial court denied the motion for new trial.[20] In the same order, Cordero's motion for execution pending appeal was granted. Defendants moved to reconsider the said order insofar as it granted the motion for execution pending appeal.[21] On August 8, 2000, they filed a notice of appeal.[22]

On August 18, 2000, the trial court denied the motion for reconsideration and on August 21, 2000, the writ of execution pending appeal was issued.[23] Meanwhile, the notice of appeal was denied for failure to pay the appellate court docket fee within the prescribed period.[24] Defendants filed a motion for reconsideration and to transmit the case records to the CA.[25]

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[18] Records, Vol. I, pp. 445-446.

[19] *Id.*, pp. 460-465.

[20] *Id.*, pp. 477-480.

[21] *Id.*, pp. 481-485.

[22] *Id.*, p. 486.

[23] *Id.*, pp. 500-502.

[24] *Id.*, p. 503.

[25] *Id.*, pp. 512-514.

On September 29, 2000, the CA issued a temporary restraining order at the instance of defendants in the *certiorari* case they filed with said court docketed as CA-G.R. SP No. 60354 questioning the execution orders issued by the trial court. Consequently, as requested by the defendants, the trial court recalled and set aside its November 6, 2000 Order granting the *ex-parte* motion for release of garnished funds, cancelled the scheduled public auction sale of levied real properties, and denied the *ex-parte* Motion for Break-Open Order and *Ex-Parte* Motion for Encashment of Check filed by Cordero.[26] On November 29, 2000, the trial court reconsidered its Order dated August 21, 2000 denying due course to the notice of appeal and forthwith directed the transmittal of the records to the CA.[27]

On January 29, 2001, the CA rendered judgment granting the petition for *certiorari* in CA-G.R. SP No. 60354 and setting aside the trial court's orders of execution pending appeal. Cordero appealed the said judgment in a petition for review filed with this Court which was eventually denied under our Decision dated September 17, 2002.[28]

On March 16, 2004, the CA in CA-G.R. CV No. 69113 affirmed the trial court (1) in allowing Cordero to present his evidence *ex-parte* after the unjustified failure of appellants (Go, Tecson and Landicho) to appear at the pre-trial conference despite due notice; (2) in finding that it was Cordero and not Pamana who was appointed by AFFA as the exclusive distributor in the Philippines of its SEACAT 25 and other fast ferry vessels, which is not limited to the sale of one (1) such catamaran to Go on August 7, 1997; and (3) in finding that Cordero is entitled to a commission per vessel sold for AFFA through his efforts in the amount equivalent to 22.43% of the price of each vessel or US$328,742.00, and with payments of US$297,219.91 having been made to Cordero, there remained a balance of US$31,522.09 still due to him. The CA sustained the trial court in ruling that

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[26] Records, Vol. II, pp. 550-620.

[27] *Id.*, pp. 621-622.

[28] *Cordero v. Go*, G.R. No. 149754, 389 SCRA 288.

Cordero is entitled to damages for the breach of his exclusive distributorship agreement with AFFA. However, it held that Cordero is entitled only to commission for the sale of the first catamaran obtained through his efforts with the remaining unpaid sum of US$31,522.09 or ₱1,355,449.90 (on the basis of US$1.00=₱43.00 rate) with interest at 6% per annum from the time of the filing of the complaint until the same is fully paid. As to the ₱800,000.00 representing expenses incurred by Cordero for transportation, phone bills, entertainment, food and lodging, the CA declared there was no basis for such award, the same being the logical and necessary consequences of the exclusive distributorship agreement which are normal in the field of sales and distribution, and the expenditures having redounded to the benefit of the distributor (Cordero).

On the amounts awarded by the trial court as moral and exemplary damages, as well as attorney's fees, the CA reduced the same to ₱500,000.00, ₱300,000.00 and ₱50,000.00, respectively. Appellants were held solidarily liable pursuant to the provisions of Article 1207 in relation to Articles 19, 20, 21 and 22 of the New Civil Code. The CA further ruled that no error was committed by the trial court in denying their motion for new trial, which said court found to be *pro forma* and did not raise any substantial matter as to warrant the conduct of another trial.

By Resolution dated July 22, 2004, the CA denied the motions for reconsideration respectively filed by the appellants and appellee, and affirmed the Decision dated March 16, 2004 with the sole modification that the legal interest of 6% per annum shall start to run from June 24, 1998 until the finality of the decision, and the rate of 12% interest per annum shall apply once the decision becomes final and executory until the judgment has been satisfied.

The case before us is a consolidation of the petitions for review under Rule 45 separately filed by Go (G.R. No. 164703) and Cordero (G.R. No. 164747) in which petitioners raised the following arguments:

***G.R. No. 164703***
*(Petitioner Go)*

I. THE HONORABLE COURT OF APPEALS DISREGARDED THE RULES OF COURT AND PERTINENT JURISPRUDENCE AND ACTED WITH GRAVE ABUSE OF DISCRETION IN NOT RULING THAT THE RESPONDENT IS NOT THE REAL PARTY-IN-INTEREST AND IN NOT DISMISSING THE INSTANT CASE ON THE GROUND OF LACK OF CAUSE OF ACTION;

II. THE HONORABLE COURT OF APPEALS IGNORED THE LAW AND JURISPRUDENCE AND ACTED WITH GRAVE ABUSE OF DISCRETION IN HOLDING HEREIN PETITIONER RESPONSIBLE FOR THE BREACH IN THE ALLEGED EXCLUSIVE DISTRIBUTORSHIP AGREEMENT WITH ALUMINIUM FAST FERRIES AUSTRALIA;

III. THE HONORABLE APPELLATE COURT MISAPPLIED THE LAW AND ACTED WITH GRAVE ABUSE OF DISCRETION IN FINDING PETITIONER LIABLE *IN SOLIDUM* WITH THE CO-DEFENDANTS WITH RESPECT TO THE CLAIMS OF RESPONDENT;

IV. THE HONORABLE COURT OF APPEALS MISAPPLIED LAW AND JURISPRUDENCE AND GRAVELY ABUSED ITS DISCRETION WHEN IT FOUND PETITIONER LIABLE FOR UNPAID COMMISSIONS, DAMAGES, ATTORNEY'S FEES, AND LITIGATION EXPENSES; and

V. THE HONORABLE APPELLATE COURT ACTED CONTRARY TO LAW AND JURISPRUDENCE AND GRAVELY ABUSED ITS DISCRETION WHEN IT EFFECTIVELY DEPRIVED HEREIN PETITIONER OF HIS RIGHT TO DUE PROCESS BY AFFIRMING THE LOWER COURT'S DENIAL OF PETITIONER'S MOTION FOR NEW TRIAL.[29]

***G.R. No. 164747***
*(Petitioner Cordero)*

I.

THE COURT OF APPEALS ERRED IN NOT SUSTAINING THE JUDGMENT OF THE TRIAL COURT AWARDING PETITIONER

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[29] *Rollo* (G.R. No. 164703), pp. 23-24.

ACTUAL DAMAGES FOR HIS COMMISSION FOR THE SALE OF THE SECOND VESSEL, SINCE THERE IS SUFFICIENT EVIDENCE ON RECORD WHICH PROVES THAT THERE WAS A SECOND SALE OF A VESSEL.

A. THE MEMORANDUM OF AGREEMENT DATED 7 AUGUST 1997 PROVIDES THAT RESPONDENT GO WAS CONTRACTUALLY BOUND TO BUY TWO (2) VESSELS FROM AFFA.

B. RESPONDENT GO'S POSITION PAPER AND COUNTER-AFFIDAVIT/POSITION PAPER THAT WERE FILED BEFORE THE BUREAU OF CUSTOMS, ADMITS UNDER OATH THAT HE HAD INDEED PURCHASED A SECOND VESSEL FROM AFFA.

C. RESPONDENTS ADMITTED IN THEIR PRE-TRIAL BRIEF THAT THEY HAD PURCHASED A SECOND VESSEL.

II.

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER IS NOT ENTITLED TO HIS COMMISSIONS FOR THE PURCHASE OF A SECOND VESSEL, SINCE IT WAS PETITIONER'S EFFORTS WHICH ACTUALLY FACILITATED AND SET-UP THE TRANSACTION FOR RESPONDENTS.

III.

THE COURT OF APPEALS ERRED IN NOT IMPOSING THE PROPER LEGAL INTEREST RATE ON RESPONDENTS' UNPAID OBLIGATION WHICH SHOULD BE TWELVE PERCENT (12%) FROM THE TIME OF THE BREACH OF THE OBLIGATION.

IV.

THE COURT OF APPEALS ERRED IN NOT SUSTAINING THE ORIGINAL AMOUNT OF CONSEQUENTIAL DAMAGES AWARDED TO PETITIONER BY THE TRIAL COURT CONSIDERING THE BAD FAITH AND FRAUDULENT CONDUCT OF RESPONDENTS IN MISAPPROPRIATING THE MONEY OF PETITIONER.[30]

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[30] *Rollo* (G.R. No. 164747), pp. 21-22.

The controversy boils down to two (2) main issues: (1) whether petitioner Cordero has the legal personality to sue the respondents for breach of contract; and (2) whether the respondents may be held liable for damages to Cordero for his unpaid commissions and termination of his exclusive distributorship appointment by the principal, AFFA.

### *I. Real Party-in-Interest*

First, on the issue of whether the case had been filed by the real party-in-interest as required by Section 2, Rule 3 of the Rules of Court, which defines such party as the one (1) to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. The purposes of this provision are: 1) to prevent the prosecution of actions by persons without any right, title or interest in the case; 2) to require that the actual party entitled to legal relief be the one to prosecute the action; 3) to avoid a multiplicity of suits; and 4) to discourage litigation and keep it within certain bounds, pursuant to sound public policy.[31] A case is dismissible for lack of personality to sue upon proof that the plaintiff is not the real party-in-interest, hence grounded on failure to state a cause of action.[32]

On this issue, we agree with the CA in ruling that it was Cordero and not Pamana who is the exclusive distributor of AFFA in the Philippines as shown by the Certification dated June 1, 1997 issued by Tony Robinson.[33] Petitioner Go mentions the following documents also signed by respondent Robinson which state that "Pamana Marketing Corporation represented by Mr. Mortimer F. Cordero" was actually the exclusive distributor: (1) letter dated 1 June 1997;[34] (2) certification dated 5 August 1997;[35] and (3) letter dated 5 August 1997 addressed

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[31] *Oco v. Limbaring*, G.R. No. 161298, January 31, 2006, 481 SCRA 348, 358.

[32] *Tamondong v. Court of Appeals*, G.R. No. 158397, November 26, 2004, 444 SCRA 509.

[33] Folder of exhibits, Exhibit "A-6", p. 7.

[34] *Id.*, Exhibit "A-9", p. 10

[35] *Id.*, Exhibit "A", p. 1.

to petitioner Cordero concerning "commissions to be paid to Pamana Marketing Corporation."[36] Such apparent inconsistency in naming AFFA's exclusive distributor in the Philippines is of no moment. For all intents and purposes, Robinson and AFFA dealt only with Cordero who alone made decisions in the performance of the exclusive distributorship, as with other clients to whom he had similarly offered AFFA's fast ferry vessels. Moreover, the stipulated commissions from each progress payments made by Go were directly paid by Robinson to Cordero.[37] Respondents Landicho and Tecson were only too aware of Cordero's authority as the person who was appointed and acted as exclusive distributor of AFFA, which can be gleaned from their act of immediately furnishing him with copies of bank transmittals everytime Go remits payment to Robinson, who in turn transfers a portion of funds received to the bank account of Cordero in the Philippines as his commission. Out of these partial payments of his commission, Cordero would still give Landicho and Tecson their respective "commission," or "cuts" from his own commission. Respondents Landicho and Tecson failed to refute the evidence submitted by Cordero consisting of receipts signed by them. Said amounts were apart from the earlier expenses shouldered by Cordero for Landicho's airline tickets, transportation, food and hotel accommodations for the trip to Australia.[38]

Moreover, petitioner Go, Landicho and Tecson never raised petitioner Cordero's lack of personality to sue on behalf of Pamana,[39] and did so only before the CA when they contended that it is Pamana and not Cordero, who was appointed and acted as exclusive distributor for AFFA.[40] It was Robinson who argued in support of his motion to dismiss that as far as

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[36] *Id.*, Exhibit "A-3", p. 4.

[37] *Id.*, Exhibits "J" to "J-2", "K" to "K-4", "M", "Y" to "Y-4", pp. 59-66, 69-71, 314-318.

[38] *Id.*, Exhibits "R-6", "P", "R-7", "V", "W" , "X" to "X-7", "Y" to "Y-4" and "Z" to "Z-2", pp. 232, 236-238, 239, 301-321.

[39] Records, Vol. I, pp. 70-73, 203-213, 265-267, 460-464.

[40] CA *rollo*, pp. 78-84.

said defendant is concerned, the real party plaintiff appears to be Pamana, against the real party defendant which is AFFA.[41] As already mentioned, the trial court denied the motion to dismiss filed by Robinson.

We find no error committed by the trial court in overruling Robinson's objection over the improper resort to summons by publication upon a foreign national like him and in an *action in personam*, notwithstanding that he raised it in a special appearance specifically raising the issue of lack of jurisdiction over his person. Courts acquire jurisdiction over the plaintiffs upon the filing of the complaint, while jurisdiction over the defendants in a civil case is acquired either through the service of summons upon them in the manner required by law *or* through their voluntary appearance in court and their submission to its authority.[42] A party who makes a special appearance in court challenging the jurisdiction of said court based on the ground of invalid service of summons is not deemed to have submitted himself to the jurisdiction of the court.[43]

In this case, however, although the Motion to Dismiss filed by Robinson specifically stated as one (1) of the grounds the lack of "personal jurisdiction," it must be noted that he had earlier filed a Motion for Time to file an appropriate responsive pleading even beyond the time provided in the summons by publication.[44] Such motion did not state that it was a conditional appearance entered to question the regularity of the service of summons, but an appearance submitting to the jurisdiction of the court by acknowledging the summons by publication issued by the court and praying for additional time to file a responsive pleading. Consequently, Robinson having acknowledged the summons by publication and also having invoked the jurisdiction

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[41] Records, Vol. I, pp. 241-242.

[42] *Perkin Elmer Singapore Pte Ltd. v. Dakila Trading Corporation*, G.R. No. 172242, August 14, 2007, 530 SCRA 170, 186.

[43] *United Coconut Planters Bank v. Ongpin*, G.R. No. 146593, October 26, 2001, 368 SCRA 464, 470.

[44] Records, Vol. I, pp. 168-170.

of the trial court to secure affirmative relief in his motion for additional time, he effectively submitted voluntarily to the trial court's jurisdiction. He is now estopped from asserting otherwise, even before this Court.[45]

### *II. Breach of Exclusive Distributorship, Contractual Interference and Respondents' Liability for Damages*

In *Yu v. Court of Appeals*,[46] this Court ruled that the right to perform an exclusive distributorship agreement and to reap the profits resulting from such performance are proprietary rights which a party may protect. Thus, injunction is the appropriate remedy to prevent a wrongful interference with contracts by *strangers* to such contracts where the legal remedy is insufficient and the resulting injury is irreparable. In that case, the former dealer of the same goods purchased the merchandise from the manufacturer in England through a trading firm in West Germany and sold these in the Philippines. We held that the rights granted to the petitioner under the exclusive distributorship agreement may not be diminished nor rendered illusory by the expedient act of utilizing or interposing a person or firm to obtain goods for which the exclusive distributorship was conceptualized, at the expense of the sole authorized distributor.[47]

In the case at bar, it was established that petitioner Cordero was not paid the balance of his commission by respondent Robinson. From the time petitioner Go and respondent Landicho directly dealt with respondent Robinson in Brisbane, and ceased communicating through petitioner Cordero as the exclusive distributor of AFFA in the Philippines, Cordero was no longer informed of payments remitted to AFFA in Brisbane. In other words, Cordero had clearly been cut off from the transaction until the arrival of the first SEACAT 25 which was sold through his efforts. When Cordero complained to Go, Robinson, Landicho

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[45] See *Dole Philippines, Inc.(Tropifresh Division) v. Quilala*, G.R. No. 168723, July 9, 2008, 557 SCRA 433, 437-438.

[46] G.R. No. 86683, January 21, 1993, 217 SCRA 328.

[47] *Id.*, pp. 331-332.

and Tecson about their acts prejudicial to his rights and demanded that they respect his exclusive distributorship, Go simply let his lawyers led by Landicho and Tecson handle the matter and tried to settle it by promising to pay a certain amount and to purchase high-speed catamarans through Cordero. However, Cordero was not paid anything and worse, AFFA through its lawyer in Australia even terminated his exclusive dealership insisting that his services were engaged for only one (1) transaction, that is, the purchase of the first SEACAT 25 in August 1997.

Petitioner Go argues that unlike in *Yu v. Court of Appeals*[48] there is no conclusive proof adduced by petitioner Cordero that they actually purchased a second SEACAT 25 directly from AFFA and hence there was no violation of the exclusive distributorship agreement. Further, he contends that the CA gravely abused its discretion in holding them solidarily liable to Cordero, relying on Articles 1207, 19 and 21 of the Civil Code despite absence of evidence, documentary or testimonial, showing that they conspired to defeat the very purpose of the exclusive distributorship agreement.[49]

We find that contrary to the claims of petitioner Cordero, there was indeed no sufficient evidence that respondents actually purchased a second SEACAT 25 directly from AFFA. But this circumstance will not absolve respondents from liability for invading Cordero's rights under the exclusive distributorship. Respondents clearly acted in bad faith in bypassing Cordero as they completed the remaining payments to AFFA without advising him and furnishing him with copies of the bank transmittals as they previously did, and directly dealt with AFFA through Robinson regarding arrangements for the arrival of the first SEACAT 25 in Manila and negotiations for the purchase of the second vessel pursuant to the Memorandum of Agreement which Cordero signed in behalf of AFFA. As a result of respondents' actuations, Cordero incurred losses as he was

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[48] *Supra*.

[49] *Rollo* (G.R. No. 164703), pp. 33-34.

not paid the balance of his commission from the sale of the first vessel and his exclusive distributorship revoked by AFFA.

Petitioner Go contends that the trial and appellate courts erred in holding them solidarily liable for Cordero's unpaid commission, which is the sole obligation of the principal AFFA. It was Robinson on behalf of AFFA who, in the letter dated August 5, 1997 addressed to Cordero, undertook to pay commission payments to Pamana on a staggered progress payment plan in the form of percentage of the commission per payment. AFFA explicitly committed that it will, "upon receipt of progress payments, pay to Pamana their full commission by telegraphic transfer to an account nominated by Pamana within one to two days of [AFFA] receiving such payments."[50] Petitioner Go further maintains that he had not in any way violated or caused the termination of the exclusive distributorship agreement between Cordero and AFFA; he had also paid in full the first and only vessel he purchased from AFFA.[51]

While it is true that a third person cannot possibly be sued for breach of contract because only parties can breach contractual provisions, a contracting party may sue a third person not for breach but for inducing another to commit such breach.

Article 1314 of the Civil Code provides:

> Art. 1314. Any third person who induces another to violate his contract shall be liable for damages to the other contracting party.

The elements of tort interference are: (1) existence of a valid contract; (2) knowledge on the part of the third person of the existence of a contract; and (3) interference of the third person is without legal justification.[52]

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[50] *Id.*, pp 36-37; Exhibit "A-3", folder of exhibits, p. 4.

[51] *Rollo* (G.R. No. 164703), p. 39.

[52] *So Ping Bun v. Court of Appeals*, G.R. No. 120554, September 21, 1999, 314 SCRA 751, 758, citing 30 Am Jur, Section 19, pp. 71-72 and *Sampaguita Pictures, Inc. v. Vasquez, et al.* (Court of Appeals, 68 O.G. 7666).

The presence of the first and second elements is not disputed. Through the letters issued by Robinson attesting that Cordero is the exclusive distributor of AFFA in the Philippines, respondents were clearly aware of the contract between Cordero and AFFA represented by Robinson. In fact, evidence on record showed that respondents initially dealt with and recognized Cordero as such exclusive dealer of AFFA high-speed catamaran vessels in the Philippines. In that capacity as exclusive distributor, petitioner Go entered into the Memorandum of Agreement and Shipbuilding Contract No. 7825 with Cordero in behalf of AFFA.

As to the third element, our ruling in the case of *So Ping Bun v. Court of Appeals*[53] is instructive, to wit:

> A duty which the law of torts is concerned with is respect for the property of others, and a cause of action *ex delicto* may be predicated upon an unlawful interference by one person of the enjoyment by the other of his private property. This may pertain to a situation where a third person induces a party to renege on or violate his undertaking under a contract. In the case before us, petitioner's Trendsetter Marketing asked DCCSI to execute lease contracts in its favor, and as a result petitioner deprived respondent corporation of the latter's property right. Clearly, and as correctly viewed by the appellate court, the three elements of tort interference above-mentioned are present in the instant case.
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> Authorities debate on whether interference may be justified where the defendant acts for the sole purpose of furthering his own financial or economic interest. One view is that, as a general rule, justification for interfering with the business relations of another exists where the actor's motive is to benefit himself. Such justification does not exist where his sole motive is to cause harm to the other. Added to this, some authorities believe that it is not necessary that the interferer's interest outweigh that of the party whose rights are invaded, and that an individual acts under an economic interest that is substantial, not merely *de minimis*, such that wrongful and malicious motives are negatived, for he acts in self-protection. Moreover, justification for protecting one's financial position should not be made to depend on a comparison of his economic interest in the subject matter with that of others. It is sufficient if the impetus of

[53] *Supra*.

his conduct lies in a proper business interest rather than in wrongful motives.

**As early as *Gilchrist vs. Cuddy*, we held that where there was no malice in the interference of a contract, and the impulse behind one's conduct lies in a proper business interest rather than in wrongful motives, a party cannot be a malicious interferer.** Where the alleged interferer is financially interested, and such interest motivates his conduct, it cannot be said that he is an officious or malicious intermeddler.

In the instant case, it is clear that petitioner So Ping Bun prevailed upon DCCSI to lease the warehouse to his enterprise at the expense of respondent corporation. **Though petitioner took interest in the property of respondent corporation and benefited from it, nothing on record imputes deliberate wrongful motives or malice in him.**

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While we do not encourage tort interferers seeking their economic interest to intrude into existing contracts at the expense of others, however, we find that the conduct herein complained of did not transcend the limits forbidding an obligatory award for damages in the absence of any malice. The business desire is there to make some gain to the detriment of the contracting parties. **Lack of malice, however, precludes damages. But it does not relieve petitioner of the legal liability for entering into contracts and causing breach of existing ones.** The respondent appellate court correctly confirmed the permanent injunction and nullification of the lease contracts between DCCSI and Trendsetter Marketing, without awarding damages. The injunction saved the respondents from further damage or injury caused by petitioner's interference.[54] [EMPHASIS SUPPLIED.]

Malice connotes ill will or spite, and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive.[55] In the case of *Lagon v. Court of* Appeals,[56] we held that to sustain a case for tortuous interference, the defendant must have acted with malice or

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[54] *Id.*, pp. 758-760.

[55] *Borjal v. Court of Appeals*, G.R. No. 126466, January 14, 1999, 301 SCRA 1, 28.

[56] G.R. No. 119107, March 18, 2005, 453 SCRA 616, 626.

must have been driven by purely impure reasons to injure the plaintiff; in other words, his act of interference cannot be justified. We further explained that the word "induce" refers to situations where a person causes another to choose one course of conduct by persuasion or intimidation. As to the allegation of private respondent in said case that petitioner induced the heirs of the late Bai Tonina Sepi to sell the property to petitioner despite an alleged renewal of the original lease contract with the deceased landowner, we ruled as follows:

> Assuming *ex gratia argumenti* that petitioner knew of the contract, such knowledge alone was not sufficient to make him liable for tortuous interference. x x x
>
> Furthermore, the records do not support the allegation of private respondent that petitioner *induced* the heirs of Bai Tonina Sepi to sell the property to him. The word "induce" refers to situations where a person causes another to choose one course of conduct by persuasion or intimidation. The records show that the decision of the heirs of the late Bai Tonina Sepi to sell the property was completely of their own volition and that petitioner did absolutely nothing to influence their judgment. Private respondent himself did not proffer any evidence to support his claim. *In short, even assuming that private respondent was able to prove the renewal of his lease contract with Bai Tonina Sepi, the fact was that he was unable to prove malice or bad faith on the part of petitioner in purchasing the property. Therefore, the claim of tortuous interference was never established.*[57]

In their Answer, respondents denied having anything to do with the unpaid balance of the commission due to Cordero and the eventual termination of his exclusive distributorship by AFFA. They gave a different version of the events that transpired following the signing of Shipbuilding Contract No. 7825. According to them, several builder-competitors still entered the picture after the said contract for the purchase of one (1) SEACAT 25 was sent to Brisbane in July 1997 for authentication, adding that the contract was to be effective on August 7, 1997, the time when their funds was to become available. Go admitted

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[57] *Id.,* p. 626.

he called the attention of AFFA if it can compete with the prices of other builders, and upon mutual agreement, AFFA agreed to give them a discounted price under the following terms and conditions: (1) that the contract price be lowered; (2) that Go will obtain another vessel; (3) that to secure compliance of such conditions, Go must make an advance payment for the building of the second vessel; and (4) that the payment scheme formerly agreed upon as stipulated in the first contract shall still be the basis and used as the guiding factor in remitting money for the building of the first vessel. This led to the signing of another contract superseding the first one (1), still to be dated 07 August 1997. Attached to the answer were photocopies of the second contract stating a lower purchase price (US$1,150,000.00) and facsimile transmission of AFFA to Go confirming the transaction.[58]

As to the cessation of communication with Cordero, Go averred it was Cordero who was nowhere to be contacted at the time the shipbuilding progress did not turn good as promised, and it was always Landicho and Tecson who, after several attempts, were able to locate him only to obtain unsatisfactory reports such that it was Go who would still call up Robinson regarding any progress status report, lacking documents for MARINA, *etc*., and go to Australia for ocular inspection. Hence, in May 1998 on the scheduled launching of the ship in Australia, Go engaged the services of Landicho who went to Australia to see to it that all documents needed for the shipment of the vessel to the Philippines would be in order. It was also during this time that Robinson's request for inquiry on the Philippine price of a Wartsila engine for AFFA's then on-going vessel construction, was misinterpreted by Cordero as indicating that Go was buying a second vessel.[59]

We find these allegations unconvincing and a mere afterthought as these were the very same averments contained in the Position Paper for the Importer dated October 9, 1998, which was

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[58] Records, Vol. I, pp. 204-206.

[59] *Id.,* pp. 206-207.

submitted by Go on behalf of ACG Express Liner in connection with the complaint-affidavit filed by Cordero before the BOC-SGS Appeals Committee relative to the shipment valuation of the first SEACAT 25 purchased from AFFA.[60] It appears that the purported second contract superseding the original Shipbuilding Contract No. 7825 and stating a lower price of US$1,150,000.00 (not US$1,465,512.00) was only presented before the BOC to show that the vessel imported into the Philippines was not undervalued by almost US$500,000.00. Cordero vehemently denied there was such modification of the contract and accused respondents of resorting to falsified documents, including the facsimile transmission of AFFA supposedly confirming the said sale for only US$1,150,000.00. Incidentally, another document filed in said BOC case, the Counter-Affidavit/Position Paper for the Importer dated November 16, 1998,[61] states in paragraph 8 under the Antecedent facts thereof, that –

> 8. As elsewhere stated, the total remittances made by herein Importer to AFFA does not alone represent the purchase price for Seacat 25. **It includes advance payment for the acquisition of another vessel as part of the deal due to the discounted price.**[62]

which even gives credence to the claim of Cordero that respondents negotiated for the sale of the second vessel and that the nonpayment of the remaining two (2) instalments of his commission for the sale of the first SEACAT 25 was a result of Go and Landicho's directly dealing with Robinson, obviously to obtain a lower price for the second vessel at the expense of Cordero.

The act of Go, Landicho and Tecson in inducing Robinson and AFFA to enter into another contract directly with ACG Express Liner to obtain a lower price for the second vessel resulted in AFFA's breach of its contractual obligation to pay

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[60] Folder of exhibits, Exhibit "BB", pp. 324-342.

[61] *Id.,* Exhibit "CC", pp. 343-361.

[62] *Id.,* p. 345.

in full the commission due to Cordero and unceremonious termination of Cordero's appointment as exclusive distributor. Following our pronouncement in *Gilchrist v. Cuddy (supra)*, such act may not be deemed malicious if impelled by a proper business interest rather than in wrongful motives. The attendant circumstances, however, demonstrated that respondents transgressed the bounds of permissible financial interest to benefit themselves at the expense of Cordero. Respondents furtively went directly to Robinson *after* Cordero had worked hard to close the deal for them to purchase from AFFA two (2) SEACAT 25, closely monitored the progress of building the first vessel sold, attended to their concerns and spent no measly sum for the trip to Australia with Go, Landicho and Go's family members. But what is appalling is the fact that even as Go, Landicho and Tecson secretly negotiated with Robinson for the purchase of a second vessel, Landicho and Tecson continued to demand and receive from Cordero their "commission" or "cut" from Cordero's *earned commission* from the sale of the first SEACAT 25.

Cordero was practically excluded from the transaction when Go, Robinson, Tecson and Landicho suddenly ceased communicating with him, without giving him any explanation. While there was nothing objectionable in negotiating for a lower price in the second purchase of SEACAT 25, which is not prohibited by the Memorandum of Agreement, Go, Robinson, Tecson and Landicho clearly connived not only in ensuring that Cordero would have no participation in the contract for sale of the second SEACAT 25, but also that Cordero would not be paid *the balance of his commission from the sale of the first SEACAT 25*. This, despite their knowledge that it was commission already earned by and due to Cordero. Thus, the trial and appellate courts correctly ruled that the actuations of Go, Robinson, Tecson and Landicho were without legal justification and intended solely to prejudice Cordero.

The existence of malice, ill will or bad faith is a factual matter. As a rule, findings of fact of the trial court, when affirmed by

the appellate court, are conclusive on this Court.[63] We see no compelling reason to reverse the findings of the RTC and the CA that respondents acted in bad faith and in utter disregard of the rights of Cordero under the exclusive distributorship agreement.

The failure of Robinson, Go, Tecson and Landico to act with fairness, honesty and good faith in securing better terms for the purchase of high-speed catamarans from AFFA, to the prejudice of Cordero as the duly appointed exclusive distributor, is further proscribed by Article 19 of the Civil Code:

> Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

As we have expounded in another case:

> Elsewhere, we explained that when "a right is exercised in a manner which does not conform with the norms enshrined in Article 19 and results in damage to another, a legal wrong is thereby committed for which the wrongdoer must be responsible." The object of this article, therefore, is to set certain standards which must be observed not only in the exercise of one's rights but also in the performance of one's duties. These standards are the following: act with justice, give everyone his due and observe honesty and good faith. Its antithesis, necessarily, is any act evincing bad faith or intent to injure. Its elements are the following: (1) There is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another. When Article 19 is violated, an action for damages is proper under Articles 20 or 21 of the Civil Code. Article 20 pertains to damages arising from a violation of law x x x. Article 21, on the other hand, states:
>
> > Art. 21. Any person who willfully causes loss or injury to another in a manner that is contrary to morals, good customs or public policy shall compensate the latter for the damage.
>
> Article 21 refers to acts *contra bonus mores* and has the following elements: (1) There is an act which is legal; (2) but which is contrary

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[63] *Ramas v. Quiamco,* G.R. No. 146322, December 6, 2006, 510 SCRA 172, 178.

to morals, good custom, public order, or public policy; and (3) it is done with *intent* to injure.

A common theme runs through Articles 19 and 21, and that is, the act complained of must be intentional.[64]

Petitioner Go's argument that he, Landicho and Tecson cannot be held liable solidarily with Robinson for actual, moral and exemplary damages, as well as attorney's fees awarded to Cordero since no law or contract provided for solidary obligation in these cases, is equally bereft of merit. Conformably with Article 2194 of the Civil Code, the responsibility of two or more persons who are liable for the quasi-delict is solidary.[65] In *Lafarge Cement Philippines, Inc. v. Continental Cement Corporation*,[66] we held:

> **[O]bligations arising from tort are, by their nature, always solidary. We have assiduously maintained this legal principle as early as 1912 in *Worcester v. Ocampo*,** in which we held:
>
> > x x x The difficulty in the contention of the appellants is that they fail to recognize that the basis of the present action is tort. They fail to recognize the universal doctrine that each joint tort feasor is not only individually liable for the tort in which he participates, but is also jointly liable with his tort feasors. x x x
> >
> > It may be stated as a general rule that joint tort feasors are all the persons who command, instigate, promote, encourage, advise, countenance, cooperate in, aid or abet the commission of a tort, or who approve of it after it is done, if done for their benefit. **They are each liable as principals, to the same extent and in the same manner as if they had performed the wrongful act themselves.** x x x

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[64] *Nikko Hotel Manila Garden v. Reyes*, G.R. No. 154259, February 28, 2005, 452 SCRA 532, 546-547, citing *Albenson Enterprises Corp. v. Court of Appeals*, G.R. No. 88694, January 11, 1993, 217 SCRA 16, 25.

[65] *Ngo Sin Sing v. Li Seng Giap & Sons, Inc.*, G.R. No. 170596, November 28, 2008, 572 SCRA 625, 638, citing *Chan, Jr. v. Iglesia ni Cristo, Inc.*, G.R. No. 160283, October 14, 2005, 473 SCRA 177, 186.

[66] G.R. No. 155173, November 23, 2004, 443 SCRA 522.

> Joint tort feasors are jointly and severally liable for the tort which they commit. The persons injured may sue all of them or any number less than all. Each is liable for the whole damages caused by all, and all together are jointly liable for the whole damage. It is no defense for one sued alone, that the others who participated in the wrongful act are not joined with him as defendants; nor is it any excuse for him that his participation in the tort was insignificant as compared to that of the others. x x x
>
> Joint tort feasors are not liable *pro rata*. The damages can not be apportioned among them, except among themselves. They cannot insist upon an apportionment, for the purpose of each paying an aliquot part. They are jointly and severally liable for the whole amount. x x x
>
> A payment in full for the damage done, by one of the joint tort feasors, of course satisfies any claim which might exist against the others. There can be but satisfaction. The release of one of the joint tort feasors by agreement generally operates to discharge all. x x x
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> Of course, the court during trial may find that some of the alleged tort feasors are liable and that others are not liable. The courts may release some for lack of evidence while condemning others of the alleged tort feasors. And this is true even though they are charged jointly and severally.[67] [EMPHASIS SUPPLIED.]

The rule is that the defendant found guilty of interference with contractual relations cannot be held liable for more than the amount for which the party who was inducted to break the contract can be held liable.[68] Respondents Go, Landicho and Tecson were therefore correctly held liable for the balance of petitioner Cordero's commission from the sale of the first SEACAT 25, in the amount of US$31,522.09 or its peso equivalent, which AFFA/Robinson did not pay in violation of the exclusive distributorship agreement, with interest at the rate of 6% per annum from June 24, 1998 until the same is fully paid.

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[67] As cited in *Ngo Sin Sing v. Li Seng Giap & Sons, Inc., supra*.

[68] *Daywalt v. Corporacion de PP. Agustinos Recoletos*, 39 Phil. 587 (1919).

Respondents having acted in bad faith, moral damages may be recovered under Article 2219 of the Civil Code.[69] On the other hand, the requirements of an award of exemplary damages are: (1) they may be imposed by way of example in addition to compensatory damages, and only after the claimant's right to them has been established; (2) that they cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant; and (3) the act must be accompanied by bad faith or done in a wanton, fraudulent, oppressive or malevolent manner.[70] The award of exemplary damages is thus in order. However, we find the sums awarded by the trial court as moral and exemplary damages as reduced by the CA, still excessive under the circumstances.

Moral damages are meant to compensate and alleviate the physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injuries unjustly caused. Although incapable of pecuniary estimation, the amount must somehow be proportional to and in approximation of the suffering inflicted. Moral damages are not punitive in nature and were never intended to enrich the claimant at the expense of the defendant. There is no hard-and-fast rule in determining what would be a fair and reasonable amount of moral damages, since each case must be governed by its own peculiar facts. Trial courts are given discretion in determining the amount, with the limitation that it "should not be palpably and scandalously excessive." Indeed, it must be commensurate to the loss or injury suffered.[71]

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[69] *Magat v. Court of Appeals,* G.R. No. 124221, August 4, 2000, 337 SCRA 298; *Far East Bank & Trust Company v. Court of Appeals*, 311 Phil. 783 (1995); and *Expertravel & Tours, Inc. v. Court of Appeals,* G.R. No. 130030, June 25, 1999, 309 SCRA 141, 145-146.

[70] *National Steel Corporation v. Regional Trial Court of Lanao del Norte, Br. 2, Iligan City,* G.R. No. 127004, March 11, 1999 304 SCRA 609.

[71] *Samson, Jr. v. Bank of the Philippine Islands*, G.R. No. 150487, July 10, 2003, 405 SCRA 607, 611-612, citing *Expertravel & Tours, Inc. v. Court of Appeals,* 368 Phil. 444 (1999); *De la Serna v. Court of Appeals,* G.R. No. 109161, June 21, 1994, 233 SCRA 325; *Visayan Sawmill Company,*

We believe that the amounts of ₱300,000.00 and ₱200,000.00 as moral and exemplary damages, respectively, would be sufficient and reasonable. Because exemplary damages are awarded, attorney's fees may also be awarded in consonance with Article 2208 (1).[72] We affirm the appellate court's award of attorney's fees in the amount of ₱50,000.00.

**WHEREFORE,** the petitions are *DENIED*. The Decision dated March 16, 2004 as modified by the Resolution dated July 22, 2004 of the Court of Appeals in CA-G.R. CV No. 69113 are hereby *AFFIRMED* with *MODIFICATION* in that the awards of moral and exemplary damages are hereby reduced to ₱300,000.00 and ₱200,000.00, respectively.

With costs against the petitioner in G.R. No. 164703.

**SO ORDERED.**

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

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*Inc. v. Court of Appeals,* G.R. No. 83851, March 3, 1993, 219 SCRA 378; *Flores v. Uy,* G.R. Nos. 121492 & 124325, October 26, 2001, 368 SCRA 347; *Pagsuyuin v. Intermediate Appellate Court,* G.R. No. 72121, February 6, 1991, 193 SCRA 547; *Northwest Airlines v. Laya,* G.R. No. 145956, May 29, 2002, 382 SCRA 730; *Cavite Development Bank v. Sps. Lim,* 381 Phil. 355 (2000); *Coca-Cola Bottlers, Phils., Inc. v. Roque,* 367 Phil. 493 (1999); *Morales v. Court of Appeals,* G.R. No. 117228, June 19, 1997, 274 SCRA 282; *Prudential Bank v. Court of Appeals,* 384 Phil. 942 (1999); *Singson v. Court of Appeals,* 346 Phil. 831 (1997); *Del Rosario v. Court of Appeals,* 334 Phil. 812 (1997); *Philippine National Bank v. Court of Appeals,* 326 Phil. 326 (1996); *Mayo v. People,* G.R. No. 91201, December 5, 1991, 204 SCRA 642; *Policarpio v. Court of Appeals,* G.R. No. 94563, March 5, 1991, 194 SCRA 729; *Radio Communications of the Phils., Inc. v. Rodriguez,* G.R. No. 83768, February 28, 1990, 182 SCRA 899; and *Prudenciado v. Alliance Transport System, Inc.,* No. L-33836, March 16, 1987, 148 SCRA 440.

[72] *B.F. Metal (Corporation) v. Lomotan,* G.R. No. 170813, April 16, 2008, 551 SCRA 618.

**SECOND DIVISION**

[G.R. No. 175200. May 4, 2010]

**NATIONAL HOUSING AUTHORITY,** *petitioner, vs.* **THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD and MATEO VILLARUZ, substituted by his heirs, namely, SONIA VILLARUZ, MARGARITA VILLARUZ and CARLOS H. VILLARUZ,** *respondents*.

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; NATIONAL HOUSING AUTHORITY (NHA); HOUSING AND RESETTLEMENT PROGRAMS; LAND ACQUIRED BY NHA FOR HOUSING AND RESETTLEMENT PROGRAMS EXEMPT FROM LAND REFORM.—** P.D. 1472 exempts from land reform those lands that petitioner NHA acquired for its housing and resettlement programs whether it acquired those lands when the law took effect or afterwards. The language of the exemption is clear: the exemption covers "lands or property acquired x x x or to be acquired" by NHA. Its Section 1 does not make any distinction whether the land petitioner NHA acquired is tenanted or not. When the law does not distinguish, no distinction should be made.

**2. ID.; ID.; ID.; ID.; ID.; NHA EXEMPT FROM PAYMENT OF DISTURBANCE COMPENSATION; CASE AT BAR.—** In addition, Section 1 of P.D. 1472 provides that petitioner NHA shall not be liable for disturbance compensation. Since only tenants working on agricultural lands can claim disturbance compensation, the exemption assumes that NHA may have to acquire such kinds of land for its housing program. If the exemption from payment of disturbance compensation applied only to untenanted lands, then such exemption would be meaningless or a superfluity. Thus, petitioner NHA is not bound to pay disturbance compensation to respondent Villaruz even if he was the tenant of Lot 916. The NHA's purchase of Lot 916 for development and resettlement transformed the property by operation of law from agricultural to residential.

**3. ID.; ID.; ID.; ID.; INTERPRETATION OF P.D. NO. 1472 IN THE LIGHT OF THE GOVERNMENT'S INTERESTS IN MEETING THE HOUSING NEEDS OF THE GREATER MAJORITY.—** The Court is mindful of the plight of tenant-farmers like respondent Villaruz. But it is also incumbent upon it to weigh their rights against the government's interest in meeting the housing needs of the greater majority. It is in this light that P.D. 1472 has to be interpreted.

**APPEARANCES OF COUNSEL**

*Legal Department & Trial Services (NHA)* for petitioner.
*Legal Affairs Office (DAR)* for public respondent.
*Remus A. Diopenes* for the Heirs of private respondents.

**D E C I S I O N**

**ABAD, *J.*:**

Are all lands acquired by the National Housing Authority (NHA) for its resettlement and housing efforts beyond the scope of agrarian laws? This is the question before the Court in this case.

**The Facts and the Case**

Sometime in 1960, the administrator of the estate of the late C.N. Hodges (the Estate) asked respondent Mateo Villaruz, Sr. (Villaruz)[1] to work as tenant of the Estate's seven-hectare rice field in Barangay Alijis, Bacolod, designated as Lot 916. The Estate wanted to prevent the land from falling into the hands of squatters. It had a house constructed on the lot for Villaruz and engaged his daughter and son-in-law to serve as co-tenants. In 1976, however, squatters settled into Lot 916, occupying four of its seven hectares. Villaruz was thus left with only three hectares for planting rice and corn.

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[1] During the pendency of the petition before this Court, respondent Mateo Villaruz, Sr. passed away and was substituted by his children, Sonia, Margarita and Carlos, all surnamed Villaruz.

As it later turned out, the Estate mortgaged Lot 916 to a bank, resulting in its foreclosure when the loan could not be paid. Petitioner NHA bought the lot on September 11, 1985. Later that year, the Department of Public Works and Highways constructed roads and bridges that passed through a portion of the lot. As a result, some plants and crops had to be cut down, prompting respondent Villaruz to demand payment of their value.

When the demand was not heeded, respondent Villaruz filed an action for damages and disturbance compensation against petitioner NHA and the Estate before the Regional Trial Court (RTC) of Bacolod City in CAR Case 287. But the RTC dismissed the complaint on the ground that the NHA was not liable for disturbance compensation as provided in Section 1 of Presidential Decree (P.D.) 1472. Villaruz did not appeal from the court order.

Later on, respondent Villaruz filed a complaint with the Provincial Agrarian Reform Adjudicator (PARAD),[2] seeking recognition as tenant beneficiary of the lot he tenanted under P.D. 27 and praying that his possession of its three-hectare portion be maintained. After hearing, the PARAD ruled[3] in Villaruz's favor with respect to such portion provided he paid 25% of his net harvest to petitioner NHA until a fixed rental could be set. But he could not be declared owner of the lot since it had ceased to be private agricultural land, having been bought by the government. It was already outside the coverage of P.D. 27.

Petitioner NHA appealed the PARAD decision to the Department of Agrarian Reform Adjudication Board (DARAB),[4] which affirmed the same. Undaunted, the NHA appealed to the Court of Appeals (CA).[5] On September 21, 2006 the CA

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[2] DARAB Case VI-210-NO-92.

[3] In its Decision dated June 20, 1994.

[4] Docketed as DARAB Case 3544.

[5] Docketed as CA-G.R. SP 86396.

rendered a decision,[6] affirming the questioned decisions of the PARAD and the DARAB. This prompted the NHA to file the present petition for review.

## The Issue Presented

The core issue in this case is whether or not Lot 916 is exempt from the coverage of the agrarian reform laws, the same having been acquired by petitioner NHA for its housing program.

## The Court's Ruling

Petitioner NHA does not dispute the fact that respondent Villaruz worked on Lot 916 as a tenant while the Estate still owned it, with the latter as his landlord. Villaruz's theory is that, since the NHA stepped into the shoes of the Estate, the NHA assumed responsibility for maintaining his tenancy over the lot. In effect, the NHA became Villaruz's new landowner by operation of Section 10 of Republic Act (R.A.) 3844, which provides:

**SECTION 10.** ***Agricultural Leasehold Relation Not Extinguished by Expiration of Period, etc.*** **- The agricultural leasehold relation under this Code shall not be extinguished by mere expiration of the term or period in a leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding. In case the agricultural lessor sells, alienates or transfers the legal possession of the landholding, the purchaser or transferee thereof shall be subrogated to the rights and substituted to the obligations of the agricultural lessor.**

Petitioner NHA contends, on the other hand, that it is not subject to subrogation since Lot 916, which it acquired for its housing and resettlement projects, is exempt from the operation of agrarian laws. Section 1 of P.D. 1472 provides:

**SECTION 1. The government resettlement projects in Sapang Palay, San Jose Del Monte, Bulacan; Carmona, Cavite; San Pedro, Laguna; Dasmariñas, Cavite; and such other lands or property**

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[6] Penned by Associate Justice Priscilla Baltazar-Padilla and concurred in by Associate Justices Isaias P. Dicdican and Romeo F. Barza.

**acquired by the National Housing Authority or its predecessors-in-interest or to be acquired by it for resettlement purposes and/or housing development, are hereby declared as outside the scope of the Land Reform Program under the Agricultural Land Reform Code, as amended, and as such, the National Housing Authority or its predecessors-in-interest shall not be held liable for disturbance compensation as the case may be.**

Both the PARAD and the DARAB ruled, however, that the above exemption applied only to lands already acquired by petitioner NHA when P.D. 1472 took effect on June 11, 1978. Their view was that, based on the "whereas" clause of that presidential decree, the intent was to preserve properties that the NHA already acquired on or before June 11, 1978. The exemption did not apply to Lot 916 since the NHA bought it in 1985.

The CA disagreed and ruled that the exemption under P.D. 1472 also applied to properties that petitioner NHA acquired after the decree took effect. Still, the CA upheld the PARAD and DARAB decisions.

Looking at that "whereas" clause, the CA held that the exemption applied only after petitioner NHA shall have acquired a lot for its housing program. When a lot has already been earmarked for such program, the same can no longer be placed under agrarian reform. The CA of course found that the situation in this case differed from what P.D. 1472 contemplated. Since Villaruz was already a tenant of Lot 916 when NHA acquired it, the exemption did not apply.

This Court disagrees. P.D. 1472 exempts from land reform those lands that petitioner NHA acquired for its housing and resettlement programs whether it acquired those lands when the law took effect or afterwards. The language of the exemption is clear: the exemption covers "lands or property acquired x x x or to be acquired" by NHA. Its Section 1 does not make any distinction whether the land petitioner NHA acquired is tenanted or not. When the law does not distinguish, no distinction should be made.

In addition, Section 1 of P.D. 1472 provides that petitioner NHA shall not be liable for disturbance compensation. Since only tenants working on agricultural lands can claim disturbance compensation, the exemption assumes that NHA may have to acquire such kinds of land for its housing program. If the exemption from payment of disturbance compensation applied only to untenanted lands, then such exemption would be meaningless or a superfluity.

Thus, petitioner NHA is not bound to pay disturbance compensation to respondent Villaruz even if he was the tenant of Lot 916. The NHA's purchase of Lot 916 for development and resettlement transformed the property by operation of law from agricultural to residential.

If the ruling of the CA were to be upheld, petitioner NHA would have to allow Villaruz and his successors-in-interest to work on Lot 916 as agricultural tenants for as long as they liked without any chance of getting an emancipation patent over it under P.D. 27. This would be antithetical to the objectives of the agrarian reform program. As for the NHA, it would become an agricultural lessor with no right to use the land for the purpose for which it bought the same. This, in turn, would become prejudicial to the government's housing projects.

The Court is mindful of the plight of tenant-farmers like respondent Villaruz. But it is also incumbent upon it to weigh their rights against the government's interest in meeting the housing needs of the greater majority. It is in this light that P.D. 1472 has to be interpreted.

With the above discussion, it is unnecessary to delve into the other issues raised by the parties.

**WHEREFORE,** the Court *GRANTS* the petition, *REVERSES* and *SETS ASIDE* the decision of the Court of Appeals in CA-G.R. SP 86396 dated September 21, 2006, and *DISMISSES* the action of respondent Mateo Villaruz, Sr. for possession of the subject three-hectare portion of Lot 916.

**SO ORDERED.**

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

**THIRD DIVISION**

[G.R. No. 181068. May 4, 2010]

**PEOPLE'S AIR CARGO AND WAREHOUSING CO., INC.,** *petitioner, vs.* **HONORABLE FRANCISCO G. MENDIOLA, in his capacity as Presiding Judge of the Regional Trial Court of Pasay City, Branch 115, and CATHAY PACIFIC AIRWAYS, LTD.,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* A MOTION FOR RECONSIDERATION MUST PRECEDE A PETITION UNDER RULE 65; CASE AT BAR.—** The petition should be dismissed outright. *Firstly*, no motion for reconsideration was filed before petitioner filed this petition under Rule 65. *Certiorari* is not a defense against the unfavorable consequences of a failure to file the required motion for reconsideration. Petitioner may not designate to itself the determination of whether a motion for reconsideration is necessary or not. The plain and adequate remedy referred to in Section 1 of Rule 65 is a motion for reconsideration of the assailed decision.

**2. ID.; ID.; ID.; ID.; ID.; PURPOSE; CASE AT BAR.—** The purpose of this requirement is to enable the court or agency to rectify its mistakes without the intervention of a higher court. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so. In this case, the petitioner failed. Thus, petitioner should have first interposed a motion for reconsideration.

**3. ID.; ID.; COURTS; PRINCIPLE OF HIERARCHY OF COURTS; VIOLATED IN CASE AT BAR.—** *Secondly*, the petition violates the principle of hierarchy of courts. The assailed Order is an order from the RTC of Pasay. This petition should have been filed with the Court of Appeals, **after** the filing of a Motion for Reconsideration.

**4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI* UNDER RULE 65; DOES NOT DEAL WITH PURE QUESTIONS OF LAW**

**BUT INVOLVES GRAVE ABUSE OF DISCRETION.—** Rule 65 does not deal with pure questions of law. It involves grave abuse of discretion amounting to lack or excess of jurisdiction, and this grave abuse of discretion amounting to lack or excess of jurisdiction should be alleged and proved. In this regard, petitioner failed again.

**5. ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION NOT PRESENT WHERE PETITIONER UTTERLY DISREGARDED PROCEDURAL RULES; CASE AT BAR.—** The Court cannot bear petitioner's utter disregard of procedural rules and frustrate the objective of attaining just, speedy and orderly judicial proceedings. Even if this Court ignores the mentioned procedural lapses, still the petition fails on the merits. There was no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent in issuing the assailed order. Public respondent had sufficient basis for not giving due attention to the Urgent Motion to Cite for Contempt. Section 4, Rule 71 of the Rules of Court prescribes the procedure for the institution of proceedings for indirect contempt, *viz: x x x* ***In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned*** *x x x* In this case, petitioner filed a *mere* motion in the **same civil case.**

**6. ID.; ID.; APPEAL; SUPREME COURT; PETITION UNDER RULE 45 INVOLVES A PURE QUESTION OF LAW; CASE AT BAR.—** Also, even if this Court treats this petition as a Petition under Rule 45, it is not convinced that this case involves a pure question of law. A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts. This is not so in the case at bar. It bears stressing too that the basis of the petitioner for its Urgent Motion to Cite for Contempt is *yet* to be determined in a full-blown trial by the public respondent.

**APPEARANCES OF COUNSEL**

*Madrid Danao & Associates* for petitioner.
*Siguion Reyna Montecillo & Ongsiako* for private respondent.

## D E C I S I O N

**MENDOZA, *J.*:**

At bench is a "Petition for *Certiorari* under Rule 65 of the Rules of Court with Application for Issuance of Temporary Restraining Order (TRO), Writ of Preliminary Injunction and/or Other Protective Relief," filed by People's Air Cargo & Warehousing Co., Inc. *(petitioner)* against Hon. Francisco G. Mendiola, in his capacity as Presiding Judge of the Regional Trial Court, Branch 115, Pasay City *(RTC)*; and Cathay Pacific Airways, Ltd. *(respondents)*.

The petition challenges the January 16, 2008 Order[1] of the Regional Trial Court, Branch 115, Pasay City, the dispositive portion of which states:

> WHEREFORE, the plaintiff's (petitioner herein) Motion for Leave to Admit Amended Complaint is GRANTED, and the writ of preliminary injunction previously affirmed by the Supreme Court shall continue in force and in effect, until further notice from this Court.
>
> SO ORDERED.[2]

**THE RELEVANT ANTECEDENTS:**

On May 24, 2004, petitioner filed a Complaint[3] for Specific Performance, Injunction and Damages with application for Provisional Relief. This was docketed as **Civil Case No. 04-0321-CFM**. Pertinent portions of the said Complaint read:

> 1.4. In or about March 1997, plaintiff and defendant Cathay Pacific entered into an import cargo and warehousing contract in the form of a modified agreement following the 1993 Standard Ground Handling Agreement of the International Air Transport Association ('IATA') (the 'Contract') whereby the latter agreed to inbound and warehouse for storage and safekeeping purposes 'ALL [its] import and transit cargo arriving at the [NAIA] at plaintiff's above-described bonded

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[1] *Rollo*, pp. 33-35.

[2] Words in parenthesis ours.

[3] *Rollo*, pp. 36-54.

warehouse, FREE OF CHARGE to defendant Cathay Pacific, for a period of **FIVE (5) years from 01 June 1997, RENEWABLE for another period of five (5) years**, UNLESS terminated by either party by serving a written notice sixty (60) days prior to the termination date on 31 May 2002, and subject to such duties and functions as may be imposed by law, rules, regulations and incidental orders by the Bureau of Customs and other relevant government agencies.

x x x x x x x x x

1.7 Based on the above '5 plus 5' or ten (10) year term security, plaintiff, with utmost diligence, honesty and good faith, faithfully discharged and performed its duties and obligations under the Contract for an UNINTERRUPTED period of almost seven (7) years now. Almost two (2) years have lapsed since the automatic renewal of the Contract for another five (5) years or until 31 May 2007, with a remaining term of three (3) years at date hereof.

x x x x x x x x x

1.9. Despite plaintiff's demand for defendant Cathay Pacific to recall its arbitrary and unlawful pre-termination of its subsisting contract valid until 31 May 2007, defendant Cathay Pacific however has, with grave abuse, adamantly failed and rejected it to date, on its flimsy, ridiculous and arrogant claim that it has purportedly no subsisting contract with plaintiff.

x x x x x x x x x

2.2 Plaintiff's subject Contract with defendant Cathay Pacific, Annexes 'C' and 'C-1,' is **valid and effective until 31 May 2007**. This, by virtue of its automatic renewal for a similar period of five (5) years from 31 May 2002 or until 31 May 2007.

2.3 **However, defendant Cathay Pacific has, in utter breach thereof, fraudulently and in bad faith terminated it, without just and legal cause, and worse, has awarded to it another entity. Worst of all,** defendant Cathay Pacific now arrogantly claims that it has no contractual relation with plaintiff, for which it has refused to arbitrate with it. Since there is a dispute between the parties, plaintiff is definitely entitled under the Contract to seek arbitration with defendant Cathay Pacific to resolve the following novel legal issues, to wit:

a. Whether or not plaintiff's subject contract is valid until 31 May 2007?

b. Conversely, whether or not defendant Cathay Pacific's Notice of Termination dated 25 March 2004 was lawful and justified, and produced any effect?

c. Corollary, whether or not defendant Cathay Pacific's claim of 'NO CONTRACTUAL RELATION' with plaintiff, based on its inconsistent premises and propositions stated in its letter of 26 April 2004, is valid and justified.

d. Incidentally, whether or not plaintiff is entitled to its claim for damages against defendant Cathay Pacific based on utter breach of contract in bad faith and/or tort and/or grave abuse of stature in airline industry.

2.4 Per its subject contract, specifically Article 9, IATA 1993 Standard Ground Handling Agreement, which provides:

x x x x x x x x x'

ARTICLE 9. ARBITRATION.

9.1 Any dispute or claim concerning the scope, meaning, construction or effect of this Agreement or arising therefrom shall be referred to and finally settled by arbitration in accordance with the procedures set forth below and, if necessary, judgment on the award rendered may be entered in any Court having jurisdiction thereof:

x x x x x x x x x'

defendant Cathay Pacific is mandated to settle any dispute or controversy with plaintiff, including the present dispute *vis-à-vis* defendant Cathay Pacific's illegal and fraudulent termination effective 01 June 2004 of the subject Contract, which plaintiff conversely asserts to be effective until 31 May 2007.

x x x x x x x x x'

3.3 As shown, plaintiff's subject contract is valid and effective until 31 May 2007. Defendant Cathay Pacific, therefore, acted wantonly, maliciously and in utter bad faith when it deliberately awarded plaintiff's scope of services under the Contract to another entity, there being three (3) more years left of the Contract term.

3.4 Moreover, by virtue of such automatic renewal until 31 May 2007, defendant Cathay Pacific's Notice of Termination dated 25 March 2004, therefore, is illegal, unlawful and unjustified. Per contract,

defendant Cathay Pacific's right to terminate existed only within sixty (60) days on or before the termination date on 31 May 2002 x x x.

3.5 Plaintiff, therefore, respectfully prays that the Honorable Court declare its subject contract with defendant Cathay Pacific effective until 31 May 2007 and consequently defendant Cathay Pacific's Notice of Termination dated 25 March 2004 illegal and unjust, for which the parties ought be ordered and directed to fully comply with its terms in good faith, pending the final outcome of this case.

3.6 Clearly, defendant Cathay Pacific blatantly committed a further breach of the Contract (*i.e.* issued the unjustified Notice of Termination) to perpetuate its pre-conceived and malicious design to unlawfully dispossess plaintiff of its rights under the Contract, and award the same to a third party.

**ALLEGATIONS IN SUPPORT OF THE APPLICATION FOR ISSUANCE OF PROVISIONAL RELIEF, SPECIFICALLY EXECUTIVE AND THEN EXTENDED TEMPORARY RESTRAINING ORDER, WRIT OF PRELIMINARY INJUNCTION, STATUS *QUO ANTE* ORDER AND/OR PROTECTIVE ORDER**

4.1 Plaintiff repleads therein by reference all of the foregoing allegations.

4.2 Plaintiff is entitled to the reliefs demanded, and the whole or part of such reliefs consist in:

a. On the main case, ordering defendant Cathay Pacific to fully comply, in good faith, with arbitration clause of its subject Contract with plaintiff, or alternatively, for the Honorable Court to declare the subject Contract valid and effective until 31 May 2004 and ordering defendant Cathay Pacific to fully comply with it in good faith;

b. Pending the final resolution of the above legal issues, whether via arbitration or directly by this Honorable Court, it is imperative that provisional or injunctive relief be issued by this Honorable Court to preserve the *status quo ante* respecting the rights of the Contract parties prior to the controversy, and more so, to prevent any judgment in the arbitration proceedings or in this case from being rendered moot, nugatory, ineffectual or impossible to enforce, should defendant Cathay Pacific be left unrestrained in (a) its unjust and illegal disregard for its valid and subsisting Contract with the plaintiff, and (b) its imminent turn over of its import and transit cargo to a

third party, in blatant and brazen violation of Cathay Pacific's contractual commitment to deliver the same exclusively to plaintiff's custom bonded warehouse.

On the same date, the Executive Judge of the RTC of Pasay issued a Temporary Restraining Order *(TRO)* valid for 72 hours. The civil case was subsequently raffled to Branch 115 of the RTC of Pasay with public respondent as the Presiding Judge.[4]

Public respondent judge, thereafter, extended the TRO for another seventeen (17) days. Injunction hearings were subsequently conducted.[5]

In his Order, dated June 11, 2004,[6] public respondent granted the Writ of Preliminary Injunction reasoning out that:

> The evidence so far presented reveals that the right of the plaintiff to the relief prayed for is anchored on a written contract between the plaintiff and the defendant, which by virtue of an implied automatic renewal, is still set to expire on May 3, 2007. Undeniably, however, prior to the date of termination, defendant unilaterally terminated the contract in a letter dated March 25, 2004 without specifying any cause. Thus, in the eyes of this Court, it appears that the twin requirements for a valid injunction, together with the showing of a threatened irreparable damages, have been met.
>
> Considering further that the sole object of a preliminary injunction is simply to preserve the status quo until the merits of the case can be fully heard, this Court deems it best, in the meanwhile, to restrain the defendant from unilaterally terminating its contract with the plaintiff.
>
> WHEREFORE, the defendant, their agents or authorized representatives and all persons acting for and in their behalf are hereby enjoined from terminating their contract with the plaintiff.
>
> The order dated May 27, 2004 granting Temporary Restraining Order (TRO) will, thus, remain in full force and effect until the merits of this case are fully heard.

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[4] *Rollo*, pp. 8, 337.

[5] *Rollo*, pp. 8, 337.

[6] *Rollo*, pp. 105-106.

The plaintiff is directed to post a bond in the sum of Five Hundred Thousand Pesos (₱500,000.00) conditioned to answer for any damage that the defendant may suffer, by reason of the issuance of this Order of preliminary injunction should this Court finally decide that the said issuance is unwarranted.

On June 14, 2004, the public respondent issued the Writ of Preliminary Injunction.[7]

Private respondent then filed a Petition for *Certiorari* under Rule 65 with the Court of Appeals. The petition was docketed as **CA-GR SP No. 85395**. The petition alleged that:

"I. PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION, BY ALLOWING A WRIT OF INJUNCTION TO ISSUE DESPITE THE ABSENCE OF A CLEAR LEGAL RIGHT ON THE PART OF THE PAIR.

II. PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION, BY ALLOWING A WRIT OF INJUNCTION TO ISSUE DESPITE THE FACT THAT NO 'GRAVE AND IRRAPARABLE INJURY' WILL RESULT TO PRIVATE RESPONDENT.

III. PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION BY DISREGARDING PETITIONER'S EVIDENCE."[8]

On February 7, 2005, the Court of Appeals dismissed the petition,[9] but ordered the public respondent to conduct the trial of the case and render judgment thereon with immediate dispatch so as not to render the case moot and academic, considering that the term of the implied renewal in the alleged agreement with People's Air Cargo and Warehousing was about to expire.

The Court of Appeals also pointed out that the petition was procedurally flawed. It stated that the mere fact that the assailed writ was issued did not necessarily create an urgency justifying

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[7] *Rollo*, pp. 107-109.

[8] *Rollo*, pp. 114-115.

[9] *Rollo*, pp. 110-123.

a party *(like petitioner in* ***CA-GR SP No. 85395****, private respondent herein)* from ignoring the procedural requirement of filing a motion for reconsideration. In this case, Cathay Pacific Airways' business operations were not disrupted so as to produce such urgency that would have excused it from filing the required motion for reconsideration.

The Court of Appeals further held that the petition must still fail even on its merits. The Court of Appeals explained that there was ample justification for the issuance of the writ of preliminary injunction. The question of whether or not People's Air Cargo possessed the requisite right hinged on the *prima facie* existence of the subject Agreement, which was allegedly not terminated in accordance with the provision thereof. The allegation that the subject Agreement had been superseded by a separate Ground Handling Agreement effective October 1, 1997 was a matter that would be better assessed and considered in the trial proper.

The Court of Appeals resolved to *DENY* the Motion for Reconsideration of Cathay Pacific Airways in its June 27, 2005 Resolution.[10]

Private respondent then elevated the case to this Court by way of a Petition for Review on *Certiorari*. This was docketed as **G.R. No. 168722**. On June 5, 2006, this Court resolved to *DENY* the petition for failure of herein private respondent *(petitioner therein)* to sufficiently show that the Court of Appeals committed any reversible error in the challenged decision and resolution.[11]

On August 16, 2006, this Court resolved to *DENY* the motion for reconsideration with *FINALITY*.[12]

Acting on the premise that the implied renewal of the Agreement with petitioner would expire on May 31, 2007, private

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[10] *Rollo,* pp. 124-125.

[11] *Rollo,* p. 126.

[12] *Rollo,* p. 127.

respondent gave a written notice to petitioner that it would consider the writ as *functus officio* beyond that date and, thereafter, act accordingly.

On May 11, 2007, after several exchanges of pleadings, petitioner filed a Motion for Leave to Admit Attached Amended Complaint.[13] While petitioner's ***original Complaint*** consistently alleged that its purported contract with private respondent was valid and effective until **May 31, 2007**,[14] its ***Amended Complaint*** now alleged that the same contract would be valid and effective at least until **May 31, 2017**.[15]

Petitioner, thereafter, filed an Urgent Motion to Cite for Contempt with Damages (Re: Violation and Breach of the Writ of Preliminary Injunction dated 14 June 2004 as affirmed by the Court of Appeals and the Supreme Court).[16] Private respondents Cathay Pacific Airways, Ltd., Ramon I. Joson, Eddie V. Monreal, and Antoinette Piamonte filed their Opposition.[17] Petitioner later filed its Reply.[18]

On **January 16, 2008**, public respondent issued the assailed Order[19] which, among others, GRANTED petitioner's Motion for Leave to Admit Amended Complaint.

While the public respondent granted petitioner's Motion for Leave to Admit Amended Complaint, it ruled that it need not dwell on the other pending incidents, as they had become moot. The public was referring to the following pending motions:

1.) Plaintiff's (petitioner's) Motion to Declare in Default Defendant Bureau of Customs;

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[13] *Rollo*, pp. 140-165.

[14] *Rollo*, p. 39.

[15] *Rollo*, p. 147.

[16] *Rollo*, pp. 166-179.

[17] *Rollo*, pp. 188-205.

[18] *Rollo*, pp. 206-215.

[19] *Rollo*, pp. 33-35.

2.) Cathay Pacific's Motion to Proceed to Trial on Damages;

3.) Plaintiff's Urgent Motion to Cite for Contempt;

4.) Addendum to the Motion to Cite for Contempt;

5.) Plaintiff's Motion for Leave to Admit Attached Amended Complaint;

6.) Cathay's Omnibus Motion; and

7.) PAGS' Motion for Leave to Intervene and to Admit Attached Petition-in-Intervention.

Neither petitioner nor private respondent filed a Motion for Reconsideration of the January 16, 2008 Order of public respondent.

Instead, the parties pursued ***separate*** petitions for *Certiorari*. **Private respondent** Cathay Pacific Airways Ltd. filed a Petition for *Certiorari* with the Court of Appeals (**CA G.R. SP No. 102177)**.[20] **Petitioner**, on the other hand, filed this petition directly with this Court **(G.R. No. 181068)**, questioning the mooting of its motion to cite respondent for indirect contempt. Specifically, the alleged grounds read:

**"GROUNDS FOR ALLOWANCE OF THE PETITION**

**RESPONDENT JUDGE ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN MOOTING PETITIONER'S MOTION TO CITE FOR INDIRECT CONTEMPT DESPITE HIS DUE ADMISSION OF PETITIONER'S AMENDED COMPLAINT IN THAT:**

**A. AS AFFIRMED BY THIS HONORABLE COURT IN G.R. NO. 168722, RESPONDENT JUDGE'S PRELIMINARY INJUNCTION IS VALID AND EFFECTIVE 'UNTIL THE MERITS OF TH[E] CASE ARE FULLY HEARD.'**

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[20] *Rollo*, pp. 251-286.

**B. THE ADMISSION OF THE AMENDED COMPLAINT EXPLICITLY AMPLIFIES THE CONTINUING VALIDITY AND EFFECTIVITY OF THE PRELIMINARY INJUNCTION.**

**C. PRIVATE RESPONDENTS' ILLEGAL, ABUSIVE AND CONTUMACIOUS DISOBEDIENCE, DEFIANCE AND VIOLATION OF THE PRELIMINARY INJUNCTION THEREFORE CONSTITUTES INDIRECT CONTEMPT UNDER SECTION 3 (B), RULE 71, RULES OF COURT."**[21]

On March 19, 2008, this Court issued a Resolution,[22] directing the parties and the Court of Appeals to hold in abeyance any action on the petition (CA G.R. SP No. 102177) pending final resolution of this petition. This Court further ruled that it was without prejudice to the dismissal of private respondent's petition in the Court of Appeals should it be found to have been filed in violation of the forum shopping rule.

After private respondent's Comment and petitioner's Reply, the Court resolved to give due course to the petition and to require both parties to submit their respective memoranda,[23] which they did.[24]

On October 9, 2009, private respondent filed a Motion for Early Resolution.

## THE COURT'S RULING

The petition should be dismissed outright. *Firstly*, no motion for reconsideration was filed before petitioner filed this petition under Rule 65.

*Certiorari* is not a defense against the unfavorable consequences of a failure to file the required motion for reconsideration. Petitioner may not designate to itself the determination of whether a motion for reconsideration is necessary or not. The plain and adequate remedy referred to

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

[22] *Rollo*, p. 326.

[23] *Rollo*, p. 640.

[24] *Rollo*, pp. 646 and 681.

in Section 1 of Rule 65 is a motion for reconsideration of the assailed decision. The purpose of this requirement is to enable the court or agency to rectify its mistakes without the intervention of a higher court. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so.[25] In this case, the petitioner failed. Thus, petitioner should have first interposed a motion for reconsideration.

*Secondly*, the petition violates the principle of hierarchy of courts. The assailed Order is an order from the RTC of Pasay. This petition should have been filed with the Court of Appeals, **after** the filing of a Motion for Reconsideration.

*Thirdly*, the petitioner considers this petition as a petition under Rule 65 of the Rules of Court, and *yet* petitioner insists *(somehow to justify direct resort to this Court)* that the petition involves a PURE QUESTION OF LAW, presenting the lone issue of "[w]hether or not respondent Judge's admission of petitioner's amended complaint can validly moot its indirect contempt suit against private respondent and its responsible officers."[26]

Petitioner is confusing this Court. Rule 65 does not deal with pure questions of law. It involves grave abuse of discretion amounting to lack or excess of jurisdiction, and this grave abuse of discretion amounting to lack or excess of jurisdiction should be alleged and proved. In this regard, petitioner failed again.

The Court cannot bear petitioner's utter disregard of procedural rules and frustrate the objective of attaining just, speedy and orderly judicial proceedings.

Even if this Court ignores the mentioned procedural lapses, still the petition fails on the merits. There was no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent in issuing the assailed order. Public

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[25] *Metro Transit Organization, Inc. v. Court of Appeals*, G.R. No. 142133, November 19, 2002; 392 SCRA 229.

[26] *Rollo*, p. 4.

respondent had sufficient basis for not giving due attention to the Urgent Motion to Cite for Contempt.

Section 4, Rule 71 of the Rules of Court prescribes the procedure for the institution of proceedings for indirect contempt, *viz*:

"Sec. 4. *How proceedings commenced.* – Proceedings for indirect contempt may be initiated *motu proprio* by the court against which the contempt was committed by an order or any other formal charge requiring the respondent to show cause why he should not be punished for contempt.

***In all other cases, charges for indirect contempt shall be commenced by a verified petition with supporting particulars and certified true copies of documents or papers involved therein, and upon full compliance with the requirements for filing initiatory pleadings for civil actions in the court concerned***. If the contempt charges arose out of or are related to a principal action pending in the court, the petition for contempt shall allege that fact but said petition shall be docketed, heard and decided separately, unless the court in its discretion orders the consolidation of the contempt charge and the principal action for joint hearing and decision."[27]

In this case, petitioner filed a *mere* motion in the **same civil case**.

Also, even if this Court treats this petition as a Petition under Rule 45, it is not convinced that this case involves a pure question of law.

A question of law exists when there is doubt or controversy as to what the law is on a certain state of facts.[28] This is not so in the case at bar.

It bears stressing too that the basis of the petitioner for its Urgent Motion to Cite for Contempt is *yet* to be determined in a full-blown trial by the public respondent.

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[27] Emphases supplied.

[28] See *Abad v. Guimba*, G.R. No. 157002, July 29, 2005; 465 SCRA 356.

All told, there was no grave abuse of discretion amounting to lack or excess of jurisdiction on the part of public respondent in issuing the assailed July 16, 2008 Order.

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

**SO ORDERED.**

*Corona (Chairperson), Velasco, Jr., Nachura,* and *Bersamin,*[*] *JJ.,* concur.

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**FIRST DIVISION**

[G.R. No. 187049. May 4, 2010]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **LITO MACAPANAS *y* ECIJA,** *accused-appellant.*

**SYLLABUS**

**1. CRIMINAL LAW; RAPE; NOT ALL RAPE VICTIMS CAN BE EXPECTED TO ACT COMFORMABLY TO THE USUAL EXPECTATION OF EVERYONE; SUSTAINED. —** The fact that AAA did not immediately reveal that she was raped by appellant does not necessarily impair AAA's credibility. How the victim comported herself after the incident was not significant as it had nothing to do with the elements of the crime of rape. Not all rape victims can be expected to act conformably to the usual expectations of everyone. Different and varying degrees of behavioral responses are expected in the proximity of, or in confronting, an aberrant episode. It is settled that different people react differently to a given situation or type of situation and there is no standard form of human behavioral response

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[*] Designated as additional member of the Third Division in lieu of Justice Diosdado M. Peralta per raffle dated January 11, 2010.

when one is confronted with a strange, startling or frightful experience. In *People v. Luzorata*, we held: This Court indeed has not laid down any rule on how a rape victim should behave immediately after she has been abused. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. x x x.

**2. ID.; ID.; DELAY IN REVEALING THE COMMISSION OF RAPE IS NOT AN INDICATION OF A FABRICATED CHARGE. —** Delay in revealing the commission of rape is not an indication of a fabricated charge. It has been repeatedly held that the delay in reporting a rape incident due to death threats cannot be taken against the victim. The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained. In this case, the delay in reporting the sexual assault was reasonable and explained. AAA adequately explained that she did not immediately inform anyone of her ordeal because she was ashamed and afraid because appellant had threatened to kill her. Thus, her reluctance that caused the delay should not be taken against her. Neither can it be used to diminish her credibility nor undermine the charge of rape.

**3. REMEDIAL LAW; EVIDENCE; TESTIMONY OF WITNESSES; THE TRIAL COURT'S ASSESSMENT DESERVES GREAT WEIGHT AND IS EVEN CONCLUSIVE AND BINDING UPON THE SUPREME COURT. —** When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding upon this Court, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate properly testimonial evidence.

**4. ID.; ID.; ID.; POLICE LINE-UP; NOT REQUIRED FOR PROPER IDENTIFICATION OF THE ACCUSED. —** There is no law or police regulation requiring a police line-up for proper identification in every case. Even if there was no police line-up, there could still be proper and reliable identification as long as such identification was not suggested or instigated to the

witness by the police. What is crucial is for the witness to positively declare during trial that the person charged was the malefactor.

**5. ID.; ID.; ID.; OUT OF COURT IDENTIFICATION; TEST TO DETERMINE ADMISSIBILITY; SPECIFIED. —** In *People v. Teehankee, Jr.*, we explained the procedure for out-of-court identification and the test to determine the admissibility of such identification. We said: Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face to face with the witness for identification. It is done thru *mug shots* where photographs are shown to the witness to identify the suspect. It is also done thru *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of *out-of-court* identification contaminates the integrity of *in-court* identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and relying on out-of-court identification of suspects, courts have adopted the *totality of circumstances test* where they consider the following factors, *viz*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

**6. ID.; ID.; ID.; ID.; FAILURE OF THE CRIMINAL TO CONCEAL HIS IDENTITY WOULD NOT MAKE THE COMMISSION OF THE CRIME LESS CREDIBLE. —** We have ruled that it is not uncommon for criminals to be careless or to even intentionally reveal their identities to their victims. The failure by a criminal to conceal his identity would not make the commission of the crime any less credible. Braggadocio among criminals is not unexpected. Very often too, they feel secure in the thought that they have instilled sufficient fear in their victims that the latter will not give them away to the authorities.

**7. ID.; ID.; ID.; INCONSISTENCIES WITH REGARD TO MINOR OR COLLATERAL MATTERS DO NOT DIMINISH VALUE**

**OF THE TESTIMONY IN TERMS OF TRUTHFULNESS OR WEIGHT. —** Inconsistencies in the testimony of the witness with regard to minor or collateral matters do not diminish the value of the testimony in terms of truthfulness or weight. The gravamen of the felony is the carnal knowledge by the appellant of the private complainant under any of the circumstances provided in Article 335 of the Revised Penal Code, as amended. Where the inconsistency is not an essential element of the crime, such inconsistency is insignificant and cannot have any bearing on the essential fact testified to. In fact, these inconsistencies bolster the credibility of the witness's testimony as it erases the suspicion of the witness having been coached or rehearsed. It is when the testimony appears totally flawless that a court might have some misgiving as to its veracity. This is especially true in rape cases where victims are not expected to have a total recall of the incident.

**8. ID.; ID.; ID.; DENIAL; INTRINSICALLY WEAK BEING A NEGATIVE AND SELF-SERVING ASSERTION. —** Denial is intrinsically weak, being a negative and self-serving assertion. To be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without merit. Here, there was no strong and credible evidence adduced to overcome the testimony of private complainant pointing to appellant as the culprit. Hence, no weight can be given appellant's denial.

**9. ID.; ID.; ID.; ALIBI; ALIBI IS WORTHLESS AS AGAINST POSITIVE IDENTIFICATION OF THE ACCUSED BY THE COMPLAINANT. —** As against the positive identification by the private complainant, appellant's alibi is worthless. Having been identified by the victim herself, appellant cannot escape liability. Moreover, for alibi to prosper, it must be proven that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the *locus criminis*.

**10. CRIMINAL LAW; RAPE; USE OF DEADLY WEAPON AS QUALIFYING CIRCUMSTANCE; EXPLAINED. —** Being in the nature of a qualifying circumstance, "use of a deadly weapon" increases the penalties by degrees, and cannot be treated merely as a generic aggravating circumstance which affects only the period of the penalty. This so-called qualified form of rape

committed with the use of a deadly weapon carries a penalty of *reclusion perpetua* to death. As such, the presence of generic aggravating and mitigating circumstances will determine whether the lesser or higher penalty shall be imposed. When, as in this case, neither mitigating nor aggravating circumstance attended the commission of the crime, the minimum penalty, *i.e.*, *reclusion perpetua*, should be the penalty imposable pursuant to Article 63 of the Revised Penal Code. Thus, both trial and appellate courts properly imposed on appellant the penalty of *reclusion perpetua*.

**11. ID.; ID.; CIVIL LIABILITY; CIVIL INDEMNITY; AWARD THEREOF IS MANDATORY UPON FINDING OF THE FACT OF RAPE. —** As to the award of damages, the trial court awarded ₱50,000.00 as civil indemnity. The Court of Appeals, in addition thereto, awarded moral damages in the amount of ₱50,000.00. Under the present law, an award of ₱50,000.00 as civil indemnity is mandatory upon the finding of the fact of rape. This is exclusive of the award of moral damages of ₱50,000.00, without need of further proof. The victim's injury is now recognized as inherently concomitant with and necessarily proceeds from the appalling crime of rape which per se warrants an award of moral damages.

**12. ID.; ID.; ID.; EXEMPLARY DAMAGES; WHEN PROPER. —** Exemplary damages should likewise be awarded pursuant to Article 2230 of the Civil Code since the special aggravating circumstance of the use of a deadly weapon attended the commission of the rape. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱30,000.00 as exemplary damages is justified. This kind of damages is intended to serve as deterrent to serious wrongdoings, as a vindication of undue sufferings and wanton invasion of the rights of an injured, or as punishment for those guilty of outrageous conduct.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

**D E C I S I O N**

**VILLARAMA, JR., *J.*:**

For review is the Decision[1] dated November 24, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 00222 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Guiuan, Eastern Samar, Branch 3, finding appellant Lito E. Macapanas guilty of rape and sentencing him to suffer the penalty of *reclusion perpetua*.

On February 1, 2000, an Information was filed charging appellant of the crime of rape. The Information reads,

That on or about the 7th day of December, 1999, at about 7:30 o'clock in the morning, in between Brgy. XXX and Brgy. YYY, Salcedo, Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused while the victim was on her way to school, she was waylaid by the accused wearing a bonnet armed with a sharp-pointed bolo locally known as "*sundang*" and brought her to an isolated hut where she was alone and ordered her to undress and forced her to lie down and by means of force and intimidation did then and there willfully, unlawfully and feloniously succeed in having carnal knowledge with AAA,[3] a 19-year-old girl without her consent and against her will.

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[1] CA *rollo*, pp. 122-137. Penned by Associate Justice Marlene Gonzales-Sison with Associate Justices Arsenio J. Magpale and Pampio A. Abarintos concurring.

[2] Records, pp. 65-77. Penned by Presiding Judge Rolando M. Lacdo-o.

[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, together with the real names of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 421-426.

Contrary to law.[4]

When arraigned on March 27, 2000, appellant, with the assistance of counsel, pleaded not guilty to the offense charged.[5] Trial thereafter ensued.

The prosecution presented the following witnesses: (1) Dr. Elizabeth Co-Loyola, Medical Officer IV of Southern Samar General Hospital;[6] (2) Senior Police Officer 4 Isidro E. Bajar, Officer-in-Charge (OIC) of the Philippine National Police at Guiuan, Eastern Samar;[7] and (3) AAA, the private complainant.[8]

From their testimonies, we gather the version of the prosecution:

At around 7:30 a.m. on December 7, 1999, AAA, a student of Eastern Samar State Agricultural College, was walking on the feeder road of Barangay XXX, Salcedo, Eastern Samar going to the waiting shed where she was to take a ride to school. She was 50 to 60 meters away from the waiting shed when the appellant, wearing a makeshift ski mask and armed with a bladed weapon locally known as *sundang*, grabbed her hair. Appellant poked the *sundang* on her side and pulled her towards a grassy area. She tried to free herself and pleaded for mercy, but to no avail. Appellant simply continued to drag her.

When they reached a nearby stream, appellant shoved AAA towards an uninhabited house with the knife. Inside, appellant told her to undress, but AAA did not obey. She asked appellant to remove his mask so she could identify him. Appellant acceded and removed his mask. Then, he ordered her anew to remove her dress. When she refused, appellant grabbed her skirt and forcibly removed the buttons to open her skirt. Appellant then pushed her to the floor where he removed her panty. He mounted her and succeeded in having intercourse with her. After satisfying

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[4] Records, p. 1.

[5] *Id.* at 14.

[6] TSN, February 7, 2001.

[7] TSN, March 15, 2001.

[8] TSN, August 7 and 22, 2001.

his lust, appellant allowed AAA to put on her dress with a warning that he would kill her if she tells anyone about what happened. With appellant behind her, AAA walked back towards the waiting shed.

When AAA saw plenty of people on the road, she shouted for help. Appellant then stabbed her at the back and fled. AAA was brought to the Southern Samar General Hospital where she was confined for nine (9) days.

At the hospital, Dr. Elizabeth Co-Loyola examined AAA and found an incised wound on her back.[9] On the third day of AAA's confinement, they suspected that something more had happened to AAA, but she merely cried and did not answer their questions. On her sixth day of confinement, AAA, accompanied by her mother, admitted she was also raped. Dr. Co-Loyola thus conducted additional examination on AAA and found that she had a partially healed "Hymenal Laceration at [the] 5:00 o'clock position."[10] Dr. Co-Loyola said she believed a hard object like a penis could have caused the laceration.

Police officers, among them SPO4 Bajar, also interviewed AAA on the afternoon of December 7, 1999. AAA told SPO4 Bajar that the person who assaulted her had tattoos on his right shoulder and in between his thumb and index finger. She said she was merely touched in her private parts and was stabbed by the suspect, but did not tell SPO4 Bajar that she was raped.

On the evening of December 11, 1999, SPO4 Bajar brought appellant to the hospital where AAA identified appellant as the one (1) who stabbed her. SPO4 Bajar revealed that when he brought appellant to the hospital, his purpose was to present him as a suspect for stabbing AAA and not for raping AAA.

AAA also testified that before the incident, she once saw the appellant pass by the waiting shed where she used to wait for a ride to school. She explained that one (1) time, she was with her classmates in the waiting shed when appellant passed

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[9] Exh. "A-4", records, p. 7.

[10] Exh. "A-5", *id.* at 6.

by looking at them. A classmate informed her that the person looking at them was appellant Lito Macapanas. She added that she was familiar with appellant's father and sister because she often saw them pass by the waiting shed. She also said appellant's two (2) brothers, Sitoy and Pepe, were her classmates in grade school and that she even knows their address. These matters, however, were not revealed by her to the police.

The defense, for its part, presented the following witnesses: (1) Vangie Macapanas, appellant's sister-in-law;[11] (2) Rose B. Macapanas, appellant's wife;[12] and (3) appellant Lito E. Macapanas.[13]

Appellant vehemently denied raping AAA. He alleged that he was at his house in Barangay XXX, Salcedo, Eastern Samar the entire day of December 7, 1999, gathering coconuts. Around 5:00 a.m. on the said date, he cooked breakfast then rested. At around 6:00 a.m., he started gathering coconut in his yard and finished in the afternoon. The next day, he husked the coconuts he had gathered, cut them in halves and placed them in the kiln. On December 9, 1999, he smoked the coconuts, separated the cooked coconut meat from their shells and placed them in a sack. Then, on the morning of December 10, 1999, appellant, his father and Domingo Basijan, the owner of the coconuts, sold the copra in Salcedo, Eastern Samar.

On the afternoon of December 10, 1999, while playing basketball at the public plaza, his cousin Obet Macapanas invited him to the former's house in Barangay Talandawan, Salcedo, Eastern Samar to help Obet's family prepare food for a celebration of a death anniversary. It was while he was in Obet's house that he was arrested by a certain police officer Cabrera, who arrived together with another policeman and a *barangay tanod*. Cabrera allegedly tied his hands. When he asked them what his fault was, Cabrera replied that there was a complaint against him and that he was bringing him to AAA.

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[11] TSN, January 9, 2002.

[12] TSN, April 2, 2002.

[13] TSN, December 11, 2002; TSN, January 22, 2003.

Aboard a garbage truck, appellant, together with Obet and his nephew, Anthony Amor, was brought to the Southern Samar General Hospital and presented before AAA.

AAA allegedly failed to pinpoint him as the culprit, but he and his two (2) relatives were nonetheless incarcerated at the Salcedo Municipal Jail. Appellant added that his two (2) relatives were released from jail the following morning. While he was in jail, Cabrera brought in two (2) women victims to identify him (appellant) if he was the one (1) who waylaid them. The women, however, declared he was not the one (1) who assaulted them. Cabrera has ill feelings towards him because he defied Cabrera's order to stop cutting trees. He explained that cutting trees is his only source of livelihood.

Vangie Macapanas, on the other hand, testified that on the morning of December 7, 1999, she was at her house which was about only 10 meters away from appellant's house. From 6:00 a.m. to 7:00 a.m. of the said day, she saw appellant and the latter's wife, Rose, fixing the roof of their house. After eating breakfast, appellant went out of his house and started gathering coconuts near her yard because the coconuts which appellant was gathering were located behind her house. She said appellant finished gathering coconuts from Domingo Basijan's land at around 11:00 a.m. She alleged that appellant never left his house or the land where he gathered coconuts from 6:00 a.m. to 11:00 a.m. She, however, said that she cannot see the entire coconut plantation from her house and did not see appellant at all times while he was gathering coconuts at the plantation.

Vangie added that she knows Barangay YYY, where the crime happened, and declared that said *barangay* is about three and a half (3½) kilometers away from her house in Barangay XXX. Motor vehicles also regularly ply the route from Barangay XXX to Barangay YYY.

Appellant's wife, Rose B. Macapanas, for her part, testified that appellant left their house in Brgy. XXX at 6:00 a.m. on December 7, 1999 to gather coconuts at the plantation of Domingo Basijan where he was a tenant. At 8:00 a.m., her husband returned to their house and they fixed the roof of their house.

At around 9:00 a.m., they finished fixing the roof and his husband returned to the coconut plantation to gather coconuts anew until 11:00 a.m. Thereafter, she said appellant went home and rested. According to her, from 6:00 a.m. to 11:00 a.m., her husband did not go to any other place except the coconut plantation. During all that time, she knew that appellant was in the plantation because she heard the sound of coconuts dropping to the ground.

On May 14, 2003, the trial court promulgated its decision dated April 15, 2003, the dispositive portion of which reads as follows:

> WHEREFORE, the Court finds accused LITO E. MACAPANAS guilty beyond reasonable doubt of the crime of consummated rape under Article 266-A (a) of Republic Act No. 8353 (An Act Expanding the Definition of the Crime of Rape) and hereby sentences him to suffer the penalty of *RECLUSION PERPETUA.* The accused is further ordered to indemnify the offended party in the amount of Fifty Thousand Pesos (₱50,000.00) without subsidiary imprisonment in case of insolvency, and to pay the costs.
>
> SO ORDERED.[14]

In convicting appellant, the trial court was convinced that it was appellant who sexually assaulted AAA because of the identification she made of appellant. It found that AAA had no reason or motive to fabricate the serious charge against appellant. It did not accord credence to appellant's denial and alibi. It found the testimonies of the defense witnesses doubtful and unconvincing. Explained the trial court:

> … They tried to establish that the accused was in Brgy. XXX during the time of the commission of the crime in Brgy. YYY. But their testimonies are not convincing. Vangie Macapanas, who is a sister-in-law of the accused, testified that she saw the accused the whole morning of December 7, 1999. But clearly[,] that is not true because she herself declared that when the accused went around the coconut land which is [quite] large he was out of her sight and could only [hear] the coconuts dropping to the ground. While the declaration of Rose Macapanas, the wife of the accused, that her husband left

[14] Records, p. 77.

their house at about 6:00 o'clock in the morning to harvest coconuts and return two hours later does not preclude the possibility that her husband could have sneaked to Brgy. YYY that morning. Ditto with the testimony of the accused. Considering the proximity of Brgy. YYY from Brgy. XXX, he could have easily reach[ed] Brgy. YYY in no time and committed the crime and then return to the coconut land and resume harvesting coconuts.[15]

The trial court further ruled that despite the prosecution evidence showing that appellant stabbed AAA after raping her, appellant cannot be convicted for such stabbing no matter how conclusive and convincing the evidence is because such offense was not charged or included in the Information.

Appellant filed a Motion for Reconsideration,[16] but the trial court denied it in a Resolution[17] dated June 11, 2003.

On November 24, 2006, the Court of Appeals affirmed appellant's conviction but modified the penalty, ordering appellant to pay the additional amount of ₱50,000.00 as moral damages. The decretal portion of the appellate court's decision reads:

> WHEREFORE, the Decision of the Regional Trial Court, Branch 3, Guiuan, Eastern Samar, in Criminal Case No. 1837 finding accused-appellant Lito Macapanas *y* Ecija guilty beyond reasonable doubt of the crime of rape and sentencing him to suffer the penalty of *reclusion perpetua* is AFFIRMED with MODIFICATION. Accused-appellant must pay to the private offended party, [AAA], ₱50,000.00 as civil indemnity and another ₱50,000.00 as moral damages, together with the costs.[18]

Appellant filed his Notice of Appeal on December 18, 2006.[19] On June 1, 2009,[20] the Court required the parties to file their respective supplemental briefs, if they so desire. The parties,

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

[16] *Id.* at 81-87.

[17] *Id.* at 90.

[18] CA *rollo*, p. 136.

[19] *Id.* at 140-143.

[20] *Rollo*, p. 26.

however, opted not to file any on the ground that they have already fully argued their positions in their respective briefs.

Appellant cites a lone error:

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT [OF] THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[21]

Essentially, for our resolution is the issue of whether appellant's guilt for the crime of rape has been proven beyond reasonable doubt.

Appellant maintains that the trial court erred in giving greater weight to the testimony of the private complainant than the testimonies of the defense witnesses despite finding that some portions in her testimony appeared to be peculiar and tended to render its credibility suspect. He contends that the accusation of rape was concocted on hindsight because AAA only disclosed that she was raped after several days of confinement and after identifying appellant to SPO4 Bajar as the person who stabbed her.

We are not convinced.

The fact that AAA did not immediately reveal that she was raped by appellant does not necessarily impair AAA's credibility. How the victim comported herself after the incident was not significant as it had nothing to do with the elements of the crime of rape.[22] Not all rape victims can be expected to act conformably to the usual expectations of everyone. Different and varying degrees of behavioral responses are expected in the proximity of, or in confronting, an aberrant episode. It is settled that different people react differently to a given situation or type of situation and there is no standard form of human behavioral response when one is confronted with a strange,

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[21] CA *rollo*, p. 48.

[22] *People v. Binarao*, G.R. Nos. 134573-75, October 23, 2003, 414 SCRA 117, 129-130.

startling or frightful experience.[23] In *People v. Luzorata*,[24] we held:

> This Court indeed has not laid down any rule on how a rape victim should behave immediately after she has been abused. This experience is relative and may be dealt with in any way by the victim depending on the circumstances, but her credibility should not be tainted with any modicum of doubt. x x x.

Delay in revealing the commission of rape is not an indication of a fabricated charge.[25] It has been repeatedly held that the delay in reporting a rape incident due to death threats cannot be taken against the victim.[26] The charge of rape is rendered doubtful only if the delay was unreasonable and unexplained. In this case, the delay in reporting the sexual assault was reasonable and explained. AAA adequately explained that she did not immediately inform anyone of her ordeal because she was ashamed and afraid because appellant had threatened to kill her.[27] Thus, her reluctance that caused the delay should not be taken against her. Neither can it be used to diminish her credibility nor undermine the charge of rape.

We find no reason to reverse the findings of the trial court, as affirmed by the Court of Appeals. We find AAA's narration of her ghastly ordeal to be clear, straightforward and worthy of belief. AAA recounted her nightmare as follows:

> Q On December 7, 1999, at about 7:30 o'clock in the morning, do you remember where you were?
> A Yes, sir, I was at the cemented feeder road of Brgy. [XXX], Salcedo, Eastern Samar.
>
> Q And what were you doing on that feeder road?
> A I was walking sir.

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[23] *People v. Salome*, G.R. No. 169077, August 31, 2006, 500 SCRA 659, 670.

[24] 350 Phil. 129, 134 (1998).

[25] *People v. Romero*, 435 Phil. 182, 194 (2002).

[26] *People v. Lucas*, G.R. No. 80102, January 22, 1990, 181 SCRA 316, 325.

[27] TSN, August 7, 2001, pp. 58 and 61.

Q Where were you walking to?
A I was on my way walking to the waiting shed.

Q Now, where were you from when you were walking to that waiting shed along Barangay [XXX]?
A I came from our house at Brgy. [YYY], Salcedo, E. Samar.

Q And what was your purpose in going to that waiting shed?
A I was about to wait for a transportation going to ESSAC.

Q Now, when you were walking on that feeder road towards that shed, was there anything unusual that happened?
A Yes, sir.

Q And what was that?
A I was waylaid by a man who was wearing a bonnet and with a sharp pointed bolo locally known as "*sundang*."

Q When you said bonnet, what do you mean?
A A piece of cloth wear around the head and there is a whole for the eyes covering the face.

Q Now, when you were waylaid by this person, what happened?
A He immediately grabbed my hair and dragged to the grass.

Q What happened thereafter when you said you were dragged to the grasses by this person?

x x x x x x x x x

A He brought me to the stream and let me go.

Q What do you mean when you said the person let you go when you reached that stream?
A That is now the time when he let me go.

Q Now, you said you were forced to walk, what happened thereafter?
A While I was walking he was poking behind me his bolo.

Q What happened thereafter?
A He brought me to the place to uninhabited house.

Q What happened when you reached that uninhabited house?
A He let me go inside that house.

Q Were you able to get inside that house?
A Yes.

Q And then what happened when you are inside the house?
A He told me to undress.

Q And what did you do when you told to take-off your clothes?
A I did not follow to his instruction instead I told him to take-off his bonnet.

Q And then what happened[?]
A And he took off his bonnet and I saw him watching my bag.

Q What happened thereafter?
A He again told me to take-off my clothes.

Q And then what did you do?
A I did not take-off my uniform then he immediately grabbed my uniform.

Q What happened to your uniform?
A He immediately pushed me to the floor.

Q You said while ago that this person take-off his bonnet, could you identify the person?

x x x x x x x x x

A Yes.

Q Will you please look around the court room and identify if you see him around to be the same person who take-off his bonnet.

Court interpreter

(Witness pointing to the accused who when asked answers the name of Lito Macapanas).

Court

Are you sure of that – that he is really the one who was wearing a bonnet, be sure because the consequence that you are charging him with a serious offense, but if it is not true, then that guy who abused you is just laughing. Be sure he is the guy.

A Yes sir he is the one, I am sure.

Q You said while ago that this person whom you point out and grabbed your uniform, what part of your uniform was grabbed by this person?

A In front of my blouse.

Q How did he grab your blouse?

Court interpreter

(Witness demonstrating by using his two (2) hands to open her blouse).

Q And then what did he do?

Court interpreter

(Witness demonstrating by using her both hands by opening at her blouse).

Q What else happened after he grabbed your blouse?

A He immediately pushed me to the floor.

Q What happened to your skirt?

A He destroyed the buttons of my skirt.

Q What happened after he destroyed your buttons in your skirt?

A He removed my panty.

Q When he grabbed your blouse, what did you do if any?

A I was in the floor then he immediately placed himself on top of me.

Q And what happened thereafter?

A He made a push and pulls motion and inserted his penis.

Q Now, was he able to insert his penis inside your vagina?

A Yes, sir.

Q And then what happened after that?

A After he made a sexual intercourse with me he let me put on my dress.

Q What happened after that?

A And he told me not to tell anybody, if you tell somebody I will kill you?

Q And then what happened thereafter?
A Then he let me walked towards the waiting shed.

Q And were you able to walk towards the waiting shed?
A Yes.

Q And where was he when you were walking towards that waiting shed?
A He was following behind me.

Q What happened then if any?
A I immediately shouted because I saw many people at the road and he immediately stabbed me at my back.

Q What was your purpose in shouting?
A Because I am asking for help to that people.

Q When you shouted you were stabbed by the accused, what happened to you when you were stabbed by the accused?
A I fell down to the ground.

Q What about the accused what did he do?
A He immediately ran away.[28]

When it comes to credibility, the trial court's assessment deserves great weight, and is even conclusive and binding upon this Court, if not tainted with arbitrariness or oversight of some fact or circumstance of weight and influence. The reason is obvious. Having the full opportunity to observe directly the witnesses' deportment and manner of testifying, the trial court is in a better position than the appellate court to evaluate properly testimonial evidence.[29] In the instant case, we have no reason not to apply the rule considering the overwhelming evidence showing that appellant had carnal knowledge of AAA without her consent and against her will by means of force and intimidation.

Positive identification made with moral certainty suffices to convict the accused.[30] AAA's claim that she was raped was

[28] TSN, August 7, 2001, pp. 53-59.

[29] *People v. Escultor*, G.R. Nos. 149366-67, May 27, 2004, 429 SCRA 651, 661.

[30] *People v. Dela Cruz*, G.R. No. 171272, June 7, 2007, 523 SCRA 433, 446-447.

amply supported by the testimony and finding of Dr. Elizabeth Co-Loyola that she suffered a hymenal laceration at the five (5) o'clock position which is consistent with penile intrusion.

Appellant contends that his identification by AAA in the hospital should not have been given consideration because the identification was not made in a police line-up and that the procedure adopted constituted suggestive identification for he alone was brought infront of AAA.

Again, we find such contention untenable.

While appellant was not placed in a police line-up for identification by AAA, the absence of such police line-up does not make AAA's identification of appellant as the one (1) who raped her, unreliable. There is no law or police regulation requiring a police line-up for proper identification in every case. Even if there was no police line-up, there could still be proper and reliable identification as long as such identification was not suggested or instigated to the witness by the police.[31] What is crucial is for the witness to positively declare during trial that the person charged was the malefactor.[32]

In *People v. Teehankee, Jr.*,[33] we explained the procedure for out-of-court identification and the test to determine the admissibility of such identification. We said:

> Out-of-court identification is conducted by the police in various ways. It is done thru *show-ups* where the suspect alone is brought face to face with the witness for identification. It is done thru *mug shots* where photographs are shown to the witness to identify the suspect. It is also done thru *line-ups* where a witness identifies the suspect from a group of persons lined up for the purpose. Since corruption of *out-of-court* identification contaminates the integrity of *in-court* identification during the trial of the case, courts have fashioned out rules to assure its fairness and its compliance with the requirements of constitutional due process. In resolving the admissibility of and

[31] *People v. Escote, Jr.*, G.R. No. 140756, April 4, 2003, 400 SCRA 603, 629.

[32] *People v. Martin*, G.R. No. 177571, September 29, 2008, 567 SCRA 42, 49.

[33] G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54, 95-96.

relying on out-of-court identification of suspects, courts have adopted the *totality of circumstances test* where they consider the following factors, *viz*: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and, (6) the suggestiveness of the identification procedure.

We have applied the totality of circumstances test in the instant case and find AAA's identification of appellant via a show-up as the one (1) who raped her to be credible. Appellant's out-of-court identification is valid. AAA positively identified appellant as her abuser because the latter removed the mask he was wearing and revealed his face to her. AAA even recalled the tattoos on appellant's body and hand. The out-of-court identification made by AAA was done a few days after the incident and confirmed during the trial. There is likewise no evidence that SPO4 Bajar had supplied or even suggested to AAA the identity of appellant as her attacker. Even assuming *arguendo* that the out-of-court identification was defective, the defect was cured by the subsequent positive identification in court for the inadmissibility of a police line-up identification should not necessarily foreclose the admissibility of an independent in-court identification.[34]

Appellant attacks private complainant's credibility arguing that it would have been inconceivable for an assailant to accede to AAA's request to remove the mask and to reveal his identity when he had already conveniently clothed himself with anonymity.

However, we agree with the Court of Appeals that it is not inconceivable for appellant to have acceded to her request to reveal his identity by removing the mask that hid his face. We have ruled that it is not uncommon for criminals to be careless or to even intentionally reveal their identities to their victims. The failure by a criminal to conceal his identity would not make

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[34] *People v. Rivera*, G.R. No. 139185, September 29, 2003, 412 SCRA 224, 239.

the commission of the crime any less credible. Braggadocio among criminals is not unexpected. Very often too, they feel secure in the thought that they have instilled sufficient fear in their victims that the latter will not give them away to the authorities.[35] Here, unfortunately for appellant, AAA tried to seek the assistance of the people near the waiting shed at the first opportunity. After mustering enough courage, AAA also revealed her ordeal and identified appellant as the one (1) who raped her.

Appellant ascribes to the private complainant an alleged material inconsistency as to whether she had seen appellant even before the rape or saw him for the first time on December 7, 1999, which perceived inconsistency allegedly affects the veracity of her testimony. Such inconsistency, which we consider to be minor or trivial, will however not impair AAA's credibility.

Inconsistencies in the testimony of the witness with regard to minor or collateral matters do not diminish the value of the testimony in terms of truthfulness or weight. The gravamen of the felony is the carnal knowledge by the appellant of the private complainant under any of the circumstances provided in Article 335[36] of the Revised Penal Code, as amended. Where the inconsistency is not an essential element of the crime, such inconsistency is insignificant and cannot have any bearing on the essential fact testified to.[37] In fact, these inconsistencies bolster the credibility of the witness's testimony as it erases the suspicion of the witness having been coached or rehearsed.[38] It is when the testimony appears totally flawless that a court might have some misgiving as to its veracity. This is especially

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[35] *People v. Lovedorial*, G.R. No. 139340, January 17, 2001, 349 SCRA 402, 415; *People v. Yabut*, G.R. No. 133186, July 28, 1999, 311 SCRA 590, 598.

[36] Article 335 has been repealed by R.A. No. 8353 (The Anti-Rape Law of 1997) effective October 22, 1997. New provisions on Rape are found in Arts. 266-A to 266-D.

[37] *People v. Sabardan*, G.R. No. 132135, May 21, 2004, 429 SCRA 9, 19.

[38] *People v. Murillo*, G.R. Nos. 128851-56, February 19, 2001, 352 SCRA 105, 118.

true in rape cases where victims are not expected to have a total recall of the incident.[39]

Appellant interposed the defenses of denial and alibi. However, mere denial, if unsubstantiated by clear and convincing evidence, has no weight in law and cannot be given greater evidentiary value than the positive testimony of a rape victim.[40] Denial is intrinsically weak, being a negative and self-serving assertion.[41]

To be believed, denial must be buttressed by strong evidence of non-culpability. Otherwise, it is purely self-serving and without merit.[42] Here, there was no strong and credible evidence adduced to overcome the testimony of private complainant pointing to appellant as the culprit. Hence, no weight can be given appellant's denial. The Court finds the testimonies of appellant's wife and sister-in-law unconvincing. The testimonies of close relatives and friends are necessarily suspect and cannot prevail over the unequivocal declaration of the complaining witness.[43]

Appellant's defense of alibi likewise fails. As against the positive identification by the private complainant, appellant's alibi is worthless.[44] Having been identified by the victim herself, appellant cannot escape liability. Moreover, for alibi to prosper, it must be proven that during the commission of the crime, the accused was in another place and that it was physically impossible for him to be at the *locus criminis*.[45] From the evidence on record,

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[39] *People v. Albior*, G.R. No. 115079, February 19, 2001, 352 SCRA 35, 46.

[40] *People v. Esperas*, G.R. No. 128109, November 19, 2003, 416 SCRA 216, 225-226.

[41] *People v. Agsaoay, Jr.*, G.R. Nos. 132125-26, June 3, 2004, 430 SCRA 450, 466.

[42] *Belonghilot v. Hon. Angeles*, 450 Phil. 265, 293 (2003).

[43] *People v. Opeliña*, G.R. No. 142751, September 30, 2003, 412 SCRA 343, 354.

[44] *People v. Oco*, G.R. Nos. 137370-71, September 29, 2003, 412 SCRA 190, 215.

[45] *People v. Alfaro*, G.R. Nos. 136742-43, September 30, 2003, 412 SCRA 293, 305.

it was not physically impossible for appellant to be at the crime scene when the crime was committed since the crime scene was only three and a half (3-½) kilometers away from where appellant was allegedly working. Moreover, as testified to by his sister-in-law, motor vehicles regularly ply the Barangay XXX – Barangay YYY route. We have held that:

> Alibi, the plea of having been elsewhere than at the scene of the crime at the time of the commission of the felony, is a plausible excuse for the accused. Let there be no mistake about it. Contrary to the common notion, alibi is in fact a good defense. But to be valid for purposes of exoneration from a criminal charge, the defense of alibi must be such that it would have been physically impossible for the person charged with the crime to be at the *locus criminis* at the time of its commission, the reason being that no person can be in two places at the same time. The excuse must be so airtight that it would admit of no exception. Where there is the least possibility of accused's presence at the crime scene, the alibi will not hold water.[46]

Appellant tried to discredit the prosecution by imputing ill motives, not on the victim, but on a police officer named Cabrera whom he claimed had a grudge against him. Said claim, which has not been substantiated, is an act of desperation. For one (1), said police officer is not even known to private complainant. For another, we find it highly improbable that AAA would impute to appellant a crime so serious as rape if what she claims is not true. All told, we find that the trial court did not err in convicting appellant of the crime of rape.

Articles 266-A and 266-B of the Revised Penal Code, as amended, respectively provide:

> Art. 266-A. *Rape, When and How Committed*. – Rape is committed–
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;

[46] *People v. Malones*, G.R. Nos. 124388-90, March 11, 2004, 425 SCRA 318, 339.

x x x x x x x x x

Art. 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

Whenever the rape is committed with the **use of a deadly weapon** or by two or more persons, the penalty shall be *reclusion perpetua* to death.

x x x x x x x x x

For one (1) to be convicted of qualified rape, at least one (1) of the aggravating/qualifying circumstances mentioned in Article 266-B of the Revised Penal Code, as amended, must be alleged in the Information and duly proved during the trial.[47] In the case at bar, appellant used a sharp-pointed bolo locally known as *sundang* in consummating the salacious act. This circumstance was alleged in the Information and duly proved during trial. Being in the nature of a qualifying circumstance, "use of a deadly weapon" increases the penalties by degrees, and cannot be treated merely as a generic aggravating circumstance which affects only the period of the penalty. This so-called qualified form of rape committed with the use of a deadly weapon carries a penalty of *reclusion perpetua* to death. As such, the presence of generic aggravating and mitigating circumstances will determine whether the lesser or higher penalty shall be imposed. When, as in this case, neither mitigating nor aggravating circumstance attended the commission of the crime, the minimum penalty, *i.e.*, *reclusion perpetua*, should be the penalty imposable pursuant to Article 63 of the Revised Penal Code.[48] Thus, both trial and appellate courts properly imposed on appellant the penalty of *reclusion perpetua*.

As to the award of damages, the trial court awarded ₱50,000.00 as civil indemnity. The Court of Appeals, in addition thereto, awarded moral damages in the amount of ₱50,000.00. Under the present law, an award of ₱50,000.00 as civil indemnity is

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[47] *People v. Caliso*, 439 Phil. 492, 507-508 (2002).

[48] *People v. Ballester*, G.R. No. 152279, January 20, 2004, 420 SCRA 379, 387.

mandatory upon the finding of the fact of rape. This is exclusive of the award of moral damages of ₱50,000.00, without need of further proof. The victim's injury is now recognized as inherently concomitant with and necessarily proceeds from the appalling crime of rape which per se warrants an award of moral damages.[49]

Exemplary damages should likewise be awarded pursuant to Article 2230 of the Civil Code since the special aggravating circumstance of the use of a deadly weapon attended the commission of the rape. When a crime is committed with an aggravating circumstance, either qualifying or generic, an award of ₱30,000.00 as exemplary damages is justified. This kind of damages is intended to serve as deterrent to serious wrongdoings, as a vindication of undue sufferings and wanton invasion of the rights of an injured, or as punishment for those guilty of outrageous conduct.[50]

**WHEREFORE,** the Decision of the Court of Appeals dated November 24, 2006 finding appellant guilty beyond reasonable doubt of the crime of rape is *AFFIRMED* with *MODIFICATION*. Appellant is further ordered to pay private complainant exemplary damages in the amount of ₱30,000.00.

With costs.

**SO ORDERED.**

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

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[49] *People v. Suyat*, G.R. No. 173484, March 20, 2007, 518 SCRA 582, 601.

[50] *People v. Marcos*, G.R. No. 185380, June 18, 2009, p. 15.

**EN BANC**

[G.R. No. 191550. May 4, 2010]

**HENRY "JUN" DUEÑAS, JR.,** *petitioner, vs.* **HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL and ANGELITO "JETT" P. REYES,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; JURISDICTION OF THE SUPREME COURT TO REVIEW DECISIONS AND ORDERS OF THE ELECTORAL TRIBUNALS IS EXERCISED ONLY UPON SHOWING OF GRAVE ABUSE OF DISCRETION. —** It is hornbook principle that this Court's jurisdiction to review decisions and orders of electoral tribunals is exercised only upon showing of grave abuse of discretion committed by the tribunal; otherwise, the Court shall not interfere with the electoral tribunal's exercise of its discretion or jurisdiction. Grave abuse of discretion has been defined as the capricious and whimsical exercise of judgment, the exercise of power in an arbitrary manner, where the abuse is so patent and gross as to amount to an evasion of positive duty.

**2. POLITICAL LAW; ELECTIONS; HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET); ORDER FOR THE CONTINUATION OF THE REVISION OF BALLOTS CANNOT BE CONSIDERED GRAVE ABUSE OF DISCRETION. —** The Court has long declared in *Dueñas, Jr. v. House of Representatives Electoral Tribunal*, that the HRET was acting well within the rules when it ordered the continuation of revision of ballots. Petitioner cannot resurrect his claims, which had been finally adjudged unmeritorious by this Court, through the present petition. Thus, the fact that the HRET went on with the revision of ballots in 75% of the counter-protested precincts cannot be considered as grave abuse of discretion on the part of the electoral tribunal. Likewise, the circumstance that none of the three Supreme Court Justices took part in the Decision, cannot be taken as proof of grave abuse of discretion. Rule 89 of the 2004 Rules of the House of Representatives Electoral Tribunal provides that "[f]or rendition of decisions and the

adoption of formal resolutions, the concurrence of at least five (5) Members shall be necessary." The HRET Decision dated February 25, 2010 had the concurrence of six of its members. Verily, the HRET was acting in accordance with its rules and cannot be said to have committed any abuse of its discretion.

**APPEARANCES OF COUNSEL**

*Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero Law Offices* for petitioner.
*The Solicitor General* for public respondent.
*Borje Atienza and Partners* 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[1] of the House of Representatives Electoral Tribunal (HRET) dated February 25, 2010 and its Resolution[2] dated March 18, 2010 be declared null and void *ab initio.*

Petitioner was proclaimed as the Congressman for the Second Legislative District of Taguig City. Private respondent filed an election protest with the HRET. After revision of ballots in 100% of the protested precincts and 25% of the counter-protested precincts, the case was submitted for resolution upon the parties' submission of memoranda. However, in its Order[3] dated September 25, 2008, the HRET directed the continuation of the revision and appreciation of ballots for the remaining 75% of the counter-protested precincts. Petitioner's motion for reconsideration of said Order was denied in a HRET Resolution dated October 21, 2008 which reiterated the Order to continue

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[1] *Rollo,* pp. 54-92.

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

[3] *Id.* at 164.

revision in the remaining 75% of the counter-protested precincts. Petitioner then filed a petition for *certiorari* with this Court docketed as G.R. No. 185401, seeking the nullification of said order of revision, alleging that it was issued with grave abuse of discretion. On July 21, 2009, the Court promulgated a Decision dismissing the petition. Said Decision became final and executory and the HRET continued the proceeding in the electoral protest case.

On February 25, 2010, the HRET promulgated its Decision which declared private respondent as the winner with a margin of 37 votes.

In the instant petition, the main thrust of petitioner's argument is that since private respondent's margin of votes is merely 37, this shows that the alleged reason for the HRET's order of revision, *i.e.*, that the proclaimed results of the congressional elections in Taguig City have been substantially affected by the results of the initial revision and appreciation of ballots, is baseless. Petitioner then continued to reiterate his arguments raised in his earlier petition for *certiorari* seeking the nullification of the HRET Resolution dated October 21, 2008. He also pointed out that the three Justices of the Court who are members of the HRET took no part in the HRET's Decision and Resolution denying reconsideration.

In his Comment, private respondent counters that petitioner's allegations do not show grave abuse of discretion on the part of the HRET.

The Court resolves to dismiss the petition for lack of merit.

It is hornbook principle that this Court's jurisdiction to review decisions and orders of electoral tribunals is exercised only upon showing of grave abuse of discretion committed by the tribunal; otherwise, the Court shall not interfere with the electoral tribunal's exercise of its discretion or jurisdiction.[4] Grave abuse of discretion

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[4] *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, 351 SCRA 312, 326-327.

has been defined as the capricious and whimsical exercise of judgment, the exercise of power in an arbitrary manner, where the abuse is so patent and gross as to amount to an evasion of positive duty.[5]

Such showing of grave abuse of discretion is sorely wanting in this case. Petitioner dwells on his theory that there was no justification for the HRET's Order to continue the revision of ballots in 75% of the counter-protested precincts. Since it was eventually determined that private respondent's margin of votes is only 37, this allegedly shows that the results of the initial revision of ballots really had no substantial effect on the proclaimed results and, thus, the order for continuation of revision of ballots was uncalled for. In petitioner's view, the HRET's continuation of revision of ballots, in addition to the circumstance that none of the Supreme Court Justices who are members of the HRET took part in the Decision, are proof that the HRET committed grave abuse of discretion.

The Court has long declared in *Dueñas, Jr. v. House of Representatives Electoral Tribunal*,[6] that the HRET was acting well within the rules when it ordered the continuation of revision of ballots. Petitioner cannot resurrect his claims, which had been finally adjudged unmeritorious by this Court, through the present petition. Thus, the fact that the HRET went on with the revision of ballots in 75% of the counter-protested precincts cannot be considered as grave abuse of discretion on the part of the electoral tribunal.

Likewise, the circumstance that none of the three Supreme Court Justices took part in the Decision, cannot be taken as proof of grave abuse of discretion. Rule 89 of the 2004 Rules of the House of Representatives Electoral Tribunal provides that "[f]or rendition of decisions and the adoption of formal resolutions, the concurrence of at least five (5) Members shall be necessary." The HRET Decision dated February 25, 2010

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[5] *Villarosa v. House of Representatives Electoral Tribunal*, G.R. Nos. 143351 and 144129, September 14, 2000, 340 SCRA 396.

[6] G.R. No. 185401, July 21, 2009, 593 SCRA 316.

had the concurrence of six of its members. Verily, the HRET was acting in accordance with its rules and cannot be said to have committed any abuse of its discretion.

**WHEREFORE,** the petition is *DISMISSED* for lack of merit. The Decision dated February 25, 2010 and the Resolution dated March 18, 2010 of the House of Representatives Electoral Tribunal are *AFFIRMED*.

**SO ORDERED.**

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

*Corona, J.,* no part.

*Carpio Morales, Velasco, Jr.,* and *Leonardo-de Castro, JJ.,* no part, members of HRET.

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**THIRD DIVISION**

[G.R. No. 141508. May 5, 2010]

**ROBERTO S. BENEDICTO and TRADERS ROYAL BANK,** *petitioners, vs.* **MANUEL LACSON, A & A MONTELIBANO HIJOS, INC., ROBERTO ABELLO, DOMINADOR AGRAVANTE, LUISA ALANO, ALEXANDER FARMS, INC., ANGELA ESTATE, INC., GUILLERMO and DOROTHY ARANETA, LETECIA ARANETA, ARCEO RAMOS & SONS, INC., SPOUSES GEORGE & LOURDES ARGUELLES, ASOSACION DE HACENDEROS DE SILAY-SARAVIA, INC. (AHSSI), SALVADOR BAUTISTA, BJB AGRO-INDUSTRIAL CORP., EUGENIO BAUTISTA, LUZ RAMOS BAYOT, CYNTHIA BENEDICTO, EVA BENEDICTO, LEOPOLDO BENEDICTO, MARY JANE BENEDICTO, FLORO**

**BONGCO, FRANCISCO BONGCO, GERARDO BONGCO, MAXCY BORROMEO, QUIRICO CAMUS, CELSO AGRO INDUSTRIAL CORP., JULIA SO DE UYCHIAT, ARTURO UYCHIAT, LUIS UYCHIAT, ELISE UYCHIAT, CIRO LOCSIN AGRICULTURAL CORPORATION, CLAMONT FARMS, INC., SAGRARIO CLAPAROLS, JAIME CLAPAROLS, CLAUDIO LOPEZ, INC., RAMON CLEMENTE, SPOUSES ROMY CONLU and ASUCENA DIASATA, SPOUSES CORNELIO and DOLORES CONSING, LOPE CONSING, SPOUSES RAFAEL and JULIETA CONSOLACION, BALCONER CORDOVA, CONSOLING CORDOVA, RAFAEL COSCULLUELA, CLK AGRO DEVELOPMENT CORP., EMILIO CUAYCONG, JR., SPOUSES JOSE ROBERTO and PATRICIO CUAYCONG, ROMELI CUAYCONG, SONYA CUAYCONG, FELIPE DALIMO-OS, UBERTA DALIMO-OS, DELARICA REALTY, DOLL AGRICULTURAL CORP., DR. ANTONIO LIZARES CO., INC., SPOUSES BONIFACIO and URBANA DUJON, ELAR AGRO INDUSTRIAL CORP., ELCEE FARMS, INC., ESTATE OF FERNANDO ERENETA, SPOUSES BENJAMIN and TERESITA ESTACIO, EUSEBIO INCORPORATED, FARMLAND INCORPORATED, FELICIA AGRI DEVELOPMENT CORP., FELISA AGRI CORPORATION, SPOUSES ROLANDO and NELLY FERMIN, FERTI-ACRES AGRI-CULTURAL CORPORATION, FRANCISCO JAVIER LACSON *Y* HERMANOS, GAMBOA HERMANOS, INC., HONORATO GAMBOA, ESTATE OF REMEDIOS GAMBOA, ANTONIO GASTON, HEIRS OF GERARDO GASTON, ESTATE OF JOSE MA. GASTON, VICTOR MA. GASTON, JOSE MA. GASTON, JOSE MA. GOLEZ, ANTONIO GONZAGA, ERNESTO GONZAGA, JESUS GONZAGA, LUIS GONZAGA, GONZAGA REAL ESTATE ENTERPRISES, INC., ROBERT GONZAGA, GREEN SOILS AGRICULTURE, INC., ESTATE OF REMEDIOS L. *VDA. DE* GUINTO, WARLITO**

**USTILO, G.V. & SONS, INC., ENCARNACION HERNAEZ, SPOUSES MIGUEL and CECILIA MAGSAYSAY, ADELINO HERNANDEZ, SPOUSES ABELARDO and EMILY HILADO, SPOUSES ALFREDO and TERESITA HILADO, RAMON HILADO, SPOUSES REMO and ELSIE HINLO, SPOUSES DANILO and NIMFA HINLO, MA. CRISTINA HOJILLA, DIOSDADO and DIONISIO HOSALLA, JALIMONT REALTY, INC., ALBERTO and BENJAMIN JALANDONI, DANIEL JALANDONI, JALKK CORPORATION, LEONOR JAVELLANA, ERIBERTO JESENA, PISON JESUSA and SISTERS, JISARA AGRI DEVELOPMENT CORPORATION, J.H. TAMPINCO AGRICULTURAL CORP., LILIA LOPEZ DE JISON, ROBERTO JISON, JOMILLA AGRO INDUSTRIAL VENTURES, INC., BENIGNA JONOTA, JOSEFINA RODRIGUEZ AGRICULTURAL CORP., JT ALUNAN AGRI. CORP., ANTONIO JUGO, SPOUSES JUANITO JUMILLA and SANTAS DALIMO-OS, ESTATE OF CASILDA JUSTINIANI, SPOUSES ALEJANDRO and ANTONIO KANA-AN, AGUSTIN KILAYCO, SPOUSES RODOLFO and EMMA LACSON, EMMANUEL LACSON, ESTATE OF ERNESTO LACSON, LACSON HERMANOS, INC., ESTATE OF FELIPE LACSON, MANUEL LACSON, ESTATE OF MANUELA *VDA. DE* LACSON, PEDRO LACSON, RAMON LACSON, SR., TERESA LACSON, RODRIGO LACSON, LACTOR ESTATE DEVELOPMENT CORP., LIBERTINO AGUTANG, CARMEN CONSING LA'O, JOSE LA'O, JULIA LA'O, LA SALVACION AGRICULTURAL CORP., ENRIQUE LEDESMA, LEDESMA HERMANOS, INC., JESUS LEDESMA, SPOUSES JOSE MA. and EVA LEDESMA, LEGA FARMS, CORP., ESTATE OF ANASTACIO LEGARDE, LIMJAP-ALUNAN AGRI, JESUS LIZARES, JOSE LIZARES, LUIS LIZARES, NILO LIZARES, SR. and JR., SPOUSES JOSE and PERLA LIZARES, ROBERTO LIZARES, ANTONIO LOCSIN, FEDERICO LOCSIN,**

**JR., SPS. ROBERT and JEAN MARIE WINEBURGER, ESTATE OF JOSE LOCSIN, OSCAR LOCSIN, SPOUSES JOSE MA. and MARGARITA LOCSIN, VICENTE LOCSIN, LONOY AGRICULTURAL CORP., DOLORES LOLITA *VDA. DE* LOPEZ, FORTUNATO LOPEZ, NER LOPEZ, ESTATE OF NIEVES LOPEZ, POMPEYO LOPEZ, ROSENDO LOPEZ, ARTURO DE LUZURIAGA, CLAUDIO DE LUZURIAGA, CATALINA *VDA. DE* MAKILAN, BENITO MALAN, BASILIO MANALO, MANCY & SONS, INC., MANILAC AGRO COMMERCIAL CORP., SPOUSES MANUEL and LUISA MANOSA, JULIO and GENEVIEVE MAPA, MAPLE AGRI-CORP., INC., MARLAND AGRICULTURAL CORP., MARVIA & CO., INC., ANTONIO MENDOZA, BERNARDO MENDOZA, JR., SPOUSES BERNARDO and ROSARIO MENDOZA, MALAURIE AGRICULTURAL DEVELOPMENT CORP., HEIRS OF MANUEL and CEFERINO MONFORT, ESTATE OF MANUEL MONFORT, JR., SPOUSES EMILIO and LINDA MONTALVO, MONTILLA SISTERS AGRICULTURAL CORP., ANTONIO MONTINOLA, NIEVES AGRO-INDUSTRIAL DEVELOPMENT CORP., MAMERTO DE OCA, O. LEDESMA & CO., INC., HEIRS OF MERCEDES PABIANA, TEODULO PABIANA, ESTATE OF ROSARIO PALENZUELA, ESTATE OF ENCARNACION PANLILIO, JOSE PASCUAL, JOHNNY DE LA PENA, ANICETA PERDIGUEROS, AQUILES PERDIGUEROS, LUISA PEREZ, CRISTINA PERTIERRA, PHISON FARMS, INC., ESTATE OF JOSEFINA PICCIO, PISON-LOCSIN KAUTURAN, NICOLAS POLINARIO, PUYAS AGRO, INC., ESTATE OF LEONOR DE LA RAMA, LUIS RAMA, RAMON DE LA RAMA AGRO DEVELOPMENT CORP., REMO RAMOS, BENJAMIN RAMOS, MARIANO RAMOS, SPOUSES ENRIQUE and TERESITA REGALADO, SPS. JOSE MA. and AMELIA REGALADO, MANUEL REGALADO, AQUILINO REONIR, RHE & SONS AGRO**

**INDUSTRIAL CORP., ROAM AGRICULTURAL CORP., AMANDO ROBILLO, ROMALUX AGRI FARMS, INC., LETECIA DEL ROSARIO, MANUEL DEL ROSARIO, EULALIA ROSELLO, ROSENDO H. DE LA RAMA & CO., BIBIANO SABINO, SPOUSES REINHARDT and CORAZON SAGEMULLER, PEDRO SAJO, SPOUSES AQUILES and MA. CRISTINA SAJO, SAN ANTONIO FARMS, JOSE MA. SANTOS, MARCELINO SAUSI, STA. CLARA ESTATE, INC., SPOUSES FRANCISCO and JULITA SERRIOS, ANTONIO SIAN, SIASON-DITCHING AGRO INDUSTRIAL CORP., SPOUSES LUCRECIO SORIANO and LIBERATA DALIMO-OS, IMELDA TAMPINCO, T. GENSOLI & CO., TINIHABAN AGRICULTURAL CORP., SPOUSES LINO and THELMA TOLEDO, FRANCISCO TORIANO, GODOFREDO TORIANO, LUCRECIO TORIANO, MOISES TORIANO, TOTA, INC., DEMOCRITO TRECHO, JESUSA TRECHO, PABIO TRECHO, RUFINO TRECHO, ESTATE OF FLORENTINO TREYES, ESTATE OF VICTOR TREYES, FERNANDO TREYES, LILIA TREYES, SOCORRO TUVILLA, FRANCIS TUVILLA, SPS. JOE MARIE and VICTORIA TUVILLA, JOSE URBANOZO, JR., ESTATE OF ROSARIO VALENCIA, EDUARDO DE VENECIA, VICTORIAS MILLING, CO., INC., SPOUSES EDSEL and RITA VILLACIN, JOSEFA VILLAERA, VILLALAYA AGRO DEVELOPMENT, SERAFIN VILLANUEVA, IRVING VILLASOR, DOMINICIANO VINARTA, ROSENDO and CANDIDO VINARTA, BERNARD YBIERNAS, ESTRELLA YBIERNAS, SPOUSES CARLOS and EDITH YLANAN, BENITO YOUNG, SPOUSES RENATO and VICTORIA YULO, and JESUS YUSAY,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING; ESSENCE THEREOF, EXPLAINED;**

**APPLICATION IN CASE AT BAR. —** The essence of forum shopping is the filing by a party against whom an adverse judgment has been rendered in one forum, seeking another and possibly favorable opinion in another suit other than by appeal or special civil action for *certiorari*; the act of filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment. Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the action under consideration. There is no dispute that the dismissal of the complaint in the Pasig case, upon notice of the plaintiffs therein, was sanctioned by Section 1, Rule 17 of the Revised Rules of Court. Quite clearly, the Order declared that the dismissal of the complaint was without prejudice to the re-filing thereof. Moreover, even if the same were tested under the rules on *litis pendentia* and *res judicata*, the danger of conflicting decisions cannot be present, since the Pasig case was dismissed even before a responsive pleading was filed by petitioner. Since a party resorts to forum shopping in order to increase his chances of obtaining a favorable decision or action, it has been held that a party cannot be said to have sought to improve his chances of obtaining a favorable decision or action where no unfavorable decision has even been rendered against him in any of the cases he has brought before the courts.

**2. ID.; ID.; ID.; ID.; THERE IS NO NEED TO STATE IN THE CERTIFICATE OF NON-FORUM SHOPPING IN A SUBSEQUENT RE-FILED COMPLAINT THE FACT OF THE PRIOR FILING OR DISMISSAL OF THE FORMER COMPLAINT; SUSTAINED. —** In *Roxas v. Court of Appeals*, this Court had on occasion ruled that when a complaint is dismissed without prejudice at the instance of the plaintiff, pursuant to Section 1, Rule 17 of the 1997 Rules of Civil Procedure, there is no need to state in the certificate of non-forum shopping in a subsequent re-filed complaint the fact of the prior filing and dismissal of the former complaint, thus: **Considering that the complaint in Civil Case No. 97-0523 was dismissed without prejudice by virtue of the plaintiff's (herein petitioner's) Notice of Dismissal dated November 20, 1997 filed pursuant to Section 1, Rule 17 of the 1997 Rules of Civil Procedure, there is no need to state in the certificate of non-forum shopping in Civil Case No. 97-**

**0608 about the prior filing and dismissal of Civil Case No. 97-0523**. In *Gabionza v. Court of Appeals,* we ruled that it is scarcely necessary to add that Circular No. 28-91 (now Section 5, Rule 7 of the 1997 Rules of Civil Procedure) must be so interpreted and applied as to achieve the purposes projected by the Supreme Court when it promulgated that Circular. Circular No. 28-91 was designed to serve as an instrument to promote and facilitate the orderly administration of justice and should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules or procedure – which is to achieve substantial justice as expeditiously as possible. The fact that the Circular requires that it be strictly complied with merely underscores its mandatory nature in that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances. Thus, an omission in the certificate of non-forum shopping about any event that would not constitute *res judicata* and *litis pendencia* as in the case at bar, is not fatal as to merit the dismissal and nullification of the entire proceedings considering that the evils sought to be prevented by the said certificate are not present. It is in this light that we ruled in *Maricalum Mining Corp. v. National Labor Relations Commission* that a liberal interpretation of Supreme Court Circular No. 04-94 on non-forum shopping would be more in keeping with the objectives of procedural rules which is to "secure a just, speedy and inexpensive disposition of every action and proceeding."

**3. ID.; RULES OF COURT; TECHNICALITIES SHOULD NEVER BE USED TO DEFEAT THE SUBSTANTIVE RIGHTS OF THE OTHER PARTY; RATIONALE. —** Verily, in numerous occasions, this Court has relaxed the rigid application of the rules to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should thus not serve as basis of decisions. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. In that way, the ends of justice would be

better served. For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.

**4. ID.; CIVIL PROCEDURE; ACTIONS; *PRINCIPLE OF LITIS PENDENTIA*; REQUISITES. —** The requisites of *litis pendentia* are: (a) the identity of parties, or at least, such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases, such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.

**5. ID.; ID.; ID.; ID.; CONSTRUED. —** The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action. This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons.

**6. ID.; ID.; CAUSE OF ACTION; TEST TO DETERMINE IDENTITY OF THE CAUSES OF ACTION; EXPLAINED. —** The test to determine identity of causes of action is to ascertain whether the same evidence necessary to sustain the second cause of action is sufficient to authorize a recovery in the first, even if the forms or the nature of the two (2) actions are different from each other. If the same facts or evidence would sustain both, the two (2) actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not. This method has been considered the most accurate test as to whether a former judgment is a bar in subsequent proceedings between the same parties. It has even been designated as infallible.

**7. ID.; ID.; MOTION TO DISMISS; AN ORDER DENYING THE MOTION TO DISMISS IS MERELY INTERLOCUTORY; EFFECT. —** It is a settled rule that an Order denying a motion to dismiss is merely interlocutory and, therefore, not appealable, nor can it be subject of a petition for review on *certiorari*. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The ordinary procedure

to be followed in that event is to file an answer, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment. While the rule refers to instances when a motion to dismiss is completely denied, this Court finds no reason not to apply the same in instances when some of the grounds raised in a motion to dismiss are denied by the lower court.

**APPEARANCES OF COUNSEL**

*Gonzalez Sinense Jimenez & Associates* for Traders Royal Bank.

*Dominador R. Santiago* for petitioner Administratrix of the Estate of the Late Roberto S. Benedicto.

**D E C I S I O N**

**PERALTA, *J.*:**

Before this Court is a Petition for Review on *certiorari*,[1] under Rule 45 of the Rules of Court, seeking to set aside the September 30, 1999 Decision[2] and January 10, 2000 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 53841.

The facts of the case are as follows:

Under Presidential Decree No. 388,[4] the Philippine Sugar Commission (PHILSUCOM) was created and vested with the power to act as the single buying and selling agency of sugar in the Philippines. On September 7, 1977, PHILSUCOM further organized the National Sugar Trading Corporation (NASUTRA) as its buying marketing arm. Petitioner Robert S. Benedicto[5]

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[1] *Rollo*, pp. 12-59.

[2] Penned by Associate Justice Fermin A. Martin, Jr., with Associate Justices B.A. Adefuin-dela Cruz and Presbitero J. Velasco, Jr. (now a member of this Court), concurring; *id.* at 64-89.

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

[4] Promulgated on February 2, 1974, as amended by Presidential Decree No. 1192 dated September 2, 1977.

[5] Note that Robert S. Benedicto died on May 15, 2000 as evidenced by a Certificate of Death; *rollo*, p. 686. Per this Court's June 20, 2001 Resolution,

was the concurrent Chairman and President of Traders Royal Bank[6] and NASUTRA.

The case stems from a Complaint,[7] docketed as **Civil Case No. 95-9137** (**Bacolod Case**), filed by respondents, individual sugar planters and agricultural corporations Manuel Lacson *et al.*, on November 23, 1995, in the Regional Trial Court (RTC) of Bacolod City, Branch 44. Respondents' complaint was premised on a claim for unpaid shares based on Sugar Order No. 2, series of 1979-1980[8] and Sugar Order No. 1, series of

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Robert S. Benedicto has been substituted by the administratix of his estate; *id.* at 719.

[6] Note this Court's December 11, 2006 First Division Resolution wherein Traders Royal Bank's motion to withdraw as co-petitioner was granted on the basis of an amicable settlement/compromise agreement with respondents; *id.* at 1065.

[7] *Rollo*, pp. 132-161.

[8] PHILSUCOM SUGAR ORDER NO. 2

Series of 1979-1980

x x x x x x x x x

1. The sugar pertaining to the 1979-1980 crop shall continue to be liquidated by NASUTRA at the following prices without prejudice to future adjustments as circumstances may warrant:

   "A" (Export Sugar) ——— ₱ 90.00 per picul

   "C" (Reserve Sugar)——— 90.00 per picul

   "B" (Domestic Sugar) —— 110.00 per picul

   "B" (Washed Sugar) —— 124.00 per picul

2. That in addition to these prices, an additional price on "A" and "C" sugars of the 1979-80 crop which are exported equivalent to 50% of the export profits of NASUTRA over and above its break-even cost shall be paid to the producers (planters and millers) on a quarterly and pro rata basis beginning the end of the first quarter of calendar year 1980. The balance of 50% of such export profits of NASUTRA shall be applied to the full repayment of the PHILSUCOM-NASUTRA loans above-mentioned.

3. That this order shall apply retroactively to all sugars already produced since the start of milling of the 1979-1980 crops and prospectively to all sugars still to be produced up to the end of crop year 1979-1980. x x x; *id.* at 177-178.

1980-1981[9] issued by PHILSUCOM. The claims cover the sugar export sales[10] supposedly undervalued by NASUTRA and coursed

[9] PHILSUCOM SUGAR ORDER NO. 1
Series of 1980-1981

x x x x x x x x x

2. That sugar pertaining to the 1980-1981 crop shall be liquidated by NASUTRA at the following prices, without prejudice to future adjustments as circumstances may warrant:

"A" (Export Sugar) ———— ₱ 115.00 per picul

"C" (Reserve Sugar) ———— 115.00 per picul

"B" (Domestic Sugar) ———— 110.00 per picul

"B" (Washed Sugar) ———— 124.20 per picul

In addition to the above-stated liquidation price for "A" and "C" Sugar of the 1980-1981 crop, an additional price for the same classes of sugar which are exported equivalent to 50% of the export profits of NASUTRA over and above it break-even cost shall be paid to the producers (planters and millers) on a quarterly and pro rata basis beginning with the first quarter of calendar year 1981. The remaining 50% of such export profits of NASUTRA shall be applied to the repayment of loans from local and foreign sources contracted by PHILSUCOM-NASUTRA to support the liquidation prices paid to the producers which were at a level higher than export prices prevailing in the world market.

The above stated liquidation prices for crop year 1980-1981 shall apply retroactively to all sugars already produced since September 1, 1980 and prospectively to all sugars still to be produced up to the end of August 1981. x x x ; *id.* at 175-176.

[10] "Summary of Undervalued/ Under-Declared Nasutra Export Sales Coursed Thru TRB;" *id.* at 179.

| Shipment Date | Vessel | Quantity | Actual Collection | Reported Collection | Undervaluation |
|---|---|---|---|---|---|
| 10/25/80 | MV Fairwind | 450.00 LT | $266,716.80 | $153,115.20 | $113,601.60 |
| 11/13/80 | MV Dona Corazon | 24,350.00LT | 10,524,722.40 | 10,359,697.60 | 183,024.80 |
| 12/02/80 | MV Dona Magdalena | 725.00 LT | 429,710.40 | 246,685.60 | 183,024.80 |
| 12/10/80 | MVCenturion Bulker | 22,800.00LT | 13,375,756.80 | 7,757,836.80 | 5,617,920.00 |
| 01/21/81 | MV Tauros | 25,565.00LT | 16,327,592.82 | 9,373,247.73 | 6,954,345.09 |
| 01/27/81 | MV Union Caribbean | 7,800.00 LT | 4,506,102.67 | 2,751,273.91 | 1,754,828.76 |

through Traders Royal Bank, the total amount of which is claimed by respondents to be $33,907,172.47, to wit:

SUMMARY OF CLAIMS UNDER THE FIRST TO FIFTEENTH CAUSES OF ACTION

92. As tabulated in Annex C hereof, while the total amount actually paid by the buyers and collected by the PHILSUCOM and the Defendants NASUTRA, BENEDICTO, MONTEBON and TRB on the sales of export sugar subject of the preceding Causes of Action, amounted to US$ 94,146,954.03, the PHILSUCOM and the said Defendants recorded and reported a total collection of only US$60,239,781.56, resulting in an undervaluation of Defendant NASUTRA's export sales by US$33,907,172.74 and, correspondingly, in an equivalent understatement of the amount due the Plaintiffs and other sugar producers in the profits realized from such sales, pursuant to the directive of then President Marcos as implemented in the PHILSUCOM SUGAR ORDERS hereto attached as Annexes B and B-1 hereof.

93. Accordingly, on the basis of their respective production of "A" and "C" sugar for the 1980-1981 crop year *vis-à-vis* the national production of 20,474,653 piculs of the same classes of sugar for the same crop year, the Plaintiffs are entitled to the payment by Defendants of their *pro rata* share, in the amounts indicated opposite

| | | | | | |
|---|---|---|---|---|---|
| 12/22/80 | MV Silver Wave | 10,000.00LT | 6,079,494.04 | 3,422,361.71 | 2,657,132.33 |
| 01/02/81 | MV Caribbean Ace | 6,213.90 LT | 3,646,837.25 | 2,052,933.37 | 1,593,903.88 |
| 01/02/81 | MV Hokuho Maru | 4,467.40 LT | 2,621,844.69 | 1,475,928.89 | 1,145,915.80 |
| 01/29/81 | MV Capitan Kushnarenko | 14,763.78LT | 9,017,954.18 | 5,228,288.37 | 3,789,665.81 |
| 01/30/81 | MV Irene | 8,858.26 LT | 5,678,577.25 | 4,649,332.99 | 1,029,244.26 |
| 02/02/81 | MV Sophia | 11,000.00MT | 6,353,729.95 | 3,683,666.14 | 2,670,063.81 |
| 02/19/81 | MV Ios | 2,670.08 LT | 1,668,653.57 | 1,222,970.89 | 445,682.68 |
| 03/10/81 | MV Faith Five | 306.68 MT | 117,610.01 | 104,605.56 | 13,004.45 |
| 06/02/81 | MV Dona Magdalena | 22,800.00 LT | 13,513,651.20 | 7,757,836.80 | 5,755,814.40 |
| TOTALS | | | $94,146,954.03 | $60,239,781.56 | $33,907,172.47 |

their respective names in Annex C-1 hereof, in the undeclared profit of US$33,907,172.74 realized from the export sales, subject of the preceding Causes of Action, during the said crop year.[11]

Petitioner, as President and concurrent Chairman of both Traders Royal Bank and NASUTRA, was charged by respondents with fraud and bad faith, not only in refusing to furnish them accurate data on NASUTRA's export sugar sales, but, more importantly, in under-reporting and under-declaring the true prices of the shipments.[12] Respondents, thus, prayed for a refund of their shares in the undervalued shipments.

On December 27, 1995, petitioner filed a Motion to Dismiss,[13] arguing therein (1) that respondents had violated the rule on forum shopping; (2) that respondents have no cause of action; (3) that the issues involved are *res judicata* or rendered moot by case law; and (4) that the claim or demand has already been paid.

On the issue of forum shopping, petitioner argued that respondents have already filed the following cases beforehand, *viz.*: (a) **Civil Case No. 4301**, before Branch 51 of the RTC of Bacolod, entitled *Hector Lacson, et al. v. NASUTRA et al.*, (**Hector Lacson Case**); (b) **Civil Case No. 88-46368**, before Branch 23 of the RTC of Manila, entitled *Ramon Monfort et al. v. NASUTRA et al.* (**Ramon Monfort Case**); and (c) **Civil Case No. 65156**, before Branch 264 of the RTC of Pasig, entitled *Manuel Lacson, et al. v. NASUTRA, et al.* (**Pasig Case**).[14]

On the issue of no cause of action, petitioner argued that: (a) not being their agent, NASUTRA had no obligation to share its profits with respondents; (b) the questioned transactions were already perfected and consummated both with respect to the delivery of the sugar and full payment of the price; (c) respondents

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[11] *Rollo*, pp. 158-159.

[12] *Id.* at 74.

[13] *Id.* at 192-216.

[14] *Id.* at 74.

are estopped from questioning the subject transactions, having executed in favor of NASUTRA a "Chattel Mortgage on Standing Crop" which authorized the latter, among others, to sell or dispose of the same at the time, place, and for the price which it may deem convenient and reasonable; and (d) NASUTRA had long been dissolved and liquidated under Presidential Decree No. 2005 and Executive Order No. 114.[15]

Lastly, petitioner argued that the issues posed by respondents are barred by *res judicata* and/or rendered moot by the decisions in the following cases, *viz*.: (a) G.R. No. 55798, entitled *Corazon Zayco, et al. v. NASUTRA, et al.*; (b) Civil Case No. Q- 33723, entitled *Hortensia Starke v. NASUTRA, et al.*; (c) Civil Case No. 3265, entitled *Cecilia Magsaysay, et al. v. NASUTRA, et al.*; and (d) Civil Case No. 16439, entitled *John Keng Seng v. NASUTRA, et al*.[16]

On March 26, 1996, respondents filed a Consolidated Opposition to Motion to Dismiss.[17] Simultaneous thereto, respondents also filed an "Amended Certification" to the following effect:

x x x x x x x x x

2. **That, except for the case entitled *Manuel Lacson v. Roberto S. Benedicto, et al.*, Civil Case 65156, Pasig, RTC Branch 264, filed by some of the Plaintiffs on June 20, 1995 and subsequently withdrawn by them without prejudice on November 14, 1995 pursuant to Sec. 1, Rule 17 prior to the filing of the present suit**, Plaintiffs have not commenced any other action or proceeding involving the same issues in the Supreme Court, the Court of Appeals, or any other tribunal or agency; that to the best of my knowledge, no such action or proceeding is pending the Supreme Court, the Court of Appeals, or any other tribunal or agency; and if I or they should hereafter learn that a similar action or proceeding has been filed or pending before the Supreme Court, Court of Appeals, or any other tribunal or agency,

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

[16] *Id.* at 75.

[17] *Id.* at 217-268.

Plaintiffs and I hereby undertake to report such fact within five (5) days therefrom to this Honorable Court.[18]

On June 5, 1996, the RTC issued an Order[19] granting petitioner's motion to dismiss the complaint, the dispositive portion of which reads:

> WHEREFORE, premises considered, the Motions to Dismiss are hereby GRANTED. The case against all the defendants is ordered DISMISSED.
>
> Furnish copies of this Order all counsel on record for their information.
>
> SO ORDERED.[20]

The RTC ruled that a perusal of the copies of the complaints in two cases, namely: Hector Lacson Case and Ramon Monfort Case show similarities with the present Bacolod Case such that different decisions or rulings would give rise to conflicting rules on law on similar issues.[21] The RTC also held that respondents were guilty of forum shopping for failure to report in their original anti-forum shopping certification in the Bacolod Case that they had filed a similar case with the RTC of Pasig notwithstanding that the same had been withdrawn by them. The RTC ruled that even if the Pasig Case had been withdrawn, the same had already been commenced.[22] Thus, the RTC held that there was a need to report the same in the anti-forum shopping certification in the Bacolod Case. Lastly, the RTC ruled that NASUTRA had already been dissolved and hence, respondents have no cause of action against NASUTRA.[23] The other grounds raised, however, by petitioner in support of its motion to dismiss were denied by

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[18] *Id.* at 76. (Emphasis supplied.)

[19] *Id.* at 400-405.

[20] *Id.* at 405.

[21] *Id.* at 403.

[22] *Id.* at 404.

[23] *Id.*

the RTC, as the same did not appear to be indubitable without further evidence.[24]

Respondents appealed the RTC Order to the CA.

On September 30, 1999, the CA rendered a Decision reversing the assailed RTC Order. The CA found merit in respondents' appeal and ordered for the remand of the case to the RTC. The dispositive portion of the Decision reads:

> WHEREFORE, the appeal is GRANTED and the Assailed Order dated June 5, 1996 is REVERSED and SET ASIDE, and in lieu thereof, a new one is entered ordering the REMAND of the case to the court of origin for further proceedings.
>
> SO ORDERED.[25]

Aggrieved by the CA Decision, petitioner filed a Motion for Reconsideration,[26] which was, however, denied by the CA in a Resolution dated January 10, 2000.

Hence, herein petition, with petitioner raising the following errors committed by the CA, to wit:

> 5.1. WHEN IT ABSOLVED THE PRIVATE RESPONDENTS OF ANY VIOLATION OF THE ANTI-FORUM SHOPPING RULE NOTWITHSTANDING THEIR (CONCEDED) FAILURE TO SEASONABLY APPRISE THE BACOLOD COURT OF THE EARLIER FILING OF A SIMILAR CASE BEFORE THE PASIG COURT, THE SAME BEING A MATERIAL INFORMATION THE NON-DISCLOSURE OR CONCEALMENT THEREOF CONSTITUTING AN INEXCUSABLE OMISSION CLEARLY PENALIZED UNDER THE PERTINENT SC CIRCULARS AND SECTION 5, RULE 7 OF THE NEW RULES OF CIVIL PROCEDURE;
>
> 5.2. WHEN IT REFUSED TO APPLY THE PRINCIPLE OF *LITIS PENDENTIA* NOTWITHSTANDING THE (CONCEDED) SIMILARITIES IN THE CIRCUMSTANCES OF THE PLAINTIFFS, THE IDENTITIES OF THE DEFENDANTS AND, MOREOVER, THE SIMILARITIES IN SOME OF THE ANTECEDENT ISSUES IN CIVIL

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[24] *Id.*

[25] *Id.* at 88.

[26] *Id.* at 594-604.

CASE NO. 95-9137 AND IN THE OTHER PENDING CASES AGAINST THE HEREIN PETITIONERS; and

5.3. WHEN IT FAILED TO CONSIDER THAT CIVIL CASE NO. 95-9137 DESERVES DISMISSAL, AT ANY RATE, BASED ON THE OTHER GROUNDS INVOKED BY THE HEREIN PETITIONERS, NAMELY, LACK OF CAUSE OF ACTION, *RES JUDICATA*, PAYMENT AND PRESCRIPTION.[27]

The petition is not meritorious.

**On Forum Shopping: Civil Case No. 95-9137 (Bacolod Case) *vis-a-vis* Civil Case No. 65156 (Pasig Case)**

Petitioner contends that respondents are guilty of forum shopping because they failed to disclose, at the time of the filing of the Bacolod Case, the fact that some of the respondents had earlier commenced a similar action in Pasig. Petitioner claims that respondents should have informed the RTC of Bacolod of the commencement and subsequent withdrawal of the Pasig Case in the certificate of non-forum shopping. Petitioner insists that even if the Pasig Case was subsequently withdrawn, the same still constituted a "commenced action," which is required to be disclosed under the rules of forum shopping.

Section 5, Rule 7 of the 1997 Rules of Civil Procedure provides that:

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.

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[27] *Id.* at 23.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt as well as a cause for administrative sanctions.

A perusal of the records shows that, with the exception of additional party-plaintiffs, the Pasig Case actually has a strong resemblance to the Bacolod Case. The Pasig Case, however, was dismissed upon the instance of the plaintiffs even before the Bacolod Case was filed. The RTC Order[28] allowing the dismissal of the complaint in the Pasig Case is hereunder reproduced, to wit:

x x x x x x x x x

On November 14, 1995, A Notice of Dismissal was filed by plaintiffs thru counsel, Attys. Ricardo G. Nepomuceno, Jr. and Epifanio Sedigo, Jr., pursuant to Section 1, Rule 17 of the Rules of Court.

**According to the said Rule, plaintiff may, at any time before service of answer, dismiss an action by filing a notice of dismissal.**

Records show that no answer has yet been filed by defendants.

Being in conformity to the Rules, the same is hereby granted.

WHEREFORE, herein complaint is hereby DISMISSED and **without prejudice to the re-filing thereof**.

Notify parties and counsel of this Order.

SO ORDERED.[29]

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

[29] *Id.* (Emphasis supplied.)

The essence of forum shopping is the filing by a party against whom an adverse judgment has been rendered in one forum, seeking another and possibly favorable opinion in another suit other than by appeal or special civil action for *certiorari*;[30] the act of filing of multiple suits involving the same parties for the same cause of action, either simultaneously or successively for the purpose of obtaining a favorable judgment.[31] Forum shopping exists where the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in the action under consideration.[32]

There is no dispute that the dismissal of the complaint in the Pasig case, upon notice of the plaintiffs therein, was sanctioned by Section 1, Rule 17 of the Revised Rules of Court.[33] Quite clearly, the Order declared that the dismissal of the complaint was without prejudice to the re-filing thereof. Moreover, even if the same were tested under the rules on *litis pendentia* and *res judicata*, the danger of conflicting decisions cannot be present, since the Pasig case was dismissed even before a responsive pleading was filed by petitioner. Since a party resorts to forum shopping in order to increase his chances of obtaining a favorable decision or action, it has been held that a party cannot be said to have sought to improve his chances of obtaining a favorable decision or action where no unfavorable decision has even been rendered against him in any of the cases he has brought before the courts.[34]

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[30] *Heirs of Trinidad de Leon Vda. De Roxas v. Court of Appeals*, G.R. No. 138660, February 5, 2004, 422 SCRA 101.

[31] *Executive Secretary v. Gordon*, G.R. No. 134171, November 18, 1998, 298 SCRA 736, 740.

[32] *Marcopper Mining Corporation v. Solidbank Corporation*, G.R. No. 134049, June 17, 2004, 432 SCRA 360, citing cases.

[33] Section 1, Rule 17 of the Revised Rules of Court states:

SECTION 1. *Dismissal upon notice by plaintiff.* – A complaint may be dismissed by the plaintiff by filing a notice of dismissal at any time before service of the answer or of a motion for summary judgment. Upon such notice being filed, the court shall issue an order confirming the dismissal. Unless otherwise stated in the notice, the dismissal is without prejudice, x x x.

[34] *Executive Secretary v. Gordon*, *supra* note 31, at 741.

While the RTC may have been of the opinion that the Pasig Case was nevertheless "commenced" and, therefore, the same should have been stated by respondents in their certification of non-forum shopping in the Bacolod case, this Court does not share the same view.

In *Roxas v. Court of Appeals*,[35] this Court had on occasion ruled that when a complaint is dismissed without prejudice at the instance of the plaintiff, pursuant to Section 1, Rule 17 of the 1997 Rules of Civil Procedure, there is no need to state in the certificate of non-forum shopping in a subsequent re-filed complaint the fact of the prior filing and dismissal of the former complaint, thus:

**Considering that the complaint in Civil Case No. 97-0523 was dismissed without prejudice by virtue of the plaintiff's (herein petitioner's) Notice of Dismissal dated November 20, 1997 filed pursuant to Section 1, Rule 17 of the 1997 Rules of Civil Procedure, there is no need to state in the certificate of non-forum shopping in Civil Case No. 97-0608 about the prior filing and dismissal of Civil Case No. 97-0523**. In *Gabionza v. Court of Appeals*, we ruled that it is scarcely necessary to add that Circular No. 28-91 (now Section 5, Rule 7 of the 1997 Rules of Civil Procedure) must be so interpreted and applied as to achieve the purposes projected by the Supreme Court when it promulgated that Circular. Circular No. 28-91 was designed to serve as an instrument to promote and facilitate the orderly administration of justice and should not be interpreted with such absolute literalness as to subvert its own ultimate and legitimate objective or the goal of all rules or procedure – which is to achieve substantial justice as expeditiously as possible. The fact that the Circular requires that it be strictly complied with merely underscores its mandatory nature in that it cannot be dispensed with or its requirements altogether disregarded, but it does not thereby interdict substantial compliance with its provisions under justifiable circumstances.

Thus, an omission in the certificate of non-forum shopping about any event that would not constitute *res judicata* and *litis pendencia* as in the case at bar, is not fatal as to merit the dismissal and nullification of the entire proceedings considering that the evils

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[35] 415 Phil. 430 (2001).

sought to be prevented by the said certificate are not present. It is in this light that we ruled in *Maricalum Mining Corp. v. National Labor Relations Commission* that a liberal interpretation of Supreme Court Circular No. 04-94 on non-forum shopping would be more in keeping with the objectives of procedural rules which is to "secure a just, speedy and inexpensive disposition of every action and proceeding."[36]

Verily, in numerous occasions, this Court has relaxed the rigid application of the rules to afford the parties the opportunity to fully ventilate their cases on the merits. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should thus not serve as basis of decisions.[37] Technicalities should never be used to defeat the substantive rights of the other party.[38] Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities.[39] In that way, the ends of justice would be better served.[40] For, indeed, the general objective of procedure is to facilitate the application of justice to the rival claims of contending parties, bearing always in mind that procedure is not to hinder but to promote the administration of justice.[41] In the case at bar, considering that the same involves the various claims of 371 respondents, this Court finds that justice and equity are best served by allowing respondents to prove their case on the merits rather than denying them their day in court on a strict application of the rules.

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[36] *Id* at 445. (Emphasis supplied.)

[37] *Crystal Shipping, Inc. v. Natividad*, G.R. No. 154798, October 20, 2005, 473 SCRA 559, 566.

[38] *Dalton-Reyes v. Court of Appeals*, G.R. No. 149580, March 16, 2005, 453 SCRA 498, 508.

[39] *Philippine Amusement and Gaming Corporation v. Angara*, G.R. No. 142937, November 15, 2005, 475 SCRA 41, 53.

[40] *Heavylift Manila, Inc. v. Court of Appeals*, G.R. No. 154410, October 20, 2005, 473 SCRA 541, 547.

[41] *Asian Spirit Airlines (Airline Employees Cooperative) v. Bautista*, G.R. No. 164668, February 14, 2005, 451 SCRA 294, 301.

**On *Litis Pendentia*: Bacolod Case, Hector Lacson Case, Ramon Monfort Case**

Petitioner contends that the CA erred when it refused to apply the principle of *litis pendentia* notwithstanding the similarities in the circumstances of the plaintiffs, the identities of the defendants and the similarities in some of the antecedent issues in the Bacolod Case, the Hector Lacson Case and Ramon Monfort Case.

The requisites of *litis pendentia* are: (a) the identity of parties, or at least, such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases, such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[42]

The underlying principle of *litis pendentia* is the theory that a party is not allowed to vex another more than once regarding the same subject matter and for the same cause of action.[43] This theory is founded on the public policy that the same subject matter should not be the subject of controversy in courts more than once, in order that possible conflicting judgments may be avoided for the sake of the stability of the rights and status of persons.[44]

The CA was correct when it opined that:

Our perusal of the record reveals that forum shopping cannot, indeed, be attributed to the appellants. While it may be readily conceded that the plaintiffs in the instant case are more or less similarly situated as the plaintiffs in the cases previously filed and that the defendants, or at least the interest they represent, are basically the same, the fact remains that there is no identity of causes of

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[42] *Dayot v. Shell Chemical Company (Phils.) Inc*., G.R. No. 156542, June 26, 2007, 525 SCRA 535, 545-546; *Abines v. Bank of the Philippine Islands*, G.R. No. 167900, February 13, 2006, 482 SCRA 421, 429.

[43] *Sherwill Development Corporation v. Sitio Sto. Niño Residents Association, Inc.*, G.R. No. 158455, June 28, 2005, 461 SCRA 517, 531.

[44] *Forbes Park Association, Inc. v. Pagrel, Inc*., G.R. No. 153821, February 13, 2008, 545 SCRA 39, 49.

action and issues in the cases so far filed against the latter. The instant suit, as may be gleaned from the complaint, concerns the supposed undervaluation by the appellees of fifteen (15) sugar export sales of the appellants' export sugar production for the crop years **1979-1980** and **1980-1981** (pp. 3-32, Orig. Rec.). In contrast, Civil Case No. 4301, entitled "***Hector Lacson, et al. vs. National Sugar Trading Corporation, et al***." concerns the overcharging of trading costs for the plaintiffs' export sugar production for the crop years **1981-1982** and **1982-1983**, underpayment resulting from the defendants' use of an erroneous peso-dollar exchange rate and reimbursement for amounts alleged to have been wrongfully withheld by the latter (pp. 163-171, ***ibid***.) On the other hand, Civil Case No. 88-46368 entitled "***Ramon Monfort, et al. vs. Philippine Sugar Commission, et al.***" concerned the deficiency due the plaintiffs therein from sugar export sales for which a lower exchange rate was allegedly used by the defendants, the recovery, among others, of excessive trading costs charged, unauthorized deductions, damages, premiums and other sums supposedly still due from the defendants, as well as a detailed accounting of the sales of the export sugar produced by the plaintiffs therein. While the amended complaint filed in the case also sought to claim differentials for three (3) under-valued/under-declared NASUTRA export sales from the crop year **1980-1981** harvest, the same significantly pertained to different shipments and were coursed not through appellee Traders' Royal Bank but through the Republic Planters Bank (pp. 246-271, ***ibid.***). The variance in the subject matters of the instant case and the aforesaid cases are even conceded in the brief filed by appellee Roberto Benedicto (pp. 153-155, ***Rollo***).[45]

The test to determine identity of causes of action is to ascertain whether the same evidence necessary to sustain the second cause of action is sufficient to authorize a recovery in the first, even if the forms or the nature of the two (2) actions are different from each other. If the same facts or evidence would sustain both, the two (2) actions are considered the same within the rule that the judgment in the former is a bar to the subsequent action; otherwise, it is not. This method has been considered the most accurate test as to whether a former judgment is a bar

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[45] *Rollo*, pp. 82-83. (Underscoring supplied.)

in subsequent proceedings between the same parties. It has even been designated as infallible.[46]

While the plaintiffs in the Bacolod Case are more or less similarly situated as the plaintiffs in the Hector Lacson Case and Ramon Monfort Case, the CA was correct when it ruled that there was no identity of causes of action and issues[47] as it cannot be said that exactly the same evidence are needed to prove the causes of action in all three cases.

Thus, in the Bacolod Case, the evidence needed to prove that petitioner undervalued fifteen sugar export sales of respondents' export sugar production for the crop years **1979-1980** and **1980-1981** is not the same evidence needed in the Hector Lacson Case to prove the over-charging of trading costs for respondents' export sugar production for the crop years **1981-1982** and **1982-1983**, underpayment resulting from the petitioner's use of an erroneous peso-dollar exchange rate and reimbursement for amounts alleged to have been wrongfully withheld by the latter. The same holds true for the Ramon Monfort Case where the same significantly pertained to different shipments and were coursed not thru the Traders Royal Bank, but thru the Republic Planters Bank. The Court of Appeals, therefore, did not abuse its discretion in finding that no *litis pendentia* existed in the case at bar.

**On the "other grounds" which warrant the dismissal of the action**

It is the position of petitioner that the CA erred when it chose not to dismiss the case based on the "other grounds" petitioner had earlier raised in its motion to dismiss. More specifically, petitioner claims that the grounds of lack of cause of action, *res judicata*, payment and prescription warrant the dismissal of the complaint.

The same deserves scant consideration.

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[46] *Vda. de Cruzo v. Carriaga, Jr.*, G.R. Nos. 75109-10, June 28, 1989, 174 SCRA 330, 342.

[47] *Rollo*, p. 82.

It bears to stress that the RTC, in its June 5, 1996 Order, did not also consider the other grounds now raised by petitioner, to wit:

> In view of the sufficiency of the grounds for dismissal discussed above, **the other grounds invoked by the defendants in their Motion to Dismiss, which do not appear to be indubitable without additional evidence need not be considered**.[48]

While petitioner's Motion to Dismiss was granted by the RTC in its June 5, 1996 Order, the same Order, however, effectively denied the other grounds raised by petitioner as the same did not appear to be indubitable without additional evidence.

It is a settled rule that an Order denying a motion to dismiss is merely interlocutory and, therefore, not appealable, nor can it be subject of a petition for review on *certiorari*. Such order may only be reviewed in the ordinary course of law by an appeal from the judgment after trial. The ordinary procedure to be followed in that event is to file an answer, go to trial, and if the decision is adverse, reiterate the issue on appeal from the final judgment.[49]

While the rule refers to instances when a motion to dismiss is completely denied, this Court finds no reason not to apply the same in instances when some of the grounds raised in a motion to dismiss are denied by the lower court. The "other grounds" now raised by petitioner were not before the CA because the same were not put in issue by respondents when they chose to assail the RTC's Order to dismiss the complaint. This is understandable especially since the "other grounds" were not made the basis of the RTC's Order. Procedurally then, the proper remedy of petitioner, should he choose to reassert the "other grounds," is to interpose the same as defenses in his answer and not to put them in issue in this appeal.

**WHEREFORE,** premises considered, the petition is *DENIED*. The September 30, 1999 Decision and January 10, 2000

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[48] *Id.* at 404.

[49] *Españo, Sr. v. Court of Appeals*, 335 Phil. 983, 987-988 (1997).

Resolution of the Court of Appeals in CA-G.R. CV No. 53841, directing for the remand of the case, are *AFFIRMED*. The Regional Trial Court of Bacolod City, Branch 44, is hereby ordered to hear the case on the merits and decide the same with deliberate dispatch.

**SO ORDERED.**

*Corona (Chairperson), Nachura, Bersamin,*[*] and *Mendoza, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 143591. May 5, 2010]

**TEODORO C. BORLONGAN, JR., CORAZON M. BEJASA, ARTURO E. MANUEL, JR., ERIC L. LEE, P. SIERVO H. DIZON, BENJAMIN DE LEON, DELFIN C. GONZALES, JR., and BEN YU LIM, JR.,** *petitioners, vs.* **MAGDALENO M. PEÑA and HON. MANUEL Q. LIMSIACO, JR., as Judge Designate of the Municipal Trial Court in Cities, Bago City,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; WHEN POSTING OF BAIL BOND IS NOT DEEMED AS A WAIVER OF RIGHT TO ASSAIL ARREST; CASE AT BAR. —** The erstwhile ruling of this Court was that posting of bail constitutes a waiver of any irregularity in the issuance of a warrant of arrest, that has already been superseded by Section 26, Rule 114 of the Revised Rules of Criminal Procedure. The principle that

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[*] Designated as an additional member in lieu of Associate Justice Presbitero J. Velasco, Jr. per Raffle dated April 28, 2010.

the accused is precluded from questioning the legality of the arrest after arraignment is true only if he voluntarily enters his plea and participates during trial, without previously invoking his objections thereto. x x x Herein petitioners filed the Omnibus Motion to Quash, Recall Warrants of Arrest and/or For Reinvestigation on the same day that they posted bail. Their bail bonds likewise expressly contained a stipulation that they were not waiving their right to question the validity of their arrest. On the date of their arraignment, petitioners refused to enter their plea due to the fact that the issue on the legality of their arrest is still pending with the Court. Thus, when the court *a quo* entered a plea of not guilty for them, there was no valid waiver of their right to preclude them from raising the same with the Court of Appeals or this Court. The posting of bail bond was a matter of imperative necessity to avert their incarceration; it should not be deemed as a waiver of their right to assail their arrest.

**2. ID.; ID.; ID.; DETERMINATION OF PROBABLE CAUSE DOES NOT INCLUDE SUBMISSION OF COUNTER AFFIDAVIT TO OPPOSE THE COMPLAINT. —** Under Sec. 9(a) [Rule 112 of the 1985 Rules of Criminal Procedure] while probable cause should first be determined before an information may be filed in court, the prosecutor is not mandated to require the respondent to submit his counter-affidavits to oppose the complaint. In the determination of probable cause, the prosecutor may solely rely on the complaint, affidavits and other supporting documents submitted by the complainant. If he does not find probable cause, the prosecutor may dismiss outright the complaint or if he finds probable cause or sufficient reason to proceed with the case, he shall issue a resolution and file the corresponding information.

**3. ID.; ID.; ID.; ISSUANCE OF WARRANT OF ARREST; EXISTENCE OF PROBABLE CAUSE, REQUIRED. —** Enshrined in our Constitution is the rule that "[n]o x x x warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing x x x the persons x x x to be seized." Interpreting the words "personal determination," we said in *Soliven v. Makasiar* that it does not thereby mean that judges are obliged to conduct the personal examination of the complainant and

his witnesses themselves. To require thus would be to unduly laden them with preliminary examinations and investigations of criminal complaints instead of concentrating on hearing and deciding cases filed before them. Rather, what is emphasized merely is the exclusive and personal responsibility of the issuing judge to satisfy himself as to the existence of probable cause. To this end, he may: (a) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (b) if on the basis thereof he finds no probable cause, disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in determining its existence. What he is never allowed to do is to **follow blindly the prosecutor's bare certification as to the existence of probable cause**. Much more is required by the constitutional provision. **Judges have to go over the report, the affidavits, the transcript of stenographic notes if any, and other documents supporting the prosecutor's certification**. Although the extent of the judge's personal examination depends on the circumstances of each case, to be sure, he **cannot just rely on the bare certification alone but must go beyond it**. This is because the warrant of arrest issues not on the strength of the certification standing alone but because of the records which sustain it. He should even call for the complainant and the witnesses to answer the court's probing questions when the circumstances warrant. An arrest without a probable cause is an unreasonable seizure of a person, and violates the privacy of persons which ought not to be intruded by the State.

**4. ID.; ID.; AS A RULE, CRIMINAL PROSECUTION CANNOT BE ENJOINED; EXCEPTIONS. —** As a general rule, criminal prosecutions cannot be enjoined. However, there are recognized exceptions which, as summarized in *Brocka v. Enrile*, are: a. To afford adequate protection to the constitutional rights of the accused; b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; c. When there is a prejudicial question which is *sub judice*; d. When the acts of the officer are without or in excess of authority; e. Where the prosecution is under an invalid law, ordinance or regulation; f. When double jeopardy is clearly apparent; g. Where the court had no jurisdiction over the offense; h. Where it is a case of persecution rather than prosecution; i. Where the charges are manifestly false and motivated by the

lust for vengeance; and j. When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied.

**5. CRIMINAL LAW; INTRODUCTION OF FALSIFIED DOCUMENTS; ELEMENTS. —** Petitioners were charged with violation of par. 2, Article 172 of the Revised Penal Code or Introduction of Falsified Document in a judicial proceeding. The elements of the offense are as follows: 1. That the offender knew that a document was falsified by another person. 2. That the false document is embraced in Article 171 or in any subdivisions Nos. 1 or 2 of Article 172. 3. That he introduced said document in evidence in any judicial proceeding. The falsity of the document and the defendants' knowledge of its falsity are essential elements of the offense.

**6. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; DETERMINATION OF PROBABLE CAUSE, REQUIRED; CONSTRUED. —** Probable cause is such set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested. In determining probable cause, the average man weighs the facts and circumstances without restoring to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction.

**7. ID.; ID.; ID.; ID.; PURPOSE THEREOF. —** As enunciated in *Baltazar v. People*, the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused. The purpose of the mandate of the judge to first determine probable cause for the arrest of the accused is to insulate from the very start those falsely charged with crimes from the tribulations, expenses and anxiety of a public trial.

**8. ID.; EVIDENCE; AFFIDAVITS ARE REQUIRED TO BE BASED ON PERSONAL KNOWLEDGE; RATIONALE. —** The reason

for the requirement that affidavits must be based on personal knowledge is to guard against hearsay evidence. A witness, therefore, may not testify as what he merely learned from others either because he was told or read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned. Hearsay is not limited to oral testimony or statements; the general rule that excludes hearsay as evidence applies to written, as well as oral statements. The requirement of personal knowledge should have been strictly applied considering that herein petitioners were not given the opportunity to rebut the complainant's allegation through counter-affidavits.

**APPEARANCES OF COUNSEL**

*Fortun Narvasa & Salazar* for Teodoro C. Borlongan, Jr., Carazon M. Bejasa, and Arturo E. Manuel, Jr.

*Poblador Bautista Reyes* for P. Siervo H. Dizon and Ben Yu Lim, Jr.

*Angara Abello Concepcion Regala & Cruz* for Eric L. Lee, Benjamin De Leon and Delfin C. Gonzalez, Jr.

## D E C I S I O N

**PEREZ, *J.*:**

The pivotal issue in this case is whether or not the Court of Appeals, in its Decision[1] dated 20 June 2000 in CA-G.R. SP No. 49666, is correct when it dismissed the petition for *certiorari* filed by petitioners Teodoro C. Borlongan, Jr., Corazon M. Bejasa, Arturo E. Manuel, Jr., Benjamin de Leon, P. Siervo H. Dizon, Delfin C. Gonzales, Jr., Eric L. Lee and Ben Yu Lim, Jr., and ruled that the Municipal Trial Court in Cities (MTCC), Bago City, did not gravely abuse its discretion in denying the motion for reinvestigation and recall of the warrants of arrest in Criminal Case Nos. 6683, 6684, 6685, and 6686.

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[1] Penned by Associate Justice Romeo A. Brawner with Associate Justices Quirino D. Abad Santos, Jr. and Andres B. Reyes, Jr. concurring; *rollo,* pp. 50-60.

The factual antecedents of the case are as follows:

Respondent Atty. Magdaleno M. Peña (Atty. Peña) instituted a civil case for recovery of agent's compensation and expenses, damages, and attorney's fees[2] against Urban Bank and herein petitioners, before the Regional Trial Court (RTC) of Negros Occidental, Bago City. The case was raffled to Branch 62 and was docketed as Civil Case No. 754. Atty. Peña anchored his claim for compensation on the Contract of Agency[3] allegedly entered into with the petitioners, wherein the former undertook to perform such acts necessary to prevent any intruder and squatter from unlawfully occupying Urban Bank's property located along Roxas Boulevard, Pasay City. Petitioners filed a Motion to Dismiss[4] arguing that they never appointed the respondent as agent or counsel. Attached to the motion were the following documents: 1) a Letter[5] dated 19 December 1994 signed by Herman Ponce and Julie Abad on behalf of Isabela Sugar Company, Inc. (ISCI), the original owner of the subject property; 2) an unsigned Letter[6] dated 7 December 1994 addressed to Corazon Bejasa from Marilyn G. Ong; 3) a Letter[7] dated 9 December 1994 addressed to Teodoro Borlongan, Jr. and signed

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[2] *Id.* at 61-66.

[3] The contract was allegedly confirmed in a letter addressed to the respondent, the pertinent portion of which reads:

x x x x x x x x x

This is to confirm the engagement of your services as the authorized representative of Urban Bank, specifically to hold and maintain possession of our above [-]captioned property and to protect the same from former tenants, occupants or any other person who are threatening to return to the said property and/or interfere with your possession of the said property for and in our behalf.

You are likewise authorized to represent Urban Bank in any court action that you may institute to carry out your aforementioned duties, and to prevent any intruder, squatter or any other person not otherwise authorized in writing by Urban Bank from entering or staying in the premises. *Id.* at 69.

[4] *Id.* at 72-87.

[5] *Id.* at 96.

[6] *Id.* at 97.

[7] *Id.* at 98.

by Marilyn G. Ong; and 4) a Memorandum[8] dated 20 November 1994 from Enrique Montilla III. Said documents were presented in an attempt to show that the respondent was appointed as agent by ISCI and not by Urban Bank or by the petitioners.

In view of the introduction of the above-mentioned documents, Atty. Peña filed his Complaint-Affidavit[9] with the Office of the City Prosecutor, Bago City.[10] He claimed that said documents were falsified because the alleged signatories did not actually affix their signatures, and the signatories were neither stockholders nor officers and employees of ISCI.[11] Worse, petitioners introduced said documents as evidence before the RTC knowing that they were falsified.

In a Resolution[12] dated 24 September 1998, the City Prosecutor found probable cause for the indictment of petitioners for four (4) counts of the crime of Introducing Falsified Documents, penalized by the second paragraph of Article 172 of the Revised Penal Code. The City Prosecutor concluded that the documents were falsified because the alleged signatories untruthfully stated that ISCI was the principal of the respondent; that petitioners knew that the documents were falsified considering that the signatories were mere dummies; and that the documents formed part of the record of Civil Case No. 754 where they were used

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[8] *Id.* at 99. Also at CA *rollo,* p. 304.

[9] *Id.* at 106-109.

[10] The case was docketed as I.S. Case No. 9248.

[11] *Rollo,* p. 108.

[12] The dispositive portion of which reads:

Wherefore, In view of all the foregoing, undersigned finds probable cause that the crime of Introducing Falsified Documents in evidence under par. 2, Article 172, Revised Penal Code (4 counts) had been committed and that respondents Teodoro Borlongan, Jr., Delfin Gonzalez, Jr., Benjamin de Leon, P. Siervo Dizon, Eric Lee, Ben Lim, Jr., Corazon Bejasa, and Arturo Manuel are probably guilty.

Let Information be filed with the Municipal Trial Court in Cities, City of Bago, Philippines.

SO RESOLVED. (*Id.* at 110-114).

by petitioners as evidence in support of their motion to dismiss, and then adopted in their answer and in their Pre-Trial Brief.[13] Subsequently, the corresponding Informations[14] were filed with the MTCC, Bago City. The cases were docketed as Criminal Case Nos. 6683, 6684, 6685, and 6686. Thereafter, Judge Primitivo Blanca issued the warrants[15] for the arrest of the petitioners.

On 1 October 1998, petitioners filed an Omnibus Motion to Quash, Recall Warrants of Arrest and/or For Reinvestigation.[16] Petitioners insisted that they were denied due process because of the non-observance of the proper procedure on preliminary investigation prescribed in the Rules of Court. Specifically, they claimed that they were not afforded the right to submit their counter-affidavit. Then they argued that since no such counter-affidavit and supporting documents were submitted by the petitioners, the trial judge merely relied on the complaint-affidavit and attachments of the respondent in issuing the warrants of arrest, also in contravention with the Rules of Court. Petitioners further prayed that the information be quashed for lack of probable cause. Moreover, one of the accused, *i.e.*, Ben Lim, Jr., is not even a director of Urban Bank, contrary to what complainant stated. Lastly, petitioners posited that the criminal cases should have been suspended on the ground that the issue being threshed out in the civil case is a prejudicial question.

In an Order[17] dated 13 November 1998, the MTCC denied the omnibus motion primarily on the ground that preliminary investigation was not available in the instant case – which fell

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[13] *Id.* at 113-114.

[14] *Id.* at 115-122.

[15] *Id.* at 123-126.

[16] *Id.* at 127-142.

[17] The dispositive portion reads:

WHEREFORE, premises considered, the Omnibus Motion to Quash, Recall Warrants of Arrest and/or For reinvestigation is hereby denied.

Set arraignment of the accused on December 1, 1998 at 8:30 o'clock in the morning.

SO ORDERED. (*Id.* at 143-150.)

within the jurisdiction of the first-level court. The court, likewise, upheld the validity of the warrant of arrest, saying that it was issued in accordance with the Rules of Court. Besides, the court added, petitioners could no longer question the validity of the warrant since they already posted bail. The court also believed that the issue involved in the civil case was not a prejudicial question, and, thus, denied the prayer for suspension of the criminal proceedings. Lastly, the court was convinced that the Informations contained all the facts necessary to constitute an offense.

Petitioners immediately instituted a special civil action for *Certiorari* and Prohibition with Prayer for Writ of Preliminary Injunction and Temporary Restraining Order (TRO) before the Court of Appeals, ascribing grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the MTCC in issuing and not recalling the warrants of arrest, reiterating the arguments in their omnibus motion.[18] They, likewise, questioned the court's conclusion that by posting bail, petitioners already waived their right to assail the validity of the warrants of arrest.

On 20 June 2000, the Court of Appeals dismissed the petition.[19] Thus, petitioners filed the instant petition for review on *certiorari* under Rule 45 of the Rules of Court, raising the following issues:

A.

Where the offense charged in a criminal complaint is not cognizable by the Regional Trial Court and not covered by the Rule on Summary Procedure, is the finding of probable cause required for the filing of an Information in court?

If the allegations in the complaint-affidavit do not establish probable cause, should not the investigating prosecutor dismiss the complaint, or at the very least, require the respondent to submit his counter-affidavit?

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[18] *Id.* at 151-186.

[19] *Id.* at 50-60.

B.

Can a complaint-affidavit containing matters which are not within the personal knowledge of the complainant be sufficient basis for the finding of probable cause?

C.

Where there is offense charged in a criminal complaint is not cognizable by the Regional Trial Court and not covered by the Rule on Summary Procedure, and the record of the preliminary investigation does not show the existence of probable cause, should not the judge refuse to issue a warrant of arrest and dismiss the criminal case, or at the very least, require the accused to submit his counter-affidavit in order to aid the judge in determining the existence of probable cause?

D.

Can a criminal prosecution be restrained?

E.

Can this Honorable Court itself determine the existence of probable cause?[20]

On the other hand, respondent contends that the issues raised by the petitioners had already become moot and academic when the latter posted bail and were already arraigned.

On 2 August 2000, this Court issued a TRO[21] enjoining the judge of the MTCC from proceeding in any manner with Criminal Case Nos. 6683 to 6686, effective during the entire period that the case is pending before, or until further orders of, this Court.

We will first discuss the issue of mootness.

The issues raised by the petitioners have not been mooted by the fact that they had posted bail and were already arraigned.

It appears from the records that upon the issuance of the warrant of arrest, petitioners immediately posted bail as they wanted to avoid embarrassment, being then the officers of Urban

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

[21] *Id.* at 518-522.

Bank. On the scheduled date for the arraignment, despite the petitioners' refusal to enter a plea, the court *a quo* entered a plea of "Not Guilty" for them.

The erstwhile ruling of this Court was that posting of bail constitutes a waiver of any irregularity in the issuance of a warrant of arrest, that has already been superseded by Section 26, Rule 114 of the Revised Rule of Criminal Procedure. The principle that the accused is precluded from questioning the legality of the arrest after arraignment is true only if he voluntarily enters his plea and participates during trial, without previously invoking his objections thereto.[22]

As held in *Okabe v. Hon. Gutierrez*:[23]

> It bears stressing that Section 26, Rule 114 of the Revised Rules on Criminal Procedure is a new one, intended to modify previous rulings of this Court that an application for bail or the admission to bail by the accused shall be considered as a waiver of his right to assail the warrant issued for his arrest on the legalities or irregularities thereon. The new rule has reverted to the ruling of this Court in *People v. Red*. The new rule is curative in nature because precisely, it was designed to supply defects and curb evils in procedural rules. Hence, the rules governing curative statutes are applicable. Curative statutes are by their essence retroactive in application. Besides, procedural rules as a general rule operate retroactively, even without express provisions to that effect, to cases pending at the time of their effectivity, in other words to actions yet undetermined at the time of their effectivity. Before the appellate court rendered its decision on January 31, 2001, the Revised Rules on Criminal Procedure was already in effect. It behoved the appellate court to have applied the same in resolving the petitioner's petition for *certiorari* and her motion for partial reconsideration.

Moreover, considering the conduct of the petitioner after posting her personal bail bond, it cannot be argued that she waived her right to question the finding of probable cause and to assail the warrant of arrest issued against her by the respondent judge. There must be

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[22] *People v. Vallejo*, 461 Phil. 672, 686 (2003); *People v. Palijon*, 397 Phil. 545, 556 (2000).

[23] 473 Phil. 758, 776-777 (2004).

clear and convincing proof that the petitioner had an actual intention to relinquish her right to question the existence of probable cause. When the only proof of intention rests on what a party does, his act should be so manifestly consistent with, and indicative of, an intent to voluntarily and unequivocally relinquish the particular right that no other explanation of his conduct is possible. x x x.

Herein petitioners filed the Omnibus Motion to Quash, Recall Warrants of Arrest and/or For Reinvestigation on the same day that they posted bail. Their bail bonds likewise expressly contained a stipulation that they were not waiving their right to question the validity of their arrest.[24] On the date of their arraignment, petitioners refused to enter their plea due to the fact that the issue on the legality of their arrest is still pending with the Court. Thus, when the court *a quo* entered a plea of not guilty for them, there was no valid waiver of their right to preclude them from raising the same with the Court of Appeals or this Court. The posting of bail bond was a matter of imperative necessity to avert their incarceration; it should not be deemed as a waiver of their right to assail their arrest. The ruling to which we have returned in *People v. Red*[25] stated:

x x x The present defendants were arrested towards the end of January, 1929, on the Island and Province of Marinduque by order of the judge of the Court of First Instance of Lucena, Tayabas, at a time when there were no court sessions being held in Marinduque. In view of these circumstances and the number of the accused, it may properly be held that the furnishing of the bond was prompted by the sheer necessity of not remaining in detention, and in no way implied their waiver of any right, such as the summary examination of the case before their detention. That they had no intention of waiving this right is clear from their motion of January 23, 1929, the same day on which they furnished a bond, and the fact that they renewed this petition on February 23, 1929, praying for the stay of their arrest for lack of the summary examination; the first motion being denied by the court on January 24, 1929 (G.R. No. L-33708, page 8), and the second remaining undecided, but with an order to have it presented in Boac, Marinduque.

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[24] CA *rollo*, pp. 902-903.

[25] 55 Phil. 706, 711 (1931).

Therefore, the defendants herein cannot be said to have waived the right granted to them by Section 13, General Order No. 58, as amended by Act No. 3042.

The rest of the issues raised by the petitioners may be grouped into two, which are: (1) the procedural aspect, *i.e.*, whether the prosecution and the court *a quo* properly observed the required procedure in the instant case, and, (2) the substantive aspect, which is whether there was probable cause to pursue the criminal cases to trial.

**THE PROCEDURAL ASPECT:**

Petitioners contend that they were denied due process as they were unable to submit their counter-affidavits and were not accorded the right to a preliminary investigation. Considering that the complaint of Atty. Peña was filed in September 1998, the rule then applicable was the 1985 Rules of Criminal Procedure.

The provisions of the 1985 Rules of Criminal Procedure relevant to the issue are Sections 1, 3(a) and 9(a) of Rule 112, to wit:

Section 1. Definition. Preliminary investigation is an inquiry or proceeding for the purpose of determining whether there is sufficient ground to engender a well founded belief that a crime cognizable by the Regional Trial Court has been committed and that the respondent is probably guilty thereof, and should be held for trial.

Sec. 3. Procedure. Except as provided for in Section 7 hereof, no complaint or information for an offense cognizable by the Regional Trial Court shall be filed without a preliminary investigation having been first conducted in the following manner:

(a) The complaint shall state the known address of the respondent and be accompanied by affidavits of the complainant and his witnesses as well as other supporting documents, in such number of copies as there are respondents, plus two (2) copies for the official file. The said affidavits shall be sworn to before any fiscal, state prosecutor or government official authorized to administer oath, or, in their absence or unavailability, a notary public, who must certify that he personally examined the affiants and that he is satisfied that they voluntarily executed and understood their affidavits.

Sec. 9. Cases not falling under the original jurisdiction of the Regional Trial Courts nor covered by the Rule on Summary Procedure.

(a) Where filed with the fiscal.— If the complaint is filed directly with the fiscal or state prosecutor, the procedure outlined in Section 3(a) of this Rule shall be observed. The fiscal shall take appropriate action based on the affidavits and other supporting documents submitted by the complainant. (underscoring supplied)

The crime to which petitioners were charged was defined and penalized under second paragraph of Article 172 in relation to Article 171 of the Revised Penal Code.

Art. 172. *Falsification by private individual and use of falsified documents.* — The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and

2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

*Prision correccional* in its medium and maximum periods translates to imprisonment of 2 years, 4 months and 1 day.[26] The next lower in degree to *prision correccional* is *arresto mayor* in its maximum period to *prision correccional* in its minimum period which translates to 4 months and 1 day to 2 years and 4 months[27] of imprisonment. Since the crime committed

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[26] Luis B. Reyes, *The Revised Penal Code, Criminal Law*, Fourteenth Edition, Revised 1998, Appendix "A", Table No. 15, p. 1010.

[27] *Id.* at 1008.

is not covered by the Rules of Summary Procedure,[28] the case falls within the exclusive jurisdiction of the first level courts but applying the ordinary rules. In such instance, preliminary investigation as defined in Section 1, Rule 112 of the 1985 Rules of Criminal Procedure is not applicable since such section covers only crimes cognizable by the RTC. That which is stated in Section 9(a) is the applicable rule.

Under this Rule, while probable cause should first be determined before an information may be filed in court, the prosecutor is not mandated to require the respondent to submit his counter-affidavits to oppose the complaint. In the determination of probable cause, the prosecutor may solely rely on the complaint, affidavits and other supporting documents submitted by the complainant. If he does not find probable cause, the prosecutor may dismiss outright the complaint or if he finds probable cause or sufficient reason to proceed with the case, he shall issue a resolution and file the corresponding information.

The complaint of respondent, *verbatim*, is as follows:

COMPLAINT – AFFIDAVIT

I, MAGDALENO M. PEÑA, Filipino, of legal age, with address at Brgy. Ubay, Pulupandan, Negros Occidental, after having been sworn in accordance with law hereby depose and state:

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[28] (1) Violations of traffic laws, rules and regulations;

(2) Violations of the rental law;

(3) Violations of municipal or city ordinances;

(4) All other criminal cases where the penalty prescribed by law for the offense charged is imprisonment not exceeding six months, or a fine not exceeding one thousand pesos (₱1,000.00), or both, irrespective of other imposable penalties, accessory or otherwise, or of the civil liability arising therefrom: *Provided, however*, That in offenses involving damage to property through criminal negligence, this Rule shall govern where the imposable fine does not exceed ten thousand pesos (₱10,000.00).

This Rule shall not apply to a civil case where the plaintiff's cause of action is pleaded in the same complaint with another cause of action subject to the ordinary procedure; nor to a criminal case where the offense charged is necessarily related to another criminal case subject to the ordinary procedure.

1. I am the Plaintiff in Civil Case No. 754 pending with the Regional Trial Court of Bago City entitled "*Atty. Magdaleno M. Peña v. Urban Bank, et al.*" Impleaded therein as defendants of the board of the bank, namely, Teodoro Borlongan, Delfin Gonzales, Jr., Benjamin De Leon, P. Siervo Dizon, Eric Lee, Ben Lim Jr., Corazon Bejasa and Arturo Manuel.(underlining ours)

2. I filed the said case to collect my fees as agent of Urban Bank, Inc.(hereinafter referred to as the "bank") in ridding a certain parcel of land in Pasay City of squatters and intruders. A certified true copy of the Complaint in the said case is hereto attached as Annex "A".

3. In the Motion to Dismiss dated 12 March 1996 (a certified true copy of which is attached as Annex "B"), Answer dated 28 October 1996 (Annex "C"), and Pre-Trial Brief dated 28 January 1997 (Annex "D") filed by the bank and the respondent members of the board, the said respondents used as evidence the following documents:

a. Letter dated 19 December 1994 supposedly signed by a certain Herman Ponce and Julie Abad for Isabela Sugar Company (ISC) (a copy of which is attached as Annex "E"), which states:

December 19, 1994

Urban Bank
Urban Avenue, Makati
Metro Manila

Gentlemen:

This has reference to your property located among Roxas Boulevard, Pasay City which you purchased from Isabela Sugar Company under a Deed of Absolute Sale executed on December 1, 1994.

In line with our warranties as the Seller of the said property and our undertaking to deliver to you the full and actual possession and control of said property, free from tenants, occupants or squatters and from any obstruction or impediment to the free use and occupancy of the property and to prevent the former tenants or occupants from entering or returning to the premises. In view of the transfer of ownership of the property to Urban Bank, it may be necessary for Urban Bank to appoint Atty. Peña likewise as its authorized representative for purposes of holding/maintaining continued possession of the said property and to represent Urban Bank in any court action that may be instituted for the abovementioned purposes.

It is understood that any attorney's fees, cost of litigation and any other charges or expenses that may be incurred relative to the exercise by Atty. Peña of his abovementioned duties shall be for the account of Isabela Sugar Company and any loss or damage that may be incurred to third parties shall be answerable by Isabela Sugar Company.

Very truly yours,

Isabela Sugar Company

By:

HERMAN PONCE

JULIE ABAD

b. Memorandum dated 7 December 1994 supposedly executed by a certain Marilyn Ong on behalf of ISC, a copy of which is hereto attached as annex "F", which states:

December 7, 1994

To: ATTY. CORA BEJASA

From: MARILYN G. ONG

RE: ISABELA SUGAR CO., INC.

Atty. Magdaleno M. Peña, who has been assigned by Isabela Sugar Company Inc. to take charge of inspecting the tenants would like to request an authority similar to this from the Bank to new owners. Can you please issue something like this today as he (unreadable) this.

b. Letter dated 9 December 1994 supposedly executed by the same Marilyn Ong, a copy of which is hereto attached as Annex "G", which states:

December 9, 1994

Atty. Ted Borlongan
URBAN BANK OF THE PHILIPPINES
MAKATI, METRO MANILA

Attention: Mr. Ted Borlongan
Dear Mr. Borlongan

I would like to request for an authority from Urban Bank per attached immediately – as the tenants are questioning authority of the people who are helping us to take possession of the property.

Marilyn Ong

c. Memorandum dated 20 November 1994, copy of which is attached as annex "H", which states:

MEMORANDUM
To: Atty. Magadaleno M. Peña
Director

From: Enrique C. Montilla III
President

Date: 20 November 1994

You are hereby directed to recover and take possession of the property of the corporation situated at Roxas Boulevard covered by TCT No. 5382 of the Registry of Deeds for Pasay City, immediately upon the expiration of the contract of lease over the said property on 29 November 1994. For this purpose, you are authorized to engage the services of security guards to protect the property against intruders. You may also engage the services of a lawyer in case there is a need to go to court to protect the said property of the corporation. In addition, you may take whatever steps or measures are necessary to ensure our continued possession of the property.

ENRIQUE C. MONTILLA III
President

4. The respondent member of the board of the bank used and introduced the aforestated documents as evidence in the civil case knowing that the same are falsified. They used thae (sic) said documents to justify their refusal to pay my agent's fees, to my damage and prejudice.

5. The 19 December 1994 letter (Annex 'E") is a falsified document, in that the person who supposedly executed the letter on behalf of ISC, a certain Herman Ponce and Julie Abad did not actually affix their signatures on the document. The execution of the letter was merely simulated by making it appear that Ponce and Abad executed the letter on behalf of ISC when they did not in fact do so.

6. No persons by the name of Herman Ponce and Julie Abad were ever stockholders, officers, employees or representatives of ISC. In the letter, Herman Ponce was represented to be the

President of ISC and Julie Abad, the Corporate Secretary. However, as of 19 December 1994, the real President of plaintiff was Enrique Montilla, III and Cristina Montilla was the Corporate Secretary. A copy of the Minutes of the Regular Meeting of ISC for the year 1994, during which Montilla, et al. Were elected is hereto attached as Annex "I". On the otherhand, a list of the stockholders of ISC on or about the time of the transaction is attached as Annex "J".

7. The same holds true with respect to the Memorandum dated 7 December 1994 and athe letter dated 9 December 1994 allegedly written by a ceratin Marilyn Ong. Nobody by the said name was ever a stockholder of ISC.

8. Lastly, with respect to the supposed Memorandum issued by Enrique Montilla, III his signature thereon was merely forged by respondents. Enrique Montilla III, did not affix his signature on any such document.

9. I am executing this affidavit for the purpose of charging Teodoro C. Borlongan, Corazon M. Bejasa and Arturo E. Manuel, Delfin C. Gonzales Jr., Benjamin L. De Leon, P. Siervo H. Dizon and Eric Lee, with the crime of use of falsified documents under Artilce 172, paragraph 2, of the Revised Penal Code.(underlining ours)

10. I am likewise executing this affidavit for whatever legal purpose it may serve.

FURTHER AFFIANT SAYETH NAUGHT.

Sgd. MAGDALENO M. PEÑA

It is evident that in the affidavit-complaint, specifically in paragraph 1, respondent merely introduced and identified "the board of the bank, namely, Teodoro Borlongan, Jr., Delfin Gonzales, Jr., Benjamin De Leon, P. Siervo Dizon, Eric Lee, Ben Lim, Jr., Corazon Bejasa and Arturo Manuel, Sr." However, in the accusatory portion of the complaint which is paragraph number 9, **Mr. Ben Lim, Jr**. was not included among those charged with the crime of use of falsified documents under Article 172, paragraph 2, of the Revised Penal Code. The omission indicates that respondent did not intend to criminally implicate Mr. Ben Lim, Jr., even as he was acknowledged to

be a member of the board. And there was no explanation in the Resolution and Information by the City Prosecutor why Mr. Ben Lim, Jr. was included. Moreover, as can be gleaned from the body of the complaint and the specific averments therein, Mr. Ben Lim, Jr. was never mentioned.

The City Prosecutor should have cautiously reviewed the complaint to determine whether there were inconsistencies which ought to have been brought to the attention of the respondent or, on his own, considered for due evaluation. It is a big mistake to bring a man to trial for a crime he did not commit.

Prosecutors are endowed with ample powers in order that they may properly fulfill their assigned role in the administration of justice. It should be realized, however, that when a man is hailed to court on a criminal charge, it brings in its wake problems not only for the accused but for his family as well. Therefore, *it behooves a prosecutor to weigh the evidence carefully and to deliberate thereon to determine the existence of a prima facie case before filing the information in court. Anything less would be a dereliction of duty*.[29]

Atty. Peña, in his Second Manifestation[30] dated 16 June 1999, averred that petitioners, including Mr. Ben Lim, Jr., were already *estopped* from raising the fact that Mr. Ben Lim, Jr. was not a member of the board of directors of Urban Bank, as the latter participated and appeared through counsel in Civil Case No. 754 without raising any opposition. However, this does not detract from the fact that the City Prosecutor, as previously discussed, did not carefully scrutinize the complaint of Atty. Peña, which did not charge Mr. Ben Lim, Jr. of any crime.

What tainted the procedure further was that the Judge issued a warrant for the arrest of the petitioners, including, Mr. Ben Lim, Jr. despite the filing of the Omnibus Motion to Quash,

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[29] *Sales v. Sandiganbayan*, G.R. No. 143802, 16 November 2001, 369 SCRA 293, 305 citing *Bernardo v. Mendoza*, G.R. No. L-37876, 25 May 1979, 90 SCRA 214, 220; *Vda. De Jacob v. Puno*, G.R. Nos. 61554-55, 31 July 1984, 131 SCRA 144, 149.

[30] *Rollo*, pp. 368-372.

Recall Warrants of Arrest and/or For Reinvestigation raising among others the issue that Mr. Ben Lim, Jr., was not even a member of the board of directors. With the filing of the motion, the judge is put on alert that an innocent person may have been included in the complaint. In the Order[31] dated 13 November 1998, in denying the motion to quash, Judge Primitivo Blanca ruled that:

> Courts in resolving a motion to quash cannot consider facts contrary to those alleged in the information or which do not appear on the face of the information because said motion is hypothethical admission of the facts alleged in the information x x x. (citations omitted.)

We cannot accept as mere oversight the mistake of respondent judge since it was at the expense of liberty. This cannot be condoned.

In the issuance of a warrant of arrest, the mandate of the Constitution is for the judge to personally determine the existence of probable cause:

> Section 2, Article III of the Constitution provides:
>
> Section 2. The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

Corollary thereto, Section 9(b) of the 1985 Rules of Criminal Procedure provides:

> Sec. 9. Cases not falling under the original jurisdiction of the Regional Trial Courts nor covered by the Rule on Summary Procedure.

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[31] *Id.* at 148.

(a) x x x.

(b) Where filed directly with the Municipal Trial Court. — If the complaint or information is filed directly with the Municipal Trial Court, the procedure provided for in Section 3(a) of this Rule shall likewise be observed. If the judge finds no sufficient ground to hold the respondent for trial, he shall dismiss the complaint or information. Otherwise, he shall issue a warrant of arrest after personally examining in writing and under oath the complainant and his witnesses in the form of searching questions and answers.

Enshrined in our Constitution is the rule that "[n]o x x x warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing x x x the persons x x x to be seized."[32] Interpreting the words "personal determination," we said in *Soliven v. Makasiar*[33] that it does not thereby mean that judges are obliged to conduct the personal examination of the complainant and his witnesses themselves. To require thus would be to unduly laden them with preliminary examinations and investigations of criminal complaints instead of concentrating on hearing and deciding cases filed before them. Rather, what is emphasized merely is the exclusive and personal responsibility of the issuing judge to satisfy himself as to the existence of probable cause. To this end, he may: (a) personally evaluate the report and the supporting documents submitted by the prosecutor regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (b) if on the basis thereof he finds no probable cause, disregard the prosecutor's report and require the submission of supporting affidavits of witnesses to aid him in determining its existence. What he is never allowed to do is to **follow blindly the prosecutor's bare certification as to the existence of probable cause**. Much more is required by the constitutional provision. **Judges have to go over the report, the affidavits, the transcript of stenographic notes if any, and other**

[32] Article III, Section 2, Philippine Constitution.

[33] G.R. No. 82585, 14 November 1988, 167 SCRA 393, 406.

**documents supporting the prosecutor's certification**. Although the extent of the judge's personal examination depends on the circumstances of each case, to be sure, he **cannot just rely on the bare certification alone but must go beyond it**. This is because the warrant of arrest issues not on the strength of the certification standing alone but because of the records which sustain it.[34] He should even call for the complainant and the witnesses to answer the court's probing questions when the circumstances warrant.[35]

An arrest without a probable cause is an unreasonable seizure of a person, and violates the privacy of persons which ought not to be intruded by the State.[36]

Measured against the constitutional mandate and established rulings, there was here a clear abdication of the judicial function and a clear indication that the judge blindly followed the certification of a city prosecutor as to the existence of probable cause for the issuance of a warrant of arrest with respect to all of the petitioners. The careless inclusion of Mr. Ben Lim, Jr., in the warrant of arrest gives flesh to the bone of contention of petitioners that the instant case is a matter of persecution rather than prosecution.[37] On this ground, this Court may enjoin the criminal cases against petitioners. As a general rule, criminal prosecutions cannot be enjoined. However, there are recognized exceptions which, as summarized in *Brocka v. Enrile*,[38] are:

a. To afford adequate protection to the constitutional rights of the accused;[39]

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[34] *Lim, Sr. v. Felix,* G.R. Nos. 94054-57, 19 February 1991, 194 SCRA 292, 305.

[35] *Id.* at 306.

[36] *Yee Sue Koy v. Almeda,* 70 Phil. 141, 146-147 (1940).

[37] *Rollo,* pp. 41-42.

[38] G.R. Nos. 69863-65, 10 December 1990, 192 SCRA 183, 188.

[39] *Hernandez v. Albano,* 125 Phil. 513 (1967).

b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions;[40]

c When there is a prejudicial question which is *sub judice*;[41]

d. When the acts of the officer are without or in excess of authority;[42]

e. Where the prosecution is under an invalid law, ordinance or regulation;[43]

f. When double jeopardy is clearly apparent;[44]

g. Where the court had no jurisdiction over the offense;[45]

h. Where it is a case of persecution rather than prosecution;[46]

i. Where the charges are manifestly false and motivated by the lust for vengeance;[47] and

j. When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied.[48]

**THE SUBSTANTIVE ASPECT:**

Petitioners were charged with violation of par. 2, Article 172 of the Revised Penal Code or Introduction of Falsified

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[40] *Dimayuga v. Fernandez,* 43 Phil. 304, 306-307 (1922); *Hernandez v. Albano, id.*; *Fortun v. Labang,* 192 Phil. 125, 133 (1981).

[41] *De Leon v. Mabanag*, 70 Phil. 202 (1940).

[42] *Planas v. Gil,* 67 Phil. 62, 75 (1939).

[43] *Young v. Rafferty,* 33 Phil. 556, 562 (1916); *Yu Cong Eng v. Trinidad,* 47 Phil. 385, 389 (1925).

[44] *Sangalang v. People,* 109 Phil. 1140, 1142 (1960).

[45] *Lopez v. City Judge,* G.R. No. L-25795, 29 October 1966, 18 SCRA 616, 620-621.

[46] *Rustia v. Ocampo,* CA G.R. No. 4760, 25 March 1960.

[47] *Recto v. Castelo,* 18 L.J. [1953], cited in *Rano v. Alvenia,* CA-G.R. No. 30720-R, 8 October 1962; *Guingona, Jr. v. City Fiscal of Manila,* 213 Phil. 516, 524-525 (1984).

[48] *Salonga v. Cruz Paño,* G.R. No. 59524, 18 February 1985, 134 SCRA 438, 448-450.

Document in a judicial proceeding. The elements of the offense are as follows:

1. That the offender knew that a document was falsified by another person.
2. That the false document is embraced in Article 171 or in any subdivisions Nos. 1 or 2 of Article 172.
3. That he introduced said document in evidence in any judicial proceeding.[49]

The falsity of the document and the defendants' knowledge of its falsity are essential elements of the offense. The Office of the City Prosecutor filed the Informations against the petitioners on the basis of the Complaint-Affidavit of respondent Atty. Peña, attached to which were the documents contained in the Motion to Dismiss filed by the petitioners in Civil Case No. 754. Also included as attachments to the complaint were the Answers, Pre-Trial Brief, the alleged falsified documents, copy of the regular meetings of ISCI during the election of the Board of Directors and the list of ISCI Stockholders.[50] Based on these documents and the complaint-affidavit of Atty. Peña, the City Prosecutor concluded that probable cause for the prosecution of the charges existed. On the strength of the same documents, the trial court issued the warrants of arrest.

This Court, however, cannot find these documents sufficient to support the existence of probable cause.

Probable cause is such set of facts and circumstances as would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested. In determining probable cause, the average man weighs the facts and circumstances without restoring to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs

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[49] JBL Reyes, *Revised Penal Code, Criminal Book Two, Fourteenth Edition,* Revised, 1998 ed., p. 246.

[50] *Rollo,* pp. 110-114.

only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction.[51]

As enunciated in *Baltazar v. People*,[52] the task of the presiding judge when the Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused.

The purpose of the mandate of the judge to first determine probable cause for the arrest of the accused is to insulate from the very start those falsely charged with crimes from the tribulations, expenses and anxiety of a public trial.[53]

We do not see how it can be concluded that the documents mentioned by respondent in his complaint-affidavit were falsified. In his complaint, Atty. Peña stated that Herman Ponce, Julie Abad and Marilyn Ong, the alleged signatories of the questioned letters, did not actually affix their signatures therein; and that they were not actually officers or stockholders of ISCI.[54] He further claimed that Enrique Montilla's signature appearing in another memorandum addressed to respondent was forged.[55] These averments are mere assertions which are insufficient to warrant the filing of the complaint or worse the issuance of warrants of arrest. These averments cannot be considered as proceeding from the personal knowledge of herein respondent who failed to, basically, allege that he was present at the time of the execution of the documents. Neither was there any mention in the complaint-affidavit that herein respondent was familiar with the signatures of the mentioned signatories to be able to conclude that they were forged. What Atty. Peña actually stated

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

[52] G.R. No. 174016, 28 July 2008, 560 SCRA 278, 293-294.

[53] *Baltazar v. People*, *supra* note 52 at 294 citing *Okabe v. Gutierrez*, *supra* note 23 at 781.

[54] *Rollo*, pp. 108-109.

[55] *Id.* at 109.

were but sweeping assertions that the signatories are mere dummies of ISCI and that they are not in fact officers, stockholders or representatives of the corporation. Again, there is no indication that the assertion was based on the personal knowledge of the affiant.

The reason for the requirement that affidavits must be based on personal knowledge is to guard against hearsay evidence. A witness, therefore, may not testify as what he merely learned from others either because he was told or read or heard the same. Such testimony is considered hearsay and may not be received as proof of the truth of what he has learned.[56] Hearsay is not limited to oral testimony or statements; the general rule that excludes hearsay as evidence applies to written, as well as oral statements.[57]

The requirement of personal knowledge should have been strictly applied considering that herein petitioners were not given the opportunity to rebut the complainant's allegation through counter-affidavits.

Quite noticeable is the fact that in the letter dated 19 December 1994 of Herman Ponce and Julie Abad, neither of the two made the representation that they were the president or secretary of ISCI. It was only Atty. Peña who asserted that the two made such representation. He alleged that Marilyn Ong was never a stockholder of ISCI but he did not present the stock and transfer book of ISCI. And, there was neither allegation nor proof that Marilyn Ong was not connected to ISCI in any other way. Moreover, even if Marilyn Ong was not a stockholder of ISCI, such would not prove that the documents she signed were falsified.

The Court may not be compelled to pass upon the correctness of the exercise of the public prosecutor's function without any

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[56] Sec. 36, Rule 130, Rules on Evidence. *See* also *D.M. Consunji, Inc. v. Court of Appeals*, 409 Phil. 275, 285 (2001).

[57] 31A *C.J.S.* Evidence § 194. *See* also *Philippine Home Assurance Corp. v. Court of Appeals*, 327 Phil. 255, 267-268 (1996) cited in *D.M. Consunji, Inc. v. Court of Appeals, id.* at 285.

showing of grave abuse of discretion or manifest error in his findings.[58] Considering, however, that the prosecution and the court *a quo* committed manifest errors in their findings of probable cause, this Court therefore annuls their findings.

Our pronouncement in *Jimenez v. Jimenez*[59] as reiterated in *Baltazar v. People* is apropos:

> It is x x x imperative upon the fiscal or the judge as the case may be, to relieve the accused from the pain of going through a trial once it is ascertained that the evidence is insufficient to sustain a *prima facie* case or that no probable cause exists to form a sufficient belief as to the guilt of the accused. Although there is no general formula or fixed rule for the determination of probable cause since the same must be decided in the light of the conditions obtaining in given situations and its existence depends to a large degree upon the finding or opinion of the judge conducting the examination, such a finding should not disregard the facts before the judge nor run counter to the clear dictates of reasons. The judge or fiscal, therefore, should not go on with the prosecution in the hope that some credible evidence might later turn up during trial for this would be a flagrant violation of a basic right which the courts are created to uphold. It bears repeating that the judiciary lives up to its mission by visualizing and not denigrating constitutional rights. So it has been before. It should continue to be so.

On the foregoing discussion, we find that the Court of Appeals erred in affirming the findings of the prosecutor as well as the court *a quo* as to the existence of probable cause. The criminal complaint against the petitioners should be dismissed.

**WHEREFORE,** the petition is hereby *GRANTED*. The Decision of the Court of Appeals dated 20 June 2000, in CA-G.R. SP No. 49666, is *REVERSED* and *SET ASIDE*. The Temporary Restraining Order dated 2 August 2000 is hereby made permanent. Accordingly, the Municipal Trial Court in Cities, Negros Occidental, Bago City, is hereby *DIRECTED* to *DISMISS* Criminal Case Nos. 6683, 6684, 6685 and 6686.

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[58] *Ang v. Lucero*, G.R. No. 143169, 21 January 2005, 449 SCRA 157, 168.

[59] G.R. No. 158148, 30 June 2005, 462 SCRA 516, 528-529.

**SO ORDERED.**

*Brion (Acting Chairperson), Del Castillo, Villarama, Jr.,*[*] and *Mendoza,*[**] *JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 163267. May 5, 2010]

**TEOFILO EVANGELISTA,** *petitioner, vs.* **THE PEOPLE OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; ONLY QUESTIONS OF LAW MAY BE RAISED; EXCEPTION.—** At the outset, we emphasize that under Rule 45 of the Rules of Court, a petition for review on *certiorari* shall only raise questions of law considering that the findings of fact of the CA are, as a general rule, conclusive upon and binding on the Supreme Court. In this recourse, petitioner indulges us to calibrate once again the evidence adduced by the parties and to re-evaluate the credibility of their witnesses.

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[*] Per Raffle dated 27 April 2010, Associate Justice Martin S. Villarama, Jr., is designated an additional member in place of Associate Justice Roberto A. Abad who inhibited himself due to close association with one of the parties.

[**] Chief Justice Reynato S. Puno was originally designated as an additional member per raffle dated 15 February 2010 in lieu of Associate Justice Antonio T. Carpio who inhibited himself due to a related case. However, per Special Order No. 836 dated 12 April 2010, Associate Justice Jose Catral Mendoza is designated an additional member of the Second Division, whether Regular or Special, relative to cases wherein Chief Justice Reynato S. Puno was designated as additional member in view of the Chief Justice forthcoming retirement.

On this ground alone, the instant petition deserves to be denied outright. However, as the liberty of petitioner is at stake and following the principle that an appeal in a criminal case throws the whole case wide open for review, we are inclined to delve into the merits of the present petition.

**2. CRIMINAL LAW; PRESIDENTIAL DECREE 1866; KIND OF POSSESSION PUNISHABLE IS ONE WHERE ACCUSED POSSESSED AN UNLICENSED FIREARM EITHER PHYSICALLY OR CONSTRUCTIVELY WITH *ANIMUS POSSIDENDI*; CONSTRUCTIVE POSSESSION, A CASE OF.—** In his bid for acquittal, petitioner argues that he could not have committed the crime imputed against him for he was never in custody and possession of any firearm or ammunition when he arrived in the Philippines. Thus, the conclusion of the appellate court that he was in constructive possession of the subject firearms and ammunitions is erroneous. We are not persuaded. As correctly found by the CA: Appellant's argument that he was never found in possession of the subject firearms and ammunitions within Philippine jurisdiction is specious. It is worthy to note that at the hearing of the case before the court *a quo* on October 8, 1996, the defense counsel stipulated that the subject firearms and ammunitions were confiscated from appellant and the same were given to PAL Station Manager Nilo Umayaw who, in turn, turned over the same to Capt. Edwin Nadurata. Such stipulation of fact is binding on appellant, for the acts of a lawyer in the defense of a case are the acts of his client. Granting that Nilo Umayaw was merely told by the Dubai authorities that the firearms and ammunitions were found in the luggage of appellant and that Umayaw had no personal knowledge thereof, however, appellant's signature on the Customs Declaration Form, which contains the entry "2 PISTOL guns SENT SURRENDER TO PHILIPPINE AIRLINE," proves that he was the one who brought the guns to Manila. While appellant claims that he signed the Customs Declaration Form without reading it because of his excitement, however, he does not claim that he was coerced or persuaded in affixing his signature thereon. The preparation of the Customs Declaration Form is a requirement for all arriving passengers in an international flight. Moreover, it cannot be said that appellant had already been arrested when he signed the Customs Declaration Form. He was merely escorted by Special Agent

Acierto to the arrival area of the NAIA. In fact, appellant admitted that it was only after he signed the Customs Declaration Form that he was brought to the ground floor of NAIA for investigation. Consequently, appellant was in constructive possession of the subject firearms. As held in *People v. Dela Rosa*, the kind of possession punishable under PD 1866 is one where the accused possessed a firearm either physically or constructively with *animus possidendi* or intention to possess the same. *Animus possidendi* is a state of mind. As such, what goes on into the mind of the accused, as his real intent, could be determined solely based on his prior and coetaneous acts and the surrounding circumstances explaining how the subject firearm came to his possession. Appellant's witness, Capt. Nadurata, the PAL pilot of Flight No. PR 657 from Dubai to Manila on January 30, 1996, testified that he accepted custody of the firearms and of appellant in order that the latter, who was being detained in Dubai for having been found in possession of firearms, would be released from custody. In other words, Capt. Nadurata's possession of the firearm during the flight from Dubai to Manila was for and on behalf of appellant.

**3. REMEDIAL LAW; EVIDENCE; JUDICIAL ADMISSION; VERACITY THEREOF REQUIRES NO FURTHER PROOF AND MAY BE CONTROVERTED ONLY UPON A CLEAR SHOWING THAT IT WAS MADE THROUGH PALPABLE MISTAKE OR THAT NO ADMISSION WAS MADE; CASE AT BAR.—** We find no cogent reason to deviate from the xxx findings [of the CA], especially considering petitioner's admission during the clarificatory questioning by the trial court: Court: So, it is clear now in the mind of the Court, that the firearms and ammunitions will also be with you on your flight to Manila, is that correct? A: Yes, your honor. Court: [You] made mention of that condition, that the Dubai police agreed to release you provided that you will bring the guns and ammunitions with you? Is that the condition of the Dubai Police? A: Yes, your honor. Court: The condition of his release was that he will have to bring the guns and ammunitions to the Philippines and this arrangement was made by the PAL Supervisor at Dubai and it was Mr. Umayaw the PAL Supervisor, who interceded in his behalf with the Dubai Police for his flight in the Philippines. To us, this constitutes judicial admission

of his possession of the subject firearms and ammunitions. This admission, the veracity of which requires no further proof, may be controverted only upon a clear showing that it was made through palpable mistake or that no admission was made. No such controversion is extant on record.

**4. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; CONSTITUTIONAL PROCEDURE ON CUSTODIAL INVESTIGATION IS NOT APPLICABLE IN CASE AT BAR.—** We are likewise not swayed by petitioner's contention that the lower court erroneously relied on the Customs Declaration Form since it is not admissible in evidence because it was accomplished without the benefit of counsel while he was under police custody. The accomplishment of the Customs Declaration Form was not elicited through custodial investigation. It is a customs requirement which petitioner had a clear obligation to comply. As correctly observed by the CA, the preparation of the Customs Declaration Form is a requirement for all arriving passengers in an international flight. Petitioner was among those passengers. Compliance with the constitutional procedure on custodial investigation is, therefore, not applicable in this case. Moreover, it is improbable that the customs police were the ones who filled out the declaration form. As will be noted, it provides details that only petitioner could have possibly known or supplied. Even assuming that there was prior accomplishment of the form which contains incriminating details, petitioner could have easily taken precautionary measures by not affixing his signature thereto. Or he could have registered his objection thereto especially when no life threatening acts were being employed against him upon his arrival in the country.

**5. CRIMINAL LAW; APPLICABILITY OF PENAL LAWS; ILLEGAL POSSESSION OF FIREARMS AND AMMUNITION, COMMITTED WITHIN THE TERRITORIAL JURISDICTION OF THE PHILIPPINES.—** Indeed it is fundamental that the place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction. In order for the courts to acquire jurisdiction in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court. If

the evidence adduced during the trial shows that the offense was committed somewhere else, the court should dismiss the action for want of jurisdiction. Contrary to the arguments put forward by petitioner, we entertain no doubt that the crime of illegal possession of firearms and ammunition for which he was charged was committed in the Philippines. The accomplishment by petitioner of the Customs Declaration Form upon his arrival at the NAIA is very clear evidence that he was already in possession of the subject firearms in the Philippines.

**6. ID.; PRESIDENTIAL DECREE 1866, AS AMENDED; ILLEGAL POSSESSION OF FIREARMS; LACK OR ABSENCE OF LICENSE TO POSSESS FIREARM CONSTITUTES AN ESSENTIAL INGREDIENT OF THE OFFENSE.—** And more than mere possession, the prosecution was able to ascertain that he has no license or authority to possess said firearms. It bears to stress that the essence of the crime penalized under PD 1866, as amended, is primarily the accused's lack of license to possess the firearm. The fact of lack or absence of license constitutes an essential ingredient of the offense of illegal possession of firearm. Since it has been shown that petitioner was already in the Philippines when he was found in possession of the subject firearms and determined to be without any authority to possess them, an essential ingredient of the offense, it is beyond reasonable doubt that the crime was perpetrated and completed in no other place except the Philippines.

**7. REMEDIAL LAW; CRIMINAL PROCEDURE; JURISDICTION; DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT OR INFORMATION.—** xxx [T]he jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. In this case, the information specifically and categorically alleged that on or about January 30, 1996 petitioner was in possession, custody and control of the subject firearms at the Ninoy Aquino International Airport, Pasay City, Philippines, certainly a territory within the jurisdiction of the trial court. In contrast, petitioner failed to establish by sufficient and competent evidence that the present charge happened in Dubai. It may be well to recall that while in Dubai, petitioner, even in a situation between life and death, firmly denied possession and ownership of the firearms. Furthermore, there is no record of any criminal case having been filed against

petitioner in Dubai in connection with the discovered firearms. Since there is no pending criminal case when he left Dubai, it stands to reason that there was no crime committed in Dubai. The age-old but familiar rule that he who alleges must prove his allegation applies.

**8. ID.; ID.; PRELIMINARY INVESTIGATION; TRIAL COURT IS NOT DUTIFULLY BOUND TO ADOPT THE INVESTIGATING PROSECUTOR'S FINDING OF LACK OF PROBABLE CAUSE; RATIONALE.—** xxx There is nothing procedurally improper on the part of the trial court in disregarding the result of the preliminary investigation it itself ordered. Judicial action on the motion rests in the sound exercise of judicial discretion. In denying the motion, the trial court just followed the jurisprudential rule laid down in *Crespo v. Judge Mogul* that once a complaint or information is filed in court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests on the sound discretion of the court. The court is not dutifully bound by such finding of the investigating prosecutor. In *Solar Team Entertainment, Inc v. Judge How* we held: It bears stressing that the court is however not bound to adopt the resolution of the Secretary of Justice since the court is mandated to independently evaluate or assess the merits of the case, and may either agree or disagree with the recommendation of the Secretary of Justice. Reliance alone on the resolution of the Secretary of Justice would be an abdication of the trial court's duty and jurisdiction to determine *prima facie* case. Consequently, petitioner has no valid basis to insist on the trial court to respect the result of the preliminary investigation it ordered to be conducted.

**9. CRIMINAL LAW; ILLEGAL POSSESSION OF FIREARMS AND AMMUNITION; ELEMENTS; PROVEN BEYOND REASONABLE DOUBT.—** In the prosecution for the crime of illegal possession of firearm and ammunition, the Court has reiterated the essential elements in *People v. Eling* to wit: (1) the existence of subject firearm; and, (2) the fact that the accused who possessed or owned the same does not have the corresponding license for it. In the instant case, the prosecution proved beyond reasonable doubt the elements of the crime. The existence of the subject firearms and the ammunition were established through the testimony of Acierto. Their existence

was likewise admitted by petitioner when he entered into stipulation and through his subsequent judicial admission. Concerning petitioner's lack of authority to possess the firearms, SPO4 Bondoc, Jr. testified that upon verification, it was ascertained that the name of petitioner does not appear in the list of registered firearm holders or a registered owner thereof. As proof, he submitted a certification to that effect and identified the same in court. The testimony of SPO4 Bondoc, Jr. or the certification from the FEO would suffice to prove beyond reasonable doubt the second element.

**10. ID.; REPUBLIC ACT NO. 8294; RETROSPECTIVE APPLICATION OF PENALTY, APPLICABLE.—** xxx Republic Act (RA) No. 8294 took effect on June 6, 1997 or after the commission of the crime on January 30, 1996. However, since it is advantageous to the petitioner, it should be given retrospective application insofar as the penalty is concerned. Section 1 of PD 1866, as amended by RA 8294 provides: Section 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition*. x x x The penalty of *prision mayor* in its minimum period and a fine of Thirty thousand pesos (₱30,000.00) shall be imposed if the firearm is classified as 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: *Provided, however*, That no other crime was committed by the person arrested. *Prision mayor* in its minimum period ranges from six years and one day to eight years. Hence, the penalty imposed by the RTC as affirmed by the CA is proper.

**APPEARANCES OF COUNSEL**

*Balane Tamase Alampay Law Offices* for petitioner.
*The Solicitor General* for respondent.

## D E C I S I O N

**DEL CASTILLO, *J.*:**

To be guilty of the crime of illegal possession of firearms and ammunition, one does not have to be in actual physical possession thereof. The law does not punish physical possession alone but possession in general, which includes constructive possession or the subjection of the thing to the owner's control.[1]

This Petition for Review on *Certiorari*[2] assails the October 15, 2003 Decision[3] of the Court of Appeals (CA) in CA-G.R. CR No. 21805 which affirmed the January 23, 1998 Decision[4] of the Regional Trial Court (RTC) of Pasay City, Branch 109 convicting petitioner Teofilo Evangelista for violation of Section 1, Presidential Decree (PD) No. 1866,[5] as amended, as well as the April 16, 2004 Resolution which denied petitioner's Motion for Reconsideration.

### *Factual Antecedents*

In an Information[6] dated January 31, 1996, petitioner was charged with violation of Section 1 of PD 1866 allegedly committed as follows:

That on or about the 30th day of January 1996, at the Ninoy Aquino International Airport, Pasay City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did,

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[1] *People v. Fajardo*, 123 Phil. 1348, 1351 (1966).

[2] *Rollo*, pp. 3-37.

[3] CA *rollo*, pp. 181-194; penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Sergio L. Pestaño and Jose Catral Mendoza (now a member of this Court).

[4] Records, Vol. II, pp. 133-141; penned by Judge Lilia C. Lopez.

[5] Decree Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing In Acquisition or Disposition of Firearms, Ammunition or Explosives.

[6] Records, Vol. I, pp. 1-2.

then and there, wilfully, unlawfully and feloniously have in his possession, custody and control the following items:

1. One (1) Unit 9mm Jericho Pistol, Israel with SN F-36283 with one (1) magazine;
2. One (1) Unit Mini-Uzi 9mm Israel Submachine gun with SN 931864 with two (2) magazines;
3. Nineteen (19) 9mm bullets.

without the corresponding permit or license from competent authority.

CONTRARY TO LAW.

After posting his bail, petitioner filed on February 14, 1996 an Urgent Motion for (a) Suspension of Proceedings and (b) the Holding of A Preliminary Investigation.[7] The RTC granted the motion and, accordingly, the State Prosecutor conducted the preliminary investigation.

In a Resolution[8] dated March 6, 1996, the State Prosecutor found no probable cause to indict petitioner and thus recommended the reversal of the resolution finding probable cause and the dismissal of the complaint. Thereafter, a Motion to Withdraw Information[9] was filed but it was denied by the trial court in an Order[10] dated March 26, 1996, *viz*:

> Acting on the "Motion to Withdraw Information" filed by State Prosecutor Aida Macapagal on the ground that [there exists] no probable cause to indict the accused, the Information having been already filed in Court, the matter should be left to the discretion of the Court to assess the evidence, hence, for lack of merit, the same is hereby denied. Let the arraignment of the accused proceed.

When arraigned on March 26, 1996, petitioner pleaded not guilty to the charge. Thereafter, trial ensued.

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[7] *Id.* at 54-59.

[8] *Id.* at 75-79.

[9] *Id.* at 73-74.

[10] *Id.* at 86.

***Version of the Prosecution***

In the morning of January 30, 1996, Maximo Acierto, Jr. (Acierto), a Customs Police assigned at the Ninoy Aquino International Airport (NAIA) District Command, was informed by his superior that a certain passenger of Philippine Airlines (PAL) Flight No. 657 would be arriving from Dubai bringing with him firearms and ammunitions. Shortly after lunch, Acierto, together with Agents Cuymo and Fuentabella, proceeded to the tube area where they were met by a crewmember who introduced to them herein petitioner. Acierto asked petitioner if he brought firearms with him and the latter answered in the affirmative adding that the same were bought in Angola. Thereupon, Acierto was summoned to the cockpit by the pilot, Capt. Edwin Nadurata (Capt. Nadurata), where the firearms and ammunitions were turned over to him. Petitioner was then escorted to the arrival area to get his luggage and thereafter proceeded to the examination room where the luggage was examined and petitioner was investigated. In open court, Acierto identified the firearms and ammunitions.

During the investigation, petitioner admitted before Special Agent Apolonio Bustos (Bustos) that he bought the subject items in Angola but the same were confiscated by the Dubai authorities, which turned over the same to a PAL personnel in Dubai. Upon inquiry, the Firearms and Explosive Office (FEO) in Camp Crame certified that petitioner is neither registered with said office[11] nor licensed holder of aforesaid firearms and ammunitions. Bustos likewise verified from the Bureau of Customs, but his effort yielded no record to show that the firearms were legally purchased. Among the documents Bustos had gathered during his investigation were the Arrival Endorsement Form[12] and Customs Declaration Form.[13] A referral letter[14] was prepared endorsing the matter to the Department of Justice. Bustos admitted that petitioner

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[11] Exhibit "G", records, p. 174.

[12] Exhibit "I", *id.* at 177.

[13] Exhibit "J", *id.* at 178.

[14] Exhibit "H", *id.* at 175-176.

was not assisted by counsel when the latter admitted that he bought the firearms in Angola.

SPO4 Federico Bondoc, Jr. (SPO4 Bondoc), a member of the Philippine National Police (PNP) and representative of the FEO, upon verification, found that petitioner is not a licensed/ registered firearm holder. His office issued a certification[15] to that effect which he identified in court as Exhibit "A".

After the prosecution rested its case, petitioner, with leave of court, filed his Demurrer to Evidence,[16] the resolution of which was deferred pending submission of petitioner's evidence.[17]

***Version of the Defense***

The defense presented Capt. Nadurata whose brief but candid and straightforward narration of the event was synthesized by the CA as follows:

> x x x On January 30, 1996, he was approached by the PAL Station Manager in Dubai, who informed him that a Filipino contract worker from Angola who is listed as a passenger of PAL flight from Dubai to Manila, was being detained as he was found in possession of firearms; that if said passenger will not be able to board the airplane, he would be imprisoned in Dubai; and that the Arabs will only release the passenger if the Captain of PAL would accept custody of the passenger [herein petitioner] and the firearms. Capt. Nadurata agreed to take custody of the firearms and the passenger, herein appellant, so that the latter could leave Dubai. The firearms were deposited by the Arabs in the cockpit of the airplane and allowed the appellant to board the airplane. Upon arrival in Manila, Capt. Nadurata surrendered the firearms to the airport authorities.

Meanwhile, in view of the unavailability of the defense's intended witness, Nilo Umayaw (Umayaw), the PAL Station Manager in Dubai, the prosecution and the defense agreed and stipulated on the following points:

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[15] *Id.* at 171.

[16] *Id.* at 187-199.

[17] *Id.* at 212.

1. That PAL Station Manager Mr. Nilo Umayaw was told by a Dubai Police that firearms and ammunitions were found in the luggage of a Filipino passenger coming from Angola going to the Philippines;
2. That he was the one who turned over the subject firearms to Captain Edwin Nadurata, the Pilot in command of PAL Flight 657;
3. That the subject firearms [were] turned over at Dubai;
4. That the said firearms and ammunitions were confiscated from the accused Teofilo Evangelista and the same [were] given to the PAL Station Manager who in turn submitted [them] to the PAL Pilot, Capt. Edwin Nadurata who has already testified;
5. That [these are] the same firearms involved in this case.[18]

***Ruling of the Regional Trial Court***

On February 4, 1997, the RTC rendered its Decision, the dispositive portion of which reads:

> In view of all the foregoing, the Court finds accused TEOFILO E. EVANGELISTA guilty beyond reasonable doubt for violation of Sec. 1, P.D. 1866 as amended (Illegal Possession of Firearms and Ammunitions: (One (1) Unit Mini-Uzi 9mm Israel submachine gun with SN-931864 with two (2) magazines and nineteen (19) 9mm bullets) and hereby sentences him to imprisonment of Seventeen (17) Years and Four (4) Months to Twenty (20) Years.
>
> The above-mentioned firearms are hereby ordered forfeited in favor of the government and is ordered transmitted to the National Bureau of Investigation, Manila for proper disposition.
>
> SO ORDERED.[19]

On April 4, 1997, petitioner filed a Motion for New Trial[20] which the RTC granted.[21] Forthwith, petitioner took

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[18] *Id.* at 293-294.

[19] *Id.* at 303-304.

[20] Records, Vol. II, pp. 1-8.

[21] *Id.* at 25.

the witness stand narrating his own version of the incident as follows:

On January 28, 1996, he was at Dubai International Airport waiting for his flight to the Philippines. He came from Luwanda, Angola where he was employed as a seaman at Oil International Limited. While at the airport in Dubai, Arab policemen suddenly accosted him and brought him to their headquarters where he saw guns on top of a table. The Arabs maltreated him and forced him to admit ownership of the guns. At this point, PAL Station Manager Umayaw came and talked to the policemen in Arabian dialect. Umayaw told him that he will only be released if he admits ownership of the guns. When he denied ownership of the same, Umayaw reiterated that he (petitioner) will be released only if he will bring the guns with him to the Philippines. He declined and insisted that the guns are not his. Upon the request of Umayaw, petitioner was brought to the Duty Free area for his flight going to the Philippines. When he was inside the plane, he saw the Arab policemen handing the guns to the pilot. Upon arrival at the NAIA, he was arrested by the Customs police and brought to the arrival area where his passport was stamped and he was made to sign a Customs Declaration Form without reading its contents. Thereafter, he was brought to a room at the ground floor of the NAIA where he was investigated. During the investigation, he was not represented by counsel and was forced to accept ownership of the guns. He denied ownership of the guns and the fact that he admitted having bought the same in Angola.

***Ruling of the Regional Trial Court***

After new trial, the RTC still found petitioner liable for the offense charged but modified the penalty of imprisonment. The dispositive portion of the Decision dated January 23, 1998 reads:

In view of all the foregoing, the Court finds accused TEOFILO E. EVANGELISTA guilty beyond reasonable doubt for violation of Sec. 1, P.D. 1866 as amended (Illegal Possession of Firearms and Ammunitions: One (1) Unit 9mm Jerico Pistol, Israel with SN F-36283 with one (1) magazine; One (1) Unit Mini-Uzi 9mm Israel submachine gun with SN-931864 with two (2) magazines and nineteen (19) 9mm

bullets and hereby sentences him to imprisonment of Six (6) Years and One (1) Day to Eight (8) Years and a fine of ₱30,000.00.

The above-mentioned firearms are hereby ordered forfeited in favor of the government and [are] ordered transmitted to the National Bureau of Investigation, Manila for proper disposition.

SO ORDERED.[22]

***Ruling of the Court of Appeals***

On appeal, the CA affirmed the findings of the trial court in its Decision dated October 15, 2003. It ruled that the stipulations during the trial are binding on petitioner. As regards possession of subject firearms, the appellate court ruled that Capt. Nadurata's custody during the flight from Dubai to Manila was for and on behalf of petitioner. Thus, there was constructive possession.

Petitioner moved for reconsideration[23] but it was denied by the appellate court in its April 16, 2004 Resolution.

Hence, this petition.

**Issues**

Petitioner assigns the following errors:

a. The Court of Appeals gravely erred in not acquitting Evangelista from the charge of Presidential Decree No. 1866, Illegal Possession of Firearms.

b. The Court of Appeals gravely erred in not holding that Evangelista was never in possession of any firearm or ammunition within Philippine jurisdiction and he therefore could not have committed the crime charged against him.

c. The Court of Appeals gravely erred in holding that Evangelista committed a continuing crime.

d. The Court of Appeals gravely erred in disregarding the results of the preliminary investigation.[24]

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[22] *Id.* at 133-141.

[23] CA *rollo*, 198-206.

[24] *Rollo*, p. 16.

We find the appeal devoid of merit.

At the outset, we emphasize that under Rule 45 of the Rules of Court, a petition for review on *certiorari* shall only raise questions of law considering that the findings of fact of the CA are, as a general rule, conclusive upon and binding on the Supreme Court.[25] In this recourse, petitioner indulges us to calibrate once again the evidence adduced by the parties and to re-evaluate the credibility of their witnesses. On this ground alone, the instant petition deserves to be denied outright. However, as the liberty of petitioner is at stake and following the principle that an appeal in a criminal case throws the whole case wide open for review, we are inclined to delve into the merits of the present petition.

In his bid for acquittal, petitioner argues that he could not have committed the crime imputed against him for he was never in custody and possession of any firearm or ammunition when he arrived in the Philippines. Thus, the conclusion of the appellate court that he was in constructive possession of the subject firearms and ammunitions is erroneous.

We are not persuaded. As correctly found by the CA:

> Appellant's argument that he was never found in possession of the subject firearms and ammunitions within Philippine jurisdiction is specious. It is worthy to note that at the hearing of the case before the court *a quo* on October 8, 1996, the defense counsel stipulated that the subject firearms and ammunitions were confiscated from appellant and the same were given to PAL Station Manager Nilo Umayaw who, in turn, turned over the same to Capt. Edwin Nadurata. Such stipulation of fact is binding on appellant, for the acts of a lawyer in the defense of a case are the acts of his client. Granting that Nilo Umayaw was merely told by the Dubai authorities that the firearms and ammunitions were found in the luggage of appellant and that Umayaw had no personal knowledge thereof, however, appellant's signature on the Customs Declaration Form, which contains the entry "2 PISTOL guns SENT SURRENDER TO PHILIPPINE AIRLINE," proves that he was the one who brought

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[25] *Dacut v. Court of Appeals*, G.R. No. 169434, March 28, 2008, 550 SCRA 260, 267.

the guns to Manila. While appellant claims that he signed the Customs Declaration Form without reading it because of his excitement, however, he does not claim that he was coerced or persuaded in affixing his signature thereon. The preparation of the Customs Declaration Form is a requirement for all arriving passengers in an international flight. Moreover, it cannot be said that appellant had already been arrested when he signed the Customs Declaration Form. He was merely escorted by Special Agent Acierto to the arrival area of the NAIA. In fact, appellant admitted that it was only after he signed the Customs Declaration Form that he was brought to the ground floor of NAIA for investigation. Consequently, appellant was in constructive possession of the subject firearms. As held in *People v. Dela Rosa*, the kind of possession punishable under PD 1866 is one where the accused possessed a firearm either physically or constructively with *animus possidendi* or intention to possess the same. *Animus possidendi* is a state of mind. As such, what goes on into the mind of the accused, as his real intent, could be determined solely based on his prior and coetaneous acts and the surrounding circumstances explaining how the subject firearm came to his possession.

Appellant's witness, Capt. Nadurata, the PAL pilot of Flight No. PR 657 from Dubai to Manila on January 30, 1996, testified that he accepted custody of the firearms and of appellant in order that the latter, who was being detained in Dubai for having been found in possession of firearms, would be released from custody. In other words, Capt. Nadurata's possession of the firearm during the flight from Dubai to Manila was for and on behalf of appellant.[26]

We find no cogent reason to deviate from the above findings, especially considering petitioner's admission during the clarificatory questioning by the trial court:

Court: So, it is clear now in the mind of the Court, that the firearms and ammunitions will also be with you on your flight to Manila, is that correct?

A: Yes, your honor.

Court: [You] made mention of that condition, that the Dubai police agreed to release you provided that you will bring the guns and ammunitions with you? Is that the condition of the Dubai

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[26] CA *rollo*, pp. 191-192. Citations Omitted

Police?

A: Yes, your honor.

Court: The condition of his release was that he will have to bring the guns and ammunitions to the Philippines and this arrangement was made by the PAL Supervisor at Dubai and it was Mr. Umayaw the PAL Supervisor, who interceded in his behalf with the Dubai Police for his flight in the Philippines.[27]

To us, this constitutes judicial admission of his possession of the subject firearms and ammunitions. This admission, the veracity of which requires no further proof, may be controverted only upon a clear showing that it was made through palpable mistake or that no admission was made.[28] No such controversion is extant on record.

Moreover, we cannot ignore the Customs Declaration Form wherein it appeared that petitioner brought the firearms with him upon his arrival in the Philippines. While there was no showing that he was forced to sign the form, petitioner can only come up with the excuse that he was excited. Hardly can we accept such pretension.

We are likewise not swayed by petitioner's contention that the lower court erroneously relied on the Customs Declaration Form since it is not admissible in evidence because it was accomplished without the benefit of counsel while he was under police custody.

The accomplishment of the Customs Declaration Form was not elicited through custodial investigation. It is a customs requirement which petitioner had a clear obligation to comply. As correctly observed by the CA, the preparation of the Customs Declaration Form is a requirement for all arriving passengers in

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[27] TSN, June 30, 1997, pp. 22-23.

[28] RULES OF COURT, Rule129, Section 4.

Sec. 4 - *Judicial admissions.* – An admission verbal or written made by a party in the course of the proceedings in the same case does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

an international flight. Petitioner was among those passengers. Compliance with the constitutional procedure on custodial investigation is, therefore, not applicable in this case. Moreover, it is improbable that the customs police were the ones who filled out the declaration form. As will be noted, it provides details that only petitioner could have possibly known or supplied. Even assuming that there was prior accomplishment of the form which contains incriminating details, petitioner could have easily taken precautionary measures by not affixing his signature thereto. Or he could have registered his objection thereto especially when no life threatening acts were being employed against him upon his arrival in the country.

Obviously, it was not only the Customs Declaration Form from which the courts below based their conclusion that petitioner was in constructive possession of subject firearms and ammunitions. Emphasis was also given on the stipulations and admissions made during the trial. These pieces of evidence are enough to show that he was the owner and possessor of these items.

Petitioner contends that the trial court has no jurisdiction over the case filed against him. He claims that his alleged possession of the subject firearms transpired while he was at the Dubai Airport and his possession thereof has ceased when he left for the Philippines. He insists that since Dubai is outside the territorial jurisdiction of the Philippines and his situation is not one of the exceptions provided in Article 2 of the Revised Penal Code, our criminal laws are not applicable. In short, he had not committed a crime within the Philippines.

Indeed it is fundamental that the place where the crime was committed determines not only the venue of the action but is an essential element of jurisdiction.[29] In order for the courts to acquire jurisdiction in criminal cases, the offense should have been committed or any one of its essential ingredients should have taken place within the territorial jurisdiction of the court. If the evidence adduced during the trial shows that the offense

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[29] *People v. Macasaet*, 492 Phil. 355, 370 (2005).

was committed somewhere else, the court should dismiss the action for want of jurisdiction.[30]

Contrary to the arguments put forward by petitioner, we entertain no doubt that the crime of illegal possession of firearms and ammunition for which he was charged was committed in the Philippines. The accomplishment by petitioner of the Customs Declaration Form upon his arrival at the NAIA is very clear evidence that he was already in possession of the subject firearms in the Philippines.

And more than mere possession, the prosecution was able to ascertain that he has no license or authority to possess said firearms. It bears to stress that the essence of the crime penalized under PD 1866, as amended, is primarily the accused's lack of license to possess the firearm. The fact of lack or absence of license constitutes an essential ingredient of the offense of illegal possession of firearm. Since it has been shown that petitioner was already in the Philippines when he was found in possession of the subject firearms and determined to be without any authority to possess them, an essential ingredient of the offense, it is beyond reasonable doubt that the crime was perpetrated and completed in no other place except the Philippines.

Moreover, the jurisdiction of a court over the criminal case is determined by the allegations in the complaint or information. In this case, the information specifically and categorically alleged that on or about January 30, 1996 petitioner was in possession, custody and control of the subject firearms at the Ninoy Aquino International Airport, Pasay City, Philippines, certainly a territory within the jurisdiction of the trial court.

In contrast, petitioner failed to establish by sufficient and competent evidence that the present charge happened in Dubai. It may be well to recall that while in Dubai, petitioner, even in a situation between life and death, firmly denied possession and ownership of the firearms. Furthermore, there is no record of any criminal case having been filed against petitioner in Dubai in connection with the discovered firearms. Since there is no

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[30] *Uy v. Court of Appeals*, 342 Phil. 329, 337 (1997).

pending criminal case when he left Dubai, it stands to reason that there was no crime committed in Dubai. The age-old but familiar rule that he who alleges must prove his allegation applies.[31]

Petitioner finally laments the trial court's denial of the Motion to Withdraw Information filed by the investigating prosecutor due to the latter's finding of lack of probable cause to indict him. He argues that such denial effectively deprived him of his substantive right to a preliminary investigation.

Still, petitioner's argument fails to persuade. There is nothing procedurally improper on the part of the trial court in disregarding the result of the preliminary investigation it itself ordered. Judicial action on the motion rests in the sound exercise of judicial discretion. In denying the motion, the trial court just followed the jurisprudential rule laid down in *Crespo v. Judge Mogul*[32] that once a complaint or information is filed in court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests on the sound discretion of the court. The court is not dutifully bound by such finding of the investigating prosecutor. In *Solar Team Entertainment, Inc v. Judge How*[33] we held:

> It bears stressing that the court is however not bound to adopt the resolution of the Secretary of Justice since the court is mandated to independently evaluate or assess the merits of the case, and may either agree or disagree with the recommendation of the Secretary of Justice. Reliance alone on the resolution of the Secretary of Justice would be an abdication of the trial court's duty and jurisdiction to determine *prima facie* case.

Consequently, petitioner has no valid basis to insist on the trial court to respect the result of the preliminary investigation it ordered to be conducted.

In fine, we find no reason not to uphold petitioner's conviction. The records substantiate the RTC and CA's

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[31] *Samson v. Daway*, 478 Phil. 784, 795 (2004).

[32] 235 Phil. 465, 476 (1987).

[33] 393 Phil. 172, 181 (2000).

finding that petitioner possessed, albeit constructively, the subject firearms and ammunition when he arrived in the Philippines on January 30, 1996. Moreover, no significant facts and circumstances were shown to have been overlooked or disregarded which if considered would have altered the outcome of the case.

In the prosecution for the crime of illegal possession of firearm and ammunition, the Court has reiterated the essential elements in *People v. Eling*[34] to wit: (1) the existence of subject firearm; and, (2) the fact that the accused who possessed or owned the same does not have the corresponding license for it.

In the instant case, the prosecution proved beyond reasonable doubt the elements of the crime. The existence of the subject firearms and the ammunition were established through the testimony of Acierto. Their existence was likewise admitted by petitioner when he entered into stipulation and through his subsequent judicial admission. Concerning petitioner's lack of authority to possess the firearms, SPO4 Bondoc, Jr. testified that upon verification, it was ascertained that the name of petitioner does not appear in the list of registered firearm holders or a registered owner thereof. As proof, he submitted a certification to that effect and identified the same in court. The testimony of SPO4 Bondoc, Jr. or the certification from the FEO would suffice to prove beyond reasonable doubt the second element.[35]

A final point. Republic Act (RA) No. 8294[36] took effect on June 6, 1997 or after the commission of the crime on January 30, 1996. However, since it is advantageous to the petitioner, it should be given retrospective application insofar as the penalty is concerned.

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[34] G.R. No. 178546, April 30, 2008, 553 SCRA 724, 738.

[35] *Valeroso v. People*, G.R. No. 164815, February 22, 2008, 546 SCRA 450, 468-469.

[36] An Act Amending the Provisions of Presidential Decree No. 1866.

Section 1 of PD 1866, as amended by RA 8294 provides:

> Section 1. *Unlawful Manufacture, Sale, Acquisition, Disposition or Possession of Firearms or Ammunition or Instruments Used or Intended to be Used in the Manufacture of Firearms or Ammunition*. x x x
>
> The penalty of *prision mayor* in its minimum period and a fine of Thirty thousand pesos (₱30,000.00) shall be imposed if the firearm is classified as 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: *Provided, however*, That no other crime was committed by the person arrested.

*Prision mayor* in its minimum period ranges from six years and one day to eight years. Hence, the penalty imposed by the RTC as affirmed by the CA is proper.

**WHEREFORE,** the petition is *DENIED*. The assailed Decision of the Court of Appeals in CA-G.R. CR No. 21805 affirming the January 23, 1998 Decision of the Regional Trial Court of Pasay City, Branch 109 dated January 23, 1998, convicting petitioner Teofilo Evangelista of violation of Section 1 of Presidential Decree No. 1866, as amended, and sentencing him to suffer the penalty of imprisonment of six years and one day to eight years and to pay a fine of ₱30,000.00 is *AFFIRMED*.

**SO ORDERED.**

*Carpio (Chairperson), Brion, Abad,* and *Perez, JJ.*, concur.

**THIRD DIVISION**

[G.R. No. 167239. May 5, 2010]

**HICOBLINO M. CATLY (Deceased), Substituted by his wife, LOURDES A. CATLY,** *petitioner, vs.* **WILLIAM NAVARRO, ISAGANI NAVARRO, BELEN DOLLETON, FLORENTINO ARCIAGA, BARTOLOME PATUGA, DIONISIO IGNACIO, BERNARDINO ARGANA, AND ERLINDA ARGANA-DELA CRUZ, and AYALA LAND, INC.,** *respondents*.

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PROPER MODE OF APPEAL IN CASE AT BAR.—** xxx Although denominated as petition for review on *certiorari* under Rule 45, petitioner, in questioning the decision and order of the trial court which were rendered in the exercise of its original jurisdiction, should have taken the appeal to the Court of Appeals within fifteen (15) days from notice of the trial court's March 1, 2005 Order, *i.e.*, within 15 days counted from March 7, 2005 (date of receipt of the appealed order), or until March 22, 2005, by filing a notice of appeal with the trial court which rendered the decision and order appealed from and serving copies thereof upon the adverse party pursuant to Sections 2(a) and 3 of Rule 41. Clearly, when petitioner sought to assail the decision and order of the trial court, an appeal to the Court of Appeals was the adequate remedy which he should have availed of, instead of filing a petition directly with this Court.

**2. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT THE PROPER REMEDY WHERE AN APPEAL IS AVAILABLE, EVEN IF THE GROUND THEREFOR IS GRAVE ABUSE OF DISCRETION.—** Even if the petition will be treated as a petition for *certiorari* under Rule 65, the same should be dismissed. In *Madrigal Transport, Inc. v. Lapanday Holdings* Corporation, which has been often cited in subsequent cases, the Court declared that where appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. Remedies of

appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.

**3. ID.; CIVIL PROCEDURE; JURISDICTION; HIERARCHY OF COURTS; RELAXATION OF THE RULES THEREON, PROPER IN CASE AT BAR.—** xxx [T]he petition should be denied for violation of hierarchy of courts as prior recourse should have been made to the Court of Appeals, instead of directly with this Court. A direct invocation of the Court's original jurisdiction to issue writs of *certiorari* should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent over-crowding of the Court's docket. As aptly pronounced in *Santiago v. Vasquez*, the observance of the hierarchy of courts should be respected as the Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate court. xxx On the contrary, the direct recourse to this Court as an exception to the rule on hierarchy of courts has been recognized because it was dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy. Considering the merits of the present case, the Court sees the need to relax the iron clad policy of strict observance of the judicial hierarchy of courts and, thus, takes cognizance over the case. The trial court, in its Decisions dated December 1, 2004 and December 13, 2004 (per Presiding Judge Raul Bautista Villanueva), erred in *motu proprio* modifying the Separate Judgment dated July 22, 1997 (per Presiding Judge Florentino M. Alumbres) by reducing the entitlement of petitioner's additional attorney's fees from ₱20,000,000.00 to ₱1,000,000.00.

**4. LEGAL ETHICS; ATTORNEYS; ATTORNEY'S FEES; THE POWER TO DETERMINE THE REASONABLENESS OR THE UNCONSCIONABLE CHARACTER THEREOF STIPULATED BY THE PARTIES IS A MATTER FALLING WITHIN THE REGULATORY PREROGATIVE OF THE COURTS.—** Clearly, in G.R. No. 127079, the Court ordered the trial court to resolve the issue of whether petitioner should be entitled to the entire amount of ₱30,000,000.00 (the sum of ₱10,000,000.00 was already received by the petitioner, plus the claim of the additional amount of ₱20,000,000.00). This directive necessarily requires the duty of the trial court (through Judge Raul Bautista Villanueva) to determine the appropriate amount of additional attorney's fees to be awarded to petitioner, whether it should be the entire amount of ₱20,000,000.00 (as claimed by petitioner) or a reduced amount (as claimed by respondent ALI). If to the mind of the trial court, despite the Separate Judgment dated July 22, 1997 (per Judge Florentino M. Alumbres) directing respondent ALI to release the amount of ₱20,000,000.00 as additional attorney's fees of petitioner, the said amount appears to be unreasonable, then it should have forthwith conducted a hearing with dispatch to resolve the issue of the reasonable amount of attorney's fees on *quantum meruit* basis and, accordingly, modify the said Separate Judgment dated July 22, 1997 to be incorporated in the Decision dated December 1, 2004. This is in consonance with the ruling in *Roldan v. Court of Appeals* which states: As a basic premise, the contention of petitioners that this Court may alter, modify or change even an admittedly valid stipulation between the parties regarding attorney's fees is conceded. The high standards of the legal profession as prescribed by law and the Canons of Professional Ethics regulate if not limit the lawyer's freedom in fixing his professional fees. The moment he takes his oath, ready to undertake his duties first, as a practitioner in the exercise of his profession, and second, as an officer of the court in the administration of justice, the lawyer submits himself to the authority of the court. It becomes axiomatic therefore, that power to determine the reasonableness or the unconscionable character of attorney's fees stipulated by the parties is a matter falling within the regulatory prerogative of the courts (*Panay Electric Co., Inc. v. Court of Appeals*, 119 SCRA 456 [1982]; *De Santos v. City of Manila*, 45 SCRA 409 [1972]; *Rolando v. Luz*, 34 SCRA 337 [1970]; *Cruz v. Court of Industrial Relations*, 8 SCRA 826 [1963]). *And this Court*

*has consistently ruled that even with the presence of an agreement between the parties, the court may nevertheless reduce attorney's fees though fixed in the contract when the amount thereof appears to be unconscionable or unreasonable* (*Borcena v. Intermediate Appellate Court*, 147 SCRA 111 [1987]; *Mutual Paper Inc. v. Eastern Scott Paper Co*., 110 SCRA 481 [1981]; *Gorospe v. Gochango*, 106 Phil. 425 [1959]; *Turner v. Casabar*, 65 Phil. 490 [1938]; *F.M. Yap Tico & Co. v. Alejano*, 53 Phil. 986 [1929]). For the law recognizes the validity of stipulations included in documents such as negotiable instruments and mortgages with respect to attorney's fees in the form of penalty provided that they are not unreasonable or unconscionable (*Philippine Engineering Co. vs. Green*, 48 Phil. 466).

**5. ID.; ID.; ID.; ID.; PRINCIPLE OF *QUANTUM MERUIT*; ELUCIDATED.—** The principle of *quantum meruit* (as much as he deserves) may be a basis for determining the reasonable amount of attorney's fees. *Quantum meruit* is a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. It is applicable even if there was a formal written contract for attorney's fees as long as the agreed fee was found by the court to be unconscionable. In fixing a reasonable compensation for the services rendered by a lawyer on the basis of *quantum meruit*, factors such as the time spent, and extent of services rendered; novelty and difficulty of the questions involved; importance of the subject matter; skill demanded; probability of losing other employment as a result of acceptance of the proferred case; customary charges for similar services; amount involved in the controversy and the benefits resulting to the client; certainty of compensation; character of employment; and professional standing of the lawyer, may be considered. Indubitably entwined with a lawyer's duty to charge only reasonable fee is the power of the Court to reduce the amount of attorney's fees if the same is excessive and unconscionable in relation to Sec. 24, Rule 138 of the Rules. Attorney's fees are unconscionable if they affront one's sense of justice, decency or unreasonableness.

**6. ID.; ID.; ID.; ID.; THE DETERMINATION OF THE AMOUNT OF REASONABLE ATTORNEY'S FEES REQUIRES THE PRESENTATION OF EVIDENCE AND A FULL-BLOWN**

**TRIAL; CASE AT BAR.—** Verily, the determination of the amount of reasonable attorney's fees requires the presentation of evidence and a full-blown trial. It would be only after due hearing and evaluation of the evidence presented by the parties that the trial court can render judgment as to the propriety of the amount to be awarded. The Decision dated December 1, 2004 did not mention that there was a hearing conducted or that the parties were required to appear before the trial court or that they submitted pleadings with regard to the issue of reasonableness of the petitioner's attorney's fees. The important thing that the trial court missed out is the fact that what is suspended is merely the execution of the Separate Judgment dated July 22, 1997, pending the determination of the propriety of the petitioner's attorney's fees. The Decision in G.R. No. 127079 should never be construed as authorizing the trial court to amend or modify what the parties have set forth in their compromise agreement (in the MOA and Amendatory Agreement), which was duly approved in the Separate Judgment dated July 22, 1997. xxx

**APPEARANCES OF COUNSEL**

*Cajigal Egargo Puertollano & Associates* for petitioner.
*Poblador Bautista & Reyes Law Offices* for Ayala Land, Inc.
*Capco & Campanilla* for intervenor Timoteo Arciaga.

**D E C I S I O N**

**PERALTA, *J.*:**

Before the Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1] dated December 13, 2004 of the Regional Trial Court (RTC), Branch 255, Las Piñas City in Civil Case No. 93-3094, entitled "*William Navarro, Isagani Navarro, Iluminada Legaspi, Belen Dolleton, Florentino Arciaga, Bartolome Patuga, Dionisio Ignacio, Bernardino Argana, and Erlinda Argana-Dela Cruz [plaintiffs] v. Ayala Land, Inc. (formerly Las Piñas Ventures,*

[1] Per Judge Raul Bautista Villanueva, *rollo*, pp. 69-76.

*Inc.), [defendant], and Estrellita Londonio, Emerita Feolino, Porfirio Daen, and Timoteo Arciaga [intervenors],*" stating that petitioner Atty. Hicoblino M. Catly will be entitled only to the reduced amount of ₱1,000,000.00 as additional attorney's fees, not the entire amount of ₱20,000,000.00 as prayed for, and its Order[2] dated March 1, 2005 denying reconsideration of the said decision.

Respondents Navarro, *et al*. (therein eight (8) plaintiffs) filed a Complaint[3] dated September 6, 1993 with the RTC, Branch 147, Makati City, against Las Piñas Ventures, Inc. (therein defendant, now substituted by herein respondent Ayala Land, Inc. [ALI]), for annulment of Transfer Certificate of Title (TCT) No. T-5332 and recovery of possession with damages. Respondents were represented by petitioner, now deceased and substituted in this case by his wife, Lourdes A. Catly. In their Complaint, respondents alleged that they owned and occupied 32 hectares of land which were registered in the name of their predecessors-in-interest in 1920, as evidenced by tax declarations; that after conducting a relocation survey, a portion of their land was included in a parcel of land covered by TCT No. T-5332, then registered in the name of Las Piñas Ventures, Inc., containing an area of 370,868 square meters, more or less; that the parcel of land covered by TCT No. T-5332 originated from Original Certificate of Title (OCT) No. 1421, pursuant to Decree No. N-60635 and issued in L.R.C. Record No. 45516, Case No. 976 which, in a Partial Decision dated September 26, 1986 rendered by the RTC of Pasig, Branch 167, was ordered cancelled and set aside; that since TCT No. T-5332 belonging to Las Piñas Ventures, Inc. originated from OCT No. 1421, the same must, consequently, be cancelled and declared null and void; that respondents also filed a complaint before the Commission on the Settlement of Land Problems (COSLAP), docketed as Case No. 027-90, against Las Piñas Ventures, Inc. for deliberately fencing the subject property, including a government road to the area known as *Daang Hari* and, thus,

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[2] *Id.* at 20-26.

[3] Records, Vol. I, pp. 1-4.

depriving them access to their property; that COSLAP noted in its resolution that per Sketch Plan SK-004, Lot 10, PSU-80886, AP 4217, the subject property actually contained an area of only 70,868 sq. m., not 370,868 sq. m. which appeared in the title of Las Piñas Ventures, Inc.; and that Las Piñas Ventures, Inc. and its predecessors-in-interest were in bad faith when they fraudulently, forcibly, and stealthily acquired possession over their property by cutting and bulldozing 104 fruit-bearing mango trees so as to pave the way for the construction of subdivision roads. Thus, respondents prayed that TCT No. T-5332 be declared null and void and that Las Piñas Ventures, Inc. be directed to open the gate leading to *Daang Hari* road, and that Las Piñas Ventures, Inc. be ordered to restore possession of the property to the respondents and to pay the respondents actual and moral damages, attorney's fees, and expenses of litigation.

On December 3, 1993, respondent ALI filed a Motion for Substitution[4] praying that it be substituted in place of Las Piñas Ventures, Inc. as party-defendant by virtue of the Certificate of Filing of the Articles of Merger,[5] dated November 6, 1992, entered into between them. On even date, it also filed a Motion to Dismiss[6] averring that the trial court has no jurisdiction over the case as the respondents did not pay the proper amount of filing fees, that their complaint failed to state a cause of action, and that their cause of action had already prescribed.

Meanwhile, respondents sought to declare respondent ALI in default,[7] which the latter opposed. On December 27, 1993, pending the resolution of the said incidents, respondents filed with the trial court a Motion to Prosecute Action as Pauper[8] on the ground that their individual gross income did not exceed ₱4,000.00 a month. Moreover, respondents moved to admit

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

[5] *Id.* at 67-70.

[6] *Id.* at 71-82.

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

[8] *Id.* at 146.

their Amended Complaint[9] dated December 27, 1993, adding that respondent ALI was named therein as a party-defendant and the titles sought to be declared null and void would be TCT Nos. T-36975 to T-36983, instead of TCT No. T-5332, as the land formerly under TCT No. T-5332 had been subdivided and presently covered by TCT Nos. T-36975 to T-36983 which was duly registered in the name of respondent ALI.

Thereafter, since the subject properties were located in Las Piñas, the case was re-raffled to the RTC of Las Piñas City, Branch 255, then presided by Judge Florentino M. Alumbres.

In its Order[10] dated January 3, 1995, the trial court granted the motion of respondents to prosecute the case as pauper litigants and exempted them from paying the legal fees.

In an Order[11] dated May 3, 1995, the trial court denied respondent ALI's Motion to Dismiss Amended Complaint.[12]

In its Order[13] dated July 31, 1995, the trial court denied the motion of respondents to declare respondent ALI in default for lack of merit.

In its Answer to Amended Complaint[14] dated August 18, 1995, respondent ALI countered that the case involved a real action where the assessed value of the property, or if there be none, the estimated value thereof, should have been stated and used as the basis for computation of the filing fees to be paid by respondents; that respondents did not state the assessed value of the property either in the body or prayer of the Amended Complaint; that using the conservative figure of ₱1,000.00 per sq. m., the property claimed by respondents would be worth ₱320,000,000.00 and, thus, the filing fees to be paid by them

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[9] *Id.* at 149-150, 151-155.

[10] *Id.* at 223-224.

[11] *Id.* at 365-367.

[12] *Id.* at 244-262.

[13] *Id.* at 417.

[14] *Id.* at 420-432.

would have been at least ₱1,602,350.00; that since respondents failed to pay the proper filing fees, the trial court did not acquire jurisdiction over the case; that the amended complaint of respondents failed to state a cause of action as the property subject of litigation was not properly identified; that respondents invoked the September 24, 1986 Partial Decision[15] of therein trial court in favor of one Jose Velasquez, but the same never became final and executory and was superseded by the December 12, 1986 Judgment,[16] whereby Jose Velasquez's rights were quitclaimed and transferred to International Corporate Bank and its transferees; that *res judicata* barred the complaint of respondents, since the proceedings which led to the issuance of a decree in a land case were proceedings *in rem* that would bind the whole world and, thus, the issuance of Decree No. N-60635 in 1957 became binding upon respondents; that respondents' cause of action to file the complaint had prescribed, since an action to annul a decree of registration prescribes in one year after its issuance, as in the case of Decree No. N-60635 and OCT No. 1421 which were issued in 1957, but the complaint was filed only in 1993, or more than 30 years later; and that as a consequence of this baseless suit, respondents should be ordered to pay moral and exemplary damages, including attorney's fees and costs of suit.

Respondents and respondent ALI submitted their respective pre-trial briefs.[17] Respondent ALI filed a Motion for Production of Documents[18] dated September 18, 1995 for the production of survey plans and tax declarations alleged by respondents in their amended complaint and Motion to Strike Out Amended Complaint[19] dated January 4, 1996 (which the trial court treated as a third motion to dismiss) due to respondents' non-payment of docket fees.

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[15] LRC Case No. 976, entitled *Eduardo C. Guico v. Jose T. Velasquez, Sr.* per Judge Nicolas P. Lapeña, Jr., RTC, Branch 167, Pasig, *id.* at 15-26.

[16] Per Judge Alfredo O. Flores, *id.* at 141-143.

[17] Records, Vol. I, pp. 485-489, 497-506.

[18] *Id.* at 490-492.

[19] *Id.* at 580-585.

In its Order[20] dated March 4, 1996, the trial court denied respondent ALI's motions for lack of merit and set the case for pre-trial on April 30, 1996 at 8:30 in the morning with a warning that should respondent ALI file a fourth motion to dismiss, respondents would be allowed to present their evidence *ex-parte*, and respondent ALI's counsel would be cited for contempt of court for delaying the proceedings of the case.

Perceiving bias on the part of the trial judge, respondent ALI filed a Motion to Inhibit[21] on March 25, 1996. The trial court, in its Order[22] dated May 27, 1996, also denied respondent ALI's Motion to Inhibit then Presiding Judge Florentino M. Alumbres from hearing the case as the grounds alleged therein did not fall under Section 1 of Rule 137 of the Rules of Court and the filing of the same was solely for the purpose of delay.

On June 17, 1996, respondent ALI filed a Petition for *Certiorari*[23]with the Court of Appeals (CA) assailing the trial court's Order dated January 3, 1995 (allowing respondents to litigate as paupers) and Order dated March 4, 1996 (denying respondent ALI's motions). In its Decision dated September 27, 1996, the CA dismissed respondent ALI's petition and, later, denied the reconsideration thereof.

Respondent ALI then filed a Petition for Review on *Certiorari*, in G.R. No. 127079, with this Court, alleging that the CA erred in holding that respondents are pauper-litigants and in sustaining the trial court's Order denying its motion for inhibition and, later, a Supplemental Petition for *Certiorari* (with Application for Temporary Restraining Order and Writ of Preliminary Injunction) dated November 9, 2000 seeking to enjoin the trial court from proceeding with the case insofar as the complaint-in-intervention of Porfirio A. Daen is concerned.

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[20] *Id.* at 600.

[21] *Id.* at 602-613.

[22] *Id.* at 635.

[23] Records, Vol. II, pp. 646-691.

On May 13, 1997, pending the resolution of respondent ALI's petitions, both parties executed a Memorandum of Agreement (MOA),[24] where herein 8 respondents and 66 other therein plaintiffs (heirs of Lorenzo dela Cruz, Florentino Navarro, Jose Dolleton, Patricio dela Cruz, Ignacio Arciaga, Dionisio Dolleton, Leon Argana, Esteban Patuga, respectively), assisted by petitioner, waive, renounce and cede in favor of respondent ALI, represented by its Senior Vice-President and General Counsel Mercedita S. Nolledo and Assistant Vice-President Ricardo N. Jacinto, and assisted by its counsel, any and all rights of exclusive ownership over the subject properties. The said MOA provides that:

**MEMORANDUM OF AGREEMENT**

KNOW ALL MEN BY THESE PRESENTS:

This Memorandum of Agreement, made and entered into by and between:

> The persons listed in Annex "A" [herein 8 respondents and 66 other therein plaintiffs] hereof, all Filipino citizens, and residents of Muntinlupa, Metro Manila, hereinafter referred to collectively as the "Heirs";
>
> — and —
>
> AYALA LAND, INC., a corporation organized and existing under the laws of the Philippines, with address at Tower One, Ayala Triangle, Ayala Avenue, Makati City, Metro Manila, hereinafter referred to as "ALI" and represented herein by its Senior Vice-President and General Counsel, Ms. Mercedita S. Nolledo;

WHEREAS, the Heirs represent themselves to be the successors-in-interest of Lorenzo [dela] Cruz, Jose Dolleton, Patricio [dela] Cruz, Dionisio Dolleton, Esteban Patuga, Florentino Navarro, Ignacio Arciaga, and Leon Argana (collectively, the "Predecessors"), with respect to their claims over Lot 10 of Psu-80886 (Ap 4217), covering an area of approximately 370,868 square meters, more or less;

WHEREAS, ALI is the registered owner of several parcels of land in Las Piñas, Metro Manila under TCT Nos. T-36975 to T-36983,

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[24] Records, Vol. VI, pp. 2871-2882.

which titles were derived from TCT No. T-5332 which, in turn, was derived from OCT No. 1421, as per Decree No. N-60635, L.R.C. Record No. 45516, Case No. 976;

WHEREAS, Lot 10 of Psu-80886 is now under ALI's TCT Nos. T-6975 to T-36983;

NOW, THEREFORE, for and in consideration of the mutual covenants hereinbelow specified, the parties hereto hereby agree as follows:

1. For and in consideration of the sums to be paid by ALI as stated in par. 2 x x x hereof, the Heirs hereby:

a) Waive, renounce and cede, in favor of ALI, any and all rights to exclusive ownership or co-ownership, past, present or future, xxx

x x x x x x x x x

2.1 First Tranche. The first tranche payment shall be in the amount of Ninety-Nine Million Nine Hundred Ninety-Five Thousand Six Hundred Thirty Pesos and Forty-Six Centavos (₱99,995,630.46), Philippine Currency, which sum shall be, as it is hereby, paid directly to the Heirs immediately upon execution of this Agreement; and the receipt of which amount said Heirs hereby so acknowledge to their full satisfaction, thereby rendering immediately operative the releases and waivers in parcel hereof. Upon the collective request of the said Heirs, the said payment is hereby broken down as follows.

x x x x x x x x x

2.2 Second Tranche. The sum of Twenty Million Pesos (₱20,000,000.00) shall be payable to the payees named below ninety (90) days after the date of execution of this Agreement. Likewise at the request of all the Heirs, the said payment should be broken down as follows as and when it becomes due.

x x x x x x x x x

2.3 The Heirs also unqualifiedly declare that their agreement with each other as to the sharing of the proceeds of the settlement is exclusively between and among themselves, and any dispute or controversy concerning the same does not affect this Agreement or their Joint Motion for Judgment Based on Compromise to be signed and filed in court by the parties hereto. Release of the balance referred to in par. 2.2 hereto by ALI to the Heirs shall completely and absolutely

discharge all of ALI's obligations under the said Joint Motion for Judgment Based on Compromise to the Heirs.

3. Upon execution hereof, the Heirs and all persons claiming rights under them shall immediately vacate the area comprising the Property, or any portion thereof which they may still be occupying, if any. The failure of the Heirs and all persons claiming rights under them to vacate the Property or any portion thereof which they may still be occupying shall entitle ALI to secure a writ of execution to eject them from any portion of the Properties.

4. The Heirs have entered into this Agreement in their respective personal capacities and as successors-in-interest of their Predecessors. They hereby jointly and severally warrant that they collectively constitute the totality of all the heirs of the Predecessors and that no one has been left out or otherwise excluded. Any breach of this warranty shall be deemed a substantial breach of this Agreement and each breach hereof shall be deemed a breach by all the Heirs.

5. The Heirs expressly warrant that they own and possess all of the rights and interests claimed by the Predecessors to the Properties, and that there are no other claimants to the said rights and interests.

6. The Heirs warrant that they have not sold, leased, mortgaged or in any way encumbered in favor of any third party or person whatsoever, nor have they otherwise diminished their rights to the Properties by any act or omission [including but not limited to the non-payment of realty taxes].

7. The Heirs expressly warrant that only they, individually and collectively, have any claim to the Properties arising from the documents and decisions mentioned in pars. 1 (a) and 1 (b) hereof as they relate to pars. 5 and 6 hereof.

8. All the foregoing warranties are to be treated as perpetual in character.

9. In case of breach of any of their warranties in pars. 5, 6 and 7, above and any of their covenants elsewhere in this Memorandum of Agreement, the Heirs shall hold ALI, its officers, stockholders, agents and assigns free and harmless, without regard to the amount of damage or claims, from any claim or suit lodged or filed against them by third parties claiming to be them or to be authorized by them, or in any manner claiming rights to the Properties.

10. With the exception of the consideration described in par. 2 hereof, the Heirs acknowledge that no representation, undertaking, promises or commitment of present or future fact, opinion or event has been made by ALI to induce this Agreement. The Heirs acknowledge that they have entered into this Agreement relying solely on their own independent inquiry into all relevant facts and circumstances and with knowledge, or with full opportunity to obtain such knowledge, of all the facts relating to the allegations upon which their claims are based.

Accordingly, any law or jurisprudence purporting to give the Heirs the option to either revive their original demand or enforce this Agreement in the event of breach thereof, notwithstanding, the Heirs agree that their claims shall remain extinguished in any event and shall not be revived for any reason and upon any ground whatsoever, and that they shall be barred from asking for the rescission hereof and from annotating any *lis pendens* or adverse claim on ALI's aforementioned titles.

11. On the other hand, ALI has entered into this Memorandum of Agreement relying solely upon the Heirs' representations in pars. 5, 6 and 7 hereof and their waivers, obligations and undertakings in pars. 1 and 3 hereof. Accordingly, in the event of the falsity of these representations and/or breach of these waivers, obligations and undertakings, ALI shall, in addition to its rights under pars. 9 and 10 hereof which shall, in any case, remain effective, have the right to rescind this Agreement, without however and moreover waiving the releases made by the Heirs in its favor under par. 1 hereof.

12. The Heirs hereby likewise quitclaim and waive, in favor of ALI's predecessors, any and all causes of action which they may have against such predecessors.

13. All parties hereto acknowledge that each of them has read and understood this Memorandum of Agreement or that the same has been read and explained to each of them in a language that they understand by her/its respective counsel.

14. The Heirs hereby agree to execute such documents as may be required to carry out the purpose of this Memorandum of Agreement.

IN WITNESS WHEREOF, the parties hereby set their hands this 13th day of May, 1997 at Makati City, Philippines.[25]

On the same day, May 13, 1997, therein plaintiffs (including herein respondents), as successors-in-interest, and respondent ALI executed the Joint Motion for Judgment Based on Compromise expressing their desire toward an amicable settlement. Thus,

**JOINT MOTION FOR JUDGMENT BASED ON COMPROMISE**

WHEREAS, the plaintiffs represent themselves to be the sole and exclusive successors-in-interest of Lorenzo dela Cruz, Jose Dolleton, Patricio dela Cruz, Dionisio Dolleton, Esteban Patuga, Florentino Navarro, Ignacio Arciaga, and Leon Argana (collectively, the "Predecessors"), with respect to their claims over Lot 10 of Psu-80886 (Ap 4217), covering an area of approximately 370,868 square meters, more or less;

WHEREAS, Ayala Land, Inc. ("ALI") is the registered owner of several parcels of land in Las Piñas, Metro Manila under TCT Nos. T-36975 to T-36983, which titles were derived from TCT No. T-5332 which, in turn, was derived from OCT No. 1421, as per Decree No. N-60635, L.R.C. Record No. 45516, Case No. 976;

WHEREAS, Lot 10 of Psu-80886 is now under ALI's TCT Nos. T-36975 to T-36983;

NOW, THEREFORE, plaintiffs and defendant, assisted by their respective counsel[s], and desiring to put an end to litigation between them, hereby respectfully request the Honorable Court to render judgment based on the compromise reached by the parties herein, upon the following terms and conditions:

1. For valuable consideration already fully and completely received, plaintiffs hereby:

a) Waive, renounce and cede, in favor of ALI, any and all rights to exclusive ownership or co-ownership, past, present or future, which they may have over those parcels of land known as Lot 10 of Plan Psu-80886 and/or any amendment thereof, as recorded in Original Certificate of Title ("OCT") No. 1421

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[25] *Id.* at 2875-2877.

issued by the Register of Deeds of Rizal on November 26, 1957 pursuant to Decree No. N-60635, and now under Transfer Certificate of Title ("TCT") Nos. 36975 to 36983, and/or any portion of what is now generally known as the Ayala Southvale Residential Subdivision Project, regardless of the source basis of such claim. Said Lot 10 and any and all other lots/portions and lands over which plaintiffs may have any claim (whether or not arising from Psu-80886) are hereafter referred to as the "Properties."

b) Waive, renounce and cede, in favor of ALI, any and all rights of exclusive ownership or co-ownership, past, present or future, which they may have, pertaining to the Properties and arising from any and all other judicial or administrative decisions from which they may derive any rights of ownership or possession with respect to the Properties.

c) Expressly transfer and assign to ALI all of their rights indicated in items 1, a) and 1, b) above.

d) Expressly acknowledge and affirm, in any case, the validity, efficacy and superiority of ALI's Torrens Certificates of Title Nos. T-36975 to T-36983 issued by the Register of Deeds of Las Piñas, as well as all their predecessor titles and any and all derivative titles which in the future may be issued, over the area covered by Properties, in particular, Lot 10 of Plan Psu-80886, and any amendment thereof, over the area covered by OCT No. 1421 and any other title derived therefrom. Plaintiffs' intention herein, is to unqualifiedly declare, that they have absolutely no other rights, claims, reservations or interests in the lands covered by ALI's titles and/or any portion of what is now generally referred to as the Ayala South[v]ale Residential Subdivision Project, whether or not arising out of said Psu-80886 and/or any amendment thereof;

e) Expressly acknowledge and affirm that they have inspected and verified the area presently being occupied and possessed by ALI and, by these presents, unqualifiedly declare that their claim, which is assigned and transferred to ALI in this Agreement, covers the very same area presently occupied by ALI and that this Agreement resolves with finality all issues concerning the location of the Properties *vis-à-vis* the area covered by ALI's titles and which area is actually and physically possessed by ALI.

2. Plaintiffs and all persons claiming rights under them shall immediately vacate the area comprising the Property, or any portion thereof which they may still be occupying. The failure of plaintiffs and all persons claiming rights under them to vacate the Property or any portion thereof which they may still be occupying shall entitle ALI to secure a writ of execution to eject them from any portion of the Properties.

3. Plaintiffs and their co-heirs have entered into this Agreement in their respective personal capacities and as successors-in-interest of their Predecessors. They hereby jointly and severally warrant that they collectively constitute the totality of all the heirs of the Predecessor and that no one has been left out or otherwise excluded. Any breach of this warranty shall be deemed a substantial breach of this Agreement, and each breach hereof shall be deemed a breach by all the Heirs.

4. Plaintiffs expressly warrant that they own and possess all of the rights and interests claimed by the Predecessors to the Properties, and that there are no other claimants to the said rights and interests.

5. Plaintiffs warrant that they have not sold, leased, mortgaged or in anyway encumbered, in favor of any third party or person, or otherwise diminished their rights to the Properties by any act or omission [including but not limited to the non-payment of realty taxes].

6. Plaintiffs expressly warrant that there are no other claims to the Properties arising from the documents and decisions mentioned in pars. 1(a) and 1(b) hereof as they relate to pars. 4 and 5 hereof.

7. All the foregoing warranties are perpetual in character.

8. In case of breach of any of their warranties in pars. 4, 5 and 6 above and any of their covenants in this Joint Motion for Judgment Based on Compromise, plaintiffs shall hold ALI, its officers, stockholders, agents and assigns free and harmless, without regard to the amount of damage or claims, from any claim or suit lodged or filed against them by any of the plaintiffs, or third parties claiming to be authorized by them, or in any manner claiming rights to the Properties.

9. With the exception of the consideration described in par. 1 hereof, plaintiffs acknowledge that no representation, undertaking, promises, or commitment of present or future fact, opinion or event

has been made by ALI to induce this Agreement. Plaintiffs acknowledge that they have entered into this Agreement relying solely on their own independent inquiry into all relevant facts and circumstances and with knowledge, or with full opportunity to obtain such knowledge, of all the facts relating to the allegations upon which their claims are based.

Accordingly, any law or jurisprudence purporting to give plaintiffs the option to either revive their original demand or enforce this Agreement in the event of breach thereof, notwithstanding, the plaintiffs agree that their claims shall remain extinguished in any event and shall not be revived for any reason and upon any ground whatsoever, and that they shall be barred from asking for the rescission hereof and from annotating any *lis pendens* or adverse claim on ALI's aforementioned titles.

10. On the other hand, ALI has entered into this Agreement relying solely upon plaintiffs' representations in paragraphs 4, 5 and 6 hereof and their waivers, obligations and undertakings in pars. 1 and 2 hereof. Accordingly, in the event of the falsity of these representations and/or breach of these waivers, obligations and undertakings, and in addition to its rights under paragraphs 8 and 9 hereof which shall, in any case, remain effective, ALI shall have the right to rescind this Compromise Agreement, without, however, waiving the releases made by the plaintiffs in its favor under par. 1 hereof.

11. Plaintiffs hereby likewise quitclaim and waive, in favor of ALI and ALI's predecessors, any and all causes of action which they may have against such predecessors.

12. All parties hereto acknowledge that each of them has read and understood this Agreement or that the same has been read and explained to each of them in a language that they understand by his/her/its respective counsel.

13. Plaintiffs hereby agree to execute such documents as may be required to carry out the purpose of this Compromise Agreement.

**P R A Y E R**

WHEREFORE, it is respectfully prayed that judgment be rendered by this Honorable Court in accordance with the terms and conditions of the above Compromise Agreement of the parties.

Other reliefs, just and equitable in the premises, are likewise prayed for.

Makati City for Las Piñas, 13 May 1997.[26]

On May 14, 1997, petitioner filed a Manifestation and Motion[27] with the trial court alleging that he was not consulted when therein heirs signed the MOA; that his Contract for Legal and Other Valuable Services[28] dated September 3, 1993, wherein respondents engaged his services as counsel, be noted on record; that should there be an amicable settlement of the case, his attorney's fees should be awarded in full as stipulated in the contract to fully compensate his efforts in representing herein respondents and therein heirs; and that the trial court issued an order confirming his right to collect his attorney's fees to the exclusion of the other agents and financiers. Petitioner also appended therein a copy of the Authority to Collect Attorney's Fee[s] as Stipulated in the Contract for Legal Services and Other Valuable Considerations[29] which stated that should there be an amicable settlement of the case by way of respondent ALI paying respondents any amount which may be agreed upon by the parties, the respondents authorize petitioner to directly collect from respondent ALI his 25% attorney's fees and that they authorize respondent ALI to deduct the 25% attorney's fees from the total amount due them and to pay and deliver the same to petitioner, his heirs or assigns.

On May 27, 1997, respondents, respondent ALI, and petitioner executed an Amendatory Agreement incorporating the provision that, in addition to the ₱10,000,000.00 attorney's fees as previously agreed upon, petitioner would also be entitled to the amount of Twenty Million (₱20,000,000.00) Pesos as additional attorney's fees, or a total amount of ₱30,000,000.00, subject to the trial court's approval.

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[26] Records, Vol. II, pp. 1115-1125.

[27] *Id.* at 1070-1072.

[28] *Id.* at 1074-1075.

[29] *Id.* at 1076.

**AMENDATORY AGREEMENT**

**KNOW ALL MEN BY THESE PRESENTS:**

DIONISIO IGNACIO, WILLIAM NAVARRO, DIONISIO ARCIAGA, ILUMINADA LEGASPI, BELEN DOLLETON, ISAGANI NAVARRO, BERNARDINO ARGANA, BARTOLOME PATUGA (collectively, the "Heads of the Families"), LEOPOLDO ESPIRITU. EMERITA FEOLINO, and ESPERANZA ESPIRITU (collectively, the "Brokers"), ATTY. HICOBLINO M. CATLY ("Atty. Catly"), and Ayala Land, Inc. ("ALI"), do hereby declare:

WHEREAS, the Heads of the Families are among the signatories to the 13 May 1997 Memorandum of Agreement (the "MOA") with ALI;

WHEREAS, the Heads of the Families and the Brokers are collectively entitled to the sum of Nineteen Million Pesos (₱19,000,000.00) under the Second Tranche payment of the MOA;

WHEREAS, under the terms of the MOA, ALI was authorized by the Heads of the Families and their co-heirs to pay for their account Atty. Catly an aggregate amount of Ten Million Pesos (₱10,000,000.00) under the First and Second Tranche payments of the MOA;

WHEREAS, Atty. Catly has claimed from the Heirs (as this term is defined in the MOA), an additional Twenty Million Pesos (₱20,000,000.00) for his attorney's fees, which claim is pending resolution before Branch 255 of the Regional Trial Court of Las Piñas (the "Las Piñas Court") in Civil Case No. 93-3094 entitled "*William Navarro, et al. v. Ayala Land, Inc.*" ("Civil Case No. 93-3094");

NOW, THEREFORE, the parties declare and covenant as follows:

1. The respective amounts to be received by the following under the First Tranche provided in Par. 2.1 of the MOA are hereby recomputed and adjusted as follows:

| | | From | To |
|---|---|---|---|
| 1. | Dionisio Ignacio | ₱ 9,086,345.98 | ₱ 8,850,245.98 |
| 2. | William Navarro | 5,079,636.68 | 4,947,636.68 |
| 3. | Dionisio Arciaga | 651,333.74 | 634,433.74 |

| | | | |
|---|---|---|---|
| 4. | Iluminada Legaspi | 1,286,749.30 | 1,253,349.30 |
| 5. | Belen Dolleton | 1,415,875.84 | 1,379,075.84 |
| 6. | Isagani Navarro | 3,302,585.86 | 3,216,785.86 |
| 7. | Bernardino Argana | 922,224.90 | 898,224.90 |
| 8. | Bartolome Patuga | 1,741,572.23 | 1,696,272.23 |
| 9. | Leopoldo Espiritu (financier) | 11,000,000.00 | 10,714,200.00 |
| 10. | Emerita Feolino (agent) | 1,500,000.00 | 1,461,000.00 |
| 11. | Esperanza Espiritu (agent) | 750,000.00 | 730,000.00 |
| 12. | Leopoldo Espiritu (agent) | 1,750,000.00 | 1,704,500.00 |
| 13. | Hicoblino Catly (attorney's fees) | 9,000,000.00 | 10,000,000.00 |

The recomputed and adjusted amounts set forth under the second column above shall be in lieu of the amounts provided for under Par. 2.1 of the MOA.

2. The Heads of the Families, the Brokers and Atty. Catly agree to abide by the final decision or resolution of the Las Piñas Court in Civil Case No. 93-3094 on the total amount of attorney's fees that should be paid to Atty. Catly. They agree to implement the said decision or resolution, once it attains finality, immediately and without any delay.

3. The provisions of Paragraph 2.2. of the MOA, notwithstanding, the Heads of the Families and the Brokers authorize ALI to retain the sum of Twenty Million Pesos (₱20,000,000.00) provided under the Second Tranche of the MOA, which sum ALI shall apply to the satisfaction of the claim of Atty. Catly for attorney's fees once this is finally decided and resolved by the Las Piñas Court and in such amount as such court shall declare. Any balance remaining after the satisfaction of Atty. Catly's claim in accordance with the decision or resolution of the Las Piñas Court shall be paid by ALI to the Heads of the Families and the Brokers in proportion to the amounts corresponding to them as set forth in Paragraph 2.2 of the MOA upon the lapse of the 90-day period referred to in such agreement

or the date of the finality of the Las Piñas Court's decision or resolution on Atty. Catly's claim, whichever is later.

4. Atty. Catly accepts the amount set forth in the MOA and such other amount, if any, as the Las Piñas Court may declare, as the final settlement of his claim for attorney's fees and waives all other claims which he may have in connection with Civil Case No. 93-3094. In acknowledgment thereof, he shall affix his own signature on the MOA.

5. Upon signing this Amendatory Agreement, the Heads of the Families and Atty. Catly shall turn over to ALI all documents in their possession, whether original or otherwise, which support or which they intend to present as evidence in support of their claim in Civil Case No. 93-3094.

6. By signing this Amendatory Agreement, the Heads of the Families, who are the plaintiffs in Civil Case No. 93-3094 hereby unconditionally and irrevocably authorize the cancellation of the notice of *lis pendens* annotated on ALI's TCT Nos. T-36975 to T-36983 under Entry No. 758-11 dated 16 June 1994, which annotations were made at the instance of Atty. Catly on behalf of the Heads of the Families. This Amendatory Agreement constitutes an authority to ALI to effect the cancellation of the said notice of *lis pendens* on behalf of the plaintiffs in Civil Case No. 93-3094.

7. Nothing herein shall be construed to amend, supersede or revoke to any extent the terms and conditions of the MOA in any other respect, except as provided herein, and only insofar as the signatoriers hereto are concerned.

IN WITNESS WHEREOF, we have signed this Declaration and Waiver this ____ day of May, 1997 at Makati City.

| | |
|---|---|
| DIONISIO IGNACIO | WILLIAM NAVARRO |
| DIONISIO ARCIAGA | ILUMINADA LEGASPI |
| BELEN DOLLETON | ISAGANI NAVARRO |
| BERNARDINO ARGANA | BARTOLOME PATUGA |
| LEOPOLDO ESPIRITU | EMERITA FEOLINO |
| ESPERANZA ESPIRITU | ATTY. HICOBLINO M. CATLY |

AYALA LAND, INC.

By: Sgd.
MERCEDITA S. NOLLEDO

And

Sgd.
RICARDO JACINTO

Assisted by:

POBLADOR BAUTISTA & REYES
5th Floor, SEDCCO I Building
Rada cor. Legaspi Street
Legaspi Village, Makati City

By:

Sgd.

ALEXANDER J. POBLADOR
PTR No. 8002896/Makati/1-13-97
IBP No. 345214/Makati 3-1-93

DINO VIVENCIO A.A. TAMAYO
PTR No. 8003065/Makati/1-13-97
IBP No. 427804/Q.C./1-13-97

In his Motion to Withdraw Manifestation and Motion dated May 27, 1997, filed on July 9, 1997, petitioner stated that he would be withdrawing all objections to the May 13, 1997 MOA and prayed for the approval of the said MOA, without prejudice to his claim for attorney's fees.

However, in an Order[30] dated June 10, 1997, the trial court held in abeyance its resolution on the Joint Motion for Judgment Based on Compromise, pending the action of this Court on respondent ALI's petition.

In its Order[31] dated June 23, 1997, the trial court directed the parties to formally submit a copy of their amendatory

[30] *Id.* at 1126.

[31] *Id.* at 1131.

agreement. In compliance therewith, the respondents submitted an unnotarized but signed copy of the subject document, while respondent ALI later submitted the notarized Amendatory Agreement dated May 27, 1997.

On July 14, 1997, respondent ALI filed a Manifestation and Motion informing the trial court that it agreed to pay the 8 respondents and 66 other heirs (or a total of 74 claimants) the total amount of ₱120,000,000.00, ₱10,000,000.00 of which would be paid to petitioner as attorney's fees. It also stated that as petitioner claimed for a higher amount of attorney's fees, the parties executed the amendatory agreement with the understanding that the issue of how much of the additional ₱20,000,000.00, if any, that petitioner would be entitled to by way of attorney's fees, would have to be resolved by the trial court.

On July 22, 1997, the trial court (per Judge Florentino M. Alumbres) rendered a Separate Judgment in favor of the petitioner as follows:

SEPARATE JUDGMENT

Originally submitted to the Court for approval and judgment on June 9, 1997 is the JOINT MOTION FOR JUDGMENT BASED ON COMPROMISE dated May 13, 1997 of the parties, duly assisted by their counsels, Atty. Hicoblino M. Catly for the plaintiffs and Atty. Alexander J. Poblador for the defendant.

During the hearing of the said motion on June 10, 1997, the parties discussed an AMENDADORY AGREEMENT which relates to attorney's fees of Atty. Catly which they alluded to as forming part of their compromise agreement, but the said amendatory agreement has not yet been submitted to the Court. On June 23, 1997, an order was issued directing the parties to submit the same for approval by the Court.

Thus, on June 27, 1997, in compliance with the said order, the plaintiffs submitted their copy which is not notarized, while the defendant submitted its, duly notarized, on July 4, 1997.

However, on July 15, 1997, this Court received a copy of defendant's MANIFESTATION AND MOTION dated July 14, 1997

which it filed with the Honorable Supreme Court whereby it "prayed that the Honorable Court itself approve forthwith the parties' Joint Motion for Judgment Based on Compromise dated 13 May 1997, without prejudice to the resolution by the Respondent Judge of Atty. Catly's claim for attorney's fees." (Underlining supplied for emphasis). With that relief prayed for before the High Court, what is left to be decided by this Court is on the matter of the claim for a (sic) attorney's fees of Atty. Catly as contained in paragraphs 2, 3 and 4 of the said Amendatory Agreement.

The AMENDATORY AGREEMENT reads, as follows:

KNOW ALL MEN BY THESE PRESENTS:

DIONISIO IGNACIO, WILLIAM NAVARRO, DIONISIO ARCIAGA, ILUMINADA LEGASPI, BELEN DOLLETON, ISAGANI NAVARRO, BERNARDINO ARGANA, BARTOLOME PATUGA (collectively, the "Heads of the Families"), LEOPOLDO ESPIRITU. EMERITA FEOLINO, and ESPERANZA ESPIRITU (collectively, the "Brokers"), ATTY. HICOBLINO M. CATLY ("Atty. Catly"), and Ayala Land, Inc. ("ALI"), do hereby declare:

WHEREAS, the Heads of the Families are among the signatories to the 13 May 1997 Memorandum of Agreement (the "MOA") with ALI;

WHEREAS, the Heads of the Families and the Brokers are collectively entitled to the sum of Nineteen Million Pesos (₱19,000,000.00) under the Second Tranche payment of the MOA;

WHEREAS, under the terms of the MOA, ALI was authorized by the Heads of the Families and their co-heirs to pay for their account Atty. Catly an aggregate amount of Ten Million Pesos (₱10,000,000.00) under the First and Second Tranche payments of the MOA;

WHEREAS, Atty. Catly has claimed from the Heirs (as this term is defined in the MOA), an additional Twenty Million Pesos (₱20,000,000.00) for his attorney's fees, which claim is pending resolution before Branch 255 of the Regional Trial Court of Las Piñas (the "Las Piñas Court") in Civil Case No. 93-3094 entitled "*William Navarro, et al. v. Ayala Land, Inc.*" ("Civil Case No. 93-3094");

NOW, THEREFORE, the parties declare and covenant as follows:

1. The respective amounts to be received by the following under the First Tranche provided in Par. 2.1 of the MOA are hereby recomputed and adjusted as follows:

| | | From | To |
|---|---|---|---|
| 14. | Dionisio Ignacio | ₱9,086,345.98 | ₱8,850,245.98 |
| 15. | William Navarro | 5,079,636.68 | 4,947,636.68 |
| 16. | Dionisio Arciaga | 651,333.74 | 634,433.74 |
| 17. | Iluminada Legaspi | 1,286,749.30 | 1,253,349.30 |
| 18. | Belen Dolleton | 1,415,875.84 | 1,379,075.84 |
| 19. | Isagani Navarro | 3,302,585.86 | 3,216,785.86 |
| 20. | Bernardino Argana | 922,224.90 | 898,224.90 |
| 21. | Bartolome Patuga | 1,741,572.23 | 1,696,272.23 |
| 22. | Leopoldo Espiritu (financier) | 11,000,000.00 | 10,714,200.00 |
| 23. | Emerita Feolino (agent) | 1,500,000.00 | 1,461,000.00 |
| 24. | Esperanza Espiritu (agent) | 750,000.00 | 730,000.00 |
| 25. | Leopoldo Espiritu (agent) | 1,750,000.00 | 1,704,500.00 |
| 26. | Hicoblino Catly (attorney's fees) | 9,000,000.00 | 10,000,000.00 |

The recomputed and adjusted amounts set forth under the second column above shall be in lieu of the amounts provided for under Par. 2.1 of the MOA.

2. The Heads of the Families, the Brokers and Atty. Catly agree to abide by the final decision or resolution of the Las Piñas Court in Civil Case No. 93-3094 on the total amount of attorney's fees that should be paid to Atty. Catly. They agree to implement the said

decision or resolution, once it attains finality, immediately and without any delay.

3. The provisions of Paragraph 2.2. of the MOA, notwithstanding, the Heads of the Families and the Brokers authorize ALI to retain the sum of Twenty Million Pesos (₱20,000,000.00) provided under the Second Tranche of the MOA, which sum ALI shall apply to the satisfaction of the claim of Atty. Catly for attorney's fees once this is finally decided and resolved by the Las Piñas Court and in such amount as such court shall declare. Any balance remaining after the satisfaction of Atty. Catly's claim in accordance with the decision or resolution of the Las Piñas Court shall be paid by ALI to the Heads of the Families and the Brokers in proportion to the amounts corresponding to them as set forth in Paragraph 2.2 of the MOA upon the lapse of the 90-day period referred to in such agreement or the date of the finality of the Las Piñas Court's decision or resolution on Atty. Catly's claim, whichever is later.

4. Atty. Catly accepts the amount set forth in the MOA and such other amount, if any, as the Las Piñas Court may declare, as the final settlement of his claim for attorney's fees and waives all other claims which he may have in connection with Civil Case No. 93-3094. In acknowledgment thereof, he shall affix his own signature on the MOA.

5. Upon signing this Amendatory Agreement, the Heads of the Families and Atty. Catly shall turn over to ALI all documents in their possession, whether original or otherwise, which support or which they intend to present as evidence in support of their claim in Civil Case No. 93-3094.

6. By signing this Amendatory Agreement, the Heads of the Families, who are the plaintiffs in Civil Case No. 93-3094 hereby unconditionally and irrevocably authorize the cancellation of the notice of *lis pendens* annotated on ALI's TCT Nos. T-36975 to T-36983 under Entry No. 758-11 dated 16 June 1994, which annotations were made at the instance of Atty. Catly on behalf of the Heads of the Families. This Amendatory Agreement constitutes an authority to ALI to effect the cancellation of the said notice of *lis pendens* on behalf of the plaintiffs in Civil Case No. 93-3094.

7. Nothing herein shall be construed to amend, supersede or revoke to any extent the terms and conditions of the MOA in any other respect, except as provided herein, and only insofar as the signatoriers hereto are concerned.

Finding the terms and conditions set forth under the Amendatory Agreement to be freely agreed upon, and the same not being contrary to law, morals, public order and public policy, the same are hereby approved.

WHEREFORE, judgment is hereby rendered on the basis of the terms and conditions agreed upon under the Amendatory Agreement with emphasis on Paragraphs 2, 3 and 4 thereof, and in accordance with Section 5, Rule 36 of the Rules of Civil Procedure.

ACCORDINGLY, the defendant [respondent ALI] is directed to immediately release the sum of Twenty Million (₱20,000,000.00) Pesos in favor of Atty. Hicoblino M. Catly representing his attorney's fees as herein approved by the Court.

SO ORDERED.[32]

On July 28, 1997, petitioner filed an *Ex-Parte* Motion to Issue Writ for Execution of Judgment[33] with the trial court to enforce his claim for attorney's fees pursuant to the Separate Judgment dated July 22, 1997 on the premise that said judgment is immediately executory. This prompted the respondents to file, in G.R. No. 127079, an Urgent Application for the Issuance of a Temporary Restraining Order[34] with this Court seeking to enjoin the trial court from enforcing the said Separate Judgment, particularly with regard to the ₱30,000,000.00 award of attorney's fees in favor of the petitioner. Respondent ALI also opposed the petitioner's *ex-parte* motion.

In its Order dated August 25, 1997, the trial court held in abeyance the resolution on petitioner's motion for execution of the trial court's Separate Judgment dated July 22, 1997 until the respondents' application for the issuance of a temporary restraining order shall have been resolved by this Court.

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[32] *Id.* at 1241-1244.

[33] *Id.* at 1254-1255.

[34] *Id.* at 1276-1280.

In the meantime, Estrellita Londonio,[35] Emerita Feolino,[36] Porfirio Daen,[37] and Timoteo Arciaga[38] filed their individual Complaints-in-Intervention raising therein their respective rights and interests with regard to the subject property. Respondent ALI also filed its Answers-in-Intervention.[39] Likewise, respondents filed a joint Answer-in-Intervention.[40] All parties filed their respective Pre-trial Briefs.

In a Decision dated May 7, 2004, this Court (Third Division), in G.R. No. 127079, entitled "*Ayala Land, Inc. v. William Navarro, Isagani Navarro, Iluminada Legaspi, Belen Dolleton, Florentino Arciaga, Bartolome Patuga, Dionisio Ignacio, Bernardino Argana, and Erlinda Argana,*" dismissed the petition of therein petitioner (herein respondent ALI) for being moot, and ordered the remand of the records of the case to the trial court for the determination on the propriety of the award of ₱30,000,000.00 attorney's fees in favor of petitioner. The pertinent portions of the Decision state:

> We now go back to the issue raised in the instant petition, *i.e.*, whether or not the Court of Appeals erred (a) in allowing respondents to litigate as paupers; and, (b) in sustaining the trial court's order denying petitioner's motion for inhibition.
>
> Obviously, with the execution of the May 13, 1997 MOA or compromise agreement and the May 27, 1997 amendatory agreement, the parties resolved to settle their differences and put an end to the litigation.[41] It bears reiterating that on July 22, 1997, the trial court rendered its Judgment approving this amendatory agreement.

[35] Records, Vol. III, pp. 1316-1318.

[36] *Id.* at 1552-1556 (Complaint-in-Intervention); records, Vol. IV, pp. 1908-1910 (Amended Complaint-in-Intervention); records, Vol. V, pp. 2375-2381 (New Amended Complaint-in-Intervention).

[37] Records, Vol. III, pp. 1621-1625.

[38] Records, Vol. V, pp. 2295-2298.

[39] Records, Vol. IV, pp. 1808-1821, 1823-1827, 1870-1883; records, Vol. VI, pp. 2794-2799.

[40] Records, Vol. IV, pp. 1981-1988, 2328-2330.

[41] Article 2028 of the New Civil Code provides:

> Art. 2028. A compromise is a contract whereby the parties, by making reciprocal concessions, avoid a litigation or put an end to one already commenced.

We have consistently held that a compromise agreement, once approved by final order of the court, has the force of *res judicata* between the parties and should not be disturbed except for vices of consent or forgery. In *Armed Forces of the Philippines Mutual Benefit Association v. Court of Appeals*,[42] we also held:

> Once stamped with judicial *imprimatur*, it (compromise agreement) becomes more than a mere 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 other judgment. It has the effect and authority of *res judicata*, although no execution may issue until it would have received the corresponding approval of the court where the litigation pends and its compliance with the terms of the agreement is thereupon decreed. A judicial compromise is likewise circumscribed by the rules of procedure.

Thus, by virtue of the trial court's Judgment approving the parties' amendatory agreement (or amendatory compromise agreement), the instant petition has become moot and academic.

In *City of Laoag vs. Public Service Commission*,[43] we ruled that a petition may be dismissed in view of the compromise agreement entered into by the parties.

Relative to Atty. Catly's attorney's fees of ₱30,000,000.00, while it was agreed upon by both parties in their MOA and amendatory agreement, however, they are now contesting its reasonableness. In fact, petitioner filed with the trial court an opposition to Atty. Catly's motion for execution of Compromise Judgment on the ground that his attorney's fee is excessive and unconscionable; while respondents filed with this Court a motion for the issuance of a temporary restraining order to enjoin the trial court from granting Atty. Catly's motion.

The issue of whether or not Atty. Catly's attorney's fee is reasonable should be resolved by the trial court. For one, this incident stemmed

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[42] G.R. No. 126745, July 26, 1999, 311 SCRA 143, 154-155, citing *Domingo v. Court of Appeals*, 255 SCRA 189 (1996); *National Electrification Administration v. Court of Appeals*, 280 SCRA 199 (1997); and Article 2037 of the New Civil Code.

[43] G.R. Nos. L-32097-98, March 30, 1979, 89 SCRA 207, 219, citing *Socorro v. Ortiz*, 12 SCRA 641 (1964).

from Atty. Catly's motion for execution of the compromise Judgment **filed with the trial court**. As earlier stated, petitioner filed its opposition, **also with the trial court**. For another, this incident appears to be factual and is being raised before us only for the first time. In *De Rama v. Court of Appeals*,[44] we held that issues or questions of fact cannot be raised for the first time on appeal.

WHEREFORE, the instant petition, being moot, is DENIED. Nonetheless, let the records be remanded to the trial court for the purpose of resolving with dispatch the propriety of Atty. Hicoblino Catly's attorney's fee of ₱30,000,000.00 being assailed by both parties before that court.

SO ORDERED.[45]

In a Decision dated December 1, 2004, the trial court (per Judge Raul Bautista Villanueva) approved the parties' Joint Motion for Judgment Based on Compromise dated May 13, 1997, dismissed all the complaints-in-intervention by therein intervenors, and directed respondents to pay respondent ALI the amount of ₱563,358.00 by way of attorney's fees which shall be taken from the second tranche payment and deducted from their *pro-rata* share. The salient portions of the said Decision state:

Thereafter, a Memorandum of Agreement (MOA) dated May 13, 1997 (Exh. "6") was entered into by the plaintiffs and the defendant Ayala Land wherein the latter agreed, among others, to pay in two (2) tranches the sum of ₱99,995,630.46 and ₱20,000,000.00, respectively, or the total amount of ₱119,995,630.46, to the plaintiffs and their co-heirs in amounts broken down for each of them, thus:

x x x x x x x x x

2.1 *First Tranche*. The first tranche payment shall be in the amount of Ninety-Nine Million Nine Hundred Ninety-Five Thousand Six Hundred Thirty Pesos and Forty-Six Centavos (₱99,995,630.46), Philippine Currency, which sum shall be, as it is hereby, paid directly

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[44] G.R. No. 131136, February 28, 2001, 353 SCRA 94, 105, citing *Heirs of Pascasio Uriate v. Court of Appeals*, 284 SCRA 511, 517 (1998); *Cheng v. Genato*, 300 SCRA 469, 480 (1998).

[45] G.R. No. 127079, 428 SCRA 361, 366-368 (Some citations omitted). (Emphasis supplied.)

to the Heirs immediately upon execution of this Agreement, and the receipt of which amount said Heirs hereby so acknowledge to their full satisfaction, thereby rendering immediately operative the releases and waivers in par. 1 hereof. Upon the collective request of the said Heirs, the said payment is hereby broken down as follows:

| | Payee | Amount |
|---|---|---|
| A. | *Heirs of Lorenzo dela Cruz* | |
| 1. | Dionisio Ignacio | 9,086,345.98 |
| 2. | Alejandro dela Cruz | 5,332,562.30 |
| 3. | Lydia Arcega | 5,332,562.30 |
| 4. | Eugenia Arciaga | 5,332,562.30 |
| 5. | Melchor dela Cruz | 1,185,000.25 |
| 6. | Gertrudez dela Cruz | 1,185,000.25 |
| B. | *Heirs of Florentino Navarro* | |
| 1. | William Navarro | 5,079,636.68 |
| 2. | Antonio Navarro | 400,000.00 |
| 3. | Tanyag Navarro | 400,000.00 |
| 4. | Isagani Navarro | 285,444.44 |
| 5. | Rodolfo Navarro | 285,444.44 |
| 6. | Victoria Navarro | 285,444.44 |
| 7. | Leonora Navarro | 285,444.44 |
| 8. | Violeta Navarro | 285,444.44 |
| 9. | Ramon Navarro | 285,444.44 |
| 10. | Salud Navarro | 285,444.44 |
| 11. | Rosalina Navarro | 85,444.44 |
| 12. | Purita Navarro | 500,000.00 |
| 13. | Bayani Navarro | 500,000.00 |
| 14. | Dakila Navarro | 500,000.00 |
| 15. | Leonila Navarro | 100,000.00 |

| | | |
|---|---|---|
| 16. | Johnny Navarro | 100,000.00 |
| 17. | Alexander Navarro | 100,000.00 |
| 18. | Soliman Navarro | 2,000,000.00 |
| 19. | Francis Hernandez | 2,000,000.00 |
| C. | *Heirs of Patricio dela Cruz* | |
| x x x | x x x | x x x |
| D. | *Heirs of Ignacio Arciaga* | |
| 1. | Iluminada Legaspi | 1,286,749.30 |
| 2. | Pedro Arciaga | 304,722.22 |
| 3. | Julia Bergado | 304,722.22 |
| 4. | Nieves Jover | 304,722.22 |
| 5. | Teresita Clamaña | 304,722.22 |
| 6. | Dolores Arciaga | 304,722.22 |
| 7. | Ernesto Arciaga | 304,722.22 |
| E. | *Heirs of Dionisio Dolleton* | |
| 1. | Belen Dolleton | 1,415,875.84 |
| 2. | Lucila Dolleton | 100,000.00 |
| 3. | Conrado Dolleton | 100,000.00 |
| 4. | Jerry Dolleton | 100,000.00 |
| 5. | Evelyn Dolleton | 100,000.00 |
| 6. | Susana Dolleton | 100,000.00 |
| 7. | Estrelita Agnabo | 100,000.00 |
| 8. | Imelda Dolleton | 100,000.00 |
| 9. | Mateo Dolleton, Jr. | 250,000.00 |
| 10. | Maria Venus Dolleton Gutierrez | 250,000.00 |
| 11. | Mariano Dolleton | 250,000.00 |
| 12. | Rosalina Dolleton | 250,000.00 |

| | | |
|---|---|---|
| 13. | Encarnacion Dolleton | 500,000.00 |
| 14. | Dominga Dolleton | 250,000.00 |
| 15. | Hilardo Dolleton | 250,000.00 |
| F. | *Heirs of Jose Dolleton* | |
| 1. | Isagani Navarro | 3,302,585.86 |
| 2. | William Navarro | 2,263,000.00 |
| 3. | Tanyag Navarro | 100,000.00 |
| 4. | Antonio A. Navarro | 100,000.00 |
| 5. | Leonora Navarro | 500,000.00 |
| 6. | Salud Navarro | 500,000.00 |
| 7. | Rodolfo Navarro | 500,000.00 |
| 8. | Victoria Navarro | 500,000.00 |
| 9. | Rosalina Navarro | 500,000.00 |
| 10. | Ramon Navarro | 500,000.00 |
| 11. | Violeta Navarro | 500,00.000 |
| 12. | Purita Navarro | 182,460.00 |
| 13. | Dakila Navarro | 182,460.00 |
| 14. | Bayani Navarro | 182,460.00 |
| 15. | Leonila Navarro | 36,492.00 |
| 16. | Alexander Navarro | 36,492.00 |
| 17. | Johnny Navarro | 36,492.00 |
| 18. | Soliman Navarro | 912,300.00 |
| 19. | Francis Hernandez | 912,300.00 |
| *G.* | *Heirs of Leon Argana* | |
| 1. | Bernardino Argana | 922,244.90 |
| 2. | Benjamin Arciaga | 100,000.00 |
| 3. | Idelfonso Arciaga | 100,000.00 |

| | | |
|---|---|---|
| 4. | Luciana Arciaga | 100,000.00 |
| 5. | Pedro Arciaga | 100,000.00 |
| 6. | Erlinda Arciaga | 100,000.00 |
| 7. | Brigida Argana | 500,000.00 |
| 8. | Renato A. Trozado | 83,335.00 |
| 9. | Natividad Marmeto | 83,335.00 |
| 10. | Josephine Trozado Espiritu | 83,335.00 |
| 11. | Teresita Trozado | 83,335.00 |
| 12. | Crecenciano Trozado Feolino | 83,335.00 |
| 13. | Buenaventura Trozado Espiritu | 83,335.00 |
| H. | *Heirs of Esteban Patuga* | |
| 1. | Bartolome Patuga | 1,741,572.23 |
| 2. | Rodrigo Patuga | 554,555.55 |
| 3. | Reynaldo Patuga | 554,555.55 |
| 4. | Lolita Patuga | 554,555.55 |
| 5. | Ofelia Patuga | 554,555.55 |
| 6. | Maria Patuga | 2,347,151.40 |
| 7. | Remedios Patuga | 293,393.93 |
| 8. | Melchor Patuga | 293,393.93 |
| 9. | Surbino Patuga | 293,393.93 |
| 10. | Ernesto Patuga | 3,227,333.30 |
| I. | *Others* | |
| 1. | Leopoldo P. Espiritu (financier) | 11,000,000.00 |
| 2. | Hicoblino Catly (attorney's fees) | 9,000,000.00 |
| 3. | Emerita Feolina (agent) | 1,500,000.00 |
| 4. | Esperanza Espiritu (agent) | 750,000.00 |
| 5. | Leopoldo Espiritu (agent) | 1,750,000.00 |

2.2. Second Tranche. The sum of Twenty Million Pesos (₱20,000,000.00) shall be paid to the payees named below ninety (90) days after the date of execution of this Agreement. Likewise at the request of all the Heirs, the said payment should be broken down as follow as and when it becomes due:

| Payee | Amount |
|---|---|
| A. | |
| 1. Dionisio Ignacio | 2,000,000.00 |
| 2. William Navarro | 2,000,000.00 |
| 3. Dionisio Arciaga | 500,000.00 |
| 4. Iluminada Legaspi | 1,700,000.00 |
| 5. Belen Dolleton | 1,700,000.00 |
| 6. Isagani Navarro | 4,900,000.00 |
| 7. Bernardino Argana | 1,700,000.00 |
| 8. Bartolome Patuga | 2,000,000.00 |
| B. | |
| 1. Leopoldo Espiritu | 1,500,000.00 |
| 2. Hicoblino Catly | 1,000,000.00 |
| 3. Emerita Feolino | 500,000.00 |
| 4. Esperanza Espiritu | 250,000.00 |
| 5. Leopoldo Espiritu | 250,000.00 |

2.3. the Heirs also unqualifiedly declare that their agreement with each other as to the sharing of the proceeds of the settlement is exclusively between and among themselves, and any dispute or controversy concerning the same does not affect this Agreement or the Joint Motion for Judgment Based on Compromise to be signed and filed in court by the parties hereto. Release of the balance referred to in par. 2.2 hereof by ALI to the Heirs shall completely and absolutely discharge all of ALI's obligations under the said Joint Motion for Judgment Based on Compromise to the Heirs.

x x x x x x x x x

For one, and with the Decision of the Third Division of the Supreme Court promulgated on 07 May 2004 in G.R. No. 127079 in the case entitled "*Ayala Land, Inc. v. William Navarro, et al.,*" there is no longer any impediment to the resolution of the Joint Motion for Judgment Based on Compromise dated 09 June 1997. It must be noted that the Court earlier suspended the approval of the said joint motion in its Order dated 10 June 1997 "(a)s there is no written order yet from the Supreme Court dismissing the appeal in connection with this case." With the above Decision of the Supreme Court, the subject Order of the Court is deemed moot and academic.

The Joint Motion for Judgment Based on Compromise dated June 9, 1997 and, necessarily, the Memorandum of Agreement (MOA) dated 13 May 1997 (as amended by the Amendatory Agreement) which it implements, are approved, there being no showing that they are contrary to law, public policy or morals.

x x x x x x x x x

WHEREFORE, premises considered, judgment is hereby rendered as follows:

1. The Joint Motion for Judgment Based on Compromise dated 13 May 1997 is hereby APPROVED, it reflecting the true, valid and lawful terms of settlement agreed upon by the parties herein and being based on the Memorandum of Agreement also dated 13 May 1997, as amended by the Amendatory Agreement, that the plaintiffs and the defendant Ayala Land, Inc. have long bound themselves with and have, in fact, already substantially implemented. Thus, and by reason thereof, the complaint of the herein plaintiffs against the said defendant is deemed duly disposed of. Accordingly, the parties to the above agreements are hereby enjoined to observe its terms, subject to any necessary modifications arising herefrom;

2. The complaints-in-intervention of intervenors Timoteo Arciaga, Porfirio Daen, Estrellita Londonio and Emerita Feolino are all DISMISSED, with prejudice, for utter lack of merit.

3. Also, the complaint-in-intervention of the heirs of Leon Navarro is DISMISSED, with prejudice, for having been abandoned and for failure to prosecute the same; and

4. The plaintiffs William Navarro, Dionisio Ignacio, Dionisio Arciaga, Iluminada Legaspi, Belen Dolleton, Isagani Navarro, Bernardino Argana and Bartolome Patuga are hereby directed to pay

the defendant Ayala Land, Inc. the sum of ₱563,358.00 as and by way of attorney's fees which shall be taken from the Second Tranche payment to be made to them, if any, and shall be deducted from their share *pro-rata*.

SO ORDERED.[46]

In a Decision dated December 13, 2004, the trial court (per Judge Raul Bautista Villanueva), acting on petitioner's claim for additional ₱20,000,000.00 attorney's fees in his *Ex-Parte* Motion to Issue Writ for Execution of Judgment dated July 28, 1997 and *Ex-Parte* Manifestation and Motion dated May 31, 2004, ruled that petitioner can execute judgment on the additional attorney's fees, but only up to the amount of ₱1,000,000.00, not the entire ₱20,000,000.00. The trial court explained the rationale as follows:

The Court, after taking into account the foregoing, finds that Atty. Catly is entitled to additional attorney's fees. For one, the Court is convinced that Atty. Catly has duly served the plaintiffs and protected their interests. The numerous pleadings he filed before the Court, the Court of Appeals and Supreme Court shows that he pursued the claims of the plaintiffs before the venues where these were being litigated or assailed. In fact, he was successful in having the petitions of the defendant dismissed before the Court of Appeals and, eventually, before the Supreme Court per the Decision promulgated on 07 May 2004.

x x x x x x x x x

Of course, with the Amendatory Agreement, the payment due to the said persons in the second tranche is subject to the "final decision or resolution of the Las Piñas Court in Civil Case No. 93-3094 on the total amount of attorney's fees that should be paid to Atty. Catly." In such event, "(a)ny balance remaining after the satisfaction of Atty. Catly's claim in accordance with the decision or resolution of the Las Piñas Court shall be paid by ALI (the defendant Ayala Land) to the Heads of the Families and the Brokers in proportion to the amounts corresponding to them as set forth in paragraph 2.2 of the MOA xxx.

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[46] *Rollo*, pp. 48-52, 58, 67-68.

However, the above notwithstanding, the Court holds that Atty. Catly is not entitled to the full amount of ₱20,000,000.00 as awarded to him in the Separate Judgment dated 22 July 1997. To begin with, the settlement of the herein case resulting in the plaintiffs and the defendant Ayala Land executing among others, the MOA wherein the total consideration for the same under the first and second tranches of payment ₱119,995,630.46 was not due to his own efforts. The records show that Atty. Catly had no active participation in the negotiations involving the parties that resulted in their compromise agreement.

More importantly, and despite the legal work he has done, Atty. Catly has not proven yet the case of the plaintiffs regarding their supposed claim over the property subject hereof. While the plaintiffs have documents which they used as basis in claiming ownership of the properties of the defendant, these have not been formally presented in Court. Of course, this is no longer necessary since the parties agreed to settle among themselves.

x x x x x x x x x

Admittedly, the clients of Atty. Catly are the original plaintiffs herein, namely, William Navarro, Dionisio Ignacio, Dionisio Arciaga, Iluminada Legaspi, Belen Dolleton, Ignacio (or Isagani) Navarro, Bernardino Argana and Bartolome Patuga. Surely, he does not represent the co-heirs of the plaintiffs who were also included in the compromise agreement or MOA and who shared in the above settlement price, as well as the brokers or financiers named therein. Thus, he could not base his claim on the entire amount of about ₱119,995,630.46.

The fact that Compromise Agreement dated 02 April 2001 was executed by Atty. Catly and the alleged attorney-in-fact of the plaintiffs is of no moment. For one, this does not include the other individuals who were named as payees for the second tranche so their share amounting to about ₱2.5 million cannot just be given to him. More importantly, the said agreement was never approved by the Court. As such, it likewise became subject to the Decision dated 07 May 2004 promulgated by the Supreme Court.

Added to this, Atty. Catly benefited immensely from the settlement of the above case among the plaintiffs and the defendant Ayala Land. In fact, he received more than what some of the plaintiffs have received. For him to get a total sum of ₱30,000,000.00 would be

downright unfair, especially since the settlement price of ₱119,995,630.46 was not entirely allocated to his clients.

To the Court, getting an additional ₱20,000,000.00 is grossly unreasonable and unconscionable. As mentioned above the 25% should not be imposed on the rounded figure of ₱120 million, as the payees under the MOA were not just the original plaintiffs, but also about 66 other persons who are not Atty. Catly's clients. There is no contractual basis by which these third persons can be said to have agreed to share in Atty. Catly's fees. If at all, only the sums to be received by the original plaintiffs, in the estimated amount of ₱41.6 million, should be counted. Twenty five percent of that is near the ₱10,000,000.00 Atty. Catly had already been paid or which he has received.

Clearly, and considering the circumstances obtaining herein, Atty. Catly cannot lay claim to the entire sum of ₱20,000,000.00 under the second tranche of payment. Instead, the sharing provided for in the MOA dated 13 May 1997, Atty. Catly should be the one implemented as this was what the parties really intended. By doing so, the additional attorney's fees due to Atty. Catly is readily determined. And to the Court, the amount of ₱1,000,000.00 appearing therein is the proper fees still due to him considering the payment of ₱10,000,000.00 he already received and the legal work he has done with respect to the herein case.

In the end, the Court sees no cogent reason to deprive the original plaintiffs and those named as recipients of sums in the second tranche provided for in the MOA dated 13 May 1997 of what are due them and which they are deserving of.

WHEREFORE, the foregoing considered, the *Ex-Parte* Manifestation and Motion dated 31 May 2004 and the earlier *Ex-Parte* Motion to Issue Writ for Execution of Judgment dated 28 July 1997, both filed by Atty. Hicoblino M. Catly, are GRANTED, but only up to the extent of executing the payment of the additional sum of ₱1,000,000.00 in his favor.

Consequently, and as to the remaining ₱19,000,000.00 under the second tranche, the same is ordered released in favor of the original plaintiffs, namely: Dionisio Ignacio, William Navarro, Dionisio Arciaga, Iluminada Legaspi, Belen Dolleton, Isagani Navarro, Bernardino Argana and Bartolome Patuga, as well as those others named therein, such as Leopoldo Espiritu, Emerita Feolino and Esperanza Espiritu, in the respective amounts earmarked for them.

SO ORDERED.[47]

Respondents filed a Motion to Order Defendant to Comply with the Delivery of the Sum Due to Plaintiffs dated December 21, 2004 seeking payment from respondent ALI the amount of ₱15,936,642.00 (according to the notarized order of payment to be submitted by the respondents to respondent ALI, with a copy thereof furnished to the trial court), net of the ₱563,358.00 attorney's fees to be taken from the second tranche of payment withheld by respondent ALI.

On December 29, 2004, petitioner filed a motion for reconsideration of the trial court's Order dated December 13, 2004 on the ground that there was no factual or legal basis for the trial court to order the release of the ₱19,000,000.00 to the respondents and those persons named in the second tranche as the amendatory agreement between the respondents and respondent ALI had already been approved.

On March 1, 2005, the trial court issued an Order granting the motion of the respondents and denying petitioner's motion for reconsideration. The trial court stated that:

> As to his assertion that the Supreme Court wanted only the Court to determine as to "whether there had been vices of consent, forgery or irregularity in the preparation of the AMENDATORY AGREEMENT," this is hardly convincing. On the contrary, it is clear in the Decision of the Third Division of the Supreme Court promulgated on 07 May 2004 in G.R. No. 127079 entitled "*Ayala Land, Inc. v. William Navarro, et al.*" that the "issue of whether or not Atty. Catly's attorney's fees is reasonable should be resolved by the trial court." In effect, the Separate Judgment dated 22 July 1997 will be implemented only after the Court has determined the "propriety of Atty. Hicoblino's attorney's fees of ₱30,000,000.00 being assailed by both parties before that court." Having done so in the questioned Order dated 13 December 2004, what remains to be done now by the Court is to have the same executed.
>
> On the award of attorney's fees in favor of the defendant per the Decision of the Court dated 01 December 2004, the attempt of Atty. Catly to question the same is misplaced. For one, this is not the

[47] *Id.* at 74-76.

subject of the Order dated 13 December 2004. More importantly, the original plaintiffs are not assailing the same so much so that with respect thereto it is binding on them.

x x x x x x x x x

WHEREFORE, the foregoing considered, the Motion to Order Defendant to Comply with the Delivery of the Sum Due to Plaintiffs dated 21 December 2004 submitted by the original plaintiffs, namely: William Navarro, Dionisio Ignacio, Dionisio Arciaga, Iluminada Legaspi, Belen Dolleton, Isagani Navarro, Bernardino Argana and Bartolome Patuga is hereby GRANTED. Accordingly, let a writ of execution be issued to implement the Separate Judgment dated 22 July 1997, as modified by the Decision of the Supreme Court on 07 May 2004 in G.R. No. 127079, and pursuant to the Order dated 13 December 2004 wherein they are entitled to the amount of ₱14,936,642.00, not ₱15,936,642.00 as computed by them since the difference of ₱1,000,000.00 pertains to the additional fees of Atty. Hicoblino Catly, and less the sum of ₱563,358.00 which they recognize as owing to defendant Ayala Land, Inc., out of the ₱20,000,000.00 provided for in the Amendatory Agreement dated 27 May 1997, and directing the said defendant to immediately pay and deliver the aforesaid amount of ₱14,936,642.00 to the herein original plaintiffs.

On the Motion for Reconsideration dated 29 December 2004 filed by Atty. Hicoblino Catly, the same is hereby DENIED for utter lack of merit.

SO ORDERED.[48]

Meanwhile, in the Resolution of December 3, 2008, the Court resolved, among others, to grant the motion to substitute Lourdes A. Catly, wife of Atty. Catly, as party petitioner in the present case, in view of the death of Atty. Catly on April 5, 2008, and to require the counsel for petitioner to comply anew with the Resolution dated March 10, 2008 by submitting the new addresses of the respondents, considering that according to the respondents' former counsel, Atty. Patrocinio S. Palanog, he is no longer the counsel of record of the respondents. In view of petitioner's manifestation, through counsel, that all efforts were exerted to

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

locate the addresses of the respondents but to no avail, the Court issued a Resolution on June 8, 2009 dispensing with the filing by respondents of their comment on the petition for review on *certiorari*.

Hence, this present petition for review on *certiorari*.[49]

Petitioner anchors on the theory that the trial court, now presided by Judge Raul Bautista Villanueva, acted with grave abuse of discretion amounting to excess of jurisdiction, and that there is no appeal, or any plain, speedy and adequate remedy available in the ordinary course of law. Petitioner alleges that the trial court erred in reopening the judgment on compromise entered into by the parties, which was previously approved by the trial court's then Presiding Judge Florentino M. Alumbres, and already partially executed in its Separate Judgment dated July 22, 1997. Petitioner argues that said judgment has attained final and executory status as respondents did not appeal from the said judgment nor did they question the Amendatory Agreement dated May 27, 1997. Thus, petitioner prays that judgment be rendered by this Court setting aside the trial court's Decision dated December 13, 2004 which reduced the award of the additional attorney's fees to only ₱1,000,000.00, instead of ₱20,000,000.00; directing respondent ALI to immediately release the sum of ₱20,000,000.00 as additional attorney's fees of petitioner pursuant to the July 22, 1997 Separate Judgment; and enjoining the trial court from implementing its Order dated March 1, 2005 which denied petitioner's motion for reconsideration.

On the other hand, respondent ALI counters that petitioner's petition is improper and fatally defective, whether treated as a petition for review on *certiorari* under Rule 45 of the Rules of Court or a petition for *certiorari* under Rule 65, as petitioner does not raise questions of law and that grave abuse of discretion is not an allowable ground under a Rule 45 petition. It avers that even if the petition is to be treated as one filed under Rule 65, the petition should be outrightly dismissed for being proscribed

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

under the doctrine of hierarchy of courts, as the petition should have been filed first with the Court of Appeals, instead of filing it directly with this Court. Respondent ALI also argues that the trial court correctly reduced the petitioner's claim from ₱20,000,000.00 to ₱1,000,000.00 as additional attorney's fees, because the trial court can control or moderate the amount of attorney's fees to be claimed, especially if the same is found to be excessive and unreasonable.

**I. Procedural misstep in filing the petition**

Records show that on December 13, 2004, the trial court rendered a Decision finding that petitioner can execute judgment on the additional attorney's fees but only up to the extent of ₱1,000,000.00, not the entire amount of ₱20,000,000.00 as prayed for in his petition. Petitioner received a copy of the assailed decision on December 22, 2004. Petitioner moved for reconsideration on December 29, 2004, but the same was denied in the trial court's Order dated March 1, 2005. Petitioner received a copy of the challenged order on March 7, 2005. On March 17, 2005, instead of appealing the assailed decision and order of the trial court to the Court of Appeals via a notice of appeal under Section 2(a) of Rule 41 of the Rules, petitioner filed a petition for review on *certiorari* directly with this Court, stating that the trial court acted with grave abuse of discretion amounting to an excess of jurisdiction, and that there is no appeal, or any plain, speedy and adequate remedy available in the ordinary course of law.

This is a procedural misstep. Although denominated as petition for review on *certiorari* under Rule 45, petitioner, in questioning the decision and order of the trial court which were rendered in the exercise of its original jurisdiction, should have taken the appeal to the Court of Appeals within fifteen (15) days from notice of the trial court's March 1, 2005 Order, *i.e.*, within 15 days counted from March 7, 2005 (date of receipt of the appealed order), or until March 22, 2005, by filing a notice of appeal with the trial court which rendered the decision and order appealed from and serving copies thereof upon the adverse party pursuant to Sections 2(a) and 3 of Rule 41. Clearly, when petitioner

sought to assail the decision and order of the trial court, an appeal to the Court of Appeals was the adequate remedy which he should have availed of, instead of filing a petition directly with this Court.

Even if the petition will be treated as a petition for *certiorari* under Rule 65, the same should be dismissed. In *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*,[50] which has been often cited in subsequent cases,[51] the Court declared that where appeal is available to the aggrieved party, the action for *certiorari* will not be entertained. Remedies of appeal (including petitions for review) and *certiorari* are mutually exclusive, not alternative or successive. Hence, *certiorari* is not and cannot be a substitute for an appeal, especially if one's own negligence or error in one's choice of remedy occasioned such loss or lapse. One of the requisites of *certiorari* is that there be no available appeal or any plain, speedy and adequate remedy. Where an appeal is available, *certiorari* will not prosper, even if the ground therefor is grave abuse of discretion.

Further, the petition should be denied for violation of hierarchy of courts as prior recourse should have been made to the Court of Appeals, instead of directly with this Court. A direct invocation of the Court's original jurisdiction to issue writs of *certiorari* should be allowed only when there are special and important

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[50] 459 Phil. 768 (2004).

[51] *San Miguel Bukid Homeowners Association, Inc., herein represented by its President, Mr. Evelio Barata v. The City of Mandaluyong, represented by the Hon. Mayor Benjamin Abalos, Jr, A.F. Calma General Construction, represented by its President, Armengo F. Calma*, G.R. No. 153653, October 2, 2009; *Sarsaba v. Vda. de Te*, G.R. No. 175910, July 30, 2009, 594 SCRA 410; *National Power Corporation v. Laohoo*, G.R. No. 151973, July 23, 2009, 593 SCRA 564; *Ocampo v. Court of Appeals (Former Second Division)*, G.R. No. 150334, March 20, 2009, 582 SCRA 43; *Vios v. Pantangco*, G.R. No. 163103, February 6, 2009, 578 SCRA 129; *Mahinay v. Court of Appeals*, G.R. No. 152457, April 30, 2008, 553 SCRA 171; *Dael v. Beltran*, G.R. No. 156470, April 30, 2008, 553 SCRA 182; *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424.

reasons therefor, clearly and specifically set out in the petition. This is established policy. It is a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent over-crowding of the Court's docket.[52] As aptly pronounced in *Santiago v. Vasquez*,[53] the observance of the hierarchy of courts should be respected as the Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate court. Thus,

> One final observation. We discern in the proceedings in this case a propensity on the part of petitioner and, for that matter, the same may be said of a number of litigants who initiate recourses before us, to disregard the hierarchy of courts in our judicial system by seeking relief directly from this Court despite the fact that the same is available in the lower courts in the exercise of their original or concurrent jurisdiction, or is even mandated by law to be sought therein. This practice must be stopped, not only because of the imposition upon the precious time of this Court but also because of the inevitable and resultant delay, intended or otherwise, in the adjudication of the case which often has to be remanded or referred to the lower court as the proper forum under the rules of procedure, or as better equipped to resolve the issues since this Court is not a trier of facts. We, therefore, reiterate the judicial policy that this Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts or where exceptional and compelling circumstances justify availment of a remedy within and calling for the exercise of our primary jurisdiction.

On the contrary, the direct recourse to this Court as an exception to the rule on hierarchy of courts has been recognized because it was dictated by public welfare and the advancement of public policy, or demanded by the broader interest of justice, or the orders complained of were found to be patent nullities, or the appeal was considered as clearly an inappropriate remedy.[54]

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[52] *People v. Cuaresma*, G.R. No. 67787, April 18, 1989, 172 SCRA 415, 424.

[53] G.R. Nos. 99289-90, January 27, 1993, 217 SCRA 633, 651-652.

[54] *Spouses Chua v. Ang*, G.R. No. 156164, September 4, 2009, 598 SCRA 229; *Chong v. Dela Cruz*, G.R. No. 184948, July 21, 2009, 593 SCRA 311.

Considering the merits of the present case, the Court sees the need to relax the iron clad policy of strict observance of the judicial hierarchy of courts and, thus, takes cognizance over the case. The trial court, in its Decisions dated December 1, 2004 and December 13, 2004 (per Presiding Judge Raul Bautista Villanueva), erred in *motu proprio* modifying the Separate Judgment dated July 22, 1997 (per Presiding Judge Florentino M. Alumbres) by reducing the entitlement of petitioner's additional attorney's fees from ₱20,000,000.00 to ₱1,000,000.00.

**II. Merit of the petition**

Petitioner insists that when the amendatory agreement was executed among petitioner, respondents, and respondent ALI and the same was submitted to the trial court for approval, the primordial consideration of the parties was to honor the 25% contingent attorney's fees agreement as provided in the retainer contract between the petitioner and his clients (herein respondents).

This argument has factual and legal bases as the trial court's dispositions, in its December 1, 2004 and December 13, 2004 Decision, are erroneous.

Records show that on May 13, 1997, respondents (including therein plaintiffs) and respondent ALI executed a MOA whereby they agreed to transfer to respondent ALI their rights of ownership over the subject property for a consideration of ₱120,000,000.00, with a stipulation therein that the amount of ₱10,000,000.00, representing attorney's fees of petitioner, shall be deducted from the amount of ₱120,000,000.00. Then, the parties filed a Joint Motion for Judgment Based on Compromise dated May 13, 1997. On May 27, 1997, petitioner, respondents, and respondent ALI executed an Amendatory Agreement incorporating a provision that, in addition to the ₱10,000,000.00 attorney's fees, petitioner would also be entitled to the amount of ₱20,000,000.00 as additional attorney's fees, or a total amount of ₱30,000,000.00, subject to the trial court's approval. In the Separate Judgment dated July 22, 1997, the trial court (through Judge Florentino M. Alumbres) approved the parties' Joint Motion for Judgment Based on Compromise dated May 13, 1997 as the terms and conditions set forth under the Amendatory Agreement was found

to be freely agreed upon and not contrary to law, morals, public order and public policy, and directed respondent ALI to immediately release the amount of ₱20,000,000.00 in favor of petitioner as his additional attorney's fees. On July 28, 1997, petitioner filed an *Ex-Parte* Motion to Issue Writ for Execution of Judgment alleging that the Separate Judgment dated July 22, 1997 was immediately executory as there was no appeal from such judgment; that said judgment was rendered in accordance with a compromise agreement, denominated as amendatory agreement, which was signed by the parties, with the assistance of their respective counsels, and approved by the trial court; and that a writ be issued for the immediate execution of the said separate judgment. However, the execution of the judgment did not come to fruition as this Court (Third Division), in G.R. No. 127079,[55] promulgated a Decision on May 7, 2004 ordering the remand of the case to the trial court to determine with dispatch whether the award of ₱30,000,000.00 as petitioner's total attorney's fees would be appropriate.

Said case, G.R. No. 127079, pointed out that with the execution of the May 13, 1997 MOA or compromise agreement and the May 27, 1997 Amendatory Agreement, the parties resolved to settle their differences and put an end to the litigation, and the trial court (per Presiding Judge Florentino M. Alumbres) had rendered the July 22, 1997 Separate Judgment approving the said Amendatory Agreement. It also explained that with the Separate Judgment of the trial court approving the parties' Amendatory Agreement, therein respondent ALI's petition was denied for being moot and academic. The reason why the Court ordered the remand of the case to the trial court was for the purpose of resolving with dispatch the propriety of petitioner's attorney's fees of ₱30,000,000.00 which was being assailed by the parties.

On December 1, 2004, instead of conducting a hearing to determine the appropriate amount of attorney's fees that petitioner should be entitled to, the trial court (per Judge Raul Bautista Villanueva rendered a Decision stating that it approved the parties'

[55] *Supra* note 45.

Joint Motion for Judgment Based on Compromise dated May 13, 1997, dismissed therein intervenors' complaints-in-intervention, and directed respondents to pay respondent ALI the amount of ₱563,358.00 by way of attorney's fees to be taken from the second tranche payment and deducted from their *pro-rata* share. It provided that with the approval of the parties' Joint Motion for Judgment Based on Compromise dated May 13, 1997, there exists no hindrance to the execution of the said compromise agreement. It stated that the said motion reflected the true, valid, and lawful terms of settlement agreed upon by the parties pursuant to the MOA and the amendatory agreement. Later, on December 13, 2004, the trial court (through Presiding Judge Raul Bautista Villanueva), acting on petitioner's claim for additional ₱20,000,000.00 attorney's fees in his *Ex-Parte* Motion to Issue Writ for Execution of Judgment dated July 28, 1997 and *Ex-Parte* Manifestation and Motion dated May 31, 2004, rendered a Decision stating that petitioner can execute judgment only up to the amount of ₱1,000,000.00, not the entire ₱20,000,000.00.

The said Decisions are erroneous. The trial court misrepresented certain facts by making it appear that the approval of the parties' Joint Motion for Judgment Based on Compromise dated May 13, 1997 was a pending incident that needs to be resolved so as to define the rights of the parties and, thus, proceeded to include it in its Decision dated December 1, 2004. The ruling that it approved the same was a surplusage and inaccurate. There was no need for the trial court to include in its disposition that it approved the parties' Joint Motion for Judgment Based on Compromise precisely because the same has been earlier approved in the Separate Judgment dated July 22, 1997.

It bears stressing that the Decision dated May 7, 2004 of the Court, in G.R. No. 127079, expressly acknowledged the existence of the compromise agreement among the parties, designated as MOA and, later, the amendatory agreement, and also the validity of their Joint Motion for Judgment Based on Compromise which it gave judicial *imprimatur*. It mentioned that as to petitioner's attorney's fees of ₱30,000,000.00, while it was the amount they agreed upon in their MOA and amendatory agreement; however, they are now contesting its reasonableness. Respondent

ALI opposed petitioner's motion to execute the compromise judgment on the ground that his attorney's fees was excessive and unconscionable, while respondents filed with this Court a motion for the issuance of a temporary restraining order to enjoin the trial court from granting petitioner's motion. We declared in said G.R. No. 127079 that the issue of whether or not petitioner's claim for attorney's fees is reasonable should be resolved by the trial court. Consequently, We denied respondent ALI's petition for being moot and remanded the case to the trial court for the purpose of resolving with dispatch the propriety of petitioner's attorney's fees of ₱30,000,000.00 which was being assailed by both parties.

Clearly, in G.R. No. 127079, the Court ordered the trial court to resolve the issue of whether petitioner should be entitled to the entire amount of ₱30,000,000.00 (the sum of ₱10,000,000.00 was already received by the petitioner, plus the claim of the additional amount of ₱20,000,000.00). This directive necessarily requires the duty of the trial court (through Judge Raul Bautista Villanueva) to determine the appropriate amount of additional attorney's fees to be awarded to petitioner, whether it should be the entire amount of ₱20,000,000.00 (as claimed by petitioner) or a reduced amount (as claimed by respondent ALI). If to the mind of the trial court, despite the Separate Judgment dated July 22, 1997 (per Judge Florentino M. Alumbres) directing respondent ALI to release the amount of ₱20,000,000.00 as additional attorney's fees of petitioner, the said amount appears to be unreasonable, then it should have forthwith conducted a hearing with dispatch to resolve the issue of the reasonable amount of attorney's fees on *quantum meruit* basis and, accordingly, modify the said Separate Judgment dated July 22, 1997 to be incorporated in the Decision dated December 1, 2004. This is in consonance with the ruling in *Roldan v. Court of Appeals*[56] which states:

As a basic premise, the contention of petitioners that this Court may alter, modify or change even an admittedly valid stipulation

[56] G.R. No. 97006, February 9, 1993, 218 SCRA 713, 717, citing *Radiowealth Finance Co., Inc. v. International Corporate Bank*, 182 SCRA 862 (1990).

between the parties regarding attorney's fees is conceded. The high standards of the legal profession as prescribed by law and the Canons of Professional Ethics regulate if not limit the lawyer's freedom in fixing his professional fees. The moment he takes his oath, ready to undertake his duties first, as a practitioner in the exercise of his profession, and second, as an officer of the court in the administration of justice, the lawyer submits himself to the authority of the court. It becomes axiomatic therefore, that power to determine the reasonableness or the unconscionable character of attorney's fees stipulated by the parties is a matter falling within the regulatory prerogative of the courts (*Panay Electric Co., Inc. v. Court of Appeals*, 119 SCRA 456 [1982]; *De Santos v. City of Manila*, 45 SCRA 409 [1972]; *Rolando v. Luz*, 34 SCRA 337 [1970]; *Cruz v. Court of Industrial Relations*, 8 SCRA 826 [1963]). *And this Court has consistently ruled that even with the presence of an agreement between the parties, the court may nevertheless reduce attorney's fees though fixed in the contract when the amount thereof appears to be unconscionable or unreasonable* (*Borcena v. Intermediate Appellate Court*, 147 SCRA 111 [1987]; *Mutual Paper Inc. v. Eastern Scott Paper Co.*, 110 SCRA 481 [1981]; *Gorospe v. Gochango*, 106 Phil. 425 [1959]; *Turner v. Casabar*, 65 Phil. 490 [1938]; *F.M. Yap Tico & Co. v. Alejano*, 53 Phil. 986 [1929]). For the law recognizes the validity of stipulations included in documents such as negotiable instruments and mortgages with respect to attorney's fees in the form of penalty provided that they are not unreasonable or unconscionable (*Philippine Engineering Co. vs. Green*, 48 Phil. 466). (Italics supplied)

The principle of *quantum meruit* (as much as he deserves) may be a basis for determining the reasonable amount of attorney's fees. *Quantum meruit* is a device to prevent undue enrichment based on the equitable postulate that it is unjust for a person to retain benefit without paying for it. It is applicable even if there was a formal written contract for attorney's fees as long as the agreed fee was found by the court to be unconscionable. In fixing a reasonable compensation for the services rendered by a lawyer on the basis of *quantum meruit*, factors such as the time spent, and extent of services rendered; novelty and difficulty of the questions involved; importance of the subject matter; skill demanded; probability of losing other employment as a result of acceptance of the proferred case;

customary charges for similar services; amount involved in the controversy and the benefits resulting to the client; certainty of compensation; character of employment; and professional standing of the lawyer, may be considered.[57] Indubitably entwined with a lawyer's duty to charge only reasonable fee is the power of the Court to reduce the amount of attorney's fees if the same is excessive and unconscionable in relation to Sec. 24, Rule 138 of the Rules. Attorney's fees are unconscionable if they affront one's sense of justice, decency or unreasonableness.[58]

Verily, the determination of the amount of reasonable attorney's fees requires the presentation of evidence and a full-blown trial.[59] It would be only after due hearing and evaluation of the evidence presented by the parties that the trial court can render judgment as to the propriety of the amount to be awarded. The Decision dated December 1, 2004 did not mention that there was a hearing conducted or that the parties were required to appear before the trial court or that they submitted pleadings with regard to the issue of reasonableness of the petitioner's attorney's fees. The important thing that the trial court missed out is the fact that what is suspended is merely the execution of the Separate Judgment dated July 22, 1997, pending the determination of the propriety of the petitioner's attorney's fees. The Decision in G.R. No. 127079 should never be construed as authorizing the trial court to amend or modify what the parties have set forth in their compromise agreement (in the MOA and Amendatory Agreement), which was duly approved in the Separate Judgment dated July 22, 1997.

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[57] *Orocio v. Anguluan*, G.R. Nos. 179892-93, January 30, 2009, 577 SCRA 531, 551-552.

[58] *Roxas v. De Zuzuarregui, Jr.*, G.R. No. 152072, January 31, 2006, 481 SCRA 258.

[59] *Jose Feliciano Loy, Jr. v. San Miguel Corporation Employees Union-Philippine Transport and General Workers Organization (SMCEU-PTGWO), as represented by its President Ma. Pilar B. Aquino and San Miguel Corporation Credit Cooperative, Inc. as represented by its President Daniel Borbon*, G.R. No. 164886, November 24, 2009.

What petitioner sought in his earlier pleadings, *i.e.*, *Ex-Parte* Motion to Issue Writ for Execution of Judgment dated July 28, 1997 and *Ex-Parte* Manifestation and Motion dated May 31, 2004, was the execution and implementation of the July 22, 1997 Separate Judgment (per Judge Florentino M. Alumbres) which declared that in view of the terms and conditions agreed upon by the parties under the Amendatory Agreement dated May 27, 1997, respondent ALI is directed to immediately release the sum of ₱20,000,000.00 in favor of the petitioner as his attorney's fees.

The Court is surprised with the trial court's Decision dated December 13, 2004 justifying the reduction of attorney's fees by stating that to allow petitioner to get the total sum of ₱30,000,000.00 would be downright unfair, especially since the settlement price of ₱119,995,630.46 was not entirely allocated to his clients. The trial court should have taken the principle of *quantum meruit* with regard to engagement of petitioner as respondents' counsel *vis-à-vis* the concept of compromise agreement entered into by the parties. The amicable settlement of ₱120,000,000.00 was paid not only to the 8 respondents, collectively referred to in the amendatory agreement as "Heads of the Families" (who had signed a contract engaging petitioner as their counsel), but also to 66 other individuals (who had no written contract with petitioner, but was assisted by the petitioner in the execution of the MOA and the Joint Motion for Judgment Based on Compromise). The respondents, designated as "Heads of the Families," represented all the heirs in the case. There was no need for the trial court, in its Decision dated December 1, 2004, to enumerate individually the heirs being represented by herein respondents. Petitioner actively represented the 8 respondents in their pleadings and other proceedings with the trial court as stipulated in their Contract for Legal and Other Valuable Services,[60] dated September 3, 1993, which stated that the 8 respondents engaged petitioner to be their counsel in connection with the 32 hectare land located at *Barangay* Pugad Lawin, Las Piñas; that the said parcel of land, covered by TCT

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[60] *Supra* note 23, at 1074-1075.

No. T-5332, was occupied by Las Piñas Ventures, Inc.; that the 8 respondents agreed to institute legal action for annulment of TCT No. T-5332 and recovery of possession with damages against Las Piñas Ventures, Inc.; and that for and in consideration of the legal services rendered by petitioner, the 8 respondents shall, in proportion to their respective shares, contribute 25% of the total area recovered from Las Piñas Ventures, Inc. or its equivalent in cash upon successful termination of court litigation; and that all litigation expenses shall be on the account of the petitioner's law firm. Hence, what bothers this Court is the failure of the trial court to hear the parties, so as to render judgment based on the outcome of the hearing and confirm the reasonableness of the attorney's fees in favor of petitioner.

**WHEREFORE,** the petition is *GRANTED*. The Decisions dated December 1, 2004 and December 13, 2004 and the Order dated March 1, 2005 of the Regional Trial Court, Branch 255, Las Piñas City, in Civil Case No. 93-3094, are *REVERSED* and *SET ASIDE*. The case is *REMANDED* to the trial court which shall forthwith conduct hearings with dispatch to resolve the issue of the amount of reasonable attorney's fees, on *quantum meruit* basis, that petitioner Hicoblino M. Catly, now deceased and substituted by his wife, Lourdes A. Catly, would be entitled to.

**SO ORDERED.**

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

**SECOND DIVISION**

[G.R. No. 172708. May 5, 2010]

**PEOPLE OF THE PHILIPPINES,** *appellee, vs.* **JOSEPH AMPER *Y* REPASO,** *appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; ESTOPPEL; AN ACCUSED IS ESTOPPED FROM ASSAILING THE LEGALITY OF HIS ARREST IF HE FAILS TO RAISE THE ISSUE, OR TO MOVE FOR THE QUASHAL OF THE INFORMATION AGAINST HIM ON THAT GROUND, WHICH SHOULD BE MADE BEFORE ARRAIGNMENT.—** We have consistently ruled that an accused is estopped from assailing the legality of his arrest if he fails to raise this issue, or to move for the quashal of the information against him on this ground, which should be made before arraignment. In this case, appellant only raised for the first time the alleged irregularity of his arrest in his appeal before the CA. This is not allowed considering that he was already properly arraigned and even actively participated in the proceedings. He is, therefore, deemed to have waived such alleged defect when he submitted himself to the jurisdiction of the court.

**2. ID.; EVIDENCE; CREDIBILITY OF WITNESSES; POSITIVE AND CATEGORICAL IDENTIFICATION OF ACCUSED AS THE VICTIM'S MOLESTER PREVAILS OVER ACCUSED'S CONTENTION THAT HIS IDENTIFICATION WAS MARKED BY SUGGESTIVENESS.—** We likewise cannot sustain appellant's contention that his identification was marked by suggestiveness. Appellant claims that he was arrested after the incident based on the suggestion of the police officer and not on the identification made by "AAA". It must be stressed that what is crucial is for the witness to positively declare during trial that the persons charged were the malefactors. In this case, "AAA" positively and categorically identified appellant during trial as her molester. She could not have been mistaken because she had a fairly good look at appellant's face even before the commission of the crime. The place where she first saw the

appellant was well-lighted. Moreover, "AAA" never faltered in her identification of the appellant.

**3. CRIMINAL LAW; CRIMES AGAINST PERSONS; RAPE; MAY BE COMMITTED ANYWHERE.—** That the crime was committed at the back of the church and that there are several establishments in the area would not make the commission of the same highly improbable. It is settled jurisprudence that rape can be committed even in a public place, in places where people congregate, in parks, along the roadside, within school premises, inside a house or where there are other occupants, and even in the same room where there are other members of the family who are sleeping.

**4. ID.; CRIMES AGAINST PROPERTY; ROBBERY WITH RAPE; ELEMENTS; PROVEN IN CASE AT BAR.—** Both the trial court and the appellate court correctly found appellant guilty of the complex crime of robbery with rape, the elements of which are as follows: (1) the taking of personal property is committed with violence against or intimidation of persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape. The first three elements were proven by "AAA" who testified that appellant brought her at knife point to the back of the church and divested her of her belongings. Appellant also threatened her with bodily harm if she refused. From the foregoing, it is clear that the crime of robbery was committed. As to the attendant rape, we find the testimony of "AAA" worthy of full faith and credence. The records show that "AAA" was only 15 years old at the time she testified. Her credibility was also strengthened by the fact that she immediately reported the incident to her father, who in turn reported the same to the police authorities. The results of the medical examination likewise corroborated her testimony that she was indeed raped as the presence of spermatozoa was even found in her vagina. "AAA's" declaration of her sexual ordeal, which was given in a straightforward, convincing, credible and satisfactory manner, shows no other intention than to obtain justice for the wrong committed by the appellant against her.

**5. REMEDIAL LAW; EVIDENCE; ALIBI; PROPERLY DISREGARDED IN CASE AT BAR.—** The trial court and the appellate court properly disregarded appellant's defense of alibi. Aside from the fact that the same cannot prevail over the positive

identification made by "AAA" of the appellant as the perpetrator of the crime, appellant also failed to prove that it was physically impossible for him to be at the scene of the crime at the time of its commission. Here, appellant claimed that he was at his workplace at the time the crime was committed and that he left work at around 6:00 o'clock in the evening and reached his home at around 9:00 o'clock in the evening. However, on cross examination, he admitted that it is possible to reach Maharlika Highway junction from his place of work in 45 to 50 minutes and from there reach Atimonan town proper in 30 minutes. It will be recalled that the incident happened at about 7:30 in the evening; thus, it is not impossible for the appellant to be at the crime scene at the time it was committed.

**6. CRIMINAL LAW; CRIMES AGAINST PROPERTY; ROBBERY WITH RAPE; PENALTY.—** Article 294 of the Revised Penal Code provides for the penalty of *reclusion perpetua* to death, when the robbery was accompanied by rape. Thus, both the trial court and the appellate court correctly imposed upon the appellant the penalty of *reclusion perpetua* and to pay the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱1,340.00 in restitution of the value of the jewelries taken from "AAA".

**APPEARANCES OF COUNSEL**

*The Solicitor General* for appellee.
*Dato Law Offices* for appellant.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

In this case, appellant Joseph Amper *y* Repaso not only robbed his victim of her material possessions; he also robbed her of her virginity.

On appeal is the Decision[1] dated August 18, 2005 of the Court of Appeals (CA), in CA-G.R. CR-H.C. No. 00716, which

[1] CA *rollo*, pp. 153-169; penned by Associate Justice Eliezer R. De los Santos and concurred in by Associate Justices Eugenio S. Labitoria and Arturo D. Brion.

affirmed with modification the Decision[2] dated January 30, 2003 of the Regional Trial Court (RTC) of Gumaca, Quezon, Branch 61, in Criminal Case No. 5195-G, convicting appellant of the crime of robbery with rape. Also assailed is the Resolution[3] dated December 5, 2005 denying the motion for reconsideration.

***Version of the Prosecution***

On August 17, 1995, at approximately 7:30 in the evening, "AAA"[4] was walking along Mateo Manila Street near Leon Guinto Memorial College located at *Brgy*. Zone II, Poblacion, Atimonan, Quezon to buy peanuts for her father.[5] While approaching the place of a certain Noni Magisa, appellant suddenly put his hand on "AAA's" shoulder, poked a pointed instrument at the left side of her body and ordered her not to make any move.[6] The appellant then directed her to walk casually towards the direction of the church.[7] When they reached the back of the church, appellant ordered "AAA" to sit on the cemented floor and to remove all the pieces of jewelry she was wearing, particularly her wrist watch, bracelet and pair of earrings.[8]

After ordering "AAA" to lie down on the floor,[9] appellant removed "AAA's" shorts and underwear[10] then also lowered

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[2] Records, pp. 392-428; penned by Judge Aurora V. Maqueda-Roman.

[3] CA *rollo*, p. 192.

[4] Pursuant to Section 44 of Republic Act (RA) No. 9262, otherwise known as the Anti-Violence Against Women and Their Children Act of 2004, and Section 63, Rule XI of the Rules and Regulations Implementing RA 9262, the real name of the child-victim is withheld to protect his/her privacy. Fictitious initials are used instead to represent him/her. Likewise, the personal circumstances or any other information tending to establish or compromise his/her identity, as well as those of his/her immediate family or household members shall not be disclosed.

[5] TSN, September 10, 1996, pp. 8-9.

[6] *Id.* at 10.

[7] *Id.*

[8] *Id.* at 12.

[9] *Id.* at 13.

[10] *Id.*

his own pants and briefs[11] and forcibly inserted his penis into her vagina and made push and pull movements.[12] All this time, appellant poked a weapon at the left side of "AAA's" neck which prevented her from shouting for help.[13] After satisfying his lust, appellant told "AAA" not to leave until he was gone.[14]

After about two minutes, "AAA" put on her garments and hurried home where she narrated the incident to her father.[15] Both proceeded to the place where the incident happened[16] but appellant could no longer be found.[17] "AAA" and her father proceeded to the police station and reported the matter.[18] Thereafter, Dr. Lourdes Taguinod (Dr. Taguinod) of Doña Martha Hospital examined her.[19]

On August 22, 1995, appellant was arrested for robbery and attempted rape committed against another individual.[20] On the following day,[21] "AAA" went to the police station and identified appellant as the person who robbed and raped her.[22]

Subsequently, an Information was filed against appellant charging him with the crime of robbery with rape,[23] *viz:*

That on or about the 17th day of August 1995, at Barangay Zone II, Municipality of Atimonan, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named

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[11] *Id.* at 14-15.

[12] *Id.* at 18-20.

[13] *Id.* at 20.

[14] *Id.* at 20-21.

[15] *Id.* at 21.

[16] *Id.*

[17] TSN, May 28, 2001, pp. 8-9.

[18] TSN, September 10, 1996, p. 22.

[19] *Id.* at 25.

[20] TSN, May 28, 2001, p. 11

[21] *Id.* at 12.

[22] TSN, February 12, 2001, p. 6.

[23] Records, pp. 2-3.

accused, armed with a pointed instrument, with intent to gain and to rob, and by means of force, violence against and intimidation of person, taking advantage of nighttime and his superior strength to better facilitate his purpose, did then and there willfully, unlawfully and feloniously take from AAA the following:

| | | |
|---|---|---|
| One (1) ring | . . . . . | ₱ 400.00 |
| Bracelet | . . . . . | 314.00 |
| Wrist Watch | . . . . . | 300.00 |
| Pair of Earring | . . . . . | 220.00 |
| | Total | ₱ 1,234.00 |

with a total value of ONE THOUSAND TWO HUNDRED THIRTY FOUR PESOS (₱1,234.00) Philippine currency, belonging to said "AAA", to her damage and prejudice in the said amount; and that by reason thereof and on the same occasion, the above-named accused, with lewd design, by means of force, threats, violence and intimidation, did, then and there willfully, unlawfully and feloniously have carnal knowledge of the aforesaid "AAA", a minor, 14 years of age, against her will.

Contrary to law.

Upon arraignment,[24] appellant pleaded not guilty to the charge. Trial thereafter ensued.

***Version of the Defense***

Appellant denied liability and insisted that he only saw "AAA" for the first time in the police station. He claimed that on August 17, 1995, he left his place of work at Hopewell Power Plant at around 6:30 in the evening[25] and arrived at the Atimonan town proper at past 9:00 o'clock in the evening.[26] Thus he could not have robbed or raped "AAA". In support of his claim, appellant submitted "Cepa Slip Form Power System Ltd." showing that he was at the power plant project site between 6:16 in the morning up to 5:21 in the afternoon of August 17, 1995[27] and

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[24] *Id.* at 19.

[25] TSN, May 7, 2002, p. 9.

[26] *Id.* at 9.

[27] *Id.* at 11.

a letter addressed to all jeepney operators stating the time when they should depart from the site.[28]

On cross-examination, however, appellant admitted that he could take a passenger jeepney from the gate of Hopewell Power Plant going to the junction of Maharlika highway[29] which would take around 45 to 50 minutes. From the junction, he could reach Atimonan town proper in 30 minutes by taking a passenger bus.[30]

***Ruling of the Regional Trial Court***

On January 30, 2003, the RTC rendered its Decision convicting appellant of the crime of robbery with rape, and sentencing him to suffer the penalty of *reclusion perpetua*. The RTC did not give credence to appellant's alibi since he failed to prove that it was impossible for him to be at the situs of the crime at the time it took place. The trial court also found "AAA's" testimony to be clear and convincing; hence there was no reason to disbelieve her.

The dispositive portion of the RTC Decision reads:

> WHEREFORE, premises considered, the Court finds accused JOSEPH AMPER guilty beyond reasonable doubt of the crime of Robbery with Rape under Article 294 of the Revised Penal Code, as amended by R.A. 7659 and he is therefore sentenced to suffer the penalty of *RECLUSION PERPETUA* and to pay the amount of ₱75,000.00 as indemnity to the victim and the amount of ₱50,000.00 as moral damages and to pay the amount of ₱1,340.00 in restitution of the value of jewelries taken from "AAA".
>
> SO ORDERED.[31]

***Ruling of the Court of Appeals***

The appellate court affirmed with modification the Decision of the trial court. It held that the prosecution satisfactorily proved

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[28] *Id.* at 11-12.

[29] TSN, September 24, 2002, p. 7.

[30] *Id.* at 9.

[31] Records, pp. 427-428.

all the elements of the complex crime of robbery with rape, to wit: a) the taking of personal property is committed with violence or intimidation against persons; b) the property taken belongs to another; c) the taking is done with *animo lucrandi,* and d) the robbery is accompanied by rape.

The dispositive portion of the CA Decision reads:

> WHEREFORE, in view of the foregoing, the appealed decision is hereby AFFIRMED in all aspects with the MODIFICATION that the civil indemnity is reduced from ₱75,000.00 to ₱50,000.00.
>
> SO ORDERED.[32]

Hence, this appeal.

**Our Ruling**

The appeal lacks merit.

We have consistently ruled that an accused is estopped from assailing the legality of his arrest if he fails to raise this issue, or to move for the quashal of the information against him on this ground, which should be made before arraignment.[33] In this case, appellant only raised for the first time the alleged irregularity of his arrest in his appeal before the CA. This is not allowed considering that he was already properly arraigned and even actively participated in the proceedings. He is, therefore, deemed to have waived such alleged defect when he submitted himself to the jurisdiction of the court.

We likewise cannot sustain appellant's contention that his identification was marked by suggestiveness. Appellant claims that he was arrested after the incident based on the suggestion of the police officer and not on the identification made by "AAA". It must be stressed that what is crucial is for the witness to positively declare during trial that the persons charged were

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[32] CA *rollo,* p. 169.

[33] *People v. Alunday,* G.R. No. 181546, September 3, 2008, 564 SCRA 135, 149.

the malefactors.[34] In this case, "AAA" positively and categorically identified appellant during trial as her molester. She could not have been mistaken because she had a fairly good look at appellant's face even before the commission of the crime.[35] The place where she first saw the appellant was well-lighted.[36] Moreover, "AAA" never faltered in her identification of the appellant.

That the crime was committed at the back of the church and that there are several establishments in the area would not make the commission of the same highly improbable. It is settled jurisprudence that rape can be committed even in a public place, in places where people congregate, in parks, along the roadside, within school premises, inside a house or where there are other occupants, and even in the same room where there are other members of the family who are sleeping.[37]

Both the trial court and the appellate court correctly found appellant guilty of the complex crime of robbery with rape, the elements of which are as follows: (1) the taking of personal property is committed with violence against or intimidation of persons; (2) the property taken belongs to another; (3) the taking is characterized by intent to gain or *animus lucrandi*; and (4) the robbery is accompanied by rape.

The first three elements were proven by "AAA" who testified that appellant brought her at knife point to the back of the church and divested her of her belongings. Appellant also threatened her with bodily harm if she refused.[38] From the foregoing, it is clear that the crime of robbery was committed.

As to the attendant rape, we find the testimony of "AAA" worthy of full faith and credence. The records show that "AAA"

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[34] *People v. Martin*, G.R. No. 177571, September 29, 2008, 567 SCRA 42, 49.

[35] TSN, September 10, 1996, p. 10.

[36] *Id.* at 24.

[37] *People v. Mendoza*, 440 Phil. 755, 772 (2002).

[38] TSN, September 10, 1996, p. 12.

was only 15 years old at the time she testified. Her credibility was also strengthened by the fact that she immediately reported the incident to her father, who in turn reported the same to the police authorities. The results of the medical examination likewise corroborated her testimony that she was indeed raped as the presence of spermatozoa was even found in her vagina.[39] "AAA's" declaration of her sexual ordeal, which was given in a straightforward, convincing, credible and satisfactory manner, shows no other intention than to obtain justice for the wrong committed by the appellant against her.

The trial court and the appellate court properly disregarded appellant's defense of alibi. Aside from the fact that the same cannot prevail over the positive identification made by "AAA" of the appellant as the perpetrator of the crime, appellant also failed to prove that it was physically impossible for him to be at the scene of the crime at the time of its commission. Here, appellant claimed that he was at his workplace at the time the crime was committed and that he left work at around 6:00 o'clock in the evening and reached his home at around 9:00 o'clock in the evening. However, on cross examination, he admitted that it is possible to reach Maharlika Highway junction from his place of work in 45 to 50 minutes and from there reach Atimonan town proper in 30 minutes.[40] It will be recalled that the incident happened at about 7:30 in the evening; thus, it is not impossible for the appellant to be at the crime scene at the time it was committed.

Article 294 of the Revised Penal Code provides for the penalty of *reclusion perpetua* to death, when the robbery was accompanied by rape. Thus, both the trial court and the appellate court correctly imposed upon the appellant the penalty of *reclusion perpetua* and to pay the amounts of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱1,340.00 in restitution of the value of the jewelries taken from "AAA".

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[39] TSN, September 24, 1996, pp. 7-8.

[40] *Id.* at 7-9.

**WHEREFORE,** premises considered, the Decision of the Court of Appeals dated August 18, 2005 in CA-G.R. CR-H.C. No. 00716, which affirmed with modification the Decision dated January 30, 2003 of the Regional Trial Court of Gumaca, Quezon, Branch 61, in Criminal Case No. 5195-G, convicting appellant of the crime of robbery with rape, and the Resolution dated December 5, 2005 denying the motion for reconsideration, are *AFFIRMED*.

**SO ORDERED.**

*Carpio, (Chairperson), Carpio Morales,*[*] *Abad,* and *Perez, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 174719. May 5, 2010]

**HEIRS OF MARIO PACRES, namely: VALENTINA *VDA. DE* PACRES, JOSERINO, ELENA, LEOVIGILDO, LELISA, and LOURDES all surnamed PACRES, and VEÑARANDA *VDA. DE* ABABA,** *petitioners, vs.* **HEIRS OF CECILIA YGOÑA, namely BAUDILLO YGOÑA YAP, MARIA YAP DETUYA, JOSEFINA YAP, EGYPTIANA YAP BANZON, and VICENTE YAP[1] and HILARIO RAMIREZ,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; APPEAL BY *CERTIORARI* TO THE SUPREME COURT; CONFINED ONLY TO QUESTIONS OF LAW.—** Petitioners would have the Court

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[*] In lieu of Justice Arturo D. Brion, per Raffle dated December 21, 2009.

[1] Per Order dated October 15, 1996 of Judge Meinrado P. Paredes.

review the evidence presented by the parties, despite the CA's finding that the trial court committed no error in appreciating the evidence presented during the trial. This goes against the rule that this Court is not a trier of facts. "Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact." Questions like these are not reviewable by this Court which, as a rule, confines its review of cases decided by the CA only to questions of law, which may be resolved without having to re-examine the probative value of the evidence presented.

**2. ID.; APPEALS; FACTUAL FINDING OF THE TRIAL COURT AND APPELLATE COURT THAT THE EXISTENCE OF AN ORAL PARTITION WAS NOT PROVEN, RESPECTED.—** We find no compelling reason to deviate from the foregoing rule and disturb the trial and appellate courts' factual finding that the existence of an oral partition was not proven. Our examination of the records indicates that, contrary to petitioners' contention, the lower courts' conclusion was justified.

**3. ID.; ID.; ADMISSIBILITY; ADMISSIONS OF A PARTY; STATEMENTS IN THE LEGAL REDEMPTION CASE ARE EXTRAJUDICIAL ADMISSIONS THAT MAY BE GIVEN IN EVIDENCE AGAINST THE PETITIONERS IN CASE AT BAR.—** Petitioners' assertion of partition of Lot No. 9 is further belied by their predecessor-in-interest's previous assertion of co-ownership over the same lot in the legal redemption case filed 10 years before. The allegations therein, sworn to as truth by Mario and Veñaranda, described Lot No. 9 as a parcel of land that is *co-owned* by the Pacres siblings *pro indiviso*. It was further alleged that Ygoña bought the *undivided* shares of Rodrigo, Francisco, Margarita, and Simplicia. The statements in the legal redemption case are extrajudicial admissions, which were not disputed by petitioners. These admissions may be given in evidence against them. At the very least, the polarity of their previous admissions and their present theory makes the latter highly suspect.

**4. CIVIL LAW; PROPERTY; POSSESSION; NOT ESTABLISHED TO PROVE ORAL PARTITION IN CASE AT BAR.—** xxx

[P]etitioners failed to show that the Pacres siblings took possession of their allotted shares after they had supposedly agreed on the oral partition. Actual possession and exercise of dominion over definite portions of the property in accordance with the alleged partition would have been strong proof of an oral partition. In this case, however, petitioners failed to present any evidence that the petitioners took actual possession of their respective allotted shares according to the supposed partition. In fact, the evidence of the parties point to the contrary. Petitioner Valentina herself drew a sketch showing the location of the *actual* occupants of Lot No. 9, but the actual occupation shown in her sketch is not in accordance with the terms of the alleged oral partition. According to the terms of the alleged oral partition, the front portions of Lot No. 9 were supposed to have been occupied by petitioners, but Valentina's sketch indicates that the actual occupants of the said portions are respondents.

**5. ID.; OBLIGATIONS AND CONTRACTS; CONTRACTS; RELATIVITY OF CONTRACTS; ONLY A PARTY TO THE CONTRACT CAN MAINTAIN AN ACTION TO ENFORCE THE OBLIGATIONS ARISING UNDER SAID CONTRACT.—** xxx [U]nder Article 1311 of the Civil Code, contracts take effect only between the parties, their assigns and heirs (subject to exceptions not applicable here). Thus, only a party to the contract can maintain an action to enforce the obligations arising under said contract. Consequently, petitioners, not being parties to the contracts of sale between Ygoña and the petitioners' siblings, cannot sue for the enforcement of the supposed obligations arising from said contracts.

**6. ID.; ID.; ID.; ID.; ID.; STIPULATIONS *POUR AUTRUI;* ABSENT IN CASE AT BAR.—** It is true that third parties may seek enforcement of a contract under the second paragraph of Article 1311, which provides that "if a contract should contain some stipulation in favor of a third person, he may demand its fulfillment." This refers to stipulations *pour autrui*, or stipulations for the benefit of third parties. However, the written contracts of sale in this case contain no such stipulation in favor of the petitioners.

**7. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; PAROL EVIDENCE RULE; AN ORAL STIPULATION CANNOT BE PROVEN UNDER THE PAROL EVIDENCE RULE;**

**EXPLAINED.—** xxx While petitioners claim that there was an *oral* stipulation, it cannot be proven under the Parol Evidence Rule. Under this Rule, "[w]hen 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." While the Rule admits of exception, no such exception was pleaded, much less proved, by petitioners. The Parol Evidence Rule applies to "the parties and their successors in interest." Conversely, it has no application to a stranger to a contract. For purposes of the Parol Evidence Rule, a person who claims to be the beneficiary of an alleged stipulation *pour autrui* in a contract (such as petitioners) may be considered a party to that contract. It has been held that a third party who avails himself of a stipulation *pour autrui* under a contract becomes a party to that contract. This is why under Article 1311, a beneficiary of a stipulation *pour autrui* is required to communicate his acceptance to the obligor before its revocation. Moreover, to preclude the application of Parol Evidence Rule, it must be shown that "at least one of the parties to the suit is not party or a privy of a party to the written instrument in question *and does not base a claim on the instrument or assert a right originating in the instrument or the relation established thereby*." A beneficiary of a stipulation *pour autrui* obviously bases his claim on the contract. He therefore cannot claim to be a stranger to the contract and resist the application of the Parol Evidence Rule. Thus, even assuming that the alleged oral undertakings invoked by petitioners may be deemed stipulations *pour autrui*, still petitioners' claim cannot prosper, because they are barred from proving them by oral evidence under the Parol Evidence Rule.

**8. ID.; CIVIL PROCEDURE; ACTIONS; THE ISSUE OF OWNERSHIP AND ENTITLEMENT TO THE EXPROPRIATION PAYMENT SHALL BE RESOLVED IN THE EXPROPRIATION CASE.—** xxx [W]hile we cannot rule on the existence of forum-shopping for insufficiency of evidence, it is correct that the issue of ownership should be litigated in the expropriation court. The court hearing the expropriation case is empowered to entertain the conflicting claims of ownership of the condemned property and adjudge the rightful owner thereof, in the same expropriation case. This is due to the intimate relationship of the issue of ownership with the claim for the expropriation payment. Petitioners'

objection regarding respondents' claim over the expropriation payment should have been brought up in the expropriation court as opposition to respondent's motion. While we do not know if such objection was already made, the point is that the proper venue for such issue is the expropriation court, and not here where a different cause of action (specific performance) is being litigated. We also cannot agree with the trial court's order to partition the lot in accordance with Exhibit No. 1 or the sketch prepared by petitioner Valentina. To do so would resolve the issue of ownership over portions of Lot No. 9 and effectively preempt the expropriation court, based solely on actual occupation (which was the only thing which Exhibit No. 1 could have possibly proved). It will be remembered that Exhibit No. 1 is simply a sketch demonstrating the portions of Lot No. 9 actually occupied by the parties. It was offered simply to impeach petitioners' assertion of actual occupation in accordance with the terms of the alleged oral partition.

**APPEARANCES OF COUNSEL**

*Delfin V. Nacua* for petitioners.
*Francis George F. Dinopol* for Hilario Ramirez.
*Rama and Realiza* for respondents Yap.

## D E C I S I O N

**DEL CASTILLO, *J.*:**

While contracts are generally obligatory in whatever form they may have been entered into, it remains imperative for a party that seeks the performance thereof to prove the existence and the terms of the contract by a preponderance of evidence. Bare assertions are not the quantum of proof contemplated by law.

This Petition for Review[2] assails the Decision[3] dated October 28, 2005 of the Court of Appeals (CA), as well as

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[2] *Rollo*, pp. 11-19.

[3] *Id.* at 21-29; penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Mercedes Gozo-Dadole and Enrico A. Lanzanas.

its Resolution[4] dated August 31, 2006. The dispositive portion of the assailed Decision reads:

> WHEREFORE, with the foregoing, the Decision of the Regional Trial Court, 7th Judicial Region, Branch 13, Cebu City dated March 15, 2000 in Civil Case No. 18819 for Specific Performance, Damages and Attorney's Fees is hereby SET ASIDE and a new one entered DISMISSING said case for failure to establish the causes of action with the required quantum of proof.
>
> No pronouncement as to cost.
>
> SO ORDERED.[5]

***Factual Antecedents***

Lot No. 9 is a 1,007 square meter parcel of land located at Kinasang-an, Pardo, Cebu City and fronting the Cebu provincial highway. The lot originally belonged to Pastor Pacres (Pastor) who left it intestate to his heirs[6] Margarita, Simplicia, Rodrigo, Francisco, Mario (petitioners' predecessor-in-interest) and Veñaranda (herein petitioner). Petitioners admitted that at the time of Pastor's death in 1962, his heirs were already occupying definite portions of Lot No. 9. The front portion along the provincial highway was occupied by the co-owned Pacres ancestral home,[7] and beside it stood Rodrigo's hut (also fronting the provincial highway). Mario's house stood at the back of the ancestral house.[8] This is how the property stood in 1968, as confirmed by petitioner Valentina's testimony.

On the same year, the heirs leased[9] "the ground floor of the [ancestral home] together with a lot area of 300 square meters

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[4] CA *rollo*, pp. 153-154.

[5] *Rollo*, p. 28.

[6] Lot No. 9 is registered under Transfer Certificate of Title No. 61114 in the name of the Heirs of Pastor Pacres.

[7] TSN (Valentina *Vda. De* Pacres), September 17, 1997, pp. 6-9.

[8] *Id.* at 6; *id.*, September 23, 1997, pp. 4-5.

[9] Exhibit "C" dated October 26, 1968. A portion reads:

> The lessors hereby lease unto the lessee the ground floor of the House No. 1277, together with a lot area of 300 square meters including the area

including the area occupied by the house" to respondent Hilario Ramirez (Ramirez), who immediately took possession thereof. Subsequently in 1974, four of the Pacres siblings[10] (namely, Rodrigo, Francisco, Simplicia and Margarita) sold their shares in the ancestral home and the lot on which it stood to Ramirez. The deeds of sale described the subjects thereof as "part and portion of the 300 square meters *actually in possession and enjoyment* by vendee and her spouse, Hilario Ramirez, by virtue of a contract of lease in their favor."[11] The Deed of Sale of Right in a House executed by Rodrigo and Francisco was more detailed, to wit:

> x x x do hereby sell, cede, transfer and convey, forever and in absolute manner, our shares interests and participation in a house of mixed materials under roof of nipa which is constructed inside Lot No. 5506[12] of the Cadastral Survey of Cebu, the lot on which the house is constructed has already been sold to and bought by the herein vendee from our brothers and sisters; that this sale pertains only to our rights and interests and participation in the house which we inherited from our late father Pastor Pacres.[13]

With the sale, respondent Ramirez's possession as lessee turned into a co-ownership with petitioners Mario and Veñaranda, who did not sell their shares in the house and lot.

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occupied by the house, of which the lessors are the co-owners, owning undivided interest over the house and lot.

[10] Namely Simplicia, Margarita, Francisco, and Rodrigo Pacres.

[11] Exhibit "5", Deed of Sale executed by Simplicia Pacres. Exhibit 6, which is the Deed of Sale executed by Margarita Pacres in favor of Ramirez, describes the object of the sale as "forming part and portion of the 300 square meters under the occupancy of the vendee and her husband, Mr. Hilario Ramirez, by virtue of a Lease Contract in their favor."

[12] Lot No. 9 consists of two consolidated lots, Lot Nos. 5504 and 5506, as confirmed by the description in TCT No. 61114 (Exhibit "37").

[13] Exhibit "7" dated December 31, 1974.

On various dates in 1971, Rodrigo,[14] Francisco,[15] and Simplicia[16] sold their remaining shares in Lot No. 9 to respondent Cecilia Ygoña (Ygoña). In 1983, Margarita[17] also sold her share to Ygoña. The total area sold to Ygoña was 493 square meters.

In 1984, Ygoña filed a petition to survey and segregate[18] the portions she bought from Lot No. 9. Mario objected on the ground that he wanted to exercise his right as co-owner to redeem his siblings' shares. Vendee Rodrigo also opposed on the ground that he wanted to annul the sale for failure of consideration. On the other hand, Margarita and the widow of Francisco both manifested their assent to Ygoña's petition. By virtue of such manifestation, the court issued a writ of possession[19] respecting Margarita's and Francisco's shares in favor of Ygoña. It is by authority of this writ that Ygoña built her house on a portion of Lot No. 9. Considering, however, the objections of the two other Pacres siblings, the trial court subsequently dismissed the petition so that the two issues could be threshed out in the proper proceeding. Mario filed the intended action while Rodrigo no longer pursued his objection.

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[14] Exhibit "3" dated August 5, 1971.

[15] Exhibit "3" dated August 5, 1971. Rodrigo and Francisco's Deed of Sale described the property sold as "the portion of 300 square meters which is the subject matter of this sale, shall be taken along the provincial road where the house of Rodrigo Pacres is built."

[16] Exhibit "23" dated August 1971. The deed of sale described its object as "the portion sold shall be taken along the provincial highway." Exhibit 24 dated December 1971. Simplicia sold an additional 50 square meters to Ygoña with the proviso "x x x that my sister Margarita Pacres is giving me an equivalent area of 50 square meters, in exchange of the portion sold to hereunder Cecilia Ygoña, the vendee."

[17] Exhibit "25" dated March 1, 1983.

[18] Exhibit "27" dated February 8, 1984.

[19] Exhibit "26". It stated that Lot No. 9-A was awarded to Ygoña and it ordered the dispossession of Margarita and Francisco's shares.

The complaint for legal redemption,[20] filed by Mario and Veñaranda, was dismissed on the ground of improper exercise of the right. The decision was affirmed by the appellate court[21] and attained finality in the Supreme Court[22] on December 28, 1992. The CA held that the complaint was filed beyond the 30-day period provided in Article 1623 of the New Civil Code and failed to comply with the requirement of consignation. It was further held that Ygoña built her house on Lot No. 9 in good faith and it would be unjust to require her to remove her house thereon.

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[20] Exhibit "26" dated October 25, 1985. It contained the following allegations:

x x x x x x x x x

II Plaintiffs are among the co-owners of a pro-indiviso parcel of land which they and the herein defendants brothers and sisters, inherited from their father x x x

III Recently, plaintiffs were verily informed and therefore allege that herein defendants PACRES on one hand and defendant Cecilia Ygoña on the other, connived, confederated and mutually helped one another in having the former's undivided shares, consisting of 492 square meters sold clandestinely in favor of the latter (Cecilia Ygoña), a stranger, without giving written notice to the other pro-indiviso co-owners, in violation of Article 1623, New Revised Civil Code of the Philippines;

x x x x x x x x x

V Proper demands were made upon the defendants, for plaintiffs' desire to redeem the undivided portions purchased clandestinely by defendant Cecilia Ygoña, but the latter refused and ignored and still continue to refuse and ignore the said plaintiffs' plea;

x x x x x x x x x

VII Plaintiffs are likewise verily informed and so allege that the price or consideration stated in the deeds of sale have been jacked up, for obvious reasons, hence the consideration stated in the said deeds of sale are not reasonable, and therefore it should be fixed or determined first so that the correct and reasonable redemption price could be consignated and/or paid accordingly, pursuant to law x x x

[21] CA-G.R. CV No. 14654. Exhibit "33".

[22] Entry of Judgment in G.R. No. 97185. Exhibit "35".

On June 18, 1993, the Republic of the Philippines, through the Department of Public Works and Highways (DPWH), expropriated the front portion of Lot No. 9 for the expansion of the Cebu south road. The petition for expropriation was filed in Branch 9 of the Regional Trial Court of Cebu City and docketed as Civil Case No. CEB-14150.[23] As occupant of the expropriated portion, Ygoña moved to withdraw her corresponding share in the expropriation payment. Petitioners opposed the said motion.[24] The parties did not supply the Court with the pleadings in the expropriation case; hence, we are unaware of the parties involved and the issues presented therein. However, from all indications, the said motion of Ygoña remains unresolved.

On July 20, 1993, the Pacres siblings (Margarita and Francisco were already deceased at that time and were only represented by their heirs) executed a Confirmation of Oral Partition/ Settlement of Estate[25] of Pastor Pacres. The relevant statements in the affidavit read:

1. That our father the late Pastor Pacres died instestate at Kinasang-an, Pardo, Cebu City on January 2, 1962;

2. That he left some real properties, one of which is a parcel of land (Lot No. 9, PCS 07-01-000006, Cebu Cad., located at Kinasang-an, Pardo, Cebu City);

3. That after the death of Pastor Pacres, the above-named children declared themselves extra-judicially as heirs of Pastor Pacres and they likewise adjudicated unto themselves the above described lot and forthwith MADE AN ORAL PARTITION;

4. *That in that ORAL PARTITION, the shares or portion to be allotted to Mario Pacres and Veñaranda Pacres Vda. de Ababa shall be fronting the national highway, while the shares of the rest shall be located at the rear;*

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[23] *Rollo,* p. 67.

[24] *Id.* at 57.

[25] Exhibit "N".

5. That recently, the said heirs had the said lot surveyed to determine specifically their respective locations in accordance with the oral partition made after the death of Pastor Pacres;

6. That a sketch of the subdivision plan is hereto attached, duly labeled, indicating the respective locations of the shares of each and every heir.

On September 30, 1994, Mario, petitioners' predecessor-in-interest, filed an ejectment suit against Ramirez' successor-in-interest Vicentuan. Mario claimed sole ownership of the lot occupied by Ramirez/Vicentuan by virtue of the oral partition. He argued that Ramirez/Vicentuan should pay rentals to him for occupying the front lot and should transfer to the rear of Lot No. 9 where the lots of Ramirez's vendors are located.

The court dismissed Mario's assertion that his siblings sold the rear lots to Ramirez. It held that the deeds of sale in favor of Ramirez clearly described the object of the sale as the ancestral house and lot.[26] Thus, Ramirez has a right to continue occupying the property he bought. The court further held that since Mario did not sell his *pro-indiviso* shares in the house and lot, at the very least, the parties are co-owners thereof. Co-owners are entitled to occupy the co-owned property.[27]

***The Complaint for Specific Performance***

On June 3, 1996, Veñaranda and the heirs of Mario filed the instant complaint for specific performance[28] against Ygoña and Ramirez. Contrary to Mario's allegations of co-ownership over Lot No. 9 in the legal redemption case, Mario's heirs insist in the action for specific performance that the heirs agreed on a partition prior to the sale. They seek compliance with such agreement from their siblings' vendees, Ygoña and Ramirez, on the basis that the two were privy to these agreements, hence bound to comply therewith. In compliance with such partition,

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[26] Civil Case No. R-32715, RTC Decision, p. 5.

[27] *Id.* at 6.

[28] Records, pp. 1-8.

Ygoña and Ramirez should desist from claiming any portion of the expropriation payment for the front lots.

Their other cause of action is directed solely at Ygoña, whom they insist agreed to additional, albeit unwritten, obligations other than the payment of the purchase price of the shares in Lot No. 9. Veñaranda and Mario's heirs insist that Ygoña contracted with her vendors to assume all obligations regarding the payment of past and present estate taxes, survey Lot No. 9 in accordance with the oral partition, and obtain separate titles for each portion. While these obligations were not written into the deeds of sale, petitioners insist it is not subject to the Statute of Frauds since these obligations were allegedly partly complied with by Ygoña. They cite as evidence of Ygoña's compliance the survey of her purchased lots and payment of realty taxes.

Respondents denied privity with the heirs' oral partition. They further maintained that no such partition took place and that the portions sold to and occupied by them were located in front of Lot No. 9; hence they are the ones entitled to the expropriation payment.[29] They sought damages from the unfounded suit leveled against them. To discredit petitioners' assertion of an oral partition, respondents presented Exhibit No. 1, which petitioner Valentina herself executed during her testimony. Exhibit No. 1 demonstrated Valentina's recollection of the actual occupation of the Pacres siblings, their heirs and vendees. The sketch undermined petitioners' allegation that the heirs partitioned the property *and* immediately *took possession* of their allotted lots/shares. Ygoña also denied ever agreeing to the additional obligations being imputed against her.

***Ruling of the Regional Trial Court***

The trial court ruled in favor of respondents.[30] It held that petitioners failed to prove partition of the lot in accordance with petitioners' version. Instead, the trial court held that the parties' actual occupation of their portions in Lot No. 9, as evidenced by petitioner Valentina's sketch, is the real agreement

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[29] *Id.* at 37-43.

[30] *Id.* at 183-201.

to which the parties are bound. Apparently unsatisfied with the parties' state of affairs, the trial court further ordered that a survey of the lot according to the parties' actual occupation thereof be conducted.

Petitioners' motion for reconsideration was denied.[31] Unsatisfied with the adverse decision, petitioners appealed to the CA questioning the factual findings of the trial court and its reliance on Exhibit 1. They maintained that Valentina was incompetent and barely literate; hence, her sketch should not be given weight.

***Ruling of the Court of Appeals***

The appellate court sustained the ruling of the trial court insofar as it dismissed petitioners' complaint for lack of evidence. It held that the oral partition was not valid because the heirs did not ratify it by taking possession of their shares in accordance with their oral agreement. Moreover, the CA ruled that Ygoña's sole undertaking under the deeds of sale was the payment of the purchase price. Since petitioners did not question the validity of the deeds and did not assail its terms as failing to express the true intent of the parties, the written document stands superior over the allegations of an oral agreement.

It, however, reversed the trial court on the latter's order to survey the lot in accordance with Valentina's sketch. The appellate court explained that while it was conclusive that Ygoña and Ramirez bought portions of the property from some of the Pacres siblings, the issue of the actual area and location of the portions sold to them remains unresolved. The CA narrated all the unresolved matters that prevented a finding that definitively settles the partition of Lot No. 9. The CA emphasized that the question regarding ownership of the front lots and the expropriation payment should be threshed out in the proper proceeding.

The CA likewise found no basis for the award of damages to either party.

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[31] *Id.* at 224-225.

Petitioners' Motion for Reconsideration[32] was denied,[33] hence this petition.

**Issues**

Petitioners formulated the following issues:[34]

1. Whether or not this complaint for specific performance, damages and attorney's fee [sic] with a prayer for the issuance of a restraining order and later on issuance of a writ of permanent injunction is tenable.
2. Whether or not the area purchased and owned by respondents in Lot No. 9 is located along or fronting the national highway.
3. Whether or not the lower court committed grave abuse of discretion by rendering a decision not in accord with laws and applicable decisions of the Supreme Court, resulting to the unrest of this case.
4. Whether or not it is lawful for the respondents to claim ownership of the ₱220,000.00 which the government set aside for the payment of the expropriated area in Lot No. 9, fronting the highway, covered by the road widening.

Consolidated and simplified, the issues to be resolved are:

I

Whether petitioners were able to prove the existence of the alleged oral agreements such as the partition and the additional obligations of surveying and titling

II

Whether the issue of ownership regarding the front portion of Lot No. 9 and entitlement to the expropriation payment may be resolved in this action

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[32] CA *rollo,* pp. 138-150.

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

[34] *Rollo,* p. 235.

**Our Ruling**

*Whether petitioners were able to prove the existence of the alleged oral agreements such as the partition and the additional obligations of surveying and titling*

Both the trial and appellate courts dismissed petitioners' complaint on the ground that they had failed to prove the existence of an oral partition. Petitioners now insist that the two courts overlooked *facts and circumstances* that are allegedly of much weight and will alter the decision if properly considered.[35]

Petitioners would have the Court review the evidence presented by the parties, despite the CA's finding that the trial court committed no error in appreciating the evidence presented during the trial. This goes against the rule that this Court is not a trier of facts. "Such questions as whether certain items of evidence should be accorded probative value or weight, or rejected as feeble or spurious, or whether or not the proofs on one side or the other are clear and convincing and adequate to establish a proposition in issue, are without doubt questions of fact."[36] Questions like these are not reviewable by this Court which, as a rule, confines its review of cases decided by the CA only to questions of law, which may be resolved without having to re-examine the probative value of the evidence presented.[37]

We find no compelling reason to deviate from the foregoing rule and disturb the trial and appellate courts' factual finding that the existence of an oral partition was not proven. Our examination of the records indicates that, contrary to petitioners' contention, the lower courts' conclusion was justified.

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[35] *Id.* at 235.

[36] *Paterno v. Paterno*, G.R. No. 63680, March 23, 1990, 183 SCRA 630, 636.

[37] *Pagsibigan v. People*, G.R. No. 163868, June 4, 2009; *Gaje v. Vda. De Dalisay*, G.R. No. 158762, April 3, 2007, 520 SCRA 272, 283.

Petitioners' only piece of evidence to prove the alleged oral partition was the joint affidavit (entitled "Confirmation of Oral Partition/Settlement of Estate") supposedly executed by some of the Pacres siblings and their heirs in 1993, to the effect that such an oral partition had previously been agreed upon. Petitioners did not adequately explain why the affidavit was executed only in 1993, several years after respondents Ygoña and Ramirez took possession of the front portions of Lot No. 9.[38] If there had been an oral partition allotting the front portions to petitioners since Pastor's death in 1962, they should have immediately objected to respondents' occupation. Instead, they only asserted their ownership over the front lots beginning in 1993 (with the execution of their joint affidavit) when expropriation became imminent and was later filed in court.

Petitioners' assertion of partition of Lot No. 9 is further belied by their predecessor-in-interest's previous assertion of co-ownership over the same lot in the legal redemption case filed 10 years before.[39] The allegations therein, sworn to as truth by Mario and Veñaranda, described Lot No. 9 as a parcel of land that is *co-owned* by the Pacres siblings *pro indiviso*. It was further alleged that Ygoña bought the *undivided* shares of Rodrigo, Francisco, Margarita, and Simplicia.

The statements in the legal redemption case are extrajudicial admissions,[40] which were not disputed by petitioners. These admissions may be given in evidence against them.[41] At the

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[38] Ygoña started her occupation of the front lot in 1984 by authority of the writ of possession issued in her favor; while Ramirez' possession began in 1968 by virtue of the contract of lease and continues until the present by virtue of the sale by heirs Rodrigo, Francisco, Simplicia and Margarita.

[39] Exhibit "26".

[40] Extrajudicial admissions are those made out of court, or in a judicial proceeding other than the one under consideration. FRANCISCO, EVIDENCE, 2ND ED. (1994), p. 33.

[41] RULES OF COURT, Rule 130, Section 26. "The act, declaration or omission of a party as to a relevant fact may be given in evidence against him."

very least, the polarity of their previous admissions and their present theory makes the latter highly suspect.

Moreover, petitioners failed to show that the Pacres siblings took possession of their allotted shares after they had supposedly agreed on the oral partition. Actual possession and exercise of dominion over definite portions of the property in accordance with the alleged partition would have been strong proof of an oral partition.[42] In this case, however, petitioners failed to present any evidence that the petitioners took actual possession of their respective allotted shares according to the supposed partition. In fact, the evidence of the parties point to the contrary. Petitioner Valentina herself drew a sketch[43] showing the location of the *actual* occupants of Lot No. 9, but the actual occupation shown in her sketch is not in accordance with the terms of the alleged oral partition.[44] According to the terms of the alleged oral partition, the front portions of Lot No. 9 were supposed to have been occupied by petitioners, but Valentina's sketch indicates that the actual occupants of the said portions are respondents.

In fine, we rule that the records contain ample support for the trial and appellate courts' factual findings that petitioners failed to prove their allegation of oral partition. While petitioners claim that the trial and appellate courts did not appreciate their evidence regarding the existence of the alleged oral partition, the reality is that their evidence is utterly unconvincing.

With respect to the alleged additional obligations which petitioners seek to be enforced against respondent Ygoña, we likewise find that the trial and appellate courts did not err in

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[42] See *Quimpo, Sr. v. Vda. De Beltran,* G.R. No. 160956, February 13, 2008, 545 SCRA 174, 182-184; *Arrogante v. Deliarte,* G.R. No. 152132, July 24, 2007, 528 SCRA 63, 71; *Avila v. Barabat,* G.R. No. 141993, March 17, 2006, 485 SCRA 8, 17; *Vda. De Ape v. Court of Appeals,* G.R. No. 133638, April 15, 2005, 456 SCRA 193, 208-210; *Maestrado v. Court of Appeals,* 384 Phil. 418, 431-433 (2000); *Crucillo v. Intermediate Appellate Court,* 375 Phil. 777, 793-794 (1999); *Tan v. Lim,* 357 Phil. 452, 470-472 (1998); *Hernandez v. Andal,* 78 Phil. 196, 203 (1947).

[43] Exhibit "1".

[44] Records, p. 140.

rejecting them. Petitioners allege that when Ygoña bought portions of Lot No. 9 from petitioners' four siblings, aside from paying the purchase price, she also bound herself to survey Lot No. 9 including the shares of the petitioners (the non-selling siblings); to deliver to petitioners, free of cost, the titles corresponding to their definite shares in Lot No. 9; and to pay for all their past and present estate and realty taxes.[45] According to petitioners, Ygoña agreed to these undertakings as additional consideration for the sale, even though they were not written in the Deeds of Sale.

Like the trial and appellate courts, we find that these assertions by petitioners have not been sufficiently established.

In the first place, under Article 1311 of the Civil Code, contracts take effect only between the parties, their assigns and heirs (subject to exceptions not applicable here). Thus, only a party to the contract can maintain an action to enforce the obligations arising under said contract.[46] Consequently, petitioners, not being parties to the contracts of sale between Ygoña and the petitioners' siblings, cannot sue for the enforcement of the supposed obligations arising from said contracts.

It is true that third parties may seek enforcement of a contract under the second paragraph of Article 1311, which provides that "if a contract should contain some stipulation in favor of a third person, he may demand its fulfillment." This refers to stipulations *pour autrui*, or stipulations for the benefit of third parties. However, the written contracts of sale in this case contain no such stipulation in favor of the petitioners. While petitioners claim that there was an *oral* stipulation, it cannot be proven under the Parol Evidence Rule. Under this Rule, "[w]hen 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

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[45] *Id.* at 3.

[46] *Young v. Court of Appeals*, 251 Phil. 189, 193-195 (1989).

agreement."[47] While the Rule admits of exception, no such exception was pleaded, much less proved, by petitioners.

The Parol Evidence Rule applies to "the parties and their successors in interest." Conversely, it has no application to a stranger to a contract. For purposes of the Parol Evidence Rule, a person who claims to be the beneficiary of an alleged stipulation *pour autrui* in a contract (such as petitioners) may be considered a party to that contract. It has been held that a third party who avails himself of a stipulation *pour autrui* under a contract becomes a party to that contract.[48] This is why under Article 1311, a beneficiary of a stipulation *pour autrui* is required to communicate his acceptance to the obligor before its revocation.

Moreover, to preclude the application of Parol Evidence Rule, it must be shown that "at least one of the parties to the suit is not party or a privy of a party to the written instrument in question *and does not base a claim on the instrument or assert a right originating in the instrument or the relation established thereby.*"[49] A beneficiary of a stipulation *pour autrui* obviously bases his claim on the contract. He therefore cannot claim to be a stranger to the contract and resist the application of the Parol Evidence Rule.

Thus, even assuming that the alleged oral undertakings invoked by petitioners may be deemed stipulations *pour autrui*, still petitioners' claim cannot prosper, because they are barred from proving them by oral evidence under the Parol Evidence Rule.

*Whether the issue of ownership regarding the front portion of Lot No. 9 and entitlement to the expropriation payment may be resolved in this action*

Petitioners characterize respondents' claim over the expropriation payment as unlawful on the ground that the

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[47] RULES OF COURT, Rule 130, Section 9.

[48] See *MOF Company, Inc. v. Shin Yang Brokerage Corporation*, G.R. No. 172822, December 18, 2009; *Mendoza v. Philippine Air Lines, Inc.*, 90 Phil. 836, 846-847 (1952).

[49] See *Lechugas v. Court of Appeals*, 227 Phil. 310, 319 (1986).

expropriated portion belongs to petitioners per the alleged oral partition. They also maintain that Ygoña is barred by laches from claiming the front portion because she waited 13 years from the time of the sale to claim her share via petition for subdivision and survey.

On the other hand, respondents charge petitioners with forum-shopping on the ground that the issue of ownership had already been submitted to the expropriation court. The trial court affirmed this argument stating that petitioners resorted to forum-shopping, while the appellate court ruled that it could not determine the existence of forum-shopping considering that it was not provided with the pleadings in the expropriation case.

We agree with the CA on this score. The parties did not provide the Court with the pleadings filed in the expropriation case, which makes it impossible to know the extent of the issues already submitted by the parties in the expropriation case and thereby assess whether there was forum-shopping.

Nonetheless, while we cannot rule on the existence of forum-shopping for insufficiency of evidence, it is correct that the issue of ownership should be litigated in the expropriation court.[50] The court hearing the expropriation case is empowered to entertain the conflicting claims of ownership of the condemned property and adjudge the rightful owner thereof, in the same expropriation case.[51] This is due to the intimate relationship of the issue of ownership with the claim for the expropriation payment. Petitioners' objection regarding respondents' claim over the expropriation payment should have been brought up in the expropriation court as opposition to respondent's motion. While we do not know if such objection was already made,[52] the point is that the proper venue for such issue is the expropriation

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[50] Records, p. 92.

[51] *Republic v. Court of First Instance*, 144 Phil. 643, 648-650 (1970).

[52] While petitioners' Verification (attached to the Complaint) (RTC Records, p. 8) confirms that they opposed respondent Ygoña's motion to withdraw the deposit in Civil Case No. CEB-14150, the records before the Court is silent regarding the nature of and the grounds for the opposition.

court, and not here where a different cause of action (specific performance) is being litigated.

We also cannot agree with the trial court's order to partition the lot in accordance with Exhibit No. 1 or the sketch prepared by petitioner Valentina. To do so would resolve the issue of ownership over portions of Lot No. 9 and effectively preempt the expropriation court, based solely on actual occupation (which was the only thing which Exhibit No. 1 could have possibly proved). It will be remembered that Exhibit No. 1 is simply a sketch demonstrating the portions of Lot No. 9 actually occupied by the parties. It was offered simply to impeach petitioners' assertion of actual occupation in accordance with the terms of the alleged oral partition.

Let it be made clear that our ruling, just like those of the trial court and the appellate court, is limited to resolving petitioners' action for specific performance. Given the finding that petitioners failed to prove the existence of the alleged oral partition and the alleged additional consideration for the sale, they cannot compel respondents to comply with these inexistent obligations. In this connection, there is no basis for petitioners' claim that the CA Decision was incomplete by not definitively ruling on the ownership over the front lots. The CA decision is complete. It ruled that petitioners failed to prove the alleged obligations and are therefore not entitled to specific performance thereof.

**WHEREFORE,** the petition is *DENIED*. The assailed October 28, 2005 Decision of the Court of Appeals in CA-G.R. No. 174719, as well as its August 31, 2006 Resolution, are *AFFIRMED*.

**SO ORDERED.**

*Carpio (Chairperson), Brion, Abad,* and *Perez, JJ.*, concur.

**SECOND DIVISION**

[G.R. No. 178087. May 5, 2010]

**COMMISSIONER OF INTERNAL REVENUE,** *petitioner, vs.* **KUDOS METAL CORPORATION,** *respondent.*

**SYLLABUS**

**1. TAXATION; NATIONAL INTERNAL REVENUE CODE; REMEDIES; EXCEPTIONS AS TO PERIOD OF LIMITATION OF ASSESSMENT AND COLLECTION OF TAXES; WAIVERS EXECUTED BY RESPONDENT'S ACCOUNTANT DID NOT EXTEND THE PERIOD WITHIN WHICH THE ASSESSMENT CAN BE MADE.—** Petitioner does not deny that the assessment notices were issued beyond the three-year prescriptive period, but claims that the period was extended by the two waivers executed by respondent's accountant. We do not agree. Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver. xxx A perusal of the waivers executed by respondent's accountant reveals the following infirmities: (1) The waivers were executed without the notarized written authority of Pasco to sign the waiver in behalf of respondent. (2) The waivers failed to indicate the date of acceptance. (3) The fact of receipt by the respondent of its file copy was not indicated in the original copies of the waivers. Due to the defects in the waivers, the period to assess or collect taxes was not extended. Consequently, the assessments were issued by the BIR beyond the three-year period and are void.

**2. ID.; ID.; ID.; ID.; *ESTOPPEL* DOES NOT APPLY IN CASE AT BAR; DOCTRINE OF *ESTOPPEL* CANNOT GIVE VALIDITY TO AN ACT THAT IS PROHIBITED BY LAW OR ONE THAT IS CONTRARY TO PUBLIC POLICY.—** We find no merit in petitioner's claim that respondent is now estopped from claiming prescription since by executing the waivers, it was the one which asked for additional time to submit the required documents. In

*Collector of Internal Revenue v. Suyoc Consolidated Mining Company,* the doctrine of estoppel prevented the taxpayer from raising the defense of prescription against the efforts of the government to collect the assessed tax. However, it must be stressed that in the said case, estoppel was applied as an exception to the statute of limitations on *collection* of taxes and not on the *assessment* of taxes, as the BIR was able to make an assessment within the prescribed period. More important, there was a finding that the taxpayer made several requests or positive acts to convince the government to postpone the collection of taxes. xxx Conversely, in this case, the assessments were issued beyond the prescribed period. Also, there is no showing that respondent made any request to persuade the BIR to postpone the issuance of the assessments. The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right. As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy. It should be resorted to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate. Simply put, the doctrine of estoppel must be sparingly applied.

**3. ID.; ID.; ID.; ID.; HAVING CAUSED THE DEFECTS IN THE WAIVERS, THE BUREAU OF INTERNAL REVENUE MUST BEAR THE CONSEQUENCE AND CANNOT SHIFT THE BLAME TO THE TAXPAYER.—** The BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute

of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.

**4. ID.; ID.; ID.; ID.; DELAY IN FURNISHING THE BUREAU OF INTERNAL REVENUE OF THE REQUIRED DOCUMENTS CANNOT BE TAKEN AGAINST RESPONDENT; WITH OR WITHOUT THE REQUIRED DOCUMENTS THE COMMISSIONER OF INTERNAL REVENUE HAS THE POWER TO MAKE THE ASSESSMENTS.—** As to the alleged delay of the respondent to furnish the BIR of the required documents, this cannot be taken against respondent. Neither can the BIR use this as an excuse for issuing the assessments beyond the three-year period because with or without the required documents, the CIR has the power to make assessments based on the best evidence obtainable.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioner.

*Law Firm of Lucena Margate Mogpo & Associates* for respondent.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

The prescriptive period on when to assess taxes benefits both the government and the taxpayer.[1] Exceptions extending the period to assess must, therefore, be strictly construed.

This Petition for Review on *Certiorari* seeks to set aside the Decision[2] dated March 30, 2007 of the Court of Tax Appeals (CTA) affirming the cancellation of the assessment notices for having been issued beyond the prescriptive period and the

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[1] *Republic of the Phils. v. Ablaza*, 108 Phil. 1105, 1108 (1960).

[2] *Rollo*, pp. 31-45; penned by Associate Justice Lovell R. Bautista and concurred in by Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez. Presiding Justice Ernesto D. Acosta was on leave.

Resolution[3] dated May 18, 2007 denying the motion for reconsideration.

***Factual Antecedents***

On April 15, 1999, respondent Kudos Metal Corporation filed its Annual Income Tax Return (ITR) for the taxable year 1998.

Pursuant to a Letter of Authority dated September 7, 1999, the Bureau of Internal Revenue (BIR) served upon respondent three Notices of Presentation of Records. Respondent failed to comply with these notices, hence, the BIR issued a *Subpeona Duces Tecum* dated September 21, 2006, receipt of which was acknowledged by respondent's President, Mr. Chan Ching Bio, in a letter dated October 20, 2000.

A review and audit of respondent's records then ensued.

On December 10, 2001, Nelia Pasco (Pasco), respondent's accountant, executed a Waiver of the Defense of Prescription,[4] which was notarized on January 22, 2002, received by the BIR Enforcement Service on January 31, 2002 and by the BIR Tax Fraud Division on February 4, 2002, and accepted by the Assistant Commissioner of the Enforcement Service, Percival T. Salazar (Salazar).

This was followed by a second Waiver of Defense of Prescription[5] executed by Pasco on February 18, 2003, notarized on February 19, 2003, received by the BIR Tax Fraud Division on February 28, 2003 and accepted by Assistant Commissioner Salazar.

On August 25, 2003, the BIR issued a Preliminary Assessment Notice for the taxable year 1998 against the respondent. This was followed by a Formal Letter of Demand with Assessment

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[3] *Id.*, at 46-50; penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez.

[4] Records, pp. 227-228.

[5] *Id.* at 229-230.

Notices for taxable year 1998, dated September 26, 2003 which was received by respondent on November 12, 2003.

Respondent challenged the assessments by filing its "Protest on Various Tax Assessments" on December 3, 2003 and its "Legal Arguments and Documents in Support of Protests against Various Assessments" on February 2, 2004.

On June 22, 2004, the BIR rendered a final Decision[6] on the matter, requesting the immediate payment of the following tax liabilities:

| ***Kind of Tax*** | ***Amount*** |
|---|---|
| Income Tax | ₱ 9,693,897.85 |
| VAT | 13,962,460.90 |
| EWT | 1,712,336.76 |
| Withholding Tax-Compensation | 247,353.24 |
| Penalties | 8,000.00 |
| **Total** | **₱25,624,048.76** |

***Ruling of the Court of Tax Appeals, Second Division***

Believing that the government's right to assess taxes had prescribed, respondent filed on August 27, 2004 a Petition for Review[7] with the CTA. Petitioner in turn filed his Answer.[8]

On April 11, 2005, respondent filed an "Urgent Motion for Preferential Resolution of the Issue on Prescription."[9]

On October 4, 2005, the CTA Second Division issued a Resolution[10] canceling the assessment notices issued against respondent for having been issued beyond the prescriptive period. It found the first Waiver of the Statute of Limitations incomplete

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[6] *Id.* at 18-21.

[7] *Id.* at 1-17.

[8] *Id.* at 161-165.

[9] *Id.* at 219-226.

[10] *Id.* at 259-266.

and defective for failure to comply with the provisions of Revenue Memorandum Order (RMO) No. 20-90. Thus:

> First, the Assistant Commissioner is not the revenue official authorized to sign the waiver, as the tax case involves more than ₱1,000,000.00. In this regard, only the Commissioner is authorized to enter into agreement with the petitioner in extending the period of assessment;
>
> Secondly, the waiver failed to indicate the date of acceptance. Such date of acceptance is necessary to determine whether the acceptance was made within the prescriptive period;
>
> Third, the fact of receipt by the taxpayer of his file copy was not indicated on the original copy. The requirement to furnish the taxpayer with a copy of the waiver is not only to give notice of the existence of the document but also of the acceptance by the BIR and the perfection of the agreement.
>
> The subject waiver is therefore incomplete and defective. As such, the three-year prescriptive period was not tolled or extended and continued to run. x x x[11]

Petitioner moved for reconsideration but the CTA Second Division denied the motion in a Resolution[12] dated April 18, 2006.

***Ruling of the Court of Tax Appeals, En Banc***

On appeal, the CTA *En Banc* affirmed the cancellation of the assessment notices. Although it ruled that the Assistant Commissioner was authorized to sign the waiver pursuant to Revenue Delegation Authority Order (RDAO) No. 05-01, it found that the first waiver was still invalid based on the second and third grounds stated by the CTA Second Division. Pertinent portions of the Decision read as follows:

> While the Court *En Banc* agrees with the second and third grounds for invalidating the first waiver, it finds that the Assistant Commissioner of the Enforcement Service is authorized to sign the waiver pursuant to RDAO No. 05-01, which provides in part as follows:

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[11] *Id.* at 265.

[12] *Id.* at 294-296.

| | | |
|---|---|---|
| A. | For National Office cases | |
| | Designated Revenue Official | |
| 1. | Assistant Commissioner (ACIR), Enforcement Service | For tax fraud and policy policy cases |
| 2. | ACIR, Large Taxpayers Service | For large taxpayers cases other than those cases falling under Subsection B hereof |
| 3. | ACIR, Legal Service | For cases pending verification and awaiting resolution of certain legal issues prior to prescription and for issuance/compliance of Subpoena *Duces Tecum* |
| 4. | ACIR, Assessment Service (AS) | For cases which are pending in or subject to review or approval by the ACIR, AS |

Based on the foregoing, the Assistant Commissioner, Enforcement Service is authorized to sign waivers in tax fraud cases. A perusal of the records reveals that the investigation of the subject deficiency taxes in this case was conducted by the National Investigation Division of the BIR, which was formerly named the Tax Fraud Division. Thus, the subject assessment is a tax fraud case.

Nevertheless, the first waiver is still invalid based on the second and third grounds stated by the Court in Division. Hence, it did not extend the prescriptive period to assess.

Moreover, assuming *arguendo* that the first waiver is valid, the second waiver is invalid for violating Section 222(b) of the 1997 Tax Code which mandates that the period agreed upon in a waiver of the statute can still be extended by subsequent written agreement, provided that it is executed prior to the expiration of the first period agreed upon. As previously discussed, the exceptions to the law on prescription must be strictly construed.

In the case at bar, the period agreed upon in the subject first waiver expired on December 31, 2002. The second waiver in the instant case which was supposed to extend the period to assess to December

31, 2003 was executed on February 18, 2003 and was notarized on February 19, 2003. Clearly, the second waiver was executed after the expiration of the first period agreed upon. Consequently, the same could not have tolled the 3-year prescriptive period to assess.[13]

Petitioner sought reconsideration but the same was unavailing.

**Issue**

Hence, the present recourse where petitioner interposes that:

THE COURT OF TAX APPEALS *EN BANC* ERRED IN RULING THAT THE GOVERNMENT'S RIGHT TO ASSESS UNPAID TAXES OF RESPONDENT PRESCRIBED.[14]

***Petitioner's Arguments***

Petitioner argues that the government's right to assess taxes is not barred by prescription as the two waivers executed by respondent, through its accountant, effectively tolled or extended the period within which the assessment can be made. In disputing the conclusion of the CTA that the waivers are invalid, petitioner claims that respondent is estopped from adopting a position contrary to what it has previously taken. Petitioner insists that by acquiescing to the audit during the period specified in the waivers, respondent led the government to believe that the "delay" in the process would not be utilized against it. Thus, respondent may no longer repudiate the validity of the waivers and raise the issue of prescription.

***Respondent's Arguments***

Respondent maintains that prescription had set in due to the invalidity of the waivers executed by Pasco, who executed the same without any written authority from it, in clear violation of RDAO No. 5-01. As to the doctrine of *estoppel* by acquiescence relied upon by petitioner, respondent counters that the principle of equity comes into play only when the law is doubtful, which is not present in the instant case.

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[13] *Rollo*, pp. 42-43.

[14] *Id.* at 17.

**Our Ruling**

The petition is bereft of merit.

Section 203[15] of the National Internal Revenue Code of 1997 (NIRC) mandates the government to assess internal revenue taxes within three years from the last day prescribed by law for the filing of the tax return or the actual date of filing of such return, whichever comes later. Hence, an assessment notice issued after the three-year prescriptive period is no longer valid and effective. Exceptions however are provided under Section 222[16] of the NIRC.

[15] SEC. 203. Period of Limitation Upon Assessment and Collection. — Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: Provided, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.

[16] SEC. 222. Exceptions as to period of limitation of assessment and collection of taxes. —

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud, or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

(c) Any internal revenue tax which has been assessed within the period of limitation as prescribed in paragraph (a) hereof may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax.

(d) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, may be collected

***The waivers executed by respondent's accountant did not extend the period within which the assessment can be made***

Petitioner does not deny that the assessment notices were issued beyond the three-year prescriptive period, but claims that the period was extended by the two waivers executed by respondent's accountant.

We do not agree.

Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90[17] issued on April 4, 1990

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by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period. The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.

(e) Provided, however, That nothing in the immediately preceding Section and paragraph (a) hereof shall be construed to authorize the examination and investigation or inquiry into any tax return filed in accordance with the provisions of any tax amnesty law or decree.

[17] In the execution of said waiver, the following procedures should be followed:

1. The waiver must be in the form identified hereof. This form may be reproduced by the Office concerned but there should be no deviation from such form. The phrase "but not after _____ 19 ___" should be filled up. This indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription. The period agreed upon shall constitute the time within which to effect the assessment/collection of the tax in addition to the ordinary prescriptive period.

2. The waiver shall be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials.

Soon after the waiver is signed by the taxpayer, the Commissioner of Internal Revenue or the revenue official authorized by him, as hereinafter provided, shall sign the waiver indicating that the Bureau has accepted and agreed to the waiver. The date of such acceptance by the Bureau should be indicated. Both the date of execution by the taxpayer and

and RDAO 05-01[18] issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

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date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

3. The following revenue officials are authorized to sign the waiver.

A. In the National Office

| | |
|---|---|
| 1. ACIRs for Collection, Special Operations National Assessment, Excise and Legal on tax cases pending before their respective offices. In the absence of the ACIR, the Head Executive Assistant may sign the waiver. | For tax cases involving not more ₱500,000.00 |
| 3. Commissioner | For tax cases involving more than ₱1M |

x x x x x x x x x

4. The waiver must be executed in three (3) copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy shall be indicated in the original copy.

5. The foregoing procedures shall be strictly followed. Any revenue official found not to have complied with this Order resulting in prescription of the right to assess/collect shall be administratively dealt with.

[18] I. Revenue Officials Authorized to Sign the Waiver

The following revenue officials are authorized to sign and accept the Waiver of the Defense of Prescription Under the Statute of Limitations (Annex A) prescribed in Sections 203, 222 and other related provisions of the National Internal Revenue Code of 1997:

A. For National Office cases

| Designated Revenue Official | | |
|---|---|---|
| 1. Assistant Commissioner (ACIR), Enforcement Service | — | For tax fraud and policy cases |

x x x x x x x x x

In order to prevent undue delay in the execution and acceptance of the waiver, the assistant heads of the concerned offices are likewise authorized to sign the same under meritorious circumstances in the absence of the abovementioned officials.

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase "but not after _____ 19 ___", which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second

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The authorized revenue official shall ensure that the waiver is duly accomplished and signed by the taxpayer or his authorized representative before affixing his signature to signify acceptance of the same. In case the authority is delegated by the taxpayer to a representative, the concerned revenue official shall see to it that such delegation is in writing and duly notarized. The "WAIVER" should not be accepted by the concerned BIR office and official unless duly notarized.

II. Repealing Clause

All other issuances and/or portions thereof inconsistent herewith are hereby repealed and amended accordingly.

> copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement.[19]

A perusal of the waivers executed by respondent's accountant reveals the following infirmities:

1. The waivers were executed without the notarized written authority of Pasco to sign the waiver in behalf of respondent.
2. The waivers failed to indicate the date of acceptance.
3. The fact of receipt by the respondent of its file copy was not indicated in the original copies of the waivers.

Due to the defects in the waivers, the period to assess or collect taxes was not extended. Consequently, the assessments were issued by the BIR beyond the three-year period and are void.

***Estoppel does not apply in this case***

We find no merit in petitioner's claim that respondent is now estopped from claiming prescription since by executing the waivers, it was the one which asked for additional time to submit the required documents.

In *Collector of Internal Revenue v. Suyoc Consolidated Mining Company*,[20] the doctrine of estoppel prevented the taxpayer from raising the defense of prescription against the efforts of the government to collect the assessed tax. However, it must be stressed that in the said case, estoppel was applied as an exception to the statute of limitations on *collection* of taxes and not on the *assessment* of taxes, as the BIR was able to make an assessment within the prescribed period. More

[19] *Philippine Journalist, Inc. v. Commissioner of Internal Revenue,* 488 Phil. 218, 235 (2004).

[20] 104 Phil 819 (1958).

important, there was a finding that the taxpayer made several requests or positive acts to convince the government to postpone the collection of taxes, *viz*:

It appears that the first assessment made against respondent based on its second final return filed on November 28, 1946 was made on February 11, 1947. Upon receipt of this assessment respondent requested for at least one year within which to pay the amount assessed although it reserved its right to question the correctness of the assessment before actual payment. Petitioner granted an extension of only three months. When it failed to pay the tax within the period extended, petitioner sent respondent a letter on November 28, 1950 demanding payment of the tax as assessed, and upon receipt of the letter respondent asked for a reinvestigation and reconsideration of the assessment. When this request was denied, respondent again requested for a reconsideration on April 25, 1952, which was denied on May 6, 1953, which denial was appealed to the Conference Staff. The appeal was heard by the Conference Staff from September 2, 1953 to July 16, 1955, and as a result of these various negotiations, the assessment was finally reduced on July 26, 1955. This is the ruling which is now being questioned after a protracted negotiation on the ground that the collection of the tax has already prescribed.

It is obvious from the foregoing that petitioner refrained from collecting the tax by distraint or levy or by proceeding in court within the 5-year period from the filing of the second amended final return due to the several requests of respondent for extension to which petitioner yielded to give it every opportunity to prove its claim regarding the correctness of the assessment. Because of such requests, several reinvestigations were made and a hearing was even held by the Conference Staff organized in the collection office to consider claims of such nature which, as the record shows, lasted for several months. After inducing petitioner to delay collection as he in fact did, it is most unfair for respondent to now take advantage of such desistance to elude his deficiency income tax liability to the prejudice of the Government invoking the technical ground of prescription.

While we may agree with the Court of Tax Appeals that a mere request for reexamination or reinvestigation may not have the effect of suspending the running of the period of limitation for in such case there is need of a written agreement to extend the period between the Collector and the taxpayer, there are cases however where a taxpayer may be prevented from setting up the defense of prescription

even if he has not previously waived it in writing as when by his repeated requests or positive acts the Government has been, for good reasons, persuaded to postpone collection to make him feel that the demand was not unreasonable or that no harassment or injustice is meant by the Government. And when such situation comes to pass there are authorities that hold, based on weighty reasons, that such an attitude or behavior should not be countenanced if only to protect the interest of the Government.

This case has no precedent in this jurisdiction for it is the first time that such has risen, but there are several precedents that may be invoked in American jurisprudence. As Mr. Justice Cardozo has said: "The applicable principle is fundamental and unquestioned. 'He who prevents a thing from being done may not avail himself of the nonperformance which he has himself occasioned, for the law says to him in effect "this is your own act, and therefore you are not damnified."' "(*R. H. Stearns Co. vs. U.S.*, 78 L. ed., 647). Or, as was aptly said, "The tax could have been collected, but the government withheld action at the specific request of the plaintiff. The plaintiff is now estopped and should not be permitted to raise the defense of the Statute of Limitations." [*Newport Co. vs. U.S.*, (DC-WIS), 34 F. Supp. 588].[21]

Conversely, in this case, the assessments were issued beyond the prescribed period. Also, there is no showing that respondent made any request to persuade the BIR to postpone the issuance of the assessments.

The doctrine of estoppel cannot be applied in this case as an exception to the statute of limitations on the assessment of taxes considering that there is a detailed procedure for the proper execution of the waiver, which the BIR must strictly follow. As we have often said, the doctrine of estoppel is predicated on, and has its origin in, equity which, broadly defined, is justice according to natural law and right.[22] As such, the doctrine of estoppel cannot give validity to an act that is prohibited by law or one that is against public policy.[23] It should be resorted

[21] *Id.* at 822-824.

[22] *La Naval Drug Corporation v. Court of Appeals*, G.R. No. 103200, August 31, 1994, 236 SCRA 78, 87.

[23] *Ouano v. Court of Appeals*, 446 Phil. 690, 708 (2003).

to solely as a means of preventing injustice and should not be permitted to defeat the administration of the law, or to accomplish a wrong or secure an undue advantage, or to extend beyond them requirements of the transactions in which they originate.[24] Simply put, the doctrine of estoppel must be sparingly applied.

Moreover, the BIR cannot hide behind the doctrine of estoppel to cover its failure to comply with RMO 20-90 and RDAO 05-01, which the BIR itself issued. As stated earlier, the BIR failed to verify whether a notarized written authority was given by the respondent to its accountant, and to indicate the date of acceptance and the receipt by the respondent of the waivers. Having caused the defects in the waivers, the BIR must bear the consequence. It cannot shift the blame to the taxpayer. To stress, a waiver of the statute of limitations, being a derogation of the taxpayer's right to security against prolonged and unscrupulous investigations, must be carefully and strictly construed.[25]

As to the alleged delay of the respondent to furnish the BIR of the required documents, this cannot be taken against respondent. Neither can the BIR use this as an excuse for issuing the assessments beyond the three-year period because with or without the required documents, the CIR has the power to make assessments based on the best evidence obtainable.[26]

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[24] *C & S Fishfarm Corporation v. Court of Appeals*, 442 Phil. 279, 290 (2002).

[25] *Philippine Journalist, Inc. v. Commissioner of Internal Revenue*, *supra* note 19 at 231-232.

[26] SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement –

x x x x x x x x x

(b) Failure to Submit Required Returns, Statements, Reports and other Documents. – When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by law or rules and regulation or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.

**WHEREFORE,** the petition is *DENIED*. The assailed Decision dated March 30, 2007 and Resolution dated May 18, 2007 of the Court of Tax Appeals are hereby *AFFIRMED*.

**SO ORDERED.**

*Carpio, (Chairperson), Brion, Abad,* and *Perez, JJ.*, concur.

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**FIRST DIVISION**

[G.R. No. 180062. May 5, 2010]

**GOVERNMENT SERVICE INSURANCE SYSTEM,** *petitioner, vs.* **BOARD OF COMMISSIONERS (2nd DIVISION), BOARD OF COMMISSIONERS OF THE HOUSING AND LAND USE REGULATORY BOARD (HLURB) HLURB NATIONAL CAPITAL REGION FIELD OFFICE, SPOUSES MARCELINO H. DE LOS REYES and ALMA T. DE LOS REYES, and NEW SAN JOSE BUILDERS, INC.,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; HOUSING AND LAND USE REGULATORY BOARD (HLURB); HLURB REVISED RULES OF PROCEDURE ALLOWS A DIVISION OF THE BOARD TO ENTERTAIN MOTIONS FOR RECONSIDERATION AND APPEALS. —** Section 5 of E.O. No. 648 specifically mandates the HLURB Board of Commissioners to adopt rules of procedure for the conduct of its business and perform such functions necessary for the effective discharge thereof. Such grant of power necessary to

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In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be prima facie correct and sufficient for all legal purposes.

carry out its functions has been held to be an adequate source of authority to delegate a particular function, unless, by express provision of the Act or by implication, it has been withheld. The present composition of the Board of Commissioners, wherein five out of its nine members sit in *ex-officio* capacity while the remaining four serve as full time commissioners, practicality necessitates the establishment of a procedure whereby a case on appeal may be decided by members of a division. Since the 2004 HLURB Rules of Procedure provides that a motion for reconsideration shall be assigned to the Division from which the decision, order or ruling originated, the questioned cognizance by the HLURB Second Division of GSIS's motion for reconsideration is in order.

**2. ID.; ID.; ID.; ID.; THE JURISDICTION OF THE HLURB TO REGULATE THE REAL ESTATE BUSINESS IS BROAD ENOUGH TO INCLUDE JURISDICTION OVER A COMPLAINT FOR ANNULMENT OF FORECLOSURE SALE AND MORTGAGE AND THE GRANT OF INCIDENTAL RELIEFS SUCH AS CEASE AND DESIST ORDERS (CDO). —** The act subject of the CDO was the intended consolidation by the GSIS of ownership of the condominium unit, not the mandatory foreclosure of the mortgage. At any rate, the second paragraph of the above-quoted Section 2 of PD No. 385 in fact recognizes the eventuality that an injunction may be issued against a government financial institution, hence, it obliges the borrower to liquidate the arrearages due in order to safeguard the interests of the government financial institution-lender. Undoubtedly, the jurisdiction of the HLURB to regulate the real estate business is broad enough to include jurisdiction over a complaint for annulment of foreclosure sale and mortgage and the grant of incidental reliefs such as a CDO. Even Presidential Decree No. 957, *"The Subdivision and Condominium Buyers Protective Decree,"* authorizes the HLURB as successor of the National Housing Authority to issue CDOs in relevant cases, *viz*: SECTION 16. Cease and Desist Order. — Whenever it shall appear to the Authority that any person is engaged or about to engage in any act or practice which constitutes or will constitute a violation of the provisions of this Decree, or of any rule or regulation thereunder, it may, upon due notice and hearing as provided in Section 13 hereof, issue a cease and desist order to enjoin such act or practices.

**APPEARANCES OF COUNSEL**

*The Chief Legal Counsel (GSIS Law Office)* for petitioner.
*Grace Irmina V. Adducol* for private respondents.

**D E C I S I O N**

**CARPIO MORALES, *J.*:**

New San Jose Builders, Inc. (NSJBI) mortgaged on December 10, 1997 three parcels of land together with the existing improvements, 366 lots with existing low cost houses, and 102 condominium units located on Scout Rallos Street, Quezon City to the Government Service Insurance System (GSIS) to secure the payment of a loan amounting to Six Hundred Million (₱600,000,000) Pesos. The mortgaged properties included Condominium Unit 312 (the condominium unit) which was later sold by NSJBI to respondent spouses Marcelino and Alma De los Reyes (spouses De los Reyes) by Deed of Absolute Sale dated May 28, 2001.

NSJBI defaulted in its loan obligation, hence, the GSIS foreclosed the mortgage and purchased the properties covered thereby on June 17, 2003. The Certificate of Sale, dated June 20, 2003, issued to GSIS was registered with the Registry of Deeds of Quezon City on September 19, 2003.

The spouses De los Reyes later discovered the mortgage and eventual sale of the condominium unit to GSIS, hence, they filed on June 15, 2004, a complaint against herein respondents NSJBI, et al. with the Housing and Land Use Regulatory Board (HLURB), docketed as REM – 061504-12726,[1] praying as follows:

1. Ordering the revocation of the Certificate of Registration and License to Sell of the respondent corporation, New San Jose Builders, Inc. (NSJBI);

2. Ordering the respondent corporation New San Jose Builders, Inc. (NSJBI) and the individual respondents Rey L. Vergara and Carol B. Ros to immediately cause the release and delivery

[1] HLURB records, Vol. 1, pp. 1-16 (documents are paginated in reverse order).

to herein complainants of the Condominium Certificate of Title No. N-18117 covering Unit 312 of Saint John Condominium, free from all liens and encumbrances;

3. Ordering the respondent Government Service Insurance System to release the mortgage on Condominium Certificate of Title No. N-18117 covering Unit 312 of Saint John Condominium;

4. Ordering the respondent corporation New San Jose Builders, Inc. (NSJBI) and individual respondents President Rey L. Vergara and AVP for Marketing Carol B. Ros to indemnify the complainants, jointly and severally, the following amounts . . .

x x x x x x x x x[2]

In its Answer, GSIS claimed that the spouses De los Reyes had no cause of action against it as the mortgage was executed *prior* to the sale of the condominium unit[3] to which sale it (GSIS) was not a party.

Before the expiration of the redemption period or on September 20, 2004, the spouses De los Reyes filed an Urgent Motion for Issuance of a Writ of Preliminary Injunction with Prayer for a Temporary Restraining Order to restrain GSIS from consolidating its title to the condominium unit.

GSIS opposed the motion, alleging that Presidential Decree (PD) No. 385,[4] in relation to Letter of Instruction No. 411, prohibits the issuance of a restraining order against any government financial institution in any action taken by it in compliance with the mandatory foreclosure under said PD.[5]

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[2] *Id.* at 11-12.

[3] *Rollo*, pp. 55-56.

[4] Entitled, "Requiring Government Financial Institutions to Foreclose Mandatorily All Loans with Arrearages, including Interest and Charges amounting to at least Twenty Percent (20%) of the Total Outstanding Obligation."

[5] Section 1. It shall be mandatory for government financial institutions, after the lapse of sixty (60) days from the issuance of this Decree, to foreclose the collaterals and/or securities for any loan, credit, accommodation, and/or guarantees granted by them whenever the arrearages on such account, including accrued interest and other charges, amount to at least twenty percent (20%) of the total outstanding obligations, including interest and

By Order of November 16, 2004,[6] House and Land Use Arbiter Rowena C. Balasolla granted the spouses De los Reyes's motion and issued a Cease and Desist Order (CDO) restraining GSIS from consolidating ownership of the condominium unit.

On the appeal of GSIS, the HLURB Second Division, by Decision of June 23, 2005, affirmed the Arbiter's ruling, it holding that PD No. 385 applies only to on-going foreclosure proceedings. Besides, it noted that

> . . . an examination of the project's technical docket shows that no mortgage clearance was secured beforehand. Thus, said respondents violated Section 18 of P.D. No. 957 which provides that no mortgage on any unit or lot shall be made by the owner or developer without prior written approval of this Board. This being so, **the said mortgage and the incidents which transpired subsequent thereto are void**.[7] (emphasis and underscoring supplied)

GSIS's motion for reconsideration, filed before the Board *En Banc*, was denied by the Second Division by Resolution of October 21, 2005, prompting it to file a petition for *certiorari* before the Court of Appeals.

In addition to its arguments proffered before the HLURB, GSIS alleged that the HLURB acted without jurisdiction, for only three members, instead of the nine-man Board of Commissioners, entertained the appeal, contrary to the mandate of Sections 5 and 6(a) of Executive Order (E.O.) No. 648 (1981), as amended.[8]

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other charges, as appearing in the books of account and/or related records of the financial institution concerned. This shall be without prejudice to the exercise by the government financial institutions of such rights and/or remedies available to them under their respective contracts with their debtors, including the right to foreclose on loans, credits, accommodations and/or guarantees on which the arrearages are less than twenty percent (20%).

[6] *Rollo*, pp. 74-75.

[7] *Id.* at 95.

[8] REORGANIZING THE HUMAN SETTLEMENTS REGULATORY COMMISSION (PREDECESSOR OF THE HLURB), ENACTED ON FEBRUARY 7, 1981.

The Court of Appeals, by Decision of June 28, 2007,[9] dismissed GSIS's petition and accordingly ordered the Arbiter to proceed with dispatch in the disposition of the spouses De los Reyes's complaint.

In dismissing GSIS's petition, the appellate court held that the HLURB Second Division did not abuse its discretion in taking jurisdiction over GSIS's motion for reconsideration-appeal, for 2004, the HLURB Revised Rules of Procedure provides that appeals shall be decided by the Board of Commissioners sitting *en banc* **or** by division in accordance with the internal rules of the Board.[10]

On the merits, the Court of Appeals ratiocinated that the requisites for the issuance of a writ of preliminary injunction were present; and since the act sought to be enjoined pertains to the consolidation process, it is outside the intended ambit of PD No. 385.

GSIS's motion for reconsideration having been denied by the appellate court by Resolution of October 10, 2007, the present petition for review was filed.

GSIS argues in the main that the HLURB Revised Rules of Procedure did not vest authority in the Board's Second Division to entertain appeals.

The Court is not persuaded.

Section 5 of E.O. No. 648 specifically mandates the HLURB Board of Commissioners to adopt rules of procedure for the conduct of its business and perform such functions necessary for the effective discharge thereof. Such grant of power necessary to carry out its functions has been held to be an adequate source of authority to delegate a particular function, unless, by express provision of the Act or by implication, it has been withheld.[11]

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[9] Penned by Associate Justice Marlene Gonzales-Sison, with the concurrence of Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso, *rollo* pp.136-150.

[10] Section 2, Rule XX, 2004 HLURB Revised Rules of Procedure.

[11] *Realty Exchange Venture Corporation and/or Magdiwang Realty Corporation v. Lucina S. Sendino and the Office of the Executive Secretary*,

The present composition of the Board of Commissioners,[12] wherein five out of its nine members sit in *ex-officio* capacity while the remaining four serve as full time commissioners, practicality necessitates the establishment of a procedure whereby a case on appeal may be decided by members of a division.

Since the 2004 HLURB Rules of Procedure provides that a motion for reconsideration shall be assigned to the Division from which the decision, order or ruling originated,[13] the questioned cognizance by the HLURB Second Division of GSIS's motion for reconsideration is in order.

Respecting GSIS's argument that PD No. 385 prohibits the issuance of a CDO, the pertinent provisions of the decree read:

Section 1. It shall be mandatory for government financial institutions, after the lapse of sixty (60) days from the issuance of this Decree, to foreclose the collaterals and/or securities for any loan, credit, accommodation, and/or guarantees granted by them whenever the

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G.R. No. 109703, July 5, 1994, 233 SCRA 665 citing *American Tobacco Co. v. Director of Patents*, 67 SCRA 287, 292 (1975).

[12] Under Section 5(J), Article IV of E.O. No. 648, Series of 1981, as amended by E.O. No. 90, Series of 1986, the recent rules of procedure promulgated by the Board in Resolution No. R-538, Series of 1994, enumerate the composition of the HLURB Board of Commissioners as follows:

"Sec. 1.— Membership

"The Board of Commissioners shall be composed of the following:

"1. The Chairman, Housing and Urban Development Coordinating Council (HUDCC), as *Ex-Officio* Chairman;

"2. The Four Full-Time Commissioners;

"3. The *Ex-Officio* Commissioners referred to in Executive Order 648, representing . . . :

'a. The Department of Justice

'b. The Department of the National Economic and Development Authority;

'c. The Department of Local Government; and

'd. The Department of Public Works and Highways, (1a)'"

[13] 2004 HLURB Rules of Procedure, Rule XXI, Section 1.

arrearages on such account, including accrued interest and other charges, amount to at least twenty percent (20%) of the total outstanding obligations, including interest and other charges, as appearing in the books of account and/or related records of the financial institution concerned. This shall be without prejudice to the exercise by the government financial institutions of such rights and/or remedies available to them under their respective contracts with their debtors, including the right to foreclose on loans, credits, accommodations and/or guarantees on which the arrearages are less than twenty percent (20%).

Section 2. No restraining order, temporary or permanent injunction shall be issued by the court against any government financial institution in any action taken by such institution **in compliance with the mandatory foreclosure provided in Section 1 hereof**, whether such restraining order, temporary or permanent injunction is sought by the borrower(s) or any third party or parties, except after due hearing in which it is established by the borrower and admitted by the government financial institution concerned that twenty percent (20%) of the outstanding arrearages has been paid after the filing of foreclosure proceedings.

In case a restraining order or injunction is issued, the borrower shall nevertheless be legally obligated to liquidate the remaining balance of the arrearages outstanding as of the time of foreclosure, plus interest and other charges, on every succeeding thirtieth (30th) day after the issuance of such restraining order or injunction until the entire arrearages have been liquidated. These shall be in addition to the payment of amortization currently maturing. The restraining order or injunction shall automatically be dissolved should the borrower fail to make any of the above-mentioned payments on due dates, and no restraining order or injunction shall be issued thereafter. This shall be without prejudice to the exercise by the government financial institutions of such rights and/or remedies available to them under their respective charters and their respective contracts with their debtors, nor should this provision be construed as restricting the government financial institutions concerned from approving, solely at its own discretion, any restructuring, recapitalization, or any other arrangement that would place the entire account on a current basis, provided, however, that at least twenty percent (20%) of the arrearages outstanding at the time of the foreclosure is paid.

All restraining orders and injunctions existing as of the date of this Decree on foreclosure proceedings filed by said government financial

institutions shall be considered lifted unless finally resolved by the court within sixty (60) days from date hereof. (underscoring supplied)

The act subject of the CDO was the intended consolidation by the GSIS of ownership of the condominium unit, not the mandatory foreclosure of the mortgage. At any rate, the second paragraph of the above-quoted Section 2 of PD No. 385 in fact recognizes the eventuality that an injunction may be issued against a government financial institution, hence, it obliges the borrower to liquidate the arrearages due in order to safeguard the interests of the government financial institution-lender.

Undoubtedly, the jurisdiction of the HLURB to regulate the real estate business is broad enough to include jurisdiction over a complaint for annulment of foreclosure sale and mortgage and the grant of incidental reliefs such as a CDO.[14] Even Presidential Decree No. 957, "*The Subdivision and Condominium Buyers Protective Decree,*" authorizes the HLURB as successor of the National Housing Authority to issue CDOs in relevant cases, *viz*:

SECTION 16. Cease and Desist Order. — Whenever it shall appear to the Authority that any person is engaged or about to engage in any act or practice which constitutes or will constitute a violation of the provisions of this Decree, or of any rule or regulation thereunder, it may, upon due notice and hearing as provided in Section 13 hereof, issue a cease and desist order to enjoin such act or practices.

**WHEREFORE,** the challenged Court of Appeals Decision of June 28, 2007 is *AFFIRMED*. The Housing and Land Use Arbiter is *ORDERED* to proceed with dispatch with private respondent spouses De los Reyes's complaint.

**SO ORDERED.**

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

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[14] *Home Bankers Savings & Trust Co. v. Court of Appeals*, G.R. No. 128354, April 26, 2005, 457 SCRA 167.

**FIRST DIVISION**

[G.R. No. 181847. May 5, 2010]

**PUBLIC ESTATES AUTHORITY now PHILIPPINE RECLAMATION AUTHORITY,** *petitioner, vs.* **ESTATE OF JESUS S. YUJUICO, represented by BENEDICTO V. YUJUICO and EDILBERTO V. YUJUICO; and AUGUSTO Y. CARPIO,** *respondents.*

**SYLLABUS**

**1. CIVIL LAW; COMPROMISES; THE SUBJECT COMPROMISE AGREEMENT WHICH HAVING BEEN JUDICIALLY AFFIRMED CONSTITUTES *RES JUDICATA* UPON THE PARTIES.—** The present case turns on the pivot of the option to purchase provided in the Compromise Agreement which, having been judicially affirmed, constitutes *res judicata* upon the parties. A compromise agreement intended to resolve a matter already under litigation is a judicial compromise. Having judicial mandate and entered as its determination of the controversy, such judicial compromise has the force and effect of a judgment. It transcends its identity as a mere contract between the parties, as it becomes a judgment that is subject to execution in accordance with the Rules of Court. Thus, a compromise agreement that has been made and duly approved by the court attains the effect and authority of *res judicata*, although no execution may be issued unless the agreement receives the approval of the court where the litigation is pending and compliance with the terms of the agreement is decreed. To simply say that, by the earlier-quoted term of the Compromise Agreement respecting petitioner's evaluation of the land subject of the option to purchase on the basis of its fair market value on the date of the exercise of the option, petitioner has the exclusive prerogative to determine the purchase price of the subject land is a very myopic interpretation.

**2. ID.; ID.; THE TERM "FAIR MARKET VALUE" IN THE STIPULATION CANNOT BE IGNORED WITHOUT RUNNING AFOUL THE INTENT OF THE PARTIES.—** The proper interpretation of the stipulation is that petitioner is given the right to determine the price of the subject land, provided it can

*substantiate* that the same is its **fair market value as of the date of the exercise of the option**. The term "fair market value" in the stipulation cannot be ignored without running afoul of the intent of the parties. It not being disputed that respondents exercised the option to purchase on January 26, 1999, the valuation should thus be based on the fair market value of the property on the said date. Indeed, as the appellate court held, in order to write *finis* to the case, the fair market value of the property must be determined on the basis of the existing records, instead of still remanding the case to the trial court.

**3. ID.; ID.; "FAIR MARKET VALUE"; SETTLED MEANING IN LAW AND JURISPRUDENCE; NO COGENT REASON TO DISTURB THE FACTUAL FINDING OF THE APPELLATE COURT REGARDING THE VALUATION OF THE PROPERTY.—** "Fair market value" has acquired a settled meaning in law and jurisprudence. It is the price at which a property may be sold by a seller who is not compelled to sell and bought by a buyer who is not compelled to buy, taking into consideration all uses to which the property is adapted and might in reason be applied. The criterion established by the statute contemplates a hypothetical sale. Given this yardstick, the Court found no cogent reason to disturb the factual finding of the appellate court that the proper valuation of the property is ₱13,000 per square meter as of January 26, 1999. As it correctly explained, the value was arrived at through the market data approach, which is based on sales and listings of comparable property registered within the vicinity; and that the property was classified as raw land because there were yet no houses and facilities like electricity, water and others at the time of the exercise of the option. The rule is well-established that if there is no showing of error in the appreciation of facts by the appellate court as in the present case, the Court treats it as conclusive.

**4. ID.; ID.; PETITIONER'S BAD FAITH IS ABUNDANTLY CLEAR.—** A word on petitioner. Its bad faith is abundantly clear. It did not respond to respondents' notification of their intention to exercise the stipulated option to purchase until after more than four years, or on March 26, 2004, when it surprised respondents with an exorbitant price for the property and gave them only 122 days within which to purchase the same. Undeniably, it is enfeebling the Compromise Agreement under the guise of enforcing it, which the Court will not sanction.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for petitioner.
*Villaraza Cruz Marcelo and Angangco* for Benedicto V. Yujuico.

**D E C I S I O N**

**CARPIO MORALES, *J.*:**

The present petition for review on *certiorari* is an offshoot of this Court's final and executory decision in *Public Estates Authority (PEA) v. Jesus S. Yujuico and Augusto Y. Carpio* (*2001 PEA Case*)[1] which settled the issue on overlapping parcels of land between petitioner on one hand, and Jesus S. Yujuico (Yujuico) and Augusto Y. Carpio (Carpio) on the other, by upholding the Compromise Agreement executed by the parties.

In the *2001 PEA Case,* the Court affirmed the dismissal of PEA's petition for relief from judgment questioning the Compromise Agreement approved by Branch 258 of the Regional Trial Court of Parañaque City, ruling that the petition was filed beyond the 60-day period allowed by Sec. 3, Rule 38 of the Rules of Court; and that it would not be right to allow a mere change of PEA's management to defeat the operation of the rules on reglementary period. The crux of the present controversy is the implementation of the Compromise Agreement which provides that, among other things:

> c. The SECOND PARTY is also given the OPTION TO PURCHASE an additional 7.6 hectares of land and CBP 1-A. The land subject of the OPTION shall be located and identified in the area to be agreed upon by the parties under a separate arrangement.
>
> i. The OPTION must be exercised within a period of three (3) years from the date this Compromise Agreement has been approved by the Court and the Compromise Judgment has been issued and become final.

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[1] G.R. No. 140486, February 6, 2001, 351 SCRA 280.

ii. The value of the land subject of the OPTION **shall be based on the fair market value as determined by PEA on the date of the exercise of the OPTION**.

iii. The OPTION shall be exercisable in increments of 5,000 square meters.

iv. In the event that the SECOND PARTY would develop the property at CBP-1A subject of their option, through a joint venture agreement or other business arrangements, the FIRST PARTY shall have the right of first refusal to develop the same.

v. Within the option period, if the FIRST PARTY will have an offer to purchase or develop the property, the SECOND PARTY shall be notified by PEA and shall be required to match the offer. If the SECOND PARTY cannot match the offer, the PEA shall be free to sell or award the development to the offeror.[2] (emphasis and underscoring supplied)

On January 26, 1999, respondents informed petitioner of their intention to exercise the option to purchase.[3]

By Omnibus Motion of June 6, 2002,[4] Yujuico and Carpio, assisted by Benedicto V. Yujuico (Benedicto) acting as their attorney-in-fact, moved that the trial court issue an Order for, among other things, the appointment of three licensed real estate appraisers who shall submit a report on the fair market value of the subject property on the date of the exercise of the option to purchase stipulated in the Compromise Agreement; and the suspension of the three-year option period until the trial court's approval of the appraisers' report.

By letter of March 26, 2004,[5] however, petitioner set the terms and conditions for respondents' exercise of the option to purchase, thus:

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[2] *Vide* Compromise Agreement, *CA rollo,* pp. 40-46; where PEA is the FIRST PARTY, while Benedicto V. Yujuico, attorney-in-fact of Jesus S. Yujuico and Augusto Y. Carpio, is the SECOND PARTY.

[3] *Vide rollo,* p. 123.

[4] *Id.* at 114-122

[5] *Id.* at 123-126.

1. Area: 7.6 hectares of land identified in the Subdivision Plan attached to the Compromise Agreement which are part and parcels of the undivided portions of Superblocks A, B and C of the CBP-IA Subdivision Plan covered by TCT Nos. 141653, 142194, 143079, 143080, 143081, 143665.

2. Period within which to purchase the whole 7.6 hectares: 122 days from the date of receipt of this letter.

x x x x x x x x x

3. Purchase Price: Sixty Thousand Pesos (Php 60,000.00) per square meter or for the total amount of Four Billion Five Hundred Sixty Million Pesos, Philippine Currency (Php 4,560,000,000.00).

x x x x x x x x x

4. Mode of Payment: Cash basis only.

5. Terms of Payment:

   a. Down payment: Thirty percent (30%) of the entire amount due for the whole 7.6 hectares must be paid within thirty (30) days from receipt of this letter at the principal office address of PEA.

   b. Another thirty percent (30%) of the full amount of P4.56 Billion shall be paid within sixty (60) days from the date of receipt of this letter.

   c. The remaining balance of forty percent (40%) of the entire amount of P4.56 Billion shall be paid within 122 days from the date of receipt of this letter.

x x x x x x x x x

8. Failure to Exercise the Option:

If after the lapse of 122 days, your principals shall fail to pay the purchase price for the whole 7.6 hectares or any portion thereof, then the unpaid portions of the 7.6 hectares shall be free from your option to purchase which shall be deemed to have lapsed and with respect to which you shall execute on behalf of your principals a quitclaim deed.

Respondents did not heed petitioner's imposition of a 122-day period to exercise the option to purchase. Instead, they

filed with the trial court a Supplemental Omnibus Motion[6] praying for an Order directing, among other things:

> (B) PEA and BENEDICTO V. YUJUICO, Attorney-in-Fact of [herein respondents], (aa) to implement the OPTION TO PURCHASE the 7.6 Has. to be taken from PEA-CBP-IA with specific boundaries delineated by the parties as shown in ANNEX "B" hereof; (bb) to consider the actual condition of said 7.6 Has. and the prevailing real estate market on or about January 26, 1999, the date of the exercise of the OPTION, which was reiterated in subsequent letters to PEA in determining the fair, just and *bona fide* market price of said 7.6 Has. by the PEA; and (cc) which exercise of the OPTION is well within the 3-year period from the date the Court-approved Compromise Agreement became final as provided in Par. (c)(i) of the said Compromise Agreement.

In its Comment to the Motion,[7] petitioner contended that the determination of the fair market value of the property subject of the option to purchase had been lodged in it by the Compromise Agreement; and that the period for the exercise of the option had expired, respondents not having exercised the same within three years from the date the compromise judgment became final.

By Order of January 11, 2005,[8] the trial court denied respondents' Supplemental Omnibus Motion, holding that, among other things, it is petitioner which has the exclusive right to determine the fair market value of the land that respondents want to purchase pursuant to the Compromise Agreement.

Their motion for reconsideration having been denied by Order dated June 7, 2005,[9] respondents appealed to the Court of Appeals via *certiorari*.[10]

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[6] *Id.* at 127-144.

[7] *Id.* at 145-162.

[8] *Id.* at 196-199.

[9] *Id.* at 248.

[10] *Id.* at 2-34.

By Decision of August 31, 2007,[11] the appellate court granted respondents' petition. It held that, among other things, the Compromise Agreement stipulated that the price to be determined by petitioner cannot be any price conceived by whim, but must be the "fair market value," which has acquired a definite meaning in the world of business; and that it must accordingly determine the fair market value of the property instead of remanding the case to the trial court in order to put an end to the litigation.

The appellate court went on to set the fair market value at ₱13,000 per square meter at the time the option to purchase was sought to be exercised, finding that the property was then still raw land and not a ready-to-build site.

Petitioner's motion for reconsideration having been denied by Resolution dated February 20, 2008,[12] it filed the present Petition for Review on *Certiorari*.[13]

Petitioner reiterates its position before the trial court, adding that the appellate court has no authority to impose upon the parties a judgment different from the terms of their Compromise Agreement; and that the appellate court erroneously adopted the valuation of the appraiser, Royal Asia Corporation, which was hired and paid by respondents.

Respondents, on the other hand, argue that, among other things, the question of proper valuation raised by petitioner is one of fact, and thus prohibited in a petition for review; that the appellate court correctly applied the Compromise Agreement according to its intent; and that assuming that the Compromise Agreement gives petitioner the sole authority to determine the price of the property, such stipulation is void for being purely potestative and violative of the principle of mutuality of contracts.[14]

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[11] Penned by Associate Justice Vicente Q. Roxas, with the concurrence of Associate Justices Josefina Guevara-Salonga and Ramon R. Garcia; *CA rollo,* pp. 647-683.

[12] *Rollo,* pp. 712-713.

[13] *Id.* at 11-64.

[14] *Vide* Comment, *id.* at 621-660.

The petition must fail.

The present case turns on the pivot of the option to purchase provided in the Compromise Agreement which, having been judicially affirmed, constitutes *res judicata* upon the parties.

> A compromise agreement intended to resolve a matter already under litigation is a judicial compromise. Having judicial mandate and entered as its determination of the controversy, such judicial compromise has the force and effect of a judgment. It transcends its identity as a mere contract between the parties, as it becomes a judgment that is subject to execution in accordance with the Rules of Court. Thus, a compromise agreement that has been made and duly approved by the court attains the effect and authority of *res judicata*, although no execution may be issued unless the agreement receives the approval of the court where the litigation is pending and compliance with the terms of the agreement is decreed.[15]

To simply say that, by the earlier-quoted term of the Compromise Agreement respecting petitioner's evaluation of the land subject of the option to purchase on the basis of its fair market value on the date of the exercise of the option, petitioner has the exclusive prerogative to determine the purchase price of the subject land is a very myopic interpretation.

The proper interpretation of the stipulation is that petitioner is given the right to determine the price of the subject land, provided it can *substantiate* that the same is its **fair market value as of the date of the exercise of the option**. The term "fair market value" in the stipulation cannot be ignored without running afoul of the intent of the parties. It not being disputed that respondents exercised the option to purchase on January 26, 1999, the valuation should thus be based on the fair market value of the property on the said date.

Indeed, as the appellate court held, in order to write *finis* to the case, the fair market value of the property must be determined

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[15] *Rañola v. Rañola,* G.R. No. 185095, July 31, 2009; *California Manufacturing Company, Inc. v. The City of Las Piñas,* G.R. No. 178461, June 22, 2009.

on the basis of the existing records, instead of still remanding the case to the trial court.[16]

"Fair market value" has acquired a settled meaning in law and jurisprudence. It is the price at which a property may be sold by a seller who is not compelled to sell and bought by a buyer who is not compelled to buy,[17] taking into consideration all uses to which the property is adapted and might in reason be applied. The criterion established by the statute contemplates a hypothetical sale.[18]

Given this yardstick, the Court found no cogent reason to disturb the factual finding of the appellate court that the proper valuation of the property is ₱13,000 per square meter as of January 26, 1999. As it correctly explained, the value was arrived at through the market data approach, which is based on sales and listings of comparable property registered within the vicinity; and that the property was classified as raw land because there were yet no houses and facilities like electricity, water and others at the time of the exercise of the option.

The rule is well-established that if there is no showing of error in the appreciation of facts by the appellate court as in the present case, the Court treats it as conclusive.[19]

A word on petitioner. Its bad faith is abundantly clear. It did not respond to respondents' notification of their intention to exercise the stipulated option to purchase until after more than four years, or on March 26, 2004, when it surprised respondents with an exorbitant price for the property and gave them only 122 days within which to purchase the same. Undeniably, it is

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[16] *Vide Traveño v. Bobongon Banana Growers Multi-Purpose Cooperative,* G.R. No. 164205, September 3, 2009.

[17] Section 199(l), Republic Act No. 7160 or the Local Government Code of 1991.

[18] *Allied Banking Corporation v. The Quezon City Government,* G.R. No. 154126 October 11, 2005, 472 SCRA 303, 318.

[19] *Associated Bank (Now United Overseas Bank [Phils.]) v. Pronstroller,* G.R. No. 148444, September 3, 2009; *Heirs of Pael v. Court of Appeals,* 423 Phil. 67, 70 (2001).

enfeebling the Compromise Agreement under the guise of enforcing it, which the Court will not sanction.

**WHEREFORE,** the petition is *DENIED*. The Decision of the Court of Appeals dated August 31, 2007 in CA-G.R. SP No. 90825 is *AFFIRMED*.

**SO ORDERED.**

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

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**FIRST DIVISION**

[G.R. No. 184800. May 5, 2010]

**WONINA M. BONIFACIO, JOCELYN UPANO, VICENTE ORTUOSTE and JOVENCIO PERECHE, SR.,** *petitioners, vs.* **REGIONAL TRIAL COURT OF MAKATI, BRANCH 149, and JESSIE JOHN P. GIMENEZ,** *respondents*.

**SYLLABUS**

**1. REMEDIAL LAW; CRIMINAL PROCEDURE; VENUE; JURISDICTIONAL IN CRIMINAL ACTIONS SUCH THAT THE PLACE WHERE THE CRIME WAS COMMITTED DETERMINES NOT ONLY THE VENUE OF THE ACTION BUT CONSTITUTES AN ESSENTIAL ELEMENT OF THE CRIME; VENUE OF LIBEL CASES WHERE THE COMPLAINANT IS A PRIVATE INDIVIDUAL.—** Venue is jurisdictional in criminal actions such that the place where the crime was committed determines not only the venue of the action but constitutes an essential element of jurisdiction. This principle acquires even greater import in libel cases, given that Article 360, as amended, specifically provides for the possible venues for the institution

of the criminal and civil aspects of such cases. In *Macasaet*, the Court reiterated its earlier pronouncements in *Agbayani v. Sayo* which laid out the rules on venue in libel cases, *viz*: For the guidance, therefore, of both the bench and the bar, this Court finds it appropriate to reiterate our earlier pronouncement in the case of Agbayani, to wit: In order to obviate controversies as to the venue of the criminal action for written defamation, the complaint or information should contain allegations as to whether, at the time the offense was committed, the offended party was a public officer or a private individual and **where he was actually residing at that time. Whenever possible, the place where the written defamation was printed and first published should likewise be alleged. That allegation would be a *sine qua non* if the circumstance as to where the libel was printed and first published is used as the basis of the venue of the action.** It becomes clear that the venue of libel cases where the complainant is a private individual is limited to only either of two places, namely: 1) where the complainant actually resides at the time of the commission of the offense; or 2) where the alleged defamatory article was printed and first published. The Amended Information in the present case opted to lay the venue by availing of the second. Thus, it stated that the offending article "was first published and accessed by the private complainant in Makati City." In other words, it considered the phrase to be equivalent to the requisite allegation of printing and first publication.

**2. ID.; ID.; ID.; THE INSUFFICIENCY OF THE ALLEGATIONS IN THE AMENDED INFORMATION TO VEST JURISDICTION IN MAKATI BECOMES PRONOUNCED UPON AN EXAMINATION OF THE RATIONALE OF ARTICLE 360 OF R.A. NO. 4363; EVIL SOUGHT TO BE PREVENTED WAS THE INDISCRIMINATE OR ARBITRARY LAYING OF VENUE IN LIBEL CASES IN DISTANT, ISOLATED OR FAR FLUNG AREAS, MEANT TO ACCOMPLISH NOTHING MORE THAN TO HARASS OR INTIMIDATE THE ACCUSED.—** The insufficiency of the allegations in the Amended Information to vest jurisdiction in Makati becomes pronounced upon an examination of the rationale for the amendment to Article 360 by RA No. 4363. The evil sought to be prevented by the amendment to Article 360 was the indiscriminate or arbitrary laying of the venue in libel cases in distant, isolated or far-

flung areas, meant to accomplish nothing more than harass or intimidate an accused. The disparity or unevenness of the situation becomes even more acute where the offended party is a person of sufficient means or possesses influence, and is motivated by spite or the need for revenge. If the circumstances as to where the libel was printed and first published are used by the offended party as basis for the venue in the criminal action, the Information must allege with particularity where the defamatory article was printed and first published, as evidenced or supported by, for instance, the address of their editorial or business offices in the case of newspapers, magazines or serial publications. This pre-condition becomes necessary in order to forestall any inclination to harass.

**3. ID.; ID.; ID.; TO HOLD THAT THE AMENDED INFORMATION SUFFICIENTLY VESTED JURISDICTION IN THE COURTS OF MAKATI SIMPLY BECAUSE THE DEFAMATORY ARTICLE WAS ACCESSED THEREIN WOULD OPEN THE FLOODGATES TO THE LIBEL SUIT BEING FILED IN ALL OTHER LOCATIONS WHERE PETITIONER'S WEBSITE IS LIKEWISE ACCESSED OR CAPABLE OF BEING ACCESSED.—** The same measure cannot be reasonably expected when it pertains to defamatory material appearing on a website on the internet as there would be no way of determining the *situs* of its printing and first publication. To credit Gimenez's premise of equating his first *access* to the defamatory article on petitioners' website in Makati with "printing and first publication" would spawn the very ills that the amendment to Article 360 of the RPC sought to discourage and prevent. It hardly requires much imagination to see the chaos that would ensue in situations where the website's author or writer, a blogger or anyone who posts messages therein could be sued for libel anywhere in the Philippines that the private complainant may have allegedly accessed the offending website. For the Court to hold that the Amended Information sufficiently vested jurisdiction in the courts of Makati simply because the defamatory article was accessed therein would open the floodgates to the libel suit being filed in all other locations where the *pepcoalition* website is likewise accessed or capable of being accessed.

**4. ID.; ID.; ID.; LIMITATIONS IMPOSED BY ARTICLE 360 OF R.A. NO. 4363 ARE HARDLY ONEROUS.—** Respecting the contention that the venue requirements imposed by Article 360, as amended, are unduly oppressive, the Court's pronouncements in *Chavez* are instructive: For us to grant the present petition, it would be necessary to abandon the *Agbayani* rule providing that a private person must file the complaint for libel either in the place of printing and first publication, or at the complainant's place of residence. We would also have to abandon the subsequent cases that reiterate this rule in *Agbayani*, such as *Soriano*, *Agustin*, and *Macasaet*. There is no convincing reason to resort to such a radical action. **These limitations imposed on libel actions filed by private persons are hardly onerous, especially as they still allow such persons to file the civil or criminal complaint in their respective places of residence, in which situation there is no need to embark on a quest to determine with precision where the libelous matter was printed and first published.** IN FINE, the public respondent committed grave abuse of discretion in denying petitioners' motion to quash the Amended Information.

**APPEARANCES OF COUNSEL**

*Solis Medina Limpingco & Fajardo* for petitioners.
*Poblador Bautista & Reyes* for private respondent.

**D E C I S I O N**

**CARPIO MORALES, *J.*:**

Via a petition for *Certiorari* and Prohibition, petitioners Wonina M. Bonifacio, *et al.* assail the issuances of Branch 149 of the Regional Trial Court (RTC) of Makati (public respondent) – Order[1] of April 22, 2008 which denied their motion to quash the Amended Information indicting them for libel, and Joint Resolution[2] of August 12, 2008 denying reconsideration of the first issuance.

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[1] Issued by Presiding Judge Cesar Untalan; *rollo*, pp. 51-52.

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

Private respondent Jessie John P. Gimenez[3] (Gimenez) filed on October 18, 2005, on behalf of the Yuchengco Family ("in particular," former Ambassador Alfonso Yuchengco and Helen Y. Dee (Helen) and of the Malayan Insurance Co., Inc. (Malayan),[4] a criminal complaint,[5] before the Makati City Prosecutor's Office, for thirteen (13) counts of libel under Article 355 in relation to Article 353 of the Revised Penal Code (RPC) against Philip Piccio, Mia Gatmaytan and Ma. Anabella Relova Santos, who are officers of Parents Enabling Parents Coalition, Inc. (PEPCI), John Joseph Gutierrez, Jeselyn Upano, Jose Dizon, Rolanda Pareja, Wonina Bonifacio, Elvira Cruz, Cornelio Zafra, Vicente Ortueste, Victoria Gomez Jacinto, Jurencio Pereche, Ricardo Loyares and Peter Suchianco, who are trustees of PEPCI, Trennie Monsod, a member of PEPCI (collectively, the accused), and a certain John Doe, the administrator of the website www.pepcoalition.com.

PEPCI appears to have been formed by a large group of disgruntled planholders of Pacific Plans, Inc. (PPI) - a wholly owned subsidiary of Great Pacific Life Assurance Corporation, also owned by the Yuchengco Group of Companies (YGC) - who had previously purchased traditional pre-need educational plans but were unable to collect thereon or avail of the benefits thereunder after PPI, due to liquidity concerns, filed for corporate rehabilitation with prayer for suspension of payments before the Makati RTC.

Decrying PPI's refusal/inability to honor its obligations under the educational pre-need plans, PEPCI sought to provide a forum by which the planholders could seek redress for their pecuniary loss under their policies by maintaining a website on the internet under the address of www.pepcoalition.com.

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[3] President of the Philippine Integrated Advertising Agency, Inc. (PIAA) the advertising arm of the Yuchengco Group of Companies (YGC), tasked with preserving the image and good name of the YGC as well as the name and reputation of the Yuchengco Family.

[4] A domestic corporation with offices in Binondo, Manila and belonging to the YGC engaged in the non-life insurance protection business which includes fire, marine, motorcar, miscellaneous casualty and personal accident, and surety.

[5] *Rollo*, pp. 269-293.

Gimenez alleged that PEPCI also owned, controlled and moderated on the internet a blogspot[6] under the website address www.pacificnoplan.blogspot.com, as well as a yahoo e-group[7] at no2pep2010@yahoogroups.com. These websites are easily accessible to the public or by anyone logged on to the internet.

Gimenez further alleged that upon accessing the above-stated websites in Makati on various dates from August 25 to October 2, 2005, he "was appalled to read numerous articles [numbering 13], maliciously and recklessly caused to be published by [the accused] containing highly derogatory statements and false accusations, relentlessly attacking the Yuchengco Family, YGC, and particularly, Malayan."[8] He cited an article which was posted/published on www.pepcoalition.com on August 25, 2005 which stated:

*Talagang naisahan na naman tayo ng mga Yuchengcos. Nangyari na ang mga kinatatakutan kong pagbagsak ng negotiation because it was done prematurely since we had not file any criminal aspect of our case.* ***What is worse is that Yuchengcos benefited much from the nego. x x x . That is the fact na talagang hindi dapat pagtiwalaan ang mga Yuchengcos.***

LET'S MOVE TO THE BATTLEFIELD. FILE THE CRIMINAL CASES IN COURT, BSP AND AMLC AND WHEREVER. *Pumunta tayong muli sa senado, congreso,* RCBC Plaza, and other venues to air our

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[6] A *blog* is a type of website usually maintained by an individual with regular entries of commentary, descriptions of events, or other material such as graphics or video. Entries are commonly displayed in reverse-chronological order and many blogs provide commentary or news on a particular subject; *vide* http://en.wikipedia.org/wiki/Blog (visited: March 24, 2010).

[7] The term *Groups* refers to an Internet communication tool which is a hybrid between an electronic mailing list and a threaded internet forum where messages can be posted and read by e-mail or on the Group homepage, like a web forum. Members can choose whether to receive individual, daily digest or Special Delivery e-mails, or they can choose to read Group posts on the Group's web site. Groups can be created with public or member-only access; *vide* http://en.wikipedia.org/wiki/Yahoo_Groups (visited: March 24, 2010).

[8] *Rollo,* p. 274.

grievances and **call for boycott *ng* YGC.** Let us start within ourselves. ***Alisin natin ang mga* investments and deposits** *natin sa lahat ng* **YGC and I mean *lahat* and again convince friends to do the same**. *Yung mga nanonood lang noon ay dapat makisali na talaga ngayon* specially those who joined only after knowing that there was a negotiation for amicable settlements.

FOR SURE *MAY TACTICS PA SILANG NAKABASTA SA ATIN.* LET US BE READY FOR IT BECAUSE THEY HAD SUCCESSFULLY LULL US AND THE NEXT TIME THEY WILL TRY TO KILL US *NA*. x x x[9] (emphasis in the original)

By Resolution of May 5, 2006,[10] the Makati City Prosecutor's Office, finding probable cause to indict the accused, filed thirteen (13) separate Informations[11] charging them with libel. The accusatory portion of one Information, docketed as Criminal Case No. 06-876, which was raffled off to public respondent reads:

That on or about the 25th day of August 2005 in Makati City, Metro Manila, Philippines, a place within the jurisdiction of the Honorable Court, the above-named accused, being then the trustees of Parents Enabling Parents Coalition and as such trustees they hold the legal title to the website www.pepcoalition.com which is of general circulation, and publication to the public conspiring, confederating and mutually helping with one another together with John Does, did then and there willfully, unlawfully and feloniously and publicly and maliciously with intention of attacking the honesty, virtue, honor and integrity, character and reputation of complainant Malayan Insurance Co. Inc., Yuchengco Family particularly Ambassador Alfonso Yuchengco and Helen Dee and for further purpose exposing the complainant to public hatred and contempt published an article imputing a vice or defect to the complainant and caused to be composed, posted and published in the said website www.pepcoalition.com and injurious and defamatory article as follows:

> *Talagang naisahan na naman tayo ng mga Yuchengcos. Nangyari na ang mga kinatatakutan kong pagbagsak ng negotiation.* x x x

[9] *Id.* at 352.

[10] Signed by 1st Assistant City Prosecutor Romulo Nanola, *id.* at 98-108.

[11] Criminal Case Nos. 06-873 – 885, *id.* at 467-503.

> For sure may tactics pa silang nakabasta sa atin. Let us be ready for it because they had successfully lull us and the next time they will try to kill us na. x x x
>
> A copy of the full text of the foregoing article as published/ posted in www.pepcoalition.com is attached as Annex "F" of the complaint.

That the keyword and password to be used in order to post and publish the above defamatory article are known to the accused as trustees holding legal title to the above-cited website and that the accused are the ones responsible for the posting and publication of the defamatory articles that the article in question was posted and published with the object of the discrediting and ridiculing the complainant before the public.

CONTRARY TO LAW.[12]

Several of the accused appealed the Makati City Prosecutor's Resolution by a petition for review to the Secretary of Justice who, by Resolution of June 20, 2007,[13] *reversed* the finding of probable cause and accordingly directed the withdrawal of the Informations for libel filed in court. The Justice Secretary opined that the crime of "internet libel" was non-existent, hence, the accused could not be charged with libel under Article 353 of the RPC.[14]

Petitioners, as co-accused,[15] thereupon filed on June 6, 2006, before the public respondent, a Motion to Quash[16] the Information in Criminal Case No. 06-876 on the grounds that it failed to vest jurisdiction on the Makati RTC; the acts complained of in the Information are not punishable by law since internet libel is not covered by Article 353 of the RPC; and the Information is fatally defective for failure to designate the offense charged

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[12] *Id.* at 119-121.

[13] Issued by Justice Secretary Raul M. Gonzalez, *id.* at 110-118.

[14] The Yuchengcos' motion for reconsideration of the Justice Secretary's aforesaid resolution has yet to be resolved.

[15] The RTC granted the motion of the accused to post bail on recognizance by Order of May 31, 2006.

[16] *Rollo*, pp. 122-155.

and the acts or omissions complained of as constituting the offense of libel.

Citing *Macasaet v. People*,[17] petitioners maintained that the Information failed to allege a particular place within the trial court's jurisdiction where the subject article was printed and first published *or* that the offended parties resided in Makati at the time the alleged defamatory material was printed and first published.

By Order of October 3, 2006,[18] the public respondent, albeit finding that probable cause existed, quashed the Information, citing *Agustin v. Pamintuan*.[19] It found that the Information lacked any allegations that the offended parties were actually residing in Makati at the time of the commission of the offense as in fact they listed their address in the complaint-affidavit at Yuchengco Tower in Binondo, Manila; *or* that the alleged libelous article was printed and first published in Makati.

The prosecution moved to reconsider the quashal of the Information,[20] insisting that the Information sufficiently conferred jurisdiction on the public respondent. It cited *Banal III v. Panganiban*[21] which held that the Information need not allege *verbatim* that the libelous publication was "printed and first published" in the appropriate venue. And it pointed out that Malayan has an office in Makati of which Helen is a resident. Moreover, the prosecution alleged that even assuming that the Information was deficient, it merely needed a formal amendment.

Petitioners opposed the prosecution's motion for reconsideration, contending, *inter alia*, that since venue is jurisdictional in criminal cases, any defect in an information

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[17] G.R. No. 156747, February 23, 2005, 452 SCRA 255.

[18] Issued by Presiding Judge Cesar Untalan, *rollo*, pp. 156-163.

[19] G.R. No. 164938, August 22, 2005, 467 SCRA 601.

[20] *Rollo*, pp. 590-605.

[21] G.R. No. 167474, November 15, 2005, 475 SCRA 164.

for libel pertaining to jurisdiction is not a mere matter of form that may be cured by amendment.[22]

By Order of March 8, 2007,[23] the public respondent granted the prosecution's motion for reconsideration and accordingly ordered the public prosecutor to "amend the Information to cure the defect of want of venue."

The prosecution thereupon moved to admit the Amended Information dated March 20, 2007,[24] the accusatory portion of which reads:

> That on or about the 25th day of August 2005 in Makati City, Metro Manila, Philippines, a place within the jurisdiction of the Honorable Court, the above-named accused, being then the trustees of Parents Enabling Parents Coalition and as such trustees they hold the legal title to the website www.pepcoalition.com which is of general circulation, and publication to the public conspiring, confederating together with John Does, **whose true names, identities and present whereabouts are still unknown** and **all of them** mutually helping **and aiding** one another, did then and there willfully, unlawfully and feloniously and publicly and maliciously with intention of attacking the honesty, virtue, honor and integrity, character and reputation of complainant Malayan Insurance Co. Inc., Yuchengco Family particularly Ambassador Alfonso Yuchengco and Helen Dee and for further purpose exposing the complainant to public hatred and contempt published an article imputing a vice or defect to the complainant and caused to be composed, posted and published in the said website www.pepcoalition.com, **a website accessible in Makati City**, an injurious and defamatory article, **which was first published and *accessed* by the private complainant in Makati City**, as follows:
>
> x x x (emphasis and underscoring in the original; italics supplied)

Petitioners moved to quash the Amended Information[25] which, they alleged, still failed to vest jurisdiction upon the public

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[22] *Rollo*, pp. 610-624.

[23] *Id.* at 179-180.

[24] *Id.* at 181-183.

[25] *Id.* at 184-206.

respondent because it failed to allege that the libelous articles were "printed and first published" by the accused in Makati; and the prosecution erroneously laid the venue of the case in the place where the offended party *accessed* the internet-published article.

By the assailed Order of April 22, 2008, the public respondent, applying *Banal III*, found the Amended Information to be sufficient in form.

Petitioners' motion for reconsideration[26] having been denied by the public respondent by Joint Resolution of August 12, 2008, they filed the present petition for *Certiorari* and Prohibition faulting the public respondent for:

1. … NOT FINDING THAT THE ACTS ALLEGED IN THE INFORMATION ARE NOT PUNISHABLE BY LAW;
2. … ADMITTING AN AMENDED INFORMATION WHOSE JURISDICTIONAL ALLEGATIONS CONTINUES TO BE DEFICIENT; and
3. …NOT RULING THAT AN AMENDMENT IN THE INFORMATION FOR THE PURPOSE OF CURING JURISDICTIONAL DEFECTS IS ILLEGAL.[27]

With the filing of Gimenez's Comment[28] to the petition, the issues are: (1) whether petitioners violated the rule on hierarchy of courts to thus render the petition dismissible; and (2) whether grave abuse of discretion attended the public respondent's admission of the Amended Information.

The established policy of strict observance of the judicial hierarchy of courts,[29] as a rule, requires that recourse must first be made to the lower-ranked court exercising concurrent

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[26] *Vide* Motion for Reconsideration with Prayer to Cancel Arraignment, *id.* at 53-70.

[27] *Id.* at 17.

[28] *Id.* at 216-268.

[29] *Pacoy v. Cajigal*, G.R. No. 157472, 28 September 2007, 534 SCRA 338, 346.

jurisdiction with a higher court.[30] A regard for judicial hierarchy clearly indicates that petitions for the issuance of extraordinary writs against first level courts should be filed in the RTC and those against the latter should be filed in the Court of Appeals.[31] The rule is not iron-clad, however, as it admits of certain exceptions.

Thus, a strict application of the rule is unnecessary when cases brought before the appellate courts do not involve factual but purely legal questions.[32]

In the present case, the substantive issue calls for the Court's exercise of its discretionary authority, by way of exception, in order to abbreviate the review process as petitioners raise a pure question of law involving jurisdiction in criminal complaints for libel under Article 360 of the RPC –whether the Amended Information is sufficient to sustain a charge for written defamation in light of the requirements under Article 360 of the RPC, as amended by Republic Act (RA) No. 4363, reading:

> Art. 360. *Persons responsible*.—Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same.
>
> The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the same extent as if he were the author thereof.
>
> The criminal action and civil action for damages in cases of written defamations, as provided for in this chapter shall be filed simultaneously or separately with the Court of First Instance of the **province or city where the libelous article is printed and first published** or where any of the offended parties actually resides at the time of the commission of the offense: *Provided, however,* That

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[30] *Sarsaba v. Vda. de Te*, G.R. No. 175910, July 30, 2009, 594 SCRA 410.

[31] *Miaque v. Patag*, G.R. Nos. 170609-13, January 30, 2009, 577 SCRA 394, 397 citing *Chavez v. National Housing Authority*, G.R. No. 164527, 15 August 2007, 530 SCRA 235, 285 citing *People v. Cuaresma*, G.R. No. 133250, 9 July 2002, 384 SCRA 152.

[32] *Chua v. Ang*, G.R. No. 156164, September 4, 2009, 598 SCRA 229, 239.

where one of the offended parties is a public officer whose office is in the City of Manila at the time of the commission of the offense, the action shall be filed in the Court of First Instance of the City of Manila or of the city or province where the libelous article is printed and first published, and in case such public officer does not hold office in the City of Manila, the action shall be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense or where the libelous article is printed and first published and in case one of the offended parties is a private individual, the action shall be filed in the Court of First Instance of the province or city where he actually resides at the time of the commission of the offense or where the libelous matter is printed and first published x x x. (emphasis and underscoring supplied)

Venue is jurisdictional in criminal actions such that the place where the crime was committed determines not only the venue of the action but constitutes an essential element of jurisdiction.[33] This principle acquires even greater import in libel cases, given that Article 360, as amended, specifically provides for the possible venues for the institution of the criminal and civil aspects of such cases.

In *Macasaet*,[34] the Court reiterated its earlier pronouncements in *Agbayani v. Sayo*[35] which laid out the rules on venue in libel cases, *viz*:

For the guidance, therefore, of both the bench and the bar, this Court finds it appropriate to reiterate our earlier pronouncement in the case of Agbayani, to wit:

In order to obviate controversies as to the venue of the criminal action for written defamation, the complaint or information should contain allegations as to whether, at the time the offense was committed, the offended party was a public officer or a private individual and **where he was actually residing at that time. Whenever possible, the place where the written defamation was printed and**

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[33] *Macasaet v. People*, *supra* note 17 at 271; *Lopez, et al. v. The City Judge, et al.*, G.R. No. L-25795, October 29, 1966, 18 SCRA 616.

[34] *Vide Macasaet v. People*, *supra* note 17 at 273-274.

[35] G.R. No. L-47880, April 30, 1979, 89 SCRA 699.

**first published should likewise be alleged. That allegation would be a *sine qua non* if the circumstance as to where the libel was printed and first published is used as the basis of the venue of the action.** (emphasis and underscoring supplied)

It becomes clear that the venue of libel cases where the complainant is a private individual is limited to only either of two places, namely: 1) where the complainant actually resides at the time of the commission of the offense; or 2) where the alleged defamatory article was printed and first published. The Amended Information in the present case opted to lay the venue by availing of the second. Thus, it stated that the offending article "was first published and accessed by the private complainant in Makati City." In other words, it considered the phrase to be equivalent to the requisite allegation of printing and first publication.

The insufficiency of the allegations in the Amended Information to vest jurisdiction in Makati becomes pronounced upon an examination of the rationale for the amendment to Article 360 by RA No. 4363. *Chavez v. Court of Appeals*[36] explained the nature of these changes:

*Agbayani* supplies a comprehensive restatement of the rules of venue in actions for criminal libel, following the amendment by Rep. Act No. 4363 of the Revised Penal Code:

"Article 360 in its original form provided that the venue of the criminal and civil actions for written defamations is the province wherein the libel was published, displayed or exhibited, regardless of the place where the same was written, printed or composed. Article 360 originally did not specify the public officers and the courts that may conduct the preliminary investigation of complaints for libel.

Before article 360 was amended, the rule was that a criminal action for libel may be instituted in any jurisdiction where the libelous article was published or circulated, irrespective of where it was written or printed (*People v. Borja*, 43 Phil. 618). Under that rule, the criminal action is transitory and the injured party has a choice of venue.

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[36] G.R. No. 125813, February 6, 2007, 514 SCRA 279, 285-286.

**Experience had shown that under that old rule the offended party could harass the accused in a libel case by laying the venue of the criminal action in a remote or distant place.**

Thus, in connection with an article published in the Daily Mirror and the Philippine Free Press, Pio Pedrosa, Manuel V. Villareal and Joaquin Roces were charged with libel in the justice of the peace court of San Fabian, Pangasinan (*Amansec v. De Guzman*, 93 Phil. 933).

**To forestall such harassment, Republic Act No. 4363 was enacted. It lays down specific rules as to the venue of the criminal action so as to prevent the offended party in written defamation cases from inconveniencing the accused by means of out-of-town libel suits, meaning complaints filed in remote municipal courts** (Explanatory Note for the bill which became Republic Act No. 4363, Congressional Record of May 20, 1965, pp. 424-5; *Time, Inc. v. Reyes*, L-28882, May 31, 1971, 39 SCRA 303, 311).

x x x (emphasis and underscoring supplied)

Clearly, the evil sought to be prevented by the amendment to Article 360 was the indiscriminate or arbitrary laying of the venue in libel cases in distant, isolated or far-flung areas, meant to accomplish nothing more than harass or intimidate an accused. The disparity or unevenness of the situation becomes even more acute where the offended party is a person of sufficient means or possesses influence, and is motivated by spite or the need for revenge.

If the circumstances as to where the libel was printed and first published are used by the offended party as basis for the venue in the criminal action, the Information must allege with particularity where the defamatory article was printed and first published, as evidenced or supported by, for instance, the address of their editorial or business offices in the case of newspapers, magazines or serial publications. This pre-condition becomes necessary in order to forestall any inclination to harass.

The same measure cannot be reasonably expected when it pertains to defamatory material appearing on a website on the internet as there would be no way of determining the *situs* of its printing and first publication. To credit Gimenez's premise

of equating his first *access* to the defamatory article on petitioners' website in Makati with "printing and first publication" would spawn the very ills that the amendment to Article 360 of the RPC sought to discourage and prevent. It hardly requires much imagination to see the chaos that would ensue in situations where the website's author or writer, a blogger or anyone who posts messages therein could be sued for libel anywhere in the Philippines that the private complainant may have allegedly accessed the offending website.

For the Court to hold that the Amended Information sufficiently vested jurisdiction in the courts of Makati simply because the defamatory article was accessed therein would open the floodgates to the libel suit being filed in all other locations where the *pepcoalition* website is likewise accessed or capable of being accessed.

Respecting the contention that the venue requirements imposed by Article 360, as amended, are unduly oppressive, the Court's pronouncements in *Chavez*[37] are instructive:

> For us to grant the present petition, it would be necessary to abandon the *Agbayani* rule providing that a private person must file the complaint for libel either in the place of printing and first publication, or at the complainant's place of residence. We would also have to abandon the subsequent cases that reiterate this rule in *Agbayani*, such as *Soriano*, *Agustin*, and *Macasaet*. There is no convincing reason to resort to such a radical action. **These limitations imposed on libel actions filed by private persons are hardly onerous, especially as they still allow such persons to file the civil or criminal complaint in their respective places of residence, in which situation there is no need to embark on a quest to determine with precision where the libelous matter was printed and first published.**
>
> (Emphasis and underscoring supplied.)

IN FINE, the public respondent committed grave abuse of discretion in denying petitioners' motion to quash the Amended Information.

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[37] *Vide* note 36 at 291-292.

**WHEREFORE,** the petition is *GRANTED*. The assailed Order of April 22, 2008 and the Joint Resolution of August 12, 2008 are hereby *SET ASIDE*. The Regional Trial Court of Makati City, Br. 149 is hereby *DIRECTED TO QUASH* the Amended Information in Criminal Case No. 06-876 and *DISMISS* the case.

**SO ORDERED.**

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

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**FIRST DIVISION**

[G.R. No. 187200. May 5, 2010]

**GOLDEN ACE BUILDERS and ARNOLD U. AZUL,** *petitioners, vs.* **JOSE A. TALDE,** *respondent.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; BACKWAGES AND SEPARATION PAY, DISTINGUISHED.—** The basis for the payment of backwages is different from that for the award of separation pay. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing backwages is usually the length of the employee's service while that for separation pay is the actual period when the employee was unlawfully prevented from working.

**2. ID.; ID.; ID.; DOCTRINE OF STRAINED RELATIONS, EXPLAINED AND APPLIED.—** Under the *doctrine of strained relations*, the payment of separation pay is considered an

acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust. Strained relations must be demonstrated as a fact, however, to be adequately supported by evidence — substantial evidence to show that the relationship between the employer and the employee is indeed *strained* as a necessary consequence of the judicial controversy. In the present case, the Labor Arbiter found that actual animosity existed between petitioner Azul and respondent as a result of the filing of the illegal dismissal case. Such finding, especially when affirmed by the appellate court as in the case at bar, is binding upon the Court, consistent with the prevailing rules that this Court will not try facts anew and that findings of facts of quasi-judicial bodies are accorded great respect, even finality.

**3. ID.; ID.; ID.; BACKWAGES AND SEPARATION PAY, AWARDED.—** [R]espondent is entitled to backwages *and* separation pay as his reinstatement has been rendered impossible due to strained relations. As correctly held by the appellate court, the backwages due respondent must be computed from the time he was unjustly dismissed until his actual reinstatement, or from February 1999 until June 30, 2005 when his reinstatement was rendered impossible without fault on his part. The Court, however, does not find the appellate court's computation of separation pay in order. The appellate court considered respondent to have served petitioner company for only eight years. Petitioner was hired in 1990, however, and **he must be considered to have been in the service not only until 1999, when he was unjustly dismissed, but until June 30, 2005, the day he is deemed to have been actually separated (his reinstatement having been rendered impossible) from petitioner company or for a total of 15 years**.

**APPEARANCES OF COUNSEL**

*Melina O. Tecson* for petitioners.
*Public Attorney's Office* for respondent.

## D E C I S I O N

**CARPIO MORALES, *J.*:**

Jose A. Talde (respondent) was hired in 1990 as a carpenter by petitioner Golden Ace Builders of which its co-petitioner Arnold Azul (Azul) is the owner-manager. In February 1999, Azul, alleging the unavailability of construction projects, stopped giving work assignments to respondent, prompting the latter to file a complaint[1] for illegal dismissal.

By Decision[2] of January 10, 2001, the Labor Arbiter ruled in favor of respondent and ordered his immediate reinstatement without loss of seniority rights and other privileges, and with payment of full backwages, which at that time was computed at ₱144,382.23, and the amount of ₱3,236.37 representing premium pay for rest days, service incentive leave pay and 13th month pay.

Pending their appeal to the National Labor Relations Commission (NLRC) and in compliance with the Labor Arbiter's Decision, petitioners, through counsel, advised respondent to report for work in the construction site within 10 days from receipt thereof. Respondent submitted, however, on May 16, 2001 a manifestation[3] to the Labor Arbiter that actual animosities existed between him and petitioners and there had been threats to his life and his family's safety, hence, he opted for the payment of separation pay. Petitioners denied the existence of any such animosity.

Meanwhile, the NLRC dismissed petitioners' appeal by Resolution[4] of April 22, 2002, holding that respondent was a

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[1] Annex "C" of Petition; *rollo*, p. 87.

[2] Annex "D" of Petition, *id.* at 88-100. Penned by Labor Arbiter Joselito Villarosa.

[3] Annex "G" of Petition, *id.* at 109.

[4] Annex "I" of Petition, *id.* at 115-120. Penned by Commissioner (now Associate Justice of the Court of Appeals) Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

regular employee and not a project employee, and that there was no valid ground for the termination of his services. Petitioners' motion for reconsideration was denied by Resolution[5] of August 6, 2002.

Petitioners' appeal to the Court of Appeals was dismissed by Decision[6] of August 12, 2004 which attained finality on September 15, 2004.

As an agreement could not be forged by the parties on the satisfaction of the judgment, the matter was referred to the Fiscal Examiner of the NLRC who recomputed at ₱562,804.69 the amount due respondent, which was approved by the Labor Arbiter by Order[7] of July 5, 2005. A writ of execution[8] dated July 8, 2005 was thereupon issued.

Finding the amount exorbitant, petitioners filed a motion for reconsideration with the NLRC, contending that since respondent refused to report back to work, he should be considered to have abandoned the same, hence, the recomputation of the wages and benefits due him should not be beyond May 15, 2001, the date when he manifested his refusal to be reinstated.

By Resolution[9] of March 9, 2006, the NLRC granted petitioners' motion and accordingly vacated the computation.

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[5] Annex "K" of Petition, *id.* at 139-1140. Penned by Commissioner (now Associate Justice of the Court of Appeals) Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

[6] Annex "L" of Petition, *id.* at 142-149. Penned by Associate Justice Fernanda Lampas-Peralta and concurred in by Associate Justices Conrado M. Vasquez and Josefina Guevara-Salonga.

[7] Annex "M" of Petition, *id.* at. 150-151. Penned by Labor Arbiter Cresencio G. Ramos.

[8] Annex "N" of Petition, *id.* at 152-154. Penned by Labor Arbiter Cresencio G. Ramos.

[9] Annex "P" of Petition, *id.* at 163-170. Penned by Commissioner (now Associate Justice of the Court of Appeals) Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

It held that since respondent did not appeal the Decision of the Labor Arbiter granting him only reinstatement and backwages, not separation pay in lieu thereof, he may not be afforded affirmative relief; and since he refused to go back to work, he may recover backwages only up to May 20, 2001, the day he was supposed to return to the job site. Respondent's motion for reconsideration was denied by the NLRC by Resolution[10] of June 30, 2006, hence, he filed a petition for *certiorari* with the Court of Appeals.

By Decision[11] of September 10, 2008, the appellate court set aside the NLRC Resolutions, holding that respondent is entitled to both backwages *and* separation pay, even if separation pay was not granted by the Labor Arbiter, the latter in view of the strained relations between the parties. The appellate court disposed:

> WHEREFORE, in view of all the foregoing premises, judgment is hereby rendered by us **GRANTING** the petition filed in this case. The assailed **RESOLUTIONS** dated 30, 2006 and March 9, 2006 of the NLRC are hereby **SET ASIDE**.
>
> Thus, the full backwages and separation pay to be awarded to the petitioner shall be computed as follows:
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> | | |
> |---|---|
> | Full Backwages as of June 30, 2005 | = ₱562,804.69 |
> | Separation Pay: | |
> | ₱220.00 x 26 days = ₱5,720,00 | |
> | ₱5,720/month x 8 years | = 45,760.00 |
> | | **₱608,564.69** |
>
> We also award an additional 10% of the total monetary award by way of attorney's fees for the expenses incurred by the petitioner

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[10] Annex "R" of Petition, *id.* at 182-183. Penned by Commissioner (now Associate Justice of the Court of Appeals) Angelita A. Gacutan and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Victoriano R. Calaycay.

[11] *Id.* at 70-81. Penned by Associate Justice Isaias P. Dicdican and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison.

to protect his rights and interests. Furthermore, when the decision of this Court as to the monetary award becomes final and executory, the rate of legal interest shall be imposed at 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

SO ORDERED. (emphasis in the original)

Petitioners' motion for reconsideration was denied by Resolution[12] of March 12, 2009, hence, the present petition for review on *certiorari*.

Petitioners assail the appellate court's award of separation pay. They assailed too as contrary to prevailing jurisprudence the computation of backwages from the time of dismissal up to actual reinstatement. They contend that, in effect, the appellate court modified an already final and executory decision.

The petition fails.

The basis for the payment of backwages is different from that for the award of separation pay. Separation pay is granted where reinstatement is no longer advisable because of strained relations between the employee and the employer. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. The basis for computing backwages is usually the length of the employee's service while that for separation pay is the actual period when the employee was unlawfully prevented from working.[13]

As to how both awards should be computed, *Macasero v. Southern Industrial Gases Philippines*[14] instructs:

[T]he award of separation pay is inconsistent with a finding that there was no illegal dismissal, for under Article 279 of the Labor Code and as held in a catena of cases, an employee who is dismissed without

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[12] *Id.* at. 82-86. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Amelita T. Tolentino and Myrna Dimaranan-Vidal.

[13] *Equitable v. Sadac*, G.R. No. 164772, June 8, 2006, 490 SCRA 380.

[14] G.R. No. 178524, January 30, 2009.

just cause and without due process is entitled to backwages ***and*** reinstatement or payment of separation pay in lieu thereof:

> **Thus, an illegally dismissed employee is entitled to two reliefs: backwages and reinstatement.** The two reliefs provided are separate and distinct. In instances where reinstatement is no longer feasible because of strained relations between the employee and the employer, separation pay is granted. In effect, an illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages.
>
> **The normal consequences of respondents' illegal dismissal, then, are reinstatement without loss of seniority rights, and payment of backwages computed from the time compensation was withheld up to the date of actual reinstatement. Where reinstatement is no longer viable as an option, separation pay equivalent to one (1) month salary for every year of service should be awarded as an alternative. The payment of separation pay is in addition to payment of backwages.** (emphasis, italics and underscoring supplied)

*Velasco v. National Labor Relations Commission* emphasizes:

> **The accepted doctrine is that separation pay may avail *in lieu* of reinstatement if reinstatement is no longer practical or in the best interest of the parties**. Separation pay in lieu of reinstatement may likewise be awarded if the employee decides not to be reinstated. (emphasis in the original; italics supplied)

Under the *doctrine of strained relations*, the payment of separation pay is considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other hand, it releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.[15]

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[15] *Coca Cola v. Daniel*, G.R. No. 156893, June 21, 2005, 460 SCRA 494.

Strained relations must be demonstrated as a fact, however, to be adequately supported by evidence[16] — substantial evidence to show that the relationship between the employer and the employee is indeed *strained* as a necessary consequence of the judicial controversy.[17]

In the present case, the Labor Arbiter found that actual animosity existed between petitioner Azul and respondent as a result of the filing of the illegal dismissal case. Such finding, especially when affirmed by the appellate court as in the case at bar, is binding upon the Court, consistent with the prevailing rules that this Court will not try facts anew and that findings of facts of quasi-judicial bodies are accorded great respect, even finality.

Clearly then, respondent is entitled to backwages *and* separation pay as his reinstatement has been rendered impossible due to strained relations. As correctly held by the appellate court, the backwages due respondent must be computed from the time he was unjustly dismissed until his actual reinstatement, or from February 1999 until June 30, 2005 when his reinstatement was rendered impossible without fault on his part.

The Court, however, does not find the appellate court's computation of separation pay in order. The appellate court considered respondent to have served petitioner company for only eight years. Petitioner was hired in 1990, however, and **he must be considered to have been in the service not only until 1999, when he was unjustly dismissed, but until June 30, 2005, the day he is deemed to have been actually separated (his reinstatement having been rendered impossible) from petitioner company or for a total of 15 years**.

**WHEREFORE,** the Court of Appeals Decision dated September 10, 2008 and its Resolution dated March 12, 2009 in C.A. G.R. SP No. 961082 are *AFFIRMED* with the

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[16] *Paguio Transport Corporation v. National Labor Relations Commission*, 356 Phil. 158, 171 (1998).

[17] *Coca-Cola v. Daniel, supra.*

*MODIFICATION* that **the amount of separation pay due respondent is, in light of the discussion in the immediately foregoing paragraph, computed at ₱85,800.00**.

**SO ORDERED.**

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

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**FIRST DIVISION**

[G.R. No. 187556. May 5, 2010]

**PLANTERS DEVELOPMENT BANK,** *petitioner, vs.* **JAMES NG and ANTHONY NG,** *respondents*.

**SYLLABUS**

**1. CIVIL LAW; MORTGAGE; FORECLOSURE; QUESTIONS REGARDING THE VALIDITY OF MORTGAGE OR ITS FORECLOSURE CANNOT BE RAISED AS GROUND TO DENY THE ISSUANCE OF A WRIT OF POSSESSION.—** It is settled that questions regarding the validity of a mortgage or its foreclosure as well as the sale of the property covered by the mortgage cannot be raised as ground to deny the issuance of a writ of possession. Any such questions must be determined in a subsequent proceeding as in fact, herein respondents commenced an action for Annulment of Certificate of Sale, Promissory Note and Deed of Mortgage.

**2. ID.; ID.; ID.; UPON EXPIRATION OF THE PERIOD TO REDEEM, WRIT OF POSSESSION IS A MATTER OF RIGHT AND ISSUANCE THEREOF IS A MINISTERIAL FUNCTION.—** Since respondents failed to redeem the mortgage within the reglementary period, entitlement to the writ of possession becomes a matter of right and the issuance thereof is merely a ministerial function. The judge to whom an application for a writ of possession is filed need not look into the validity of

the mortgage or the manner of its foreclosure. Until the foreclosure sale is annulled, the issuance of the writ of possession is ministerial.

**3. ID.; ID.; ID.; REQUIREMENT BEFORE THE PURCHASER MAY BE ENTITLED TO A WRIT OF POSSESSION EVEN DURING REDEMPTION PERIOD.—** [E]ven during the period of redemption, the purchaser is entitled as of right to a writ of possession *provided* a bond is posted to indemnify the debtor in case the foreclosure sale is shown to have been conducted without complying with the requirements of the law.

**4. ID.; ID.; ID.; REMEDY OF THE DEFAULTING MORTGAGOR AFTER ISSUANCE OF A WRIT OF POSSESSION.—** The defaulting mortgagor is not without any expedient remedy, however. For under Section 8 of Act 3135, as amended by Act 4118, it can file with the court which issues the writ of possession a petition for cancellation of the writ within 30 days after the purchaser-mortgagee was given possession.

**APPEARANCES OF COUNSEL**

*Janda Asia & Associates* for petitioner.
*Ibuyan Garcia Ibuyan Law Offices* for respondents.

**D E C I S I O N**

**CARPIO MORALES, *J.*:**

Assailed in the present petition for review on *certiorari* is the January 19, 2009 Decision[1] of the Regional Trial Court of Quezon City (RTC-QC), Branch 77 in LRC Case No. Q-14305 (01) denying the motion of Planters Development Bank (petitioner) for the issuance of a writ of possession.

On various occasions in 1997, James Ng and his brother Anthony (respondents) obtained loans from petitioner amounting to Twenty Five Million Pesos (₱25,000,000.00) to secure which they mortgaged two parcels of land situated in San Francisco del Monte, Quezon City and covered by Transfer Certificate

[1] Penned by Judge Vivencio S. Baclig; *rollo*, pp. 27-30.

of Title (TCT) Nos. 79865 and 79866 of the Registry of Deeds of Quezon City.

Respondents failed to settle their loan obligation, hence, petitioner instituted extrajudicial foreclosure of the mortgage before Notary Public Stephen Z. Taala.[2] The Notice of Auction Sale scheduled the sale of the properties covered by the mortgage on April 7, 1999 at the Main Entrance of the Hall of Justice Building in Quezon City.[3] The Notice was published in Metro Profile, a newspaper of general circulation, in its March 9, 16 and 23, 1999 issues.[4]

The highest bidder at the auction sale was petitioner to which was issued a Certificate of Sale that was registered with the Register of Deeds of Quezon City on May 19, 1999.[5]

As respondents failed to redeem the mortgage within one year, petitioner filed on June 26, 2001, an *ex-parte* petition for the issuance of a writ of possession, docketed as LRC Case No. Q-14305 (01) and lodged before RTC-QC, Branch 77.

In the meantime, respondents instituted an action for Annulment of Certificate of Sale, Promissory Note and Deed of Mortgage, raffled to RTC-QC, Branch 221 which, by Order of June 14, 2000,[6] issued a writ of preliminary injunction restraining petitioner from consolidating its title to the properties and committing any act of dispossession that would defeat respondents' right of ownership.

After numerous incidents arising from petitioner's petition for issuance of a writ of possession and respondents' complaint for annulment which incidents reached this Court, petitioner

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[2] Petition for Extra-Judicial Foreclosure of Mortgage, Records, Vol. 1, pp. 33-35.

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

[4] Affidavit of Publication, *id.* at 38.

[5] *Id.* at 39-40.

[6] *Id.* at 110-112.

was finally allowed by Branch 77 of the RTC-QC, by Order of August 22, 2008, to present evidence *ex parte* on its petition for the issuance of a writ of possession.

By Decision of January 19, 2009, RTC-QC, Branch 77 denied the issuance of a writ of possession in this wise.

> . . . [P]etitioner was unable to prove that it complied with Sections 3 and 4 of Act 3135, as amended. Particularly, there is no proof of notice of sale made for not less than twenty (20) days in at least three (3) public places. There is also no proof that Notary Public Atty. Stephen Z. Taala, who conducted the sale at public action of the subject properties, collected filing fees and issued the corresponding official receipt, in addition to his expenses. The Petition for Extra-Judicial Foreclosure of Mortgage, dated February 25, 1999 (Exhibit "D") was filed directly with the Notary Public Atty. Stephen Z. Taala and not with the Executive Judge, through the Clerk of Court, who is also the *Ex-Officio* Sheriff. The Certificate of Sale, dated May 19, 1999 (Exhibit "F"), was not approved by the Executive Judge, or in his absence, the Vice-Executive Judge."[7] (underscoring supplied)

Petitioner's motion for reconsideration of the decision having been denied by Order of April 20, 2009,[8] it filed, before this Court, the present petition for review on *certiorari* on pure questions of law, in accordance with Rule 45 of the Rules of Court.

Petitioner, in the main, asseverates that Branch 77 of the RTC-QC cannot cite as ground for denial of the issuance of a writ of possession questions relating the validity of the mortgage or its foreclosure.

Respondents counter that there are no facts or the facts are insufficient to entitle petitioner to a writ of possession.

The petition is meritorious.

It is settled that questions regarding the validity of a mortgage or its foreclosure as well as the sale of the property

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[7] *Id.* at 30.

[8] *Id.* at 31.

covered by the mortgage cannot be raised as ground to deny the issuance of a writ of possession. Any such questions must be determined in a subsequent proceeding[9] as in fact, herein respondents commenced an action for Annulment of Certificate of Sale, Promissory Note and Deed of Mortgage.

Parenthetically, the court *a quo* denied the issuance of the writ as it credited respondents' opposition to petitioner's petition for the issuance of a writ of possession, which opposition it synthesized as follows:

> On the other hand, the mortgagors[-respondents herein] contend that the extrajudicial foreclosure proceedings conducted by the Notary Public over the mortgaged properties of the mortgagors suffered jurisdictional infirmities; that the jurisdictional infirmities consisted of the fact that the requirement of posting the notices of the sale for not less that twenty (20) days in at least three (3) public places in the city where the property is situated was not complied with; that the notice of auction sale did not mention with preciseness and particularity the kind of improvement on the mortgaged property, which consist of a three-storey building; that the bank (petitioner herein) and the Notary Public colluded to deprive the prospective bidders interested in the properties from participating in the public auction sale since they were deprived of knowing the real status of the subject properties; that the mortgaged properties were auctioned for a price grossly disproportionate and morally shocking as compared to the real value of the same properties; that the petitioner also violated the provisions of Supreme Court Administrative Order No. 3, governing the procedure of extrajudicial foreclosure, x x x.[10] (underscoring supplied)

By crediting respondents' opposition, Branch 77 of the court *a quo* pre-empted its co-equal branch, Branch 221, to which jurisdiction over respondents' annulment petition was laid, from determining the merits of respondents' claim-basis of said petition.

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[9] *Philippine National Bank v. Sanao Marketing Corporation*, G.R. No. 153951, July 29, 2005, 465 SCRA 287.

[10] *Rollo*, p. 28.

Section 33 of Rule 39 of the Rules of Court provides:

> SEC. 33. Deed and possession to be given at expiration of redemption period; by whom executed or given. – If no redemption be made within one (1) year from the date of the registration of the certificate of sale, the purchaser is entitled to a conveyance and possession of the property; x x x
>
> Upon the expiration of the right of redemption, the purchaser or redemptioner shall be substituted to and acquire all the rights, title, interest and claim of the judgment obligor to the property as of the time of the levy. (underscoring supplied)

Since respondents failed to redeem the mortgage within the reglementary period, entitlement to the writ of possession becomes a matter of right and the issuance thereof is merely a ministerial function.[11]

The judge to whom an application for a writ of possession is filed need not look into the validity of the mortgage or the manner of its foreclosure. Until the foreclosure sale is annulled, the issuance of the writ of possession is ministerial.[12]

In fact, even during the period of redemption, the purchaser is entitled as of right to a writ of possession *provided* a bond is posted to indemnify the debtor in case the foreclosure sale is shown to have been conducted without complying with the requirements of the law. More so when, as in the present case, the redemption period has expired and ownership is vested in the purchaser.[13]

The defaulting mortgagor is not without any expedient remedy, however. For under Section 8 of Act 3135, as amended by Act 4118,[14] it can file with the court which issues the writ of possession a petition for cancellation of the writ within 30 days after the

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[11] *F. David Enterprises v. Insular Bank of Asia and America*, G.R. No. 78714, November 21 1990, 191 SCRA 516, 523.

[12] *Vide* note 9.

[13] *IFC Service Leasing and Acceptance Corp. v. Nera,* 125 Phil. 595, 599 (1967).

[14] Otherwise known as "*An Act to Amend Act Numbered Thirty-One Hundred and Thirty-Five*," *entitled "An Act to Regulate the Sale of Property under Special Powers Inserted In or Annexed to Real Estate Mortgages*."

purchaser-mortgagee was given possession. So Section 8 of Rule 39 provides:

> SECTION 8. The debtor may, in the proceedings in which possession was requested, but not later than thirty days after the purchaser was given possession, petition that the sale be set aside and the writ of possession cancelled, specitying the damages suffered by him, because the mortgage was not violated or the sale was not made in accordance with the provisions hereof, and the court shall take cognizance of this petition in accordance with the summary procedure provided for in section one hundred and twelve of Act \numbered Four hundred and ninety-six; and if it finds the complaint of the debtor justified, it shall dispose in his favorr of all or part of the bond furnished by the person who obtained possession. Either of the parties may appeal from the order of the judge in accordance with section fourteen of Act Numbered Four hundred and ninety-six; but the order of possession shall continue in effect during the pendency of the appeal. (underscoring supplied)

IN FINE, it was grievous error for QC-RTC, Branch 77 to deny petitioner's motion for the issuance of a writ of possession.

**WHEREFORE,** the Decision of January 19, 2009 of the Regional Trial Court of Quezon City, Branch 77 is hereby *REVERSED* and *SET ASIDE*. Said court is DIRECTED to immediately act on petitioner's petition in LRC Case No. Q-14305 (01) in accordance with the foregoing disquisitions.

**SO ORDERED.**

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

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**EN BANC**

[A.M. No. 09-9-163-MTC. May 6, 2010]

## RE: CASES SUBMITTED FOR DECISION BEFORE HON. TERESITO A. ANDOY, former Judge, Municipal Trial Court, Cainta, Rizal.

**SYLLABUS**

**1. LEGAL ETHICS; JUDGES; THE 90-DAY PERIOD FOR THE LOWER COURT JUDGES TO DECIDE A CASE IS MANDATORY.—** Article VIII, Section 15(1) of the 1987 Constitution mandates lower court judges to decide a case within the reglementary period of **90 days**. The Code of Judicial Conduct under Rule 3.05 of Canon 3 likewise enunciates that judges should administer justice without delay and directs every judge to dispose of the court's business promptly within the period prescribed by law. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. Thus, the 90-day period is **mandatory**.

**2. ID.; ID.; ID.; FAILURE TO DECIDE A CASE WITHIN THE REGLEMENTARY PERIOD CONSTITUTES GROSS INEFFICIENCY.—** The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.

**3. ID.; ID.; ID.; ID.; GROSS INEFFICIENCY IS EVIDENT FROM FAILURE TO DECIDE 139 CASES WITHIN THE REGLEMENTARY PERIOD; FINE OF ₱40,000.00, IMPOSED.—** The inefficiency of Judge Andoy is evident in his failure to decide 139 cases within the mandatory reglementary period for no apparent reason. Some of these cases have been submitted for resolution as early as 1997. Judge Andoy, upon finding himself unable to comply with the 90-day period, could have asked the Court for a reasonable period of extension to dispose of the cases. The Court, mindful of the heavy caseload of judges, generally grants such requests for extension. Yet, Judge Andoy also failed to make such a request. x x x While the Court agrees that the total number of cases which Judge Andoy failed to timely decide, act on, or

archive, merits a fine higher than that prescribed by the rules, it deems that a fine of **₱40,000.00** is already sufficient penalty given Judge Andoy's 21 years of continuous service in the judiciary, his avowed dire need of funds, and his expressed willingness to abide by whatever penalty the Court may impose upon him.

## D E C I S I O N

**LEONARDO-DE CASTRO, *J.*:**

Before the Court is the request for Certificate of Clearance of Judge Teresito A. Andoy, former Judge of the Municipal Trial Court (MTC), Cainta, Rizal, in support of his application for Retirement/Gratuity Benefits under Republic Act No. 910,[1] as amended.

Judge Andoy compulsorily retired on October 3, 2008. In a Letter[2] dated August 24, 2009, he requested the approval of his retirement papers and that, if needed, a certain amount be deducted from his retirement benefits. He asked for the payment of his earned vacation/sick leaves, as well as the release of his withheld September 2008 Special Allowance for the Judiciary (SAJ) allowance, loyalty award checks, and all other allowances to which he was entitled prior to his retirement. Per the computation of the Fiscal Management Office of the Office of the Court Administrator (OCA), Judge Andoy had earned vacation/sick leaves amounting to ₱966,162.86, SAJ allowance totaling ₱24,845.10, and a loyalty award check for the amount of ₱3,500.00. Judge Andoy also admitted having unaccounted property accountabilities in the amount of ₱16,284.20 and a pending administrative case (MTJ-09-1738), but expressed his willingness to pay for whatever penalty would be imposed upon him by means of deduction from his retirement benefits. In the end, Judge Andoy prayed that a clearance be issued with respect to the monetary value of his accumulated leave credits so that the release of his retirement benefits may already be processed.

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[1] Providing for the Retirement of Justices and All Judges in the Judiciary.

[2] *Rollo*, pp. 2-3.

Based on the list prepared by Celestina I. Cuevas,[3] and certified by Leticia C. Perez, Clerk of Court II, MTC, Cainta, Rizal, Judge Andoy failed to resolve within the reglementary period 139 cases submitted for decision.

On September 18, 2009, the OCA submitted its report with the following recommendation:

> In view of the foregoing, it is respectfully recommended that Hon. Teresito A. Andoy, former Judge, Municipal Trial Court, Cainta, Rizal, be FINED in the amount of SEVENTY THOUSAND (₱70,000.00) PESOS for gross inefficiency for failure to decide the one hundred thirty-nine (139) cases submitted for decision before him within the reglementary period, the amount to be deducted from the retirement/ gratuity benefits due him.

The Court agrees in the findings of the OCA, except as to the recommended penalty.

Article VIII, Section 15(1) of the 1987 Constitution mandates lower court judges to decide a case within the reglementary period of **90 days**. The Code of Judicial Conduct under Rule 3.05 of Canon 3 likewise enunciates that judges should administer justice without delay and directs every judge to dispose of the court's business promptly within the period prescribed by law. Rules prescribing the time within which certain acts must be done are indispensable to prevent needless delays in the orderly and speedy disposition of cases. Thus, the 90-day period is **mandatory**.[4]

Judges are enjoined to decide cases with dispatch. Any delay, no matter how short, in the disposition of cases undermines the people's faith and confidence in the judiciary.[5] It also deprives the parties of their right to the speedy disposition of their cases.[6]

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[3] Local government official detailed at the Municipal Trial Court, Cainta, Rizal.

[4] *Gachon v. Devera, Jr.*, G.R. No. 116695, June 20, 1997, 274 SCRA 540, 549, citing *Cf. Valdez v. Ocumen*, 106 Phil. 929, 933 (1960) and *Alvero v. De la Rosa*, 76 Phil. 428, 434 (1946).

[5] *Office of the Court Administrator v. Eisma*, 439 Phil. 601, 609 (2002).

[6] *Floresta v. Ubiadas*, 473 Phil. 266, 279 (2004).

The Court has consistently impressed upon judges the need to decide cases promptly and expeditiously under the time-honored precept that justice delayed is justice denied. Every judge should decide cases with dispatch and should be careful, punctual, and observant in the performance of his functions for delay in the disposition of cases erodes the faith and confidence of our people in the judiciary, lowers its standards and brings it into disrepute. Failure to decide a case within the reglementary period is not excusable and constitutes gross inefficiency warranting the imposition of administrative sanctions on the defaulting judge.[7]

The inefficiency of Judge Andoy is evident in his failure to decide 139 cases within the mandatory reglementary period for no apparent reason. Some of these cases have been submitted for resolution as early as 1997. Judge Andoy, upon finding himself unable to comply with the 90-day period, could have asked the Court for a reasonable period of extension to dispose of the cases. The Court, mindful of the heavy caseload of judges, generally grants such requests for extension.[8] Yet, Judge Andoy also failed to make such a request.

Under the new amendments to Rule 140[9] of the Rules of Court, undue delay in rendering a decision or order is a less serious charge, for which the respondent judge shall be penalized with either (a) suspension from office without salary and other benefits for not less than one nor more than three months; or (b) a fine of more than ₱10,000.00, but not more than ₱20,000.00.

The fines imposed on each judge may vary, depending on the number of cases undecided or matters unresolved by said judge beyond the reglementary period, plus the presence of aggravating or mitigating circumstances, such as the damage

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[7] *Report on the Judicial Audit Conducted in the RTC, Br. 22, Kabacan, North Cotabato*, 468 Phil. 338, 345 (2004).

[8] *Office of the Court Administrator v. Dilag*, A.M. No. RTJ-05-1914, 30 September 2005, 471 SCRA 186, 191-192.

[9] Section 9(1) in relation to Section 11(B); *En Banc* Resolution in A.M. No. 01-8-10-SC dated September 11, 2001 (Re: Proposed Amendment to Rule 140 of the Rules of Court Regarding the Discipline of Justices and Judges).

suffered by the parties as a result of the delay, the health and age of the judge, *etc*.

The Court imposed a fine of **₱10,000.00** upon a judge who failed to decide one case within the reglementary period, without offering an explanation for such delay;[10] another who left one motion unresolved within the prescriptive period;[11] and a third who left eight cases unresolved beyond the extended period of time granted by the Court, taking into consideration that the judge involved was understaffed, burdened with heavy caseload, and hospitalized for more than a month.[12] In another case, the judge was fined **₱10,100.00** for failing to act on one motion.[13] The Court fixed the fine at **₱11,000.00** when the judge failed to resolve a motion for reconsideration and other pending incidents relative thereto because of alleged lack of manpower in his *sala*;[14] when the judge decided a case for forcible entry only after one year and seven months from the time it was submitted for resolution, giving consideration to the fact that said judge was still grieving from the untimely demise of his daughter;[15] when a judge resolved a motion after an undue delay of almost eight months;[16] when a judge resolved a motion only after 231 days;[17] when a judge failed to resolve three cases within the reglementary period;[18] and when a judge failed to resolve a motion to cite a defendant for contempt, the penalty being mitigated by the judge's immediate action to determine whether

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[10] *Saceda v. Gestopa, Jr.*, 423 Phil. 420, 425 (2001).

[11] *Ala v. Ramos, Jr.*, 431 Phil. 275, 293 (2002); *Isip, Jr. v. Nogoy*, 448 Phil. 210, 223 (2003).

[12] *Re: Request of Judge Sylvia G. Jurao for Extension of Time to Decide Criminal Case No. 5812 and 29 Others Pending Before the RTC-Branches 10 and 12, San Jose, Antique*, 455 Phil. 212, 227 (2003).

[13] *Custodio v. Quitain*, 450 Phil. 70, 77 (2003).

[14] *Gonzales v. Hidalgo*, 449 Phil. 336, 342 (2003).

[15] *Samson v. Mejia*, 452 Phil. 115, 120 (2003).

[16] *Visbal v. Buban*, 443 Phil. 705, 710 (2003).

[17] *Cabahug v. Dacanay*, 457 Phil. 521, 526 (2003).

[18] *Visbal v. Sescon*, 456 Phil. 552, 559 (2003).

the charge had basis.[19] In one case, the judge was fined **₱12,000.00** for failing to decide one criminal case on time, without explaining the reason for the delay.[20] Still in other cases, the maximum fine of **₱20,000.00** was imposed by the Court on a judge who was delayed in rendering decisions in nine criminal cases, failed altogether to render decisions in 18 other cases, and promulgated decisions in 17 cases even after he had already retired;[21] a judge who failed to decide 48 cases on time and to resolve pending incidents in 49 cases despite the lapse of a considerable length of time;[22] a judge who unduly delayed deciding 26 cases because of poor health;[23] and a judge who failed to decide 56 cases, without regard for the judge's explanation of heavy caseload, intermittent electrical brownouts, old age, and operation on both his eyes, because this already constituted his second offense.[24]

There were cases in which the Court did not strictly apply the Rules, imposing fines well-below those prescribed. The Court only imposed a fine of **₱1,000.00** for a judge's delay of nine months in resolving complainant's Amended Formal Offer of Exhibits, after finding that there was no malice in the delay and that the delay, was caused by the complainant himself.[25] In another case, a judge was fined **₱1,000.00** for his failure to act on two civil cases and one criminal case for an unreasonable period of time.[26] The Court also imposed a fine of **₱5,000.00** on a judge, who was suffering from cancer, for his failure to

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[19] *Morta v. Bagagñan*, 461 Phil. 312, 325 (2003).

[20] *Bontuyan v. Villarin*, 436 Phil. 560, 570 (2002).

[21] *Re: Cases Left Undecided by Retired Judge Antonio E. Arbis, Regional Trial Court, Branch 48, Bacolod City*, 443 Phil. 496, 502 (2003).

[22] *Report on the Judicial Audit Conducted in the MTCC-Branches 1, 2 & 3, Mandaue City*, 454 Phil. 1, 19-20 (2003).

[23] *Re: Report on the Judicial Audit Conducted in the Regional Trial Court, Branches 3, 5, 7, 60 and 61, Baguio City,* 467 Phil. 1, 18-19 (2004).

[24] *Office of the Court Administrator v. Noynay*, 447 Phil. 368, 374 (2003).

[25] *Beltran, Jr. v. Paderanga*, 455 Phil. 227, 236 (2003).

[26] *Report on the Judicial Audit Conducted in the Municipal Trial Court, Sibulan, Negros Oriental,* 347 Phil. 139, 145-146 (1997).

decide five cases within the reglementary period and to resolve pending incidents in nine cases;[27] and on another judge, who had "end stage renal disease secondary to nephrosclerosis" and died barely a year after his retirement, for his failure to decide several criminal and civil cases submitted for decision or resolution and to act on the pending incidents in over a hundred criminal and civil cases assigned to the two branches he was presiding.[28]

The Court also variably set the fines at more than the maximum amount, usually when the judge's undue delay was coupled with other offenses. The judge, in one case, was fined **₱25,000.00** for undue delay in rendering a ruling and for making a grossly and patently erroneous decision.[29] The judge, in another case, was penalized with a fine of **₱40,000.00** for deciding a case only after an undue delay of one year and six months, as well as for simple misconduct and gross ignorance of the law, considering that the undue delay was already the judge's second offense.[30] The Court again imposed a fine of **₱40,000.00** upon a judge who failed to resolve one motion, bearing in mind that he was twice previously penalized for violating the Code of Judicial Conduct and for Gross Ignorance of Procedural Law and Unreasonable Delay.[31]

The OCA recommended that Judge Andoy be fined ₱70,000.00 for leaving 139 cases undecided or unresolved within the reglementary period. While the Court agrees that the total number of cases which Judge Andoy failed to timely decide, act on, or archive, merits a fine higher than that prescribed by the rules, it deems that a fine of **₱40,000.00** is already sufficient penalty given Judge Andoy's 21 years of continuous service in the judiciary, his avowed dire need of funds, and his expressed

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[27] *Report on the Judicial Audit Conducted in the Regional Trial Court, Bacolod City, Branch 46, then Presided by Judge Emma C. Labayen, retired*, 442 Phil. 1, 6-7 (2002).

[28] *Office of the Court Administrator v. Judge Quizon*, 427 Phil. 63, 81 (2002).

[29] *Vda. de Danao v. Ginete*, 443 Phil. 657, 669 (2003).

[30] *Adriano v. Villanueva*, 445 Phil. 675, 688 (2003).

[31] *Unitrust Development Bank v. Caoibes, Jr.*, 456 Phil. 676, 686 (2003).

willingness to abide by whatever penalty the Court may impose upon him.

**WHEREFORE,** the Court finds *JUDGE TERESITO A. ANDOY,* former judge of the Municipal Trial Court of Cainta, Rizal, *GUILTY* of gross inefficiency, for which he is *FINED* in the amount of *₱40,000.00,* to be deducted from his benefits withheld by the Fiscal Management Office, Office of the Court Administrator.

**SO ORDERED.**

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

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**THIRD DIVISION**

[G.R. No. 148892. May 6, 2010]

**LAND BANK OF THE PHILIPPINES,** *petitioner, vs.* **LUZ L. RODRIGUEZ,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; APPEALS; RULE 42 PETITION IS THE PROPER MODE OF APPEAL FROM A DECISION OF A SPECIAL AGRARIAN COURT IN CASES INVOLVING DETERMINATION OF JUST COMPENSATION.—** In ruling that a petition for review and not an ordinary appeal is the proper mode of appeal from the decision of the RTC-SAC in cases involving the determination of just compensation, the Court said: The reason why it is permissible to adopt a petition for review when appealing cases decided by the Special Agrarian Courts in eminent domain cases is the need for absolute dispatch in the determination of just compensation. Just compensation

means not only paying the correct amount but also paying for the land within a reasonable time from its acquisition. Without prompt payment, compensation cannot be considered "just" for the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. Such objective is more in keeping with the nature of a petition for review. Unlike an ordinary appeal, a petition for review dispenses with the filing of a notice of appeal or completion of records as requisites before any pleading is submitted. A petition for review hastens the award of fair recompense to deprived landowners for the government-acquired property, an end not foreseeable in an ordinary appeal.

**2. POLITICAL LAW; CONSTITUTIONAL LAW; EMINENT DOMAIN; JUST COMPENSATION; FOR COMPENSATION TO BE JUST, IT MUST BE MADE WITHOUT DELAY.—** Our Constitution speaks of just compensation in Section 4, Article XIII, providing that the distribution of agricultural lands undertaken by the State under its agrarian reform program shall be subject to the payment of just compensation. The word "just" is used to describe "compensation" to ensure that the amount paid for the property taken is real, substantial, full, and ample. For compensation to be "just," it must also be made without delay.

**APPEARANCES OF COUNSEL**

*LBP Legal Department* for petitioner.
*Hector Reuben D. Feliciano* for respondent.

**D E C I S I O N**

**MENDOZA, *J.*:**

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing 1] the December 23, 1998

[1] *Rollo*, pp. 41-42. Penned by Justice Consuelo Ynares-Santiago (now a retired member of this Court), and concurred in by Justice B. A. Adefuin-Dela Cruz and Justice Presbitero J. Velasco, (now a member of this Court).

Resolution[1] of the Court of Appeals, in CA-G.R. CV No. 60471, dismissing the appeal of petitioner Land Bank; and 2] its July 3, 2001 Resolution denying petitioner's motion for the reconsideration thereof.

**THE FACTS**

Respondent Luz L. Rodriguez *(Rodriguez)* is the registered owner of three (3) parcels of agricultural land in Basud, Camarines Norte, which she voluntarily offered for sale to the government under the Comprehensive Agrarian Reform Program under Republic Act (RA) 6657 *(CARP).* These parcels of land are covered by Transfer Certificate of Title (TCT) No. 15208 with an area of 111.3895 hectares, TCT No. 15225 with an area of 20.0345 hectares and TCT No. T-15213 with an area of 47.2877 hectares *(the property).* The portion of the property planted to coconuts has a total area of 177.4240 hectares, while the portion planted to rice has an area of 1.2877 hectares.[2]

Under the CARP, the government, in the exercise of its power of eminent domain, takes over private agricultural property for distribution to qualified beneficiaries after paying just compensation to the landowner. In the present case, the Department of Agrarian Reform *(DAR),* as implementor of the land reform program, already expropriated the property but the Land Bank of the Philippines *(Landbank)* as financier has not yet paid their full value to Rodriguez.[3]

Not satisfied with the amount offered as compensation, Luz Rodriguez filed a petition to determine just compensation with the Regional Trial Court of Daet, Camarines Norte, sitting as Special Agrarian Court *(RTC-SAC).* After trial, the RTC-SAC rendered a decision, the dispositive portion of which reads:

"IN VIEW OF THE CIRCUMSTANCES, judgment is hereby rendered as follows:

1. Ordering respondent Landbank to pay the petitioner Luz Rodriguez for the 160.851 hectares of coconut land in

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[2] *Rollo,* p. 47.

[3] *Rollo,* p. 49.

the sum of ₱17,443,245.41 in cash and in bonds the proportion provided by law;

2. Ordering respondent Landbank to pay the petitioner for the 1.2877 hectares of riceland in the sum of ₱77,200.00 in cash and in bonds in the proportion provided for by law;

3. Ordering respondent Landbank to pay the petitioner Luz Rodriguez the sum of ₱254,132.00 as the compounded interest in cash.

IT IS SO ORDERED.

Landbank moved for reconsideration of the RTC-SAC decision but its motion was denied.

On August 18, 1998, Landbank filed a Notice of Appeal.[4] In its August 20, 1998 Order,[5] the RTC-SAC gave due course to the notice of appeal. Eventually, the original records were forwarded to the Court of Appeals *(CA)*.

Not in conformity with the August 20, 1998 Order, Rodriguez asked the RTC-SAC for its reconsideration basing its motion on Section 60 of RA 6657. Under said section, an "appeal may be taken from the decision of the Special Agrarian Courts by filing a *petition for review* with the Court of Appeals within fifteen (15) days from receipt of notice of the decision; otherwise, the decision shall become final."

The RTC-SAC found Rodriguez's motion meritorious and declared that its determination in its September 18, 1998 order of the amount of just compensation had become final and executory. It also ordered the return of the records that were already forwarded to the CA.[6]

Based on this order, Rodriguez filed a motion[7] with the CA for the return of the records. Landbank filed an opposition and argued that the CA had jurisdiction over its appeal and could

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

[5] *Rollo*, p. 65.

[6] *Rollo*, p. 69.

decide if its appeal was proper. In time, the CA dismissed Landbank's appeal through its assailed resolution with the following dispositive portion:

ACCORDINGLY, for failure of appellant to avail of the proper remedy, the instant appeal is hereby DISMISSED.

Appellee's "Motion to Remand Records to the Court of Origin, Regional Trial Court, Branch 40, Daet, Camarines Norte" is GRANTED. Let the entire record be returned to the trial court for resolution of incidents pending therein.

**THE ISSUE**

In this petition, Landbank submits that the sole issue is whether the proper mode of appeal from a decision of the RTC-SAC under the Rules of Court is by ordinary appeal under Rule 41[8] or by petition for review under Rule 42.[9] Landbank posits that the proper mode of appeal is by ordinary appeal pursuant to Section 61 of RA 6657.[10]

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[7] *Rollo*, Annex "F", pp. 69-71.

[8] Rule 41, Section 2. Modes of appeal. — (a) Ordinary appeal. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner. xxx

[9] Rule 42, Section 1. How appeal taken; time for filing. – A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. xxx

[10] Section 61. Procedure on Review. – Review by the Court of Appeals or the Supreme Court, as the case may be, shall be governed by the Rules of Court. The Court of Appeals, however, may require the parties to file simultaneous memoranda within a period of fifteen (15) days from notice, after which the case is deemed submitted for decision.

In her Comment,[11] Rodriguez contends that a petition for review, not an ordinary appeal, is the proper procedure as held in *Land Bank of the Philippines v. De Leon.*[12]

**THE COURT'S RULING**

Landbank admitted in its Memorandum[13] that the issue had already been settled in *Land Bank of the Philippines v. De Leon.* In ruling that a petition for review and not an ordinary appeal is the proper mode of appeal from the decision of the RTC-SAC in cases involving the determination of just compensation, the Court said:

> The reason why it is permissible to adopt a petition for review when appealing cases decided by the Special Agrarian Courts in eminent domain cases is the need for absolute dispatch in the determination of just compensation. Just compensation means not only paying the correct amount but also paying for the land within a reasonable time from its acquisition. Without prompt payment, compensation cannot be considered "just" for the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss. Such objective is more in keeping with the nature of a petition for review.
>
> Unlike an ordinary appeal, a petition for review dispenses with the filing of a notice of appeal or completion of records as requisites before any pleading is submitted. A petition for review hastens the award of fair recompense to deprived landowners for the government-acquired property, an end not foreseeable in an ordinary appeal. xxx

On March 20, 2003, the Court issued an *En Banc* Resolution[14] to address the status of pending cases which had been appealed through a notice of appeal:

> WHEREFORE, the motion for reconsideration dated October 16, 2002 and the supplement to the motion for reconsideration dated

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[11] *Rollo*, pp. 172-177.

[12] G.R. No. 143275, September 10, 2002, 388 SCRA 537.

[13] *Rollo*, pp. 212-235.

[14] G.R. No. 143275, March 20, 2003, 399 SCRA 376.

November 11, 2002 are partially granted. While we clarify that the Decision of this Court dated September 10, 2002 stands, our ruling therein that a petition for review is the correct mode of appeal from decisions of Special Agrarian Courts shall **apply only to cases appealed after the finality of this Resolution.** [emphasis supplied]

As earlier stated, Landbank filed its notice of appeal on August 18, 1998. Pursuant to the ruling that *De Leon* can be applied prospectively from March 20, 2003, the appeal of Landbank, filed prior to that date, could be positively acted upon. Accordingly, the subject CA resolutions should be set aside and Landbank should be allowed to elevate the matter to it *via* Rule 42 of the Rules of Court furnishing a copy to the heirs of Luz Rodriguez at their address of record.

This case originated from a petition filed by Luz Rodriguez to determine just compensation. Our Constitution speaks of just compensation in Section 4, Article XIII, providing that the distribution of agricultural lands undertaken by the State under its agrarian reform program shall be subject to the payment of just compensation. The word "just" is used to describe "compensation" to ensure that the amount paid for the property taken is real, substantial, full, and ample.[15] For compensation to be "just," it must also be made without delay.

This petition was filed in 2001 but remained unresolved basically due to the failure of Luz Rodriguez to submit the required memorandum.[16] As the records show, the deaths of Rodriguez on February 24, 1999[17] and of her counsel, Atty. Fernando A. Santiago *(Atty. Santiago)*, on August 22, 2005[18] were the reasons for the delay.

On April 14, a few months before he died of cancer, Atty. Santiago manifested that Atty. Hector Reuben D. Feliciano *(Atty.*

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[15] *Apo Fruits v. Court of Appeals*, G.R. No. 164195, February 6, 2007, 553 SCRA 237.

[16] The court gave due course to the petition and required the parties to file their respective memoranda on January 17, 2005.

[17] *Rollo*, p. 266.

[18] *Rollo*, p, 248.

*Feliciano)* was his co-counsel in this case.[19] After Luz Rodriguez failed to file her memorandum, the Court required Atty. Feliciano to secure and submit the written conformity of Rodriguez's heirs, Domiciano and Celestino Rodriguez.[20] Atty. Feliciano attempted to comply with the order, but the heirs reportedly failed to respond to his letters. This prompted him to pray in his April 13, 2009 compliance[21] that he be discharged from further representing Rodriguez. The Court deferred action on his prayer and ordered that a copy of the resolution requiring the parties to file a memorandum be sent to Rodriguez's heirs.[22] To date, the heirs have not responded to the communications.

As the case pertains only to a procedural matter, the Court resolves the impasse by considering the resolution requiring the heirs of Luz Rodriguez to file their memorandum as served and by deciding the merits of the case in this disposition. Technicalities that impede the cause of justice must be avoided.[23] To allow the case, which have been pending in this Court for almost ten years now, to remain in limbo would be unfair to both parties especially to the heirs of Luz Rodriguez, as the DAR had already taken possession of the property. At any rate, the heirs were already notified at their address of record.

As the petitioner Land Bank has been allowed to file a petition for review, as earlier stated, it should furnish the heirs of Luz Rodriguez and Atty. Feliciano[24] copies thereof before it could be given due course.

**WHEREFORE,** the petition is *PARTIALLY GRANTED*. The assailed resolutions of the Court of Appeals are *SET ASIDE*. Petitioner Landbank is given fifteen (15) days from receipt of this disposition to file its petition for review, furnishing the

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[19] *Rollo,* pp. 237-238.

[20] *Rollo,* p. 173.

[21] *Rollo,* p. 310.

[22] *Rollo,* p. 313.

[23] *Rovira v. Deleste,* G.R. No. 160825, March 26, 2010.

[24] For his own record and information.

heirs of Luz Rodriguez and Atty. Hector Reuben D. Feliciano copies thereof at their respective addresses of record.

**SO ORDERED.**

*Corona (Chairperson), Carpio Morales,*[*] *Nachura,* and *Peralta, JJ.,* concur.

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**SECOND DIVISION**

[G.R. No. 170515. May 6, 2010]

**MARMOSY TRADING, INC. and VICTOR MORALES,** *petitioners, vs.* **COURT OF APPEALS, NATIONAL LABOR RELATIONS COMMISSION, HON. LABOR ARBITER ELIAS H. SALINAS and JOSELITO HUBILLA,** *respondents.*

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION, SATISFACTION AND EFFECT OF JUDGMENTS; EXECUTION TAKES PLACE IN FAVOR OF THE PREVAILING PARTY ONCE THE JUDGMENT HAS BECOME FINAL AND EXECUTORY.—** Once a judgment becomes final and executory, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Final and executory judgments can neither be amended nor altered except for correction of clerical errors, even if the purpose is to correct erroneous conclusions of fact or of law. Trial and execution proceedings constitute one whole action or suit such that a case in which execution has been issued is regarded as still pending so that all proceedings in the execution are proceedings in the suit.

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[*] Designated as additional member of the Third Division in lieu of Justice Presbitero J. Velasco, Jr. per raffle dated February 15, 2010.

**2. ID.; ID.; JUDGMENTS; IMMUTABILITY OF JUDGMENT; FINAL JUDGMENTS MAY NO LONGER BE REVIEWED, OR IN ANY WAY MODIFIED DIRECTLY OR INDIRECTLY, BY A HIGHER COURT, NOT EVEN BY THE SUPREME COURT; CASE AT BAR. —** It is no longer legally feasible to modify the final ruling in this case through the expediency of a petition questioning the order of execution. This late in the day, petitioner Victor Morales is barred, by the fact of a final judgment, from advancing the argument that his real property cannot be made liable for the monetary award in favor of respondent. For a reason greater than protection from personal liability, petitioner Victor Morales, as president of his corporation, cannot rely on our previous ruling that "to hold a director personally liable for debts of a corporation and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director must be established clearly and convincingly." Judgments of courts should attain finality at some point lest there be no end in litigation. The final judgment in this case may no longer be reviewed, or in any way modified directly or indirectly, by a higher court, not even by the Supreme Court. The reason for this is that, a litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must guard against any scheme calculated to bring about that result and must frown upon any attempt to prolong controversies.

**APPEARANCES OF COUNSEL**

*Walter T. Young* for petitioners.
*Farolan/ANB Law Firm* for private respondent.

**D E C I S I O N**

**PEREZ, *J.*:**

This is a petition for review under Rule 45 of the Rules of Court assailing the Decision[1] of the Court of Appeals dated 14

[1] Penned by Associate Justice Marina L. Buzon with Associate Justices Mariano L. Guarina III and Santiago Javier Ranada concurring. *Rollo,* p. 34.

July 2005 in CA G.R. SP No. 85989, affirming the Resolution of the National Labor Relations Commission (NLRC) dated 30 January 2004 in CA No. 021367-99, ordering the levy on execution on the real property of herein petitioner Victor Morales. Likewise assailed is the resolution of the appellate court dated 16 November 2005,[2] which denied the motion for reconsideration filed by petitioners Marmosy Trading, Inc. and Victor Morales.

The facts of the case are as follows:

Petitioner Marmosy Trading, Inc. is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It acts as a distributor of various chemicals from foreign suppliers. Petitioner Victor Morales is the President and General Manager of Marmosy Trading, Inc. Respondent Joselito Hubilla was hired as a Technical Salesman pursuant to an appointment letter dated 12 February 1991. Petitioner Marmosy Trading, Inc. terminated respondent's services effective 15 July 1997.[3]

Owing to his termination, respondent filed a case for illegal dismissal, illegal deduction and diminution of benefits against petitioners before the Labor Arbiter, docketed as NLRC NCR Case No. 00-07-05054-97.[4]

On 31 May 1999, Labor Arbiter Daniel C. Cueto rendered a Decision[5] against petitioners, the dispositive portion of which reads:

WHEREFORE, on account of the foregoing considerations, judgment is hereby rendered declaring the termination of the services of the complainant to be illegal and without just and valid cause.

Accordingly, respondents are hereby ordered to reinstate the complainant to his former position, or in case the same is no longer available, to other equivalent position without loss of seniority rights and other benefits and privileges. Respondents are likewise hereby

[2] *Id.* at 33.

[3] Records, Vol. I, p.10

[4] *Id.* at 1.

[5] *Rollo,* p. 63.

ordered to pay complainant his full backwages and other benefits which he should have received had his services not been terminated, from July 15, 1997, until actually reinstated, after crediting respondents the separation pay paid to the complainant and other accountabilities in the total amount of ₱61,052.74 and 10% thereof as and by way of attorney's fees.

The total award is tentatively computed as follows:

| | | |
|---|---|---|
| 1. Backwages | | |
| 07/15/97-05/31/99 = 22.53 months | | |
| ₱5,950.00 x 22.53 | ₱ 134,053.50 | |
| 2. 13th Month Pay | | |
| 1/12 of ₱134,053.50 | 11,171.13 | |
| | ₱ 145,224.63 | |
| 3. Attorney's Fee | | |
| 10% of ₱145,224.63 | 14,522.46 | |
| Total Monetary Award | ₱ 159,747.09 | |
| Less: Accountabilities: | | |
| Separation Pay | ₱ 35,402.20 | |
| Tax Deficiency 1996 | 4,420.59 | |
| Tax Deficiency 1997 | 229.75 | |
| Car Loan Balance | 21,000.00 | 61,052.74 |
| TOTAL | | ₱98,694.35 |

All other claims are hereby denied for lack of merit.

Petitioners filed an Appeal[6] to the NLRC docketed as CA No. 021367-99. The NLRC issued a Resolution[7] dated 31 May 2000 denying the appeal for lack of merit. This Resolution of the NLRC became final and executory on 26 June 2000.[8] Respondent then filed a Motion for the issuance of a writ of execution.[9] Petitioners, for their part, further filed a petition to the Court of Appeals docketed as CA G.R. SP No. 60226.

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[6] Records, Vol. I, p. 45.

[7] *Id.* at 380.

[8] *Id.* at 395.

[9] *Id.* at 396.

The Court of Appeals issued a Resolution dated 22 August 2000 dismissing outright the petition in CA G.R. SP No. 60226 filed by the petitioners on the ground of procedural infirmities, such as, failure to file a motion for reconsideration of the NLRC Resolution dated 31 May 2000, and failure to append to the petition relevant and pertinent pleadings.[10] This resolution likewise became final and executory and an Entry of Judgment was issued by the appellate court on 25 November 2000.[11]

Petitioners elevated the decision of the Court of Appeals in CA G.R. SP No. 60226 to this Court by a petition for review docketed as G.R. No. 145881. This Court resolved to deny the petition in G.R. No. 145881 filed by the petitioners, in a Resolution dated 7 February 2001, for the late filing of the petition and failure to show reversible error on the part of the Court of Appeals.[12] Entry of Judgment was issued on 13 August 2001.[13]

Respondent then resorted to a motion for the issuance of an *alias* writ of execution.[14] On 28 August 2001, Labor Arbiter Elias H. Salinas issued a writ of execution[15] addressed to the NLRC Sheriff, the dispositive portion of which reads:

> NOW THEREFORE, you are hereby commanded to proceed to the premises of respondent Marmosy Trading, Inc. located at ITC Building 337 Gil Puyat Avenue Extension, Makati City, or wherever they may be found, to collect the total sum of TWO HUNDRED NINETY-SIX THOUSAND ONE HUNDRED SIXTY PESOS and TEN CENTAVOS (PHP296,160.10) representing complainant's total monetary award and to turn over the said amount collected to the NLRC Cashier for disposition to herein complainant.

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[10] Penned by Associate Justice Renato C. Dacudao with Justices Cancio C. Garcia and Bennie Adefuin-De La Cruz concurring; Records, Vol. II, p. 171.

[11] Records, Vol. I, p. 397.

[12] Records Vol. II, p. 27.

[13] *Id.* at 28.

[14] *Id.* at 29.

[15] *Rollo,* p. 75.

In case you failed (sic) to collect said amount in cash from the respondents, you are to cause the satisfaction of the same to be made out of the movables or chattels, or in the absence thereof, from the immovable properties of the respondents not exempt from execution.

You are to return this *Alias* Writ of Execution with your corresponding report of the proceedings undertaken thereon within sixty (30) (sic) days from receipt hereof.

A Motion for Reconsideration,[16] with Motion to Recall the Writ of Execution dated 5 September 2001 was filed by the petitioners. They assailed the computation made by the Labor Arbiter and averred that the company had stopped its operations as of June, 1997; that there is no position to which respondent can be reinstated or appointed; and that respondent had already been paid his separation pay. In a supplement to their own computation of the monetary award given to respondent, petitioners showed that in actuality, respondent still owes them the amount of ₱22,383.15, when they ceased operations at the end of 1997 and respondent had already received his separation pay.

Petitioners' motion for reconsideration was denied by the Labor Arbiter in an Order dated 22 October 2001 but the monetary award in favor of respondent was corrected to read as ₱274,823.70, and the Sheriff was directed to proceed with the execution.[17]

Undeterred, petitioners again filed before the NLRC a "Memorandum of Appeal with Prayer for Injunction" assailing the 22 October 2001 Order of the Labor Arbiter.[18] Respondent countered by filing an opposition on the ground of failure to file a *supersedeas* bond on the part of the petitioners and that no new issues were raised therein.[19]

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[16] Records, Vol. I, p. 418.

[17] *Id.* at 449.

[18] *Id.* at 508.

[19] *Id.* at 578.

In an Order dated 22 May 2002,[20] the above Appeal of the petitioners was dismissed by the NLRC for failure to file a *supersedeas* bond. The NLRC in the same order affirmed *in toto* the 22 October 2001 Order of the Labor Arbiter. Petitioners filed a Motion for Reconsideration dated 21 June 2002.[21] The motion for reconsideration was denied for lack of merit in a resolution dated 22 August 2002 issued by the NLRC. The NLRC likewise emphasized that no further motions for reconsideration shall be entertained.[22]

Acting on respondent's *ex-parte* motion for the re-computation of his monetary award and for the issuance of an *alias* writ of execution dated 19 November 2002,[23] Labor Arbiter Elias Salinas issued on 11 March 2003 an *alias* Writ of Execution[24] addressed to the NLRC Sheriff, the dispositive portion of which reads:

> NOW THEREFORE, you are hereby commanded to proceed to the premises of respondents MARMOSY TRADING INC. located at ITC Building 337 Gil Puyat, Avenue Extension, Makati (sic) City or wherever they can be found within the jurisdiction of the Republic of the Philippines, to collect the sum of TWO HUNDRED FIFTY ONE THOUSAND NINE HUNDRED TWENTY-SEVEN PESOS AND TWELVE CENTAVOS (₱251,927.12), representing complainant's computed monetary award and to deposit the said amount to the Cashier NLRC, for disposition to herein complainant.
>
> In case you failed (sic) to collect the amount in cash, you are to cause the satisfaction of the same out of the movables, chattels and in the absence thereof, to the immovable not exempt from execution.
>
> You are allowed to collect execution fees in accordance with the Procedures of the NLRC Manuals (sic) on Execution.
>
> You are to return this writ within ONE HUNDRED EIGHTY (180) days from receipt hereof with the corresponding report of the proceedings.

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[20] Records, Vol. II, p. 48.

[21] *Id.* at 55.

[22] *Id.* at 70.

[23] *Id.* at 79.

[24] *Id.* at 204.

Pursuant to the writ of execution issued by Labor Arbiter Elias Salinas, the Sheriff garnished petitioners account with Equitable-PCI Bank in the amount of ₱22,896.58,[25] which was later released to the NLRC cashier and, thereafter, turned over to the respondent as partial satisfaction of the judgment in his favor.

Petitioners objected to the garnishment by filing a motion for reconsideration and to recall the order of release and *alias* writ of execution alleging that the account with Equitable-PCI Bank belongs to both petitioner Marmosy Trading, Inc. and petitioner Victor Morales; that only petitioner Marmosy Trading, Inc. was the employer of respondent whereas petitioner Victor Morales, who was president of the Marmosy Trading, Inc. when the complaint was filed, is only a nominal party.

Petitioners' motion for reconsideration was denied by Labor Arbiter Elias Salinas in an Order dated 23 June 2003.[26] Petitioners again appealed to the NLRC. This appeal was dismissed for lack of merit in the Resolution of the NLRC dated 30 January 2004.[27]

The pertinent portion of the NLRC Resolution dated 30 January 2004 is quoted hereunder:

> As borne by the records, individual respondent Victor H. Morales is the President and General Manager of [respondent] Marmosy Trading Inc. As correctly ruled being the President at the same time General Manager of the Corporation, [Respondent] Morales is therefore to be held responsible for the corporation's obligations to the workers including complainant especially when as alleged the company had already closed its business operations. The termination of the existence of a corporation requires the assumption of the company's liabilities and there is no responsible officer but the President who must assume full responsibility of the consequences of the closure.

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[25] *Id.* at 135.

[26] *Id.* at 228.

[27] Records, Vol. I, p. 593.

Petitioners' motion for reconsideration[28] was denied for lack of merit by the NLRC in a Resolution[29] dated 20 July 2004. The Resolution became final and executory on 8 October 2004.[30]

From the above NLRC Resolution, petitioners again elevated the case to the Court of Appeals *via* a Petition for *Certiorari* under Rule 65 docketed as CA G.R. SP No. 85989. The petition was denied in a Decision[31] of the Court of Appeals dated 14 July 2005. The Court of Appeals explained that:

> The writ of execution commanded the Sheriff to proceed to the premises of petitioners located in Makati City or wherever they can be found to collect the sum of PhP251,927.12. Since petitioner Morales was likewise ordered in the decision sought to be executed to pay private respondent, the Sheriff properly levied on his real property. Section 2 Rule 4 of the NLRC Manual on Execution of Judgment provides that the Sheriff or proper officer shall enforce the execution of a money judgment by levying on all the property, real and personal, of the losing party, of whatever name and nature and which may be disposed of for value, not exempt from execution.[32]

The *fallo* of the decision rendered by the Court of Appeals states:

> Wherefore, the Petition is Dismissed for lack of merit.[33]

Petitioners' motion for reconsideration met the same fate in the appellate court's Resolution[34] dated 16 November 2005.

Hence, this petition on the lone issue of whether or not the decision dated 14 July 2005 and the resolution dated 16 November 2005 of the Court of Appeals in CA G.R. SP No. 85989, which

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[28] *Rollo,* p. 129.

[29] *Id.* at 136.

[30] Records, Vol. I, last page not numbered.

[31] *Rollo,* p. 34.

[32] *Id.* at 42.

[33] *Id.* at 211.

[34] *Id.* at 33.

allowed the notice of levy to be annotated on the title of the real property registered under Transfer Certificate of Title No. 59496 in the name of petitioner Victor Morales, are in accordance with law and existing jurisprudence.[35]

The petition is not meritorious.

At the outset, the Court takes notice of the fact that petitioners already exhausted all the remedies available to them since the time the Labor Arbiter rendered his decision dated 31 May 1999. In fact, said decision of the Labor Arbiter was elevated all the way up to this Court by the petitioners *via* G.R. No. 145881. We denied this petition in a Resolution dated 7 February 2001.[36] Execution in favor of the respondent ought to have taken place as a matter of right.[37] From the finality of G.R. No. 145881, this case was remanded to the Labor Arbiter for execution. Regrettably, due to the series of pleadings, motions and appeals to the NLRC, including petitions to the Court of Appeals, filed by the petitioners, they have so far successfully delayed the execution of the final and executory decision in this case. The decision of the Labor Arbiter, rendered on 31 May 1999, has been elevated to, for review by, the NLRC, the Court of Appeals and finally this Court which entered judgment on the matter nine years ago, or on 13 August 2001. Until the present, the decision in 1999 has not yet been executed.

The Labor Arbiter's decision has long become final and executory and it can no longer be reversed or modified.

The Court has on occasion ruled that:

Now, nothing is more settled in law than when a final judgment becomes executory, it thereby becomes immutable and unalternable.

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[35] *Id.* at 230.

[36] Records, Vol. II, p. 27.

[37] Rule 39. Execution, Satisfaction and Effect of Judgments:

Section 1. *Execution upon judgments or final orders.* – Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

The judgment may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of law or fact, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land. The only recognized exception are the correction of clerical errors or the making of so-called *nunc pro tunc* entries which cause no injury to any party, and, of course, where the judgment is void x x x.[38]

We disfavor delay in the enforcement of the labor arbiter's decision. Once a judgment becomes final and executory, the prevailing party should not be denied the fruits of his victory by some subterfuge devised by the losing party. Final and executory judgments can neither be amended nor altered except for correction of clerical errors, even if the purpose is to correct erroneous conclusions of fact or of law.[39] Trial and execution proceedings constitute one whole action or suit such that a case in which execution has been issued is regarded as still pending so that all proceedings in the execution are proceedings in the suit.[40]

Furthermore, petitioners did not succeed in overturning the decisions of the NLRC and the Court of Appeals. As well, this Court denied petitioners' petition in G.R. No. 145881.

Everything considered, what should be enforced thru an order or writ of execution in this case is the dispositive portion of the Labor Arbiter's decision as affirmed by the NLRC, the Court of Appeals and this Court. Since the writ of execution issued by the Labor Arbiter does not vary but is in fact completely consistent with the final decision in this case, the order of execution issued by the Labor Arbiter is beyond challenge.

It is no longer legally feasible to modify the final ruling in this case through the expediency of a petition questioning the

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[38] *J.D. Legaspi Construction v. National Labor Relations Commission,* G.R. No. 143161, 2 October 2002, 390 SCRA 233, 239 citing *Manning International Corp. v. National Labor Relations Commission,* G.R. No. 83018, 13 March 1991, 195 SCRA 155,161.

[39] *Aboitiz Shipping Employees Association v. Trahano,* 348 Phil. 910, 915 (1997).

[40] *Ysmael v. Court of Appeals,* 339 Phil. 361, 376 (1997).

order of execution. This late in the day, petitioner Victor Morales is barred, by the fact of a final judgment, from advancing the argument that his real property cannot be made liable for the monetary award in favor of respondent. For a reason greater than protection from personal liability, petitioner Victor Morales, as president of his corporation, cannot rely on our previous ruling that "to hold a director personally liable for debts of a corporation and thus pierce the veil of corporate fiction, the bad faith or wrongdoing of the director must be established clearly and convincingly."[41] Judgments of courts should attain finality at some point lest there be no end in litigation.[42] The final judgment in this case may no longer be reviewed, or in any way modified directly or indirectly, by a higher court, not even by the Supreme Court.[43] The reason for this is that, a litigation must end and terminate sometime and somewhere, and it is essential to an effective and efficient administration of justice that, once a judgment has become final, the winning party be not deprived of the fruits of the verdict. Courts must guard against any scheme calculated to bring about that result and must frown upon any attempt to prolong controversies.[44]

**WHEREFORE,** premises considered, the instant petition is *DENIED* for lack of merit and the Decision of the Court of Appeals in CA G.R. SP No. 85989 dated 14 July 2005, and the Resolution of the same court dated 16 November 2005 are *AFFIRMED*. Costs against petitioners.

**SO ORDERED.**

*Carpio (Chairperson), Brion, Del Castillo,* and *Abad, JJ.,* concur.

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[41] *Carag v. National Labor Relations Commission,* G.R No. 147590, 2 April 2007, 520 SCRA 28.

[42] Per Resolution in G.R. No. 144948, entitled "*C-E Construction Corp./Ambrosio Salazar v. Raymundo Hernandez.*"

[43] *C-E Construction Corp. v. National Labor Relations Commission,* G.R. No. 180188, 25 March 2009.

[44] *Sacdalan v. Court of Appeals,* G.R. No. 128967, 20 May 2004, 428 SCRA 586, 599 cited in *Obieta v. Cheok,* G.R. No. 170072, 3 September 2009.

**FIRST DIVISION**

[G.R. No. 179038. May 6, 2010]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **JOSEPH SERRANO and ANTHONY SERRANO,** *accused-appellants.*

**SYLLABUS**

**1. CRIMINAL LAW; CONSPIRACY; WHEN PRESENT.—** It is well-entrenched in our jurisprudence that: "**Conspiracy is always predominantly mental in composition** because it consists primarily of a meeting of minds and intent. By its nature, conspiracy is planned in utmost secrecy. **Hence, for collective responsibility to be established, it is not necessary that conspiracy be proved by direct evidence of a prior agreement to commit the crime** as only rarely would such agreement be demonstrable since, in the nature of things, criminal undertakings are rarely documented by agreements in writing. But the courts are not without resort in the determination of its presence. The existence of conspiracy may be inferred and proved through the acts of the accused, whose conduct before, during and after the commission of the crime point to a common purpose, concert of action, and community of interest. In short, conduct may establish conspiracy. **An accepted badge of conspiracy is when the accused by their acts aimed at the same object, one performing one part and another performing another so as to complete it with a view to the attainment of the same object,** and their acts though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments."

**2. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS; PREVAILS IN DRUG-RELATED CASES IN THE ABSENCE OF ILL MOTIVES ON THE PART OF THE POLICE OFFICERS. —** Contrary to the accused-appellants' assertion, their constitutional right to be presumed innocent was not infringed by the reliance of the trial court on the presumption of regularity

in the performance of official functions on the part of the arresting officers. In several cases, this Court has relied on such a presumption of regularity in order to determine if the testimonies of the police officers who conducted the buy-bust operation deserve full faith and credit. In *People v. Llamado,* we held: "In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, **unless there be evidence to the contrary.** Moreover**, in the absence of proof of motive to falsely impute such a serious crime against the appellant**, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over appellant's self-serving and uncorroborated denial."

**3. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURTS WHICH ARE FACTUAL IN NATURE AND WHICH INVOLVE THE CREDIBILITY OF WITNESSES ARE GENERALLY ACCORDED RESPECT. —** Fundamental is the principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.

**4. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; ELEMENTS. —** For the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of Republic Act No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti.*

**5. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. —** In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.

**6. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT PREVAIL OVER THE POSITIVE TESTIMONY OF A WITNESS. —** Mere denial cannot prevail over the positive testimony of a witness; it is self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. As between the categorical testimony that rings of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail.

**7. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DRUGS; PENALTY; CASE AT BAR. —**Under Section 5, Article II of Republic Act No. 9165, the sale of any dangerous drug, regardless of quantity and purity, is punishable by life imprisonment to death and a fine of Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). In the absence of any mitigating or aggravating circumstance, the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00) imposed by the RTC on accused-appellants Joseph and Anthony Serrano in Criminal Case No. 12007-D and upheld by the Court of Appeals was proper.

**8. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; PENALTY; CASE AT BAR. —** Likewise sustained is the penalty of twelve (12) years and one (1) day to twenty (20) years imprisonment and a fine of Three Hundred Thousand Pesos (₱300,000.00) imposed on accused-appellant Anthony Serrano in Criminal Case No. 12008-D for illegal possession of *shabu*, the total quantity of which is 0.77 gram. Section 11, Article II of Republic Act No. 9165 imposes the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00) if the quantities of dangerous drugs are less than five (5) grams.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellant.

**D E C I S I O N**

**LEONARDO-DE CASTRO, *J.*:**

Submitted for Our review is the Decision[1] dated December 29, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00494 which affirmed the decision of the Regional Trial Court (RTC) of Pasig City, Branch 70, in Criminal Case Nos. 12007-D and 12008-D. In Criminal Case No. 12007-D, both accused-appellants Joseph and Anthony Serrano were found guilty of the illegal sale of *methamphetamine hydrochloride* (*shabu*), a dangerous drug, in violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, while in Criminal Case No. 12008-D, accused-appellant Anthony Serrano was found guilty of illegal possession of said drug in violation of Section 11, Article II of the same Act.

In Criminal Case No. 12007-D, the Information[2] dated January 22, 2003 charged accused-appellants Joseph and Anthony Serrano with violation of Section 5, Article II of Republic Act No. 9165[3] as follows:

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[1] Penned by Associate Justice Vicente Q. Roxas with Associate Justices Josefina Guevarra-Salonga and Apolinario Bruselas, Jr., concurring; *rollo*, pp. 2-23.

[2] CA *rollo*, pp. 9-10.

[3] Sec. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

*Criminal Case No. 12007-D*

On or about January 18, 2003, in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together and mutually helping and aiding one another, not being lawfully authorized by law, did, then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Michael Familara, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet containing five centigrams (**0.05 gram**) of white crystalline substance, which was found positive to the test for **methylamphetamine hydrochloride (*shabu*)**, a dangerous drug, in violation of the said law. (Emphases ours.)

While in Criminal Case No. 12008-D, the Information[4] charged accused-appellant Anthony Serrano with violation of Section 11, Article II of Republic Act No. 9165,[5] committed as follows:

*Criminal Case No. 12008-D*

On or about January 18, 2003, in Pasig City and within the jurisdiction of this Honorable Court, the said accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in his possession and under his custody and control four (4) heat-sealed transparent plastic sachets each containing the following:

a) nineteen decigrams (**0.19 gram**)

b) twenty decigrams (**0.20 gram**)

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[4] CA *rollo*, pp. 11-12.

[5] Sec. 11. *Possession of Dangerous Drugs*.

x x x x x x x x x

3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*," or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

c) twenty three decigrams (**0.23 gram**)

d) fifteen decigrams (**0.15 gram**)

of white crystalline substance, which were found positive to the test for **methylamphetamine hydrochloride (*shabu*)**, a dangerous drug, in violation of the said law. (Emphases ours.)

When arraigned, accused-appellants pleaded not guilty to the charges. After the pre-trial conference was terminated without any stipulations or admissions entered into by the parties, Criminal Case Nos. 12007-D and 12008-D were jointly tried.

The prosecution presented the following witnesses: the poseur-buyer, Police Officer (PO) 1 Michael Familara (PO1 Familara); the other members of the buy-bust operation team, namely, Senior Police Officer (SPO) 3 Leneal Matias (SPO3 Matias) and PO3 Carlo Luna (PO3 Luna); and the forensic chemist, P/Inspector Lourdeliza M. Gural (P/Insp. Gural). PO1 Familara, SPO3 Matias and PO3 Luna were all officers of the Pasig Police Station, Drug Enforcement Division, while P/Insp. Gural was a member of the Eastern Police District Crime Laboratory.

The object and documentary evidence for the prosecution included, among others: the five heat-sealed plastic sachets allegedly recovered from the accused-appellants at the time of the arrest; Chemistry Report No. D-120-03E,[6] confirming that the contents of the said plastic sachets were *methylamphetamine hydrochloride* or *shabu*; and the marked money used in the buy-bust operation.

The Court of Appeals summarized the prosecution's version of events as follows:

In the afternoon of January 18, 2003, Major Jerry Galvan received a telephone call from a concerned citizen about an illegal drug trade being conducted by a certain *alias* "Tune" in Barangay Bambang, Pasig City. Thereafter, Major Galvan coordinated with the Philippine Drug Enforcement Agency (PDEA) for the conduct of a buy-bust operation. Thus, a team led by SPO3 Leneal Matias, PO3 Carlo Luna

[6] Records, p. 12.

and PO1 Michael Familara (PO1 FAMILARA) was formed to buy "*shabu*" from "Tune" with the aid of a confidential informant.

Preparations were then made, and two (2) One Hundred Peso bills were marked "MRF" and delivered to the assigned poseur-buyer, PO1 FAMILARA.

The composite team thereafter proceeded to E. Jacinto St. Brgy. Bambang, Pasig City about 3:00 o'clock in the afternoon, the confidential informant pointed to a house where accused-appellant JOSEPH was found standing. SPO3 Leneal Matias and PO3 Carlo Luna positioned themselves at a distance where they can see PO1 FAMILARA, who approached the accused-appellant JOSEPH together with the confidential informant.

The confidential informant greeted the accused-appellant JOSEPH and informed him that his companion, PO1 FAMILARA, would buy Php 200.00 worth of *shabu*.

Accused-appellant JOSEPH thereafter knocked at the door of "Tune," who turned out to be accused-appellant ANTHONY. Accused-appellant ANTHONY partially opened the door and conferred with the accused-appellant JOSEPH. PO1 FAMILARA thereafter handed the marked money to the accused-appellant JOSEPH, who in turn handed the same to the accused-appellant ANTHONY. Upon receiving the money, accused-appellant ANTHONY then took out a plastic sachet containing a white crystalline substance from his pocket and handed the same to the accused-appellant JOSEPH. Accused-appellant JOSEPH, in turn, handed the plastic sachets to PO1 FAMILARA.

FAMILARA thereafter immediately grabbed accused-appellant JOSEPH's hand while the rest of the team rushed to the scene to arrest the accused-appellants. Accused-appellant ANTHONY attempted to escape to his house but was subsequently likewise apprehended.

Both accused-appellants were bodily frisked after their apprehension. Recovered from accused-appellant ANTHONY were four heat-sealed plastic sachets with white crystalline substances, two (2) marked one hundred peso bills, a pair of scissors, a disposable lighter and one plastic bag containing several pieces of empty plastic sachets. However, nothing aside from the heat-sealed plastic sachet he previously handed to PO1 FAMILARA was recovered from accused-appellant JOSEPH.

Thereafter, the accused-appellants were brought to the Pasig Police Station for further investigation, and the evidence recovered were marked and forwarded to the PNP Crime Laboratory for examination.

Upon examination by P/Insp. Lourdeliza Gural, the five heat-sealed plastic sachets containing white crystalline substances were found positive [for] Methylamphetamine Hydrochloride or commonly known as "*shabu*."[7]

In their defense, both accused-appellants denied the charges against them. Joseph Serrano averred that he was at his brother's (Anthony's) house at the time of the arrest to fetch the latter because they, in turn, were going to fetch another sibling in Cubao, Quezon City. He also claimed that the plastic sachets containing the white crystalline substance were shown to him only at the police station.[8]

For his part, Anthony alleged that he was inside the comfort room of his house when he heard a commotion. When he came out of the comfort room, he saw his brother Joseph in handcuffs and being held by a man with a gun. Anthony allegedly politely inquired why the men with guns were holding his brother and the men replied that they were police officers. The said officers then asked the accused-appellants to go with them to the Pasig Police Station, which the accused-appellants both did voluntarily. Anthony further claimed that three police officers searched his house but found nothing and that he and Joseph only came to know the reason for their arrest and detention when they were already in court.[9]

The accused-appellants offered no documentary evidence.[10]

In a Decision[11] dated August 20, 2004, the RTC rendered judgment convicting the brothers Joseph and Anthony Serrano for illegal sale of *shabu* in Criminal Case No. 12007-D and

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[7] *Rollo*, pp. 5-7.

[8] TSN, March 10, 2004, pp. 5-7.

[9] TSN, July 14, 2004, pp. 7-13.

[10] *Id.* at 17.

[11] CA *rollo*, pp. 19-25.

Anthony Serrano for illegal possession of *shabu* in Criminal Case No. 12008-D. The *fallo* of the RTC Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> In **Criminal Case No. 12007-D,** filed against accused Anthony Serrano and Joseph Serrano for Violation of Section 5, Article II, Republic Act No. 9165 (illegal sale of *shabu*), both accused are hereby sentenced to **LIFE IMPRISONMENT** and to solidarily pay a fine of **Five Hundred Thousand Pesos (PHP500,000.00).**
>
> In **Criminal Case No. 12008-D**, filed only against accused Anthony Serrano for Violation of Section 11, Article II, Republic Act No. 9165 (illegal possession of *shabu*), said accused is hereby sentenced to **TWELVE (12) YEARS and ONE (1) DAY to TWENTY (20) YEARS** and to pay a Fine of **Three Hundred Thousand Pesos (PHP300,000.00)**.
>
> Considering the penalty imposed by the Court, the immediate commitment of herein accused to the National Penitentiary is hereby ordered.
>
> Pursuant to Section 20 of Republic Act 9165, the amount of Two Hundred Pesos (PHP200.00) recovered from the accused representing the proceeds from the illegal sale of the plastic sachet of *shabu* is hereby ordered forfeited in favor of the government.
>
> Again, pursuant to Section 21 of the same law, the Philippine Drug Enforcement Agency (PDEA) is hereby ordered to take charge and have custody of the plastic sachets of *shabu* and drug paraphernalia, subject of these cases.
>
> Costs against the accused.[12]

In arriving at its Decision, the RTC relied on the presumption of regularity in the performance of official duty in ascribing greater credence to the testimonies of the prosecution witnesses *vis-à-vis* what it termed as "self-serving averments" of the accused-appellants. The trial court further held that in the absence of evidence of improper motive on the part of the prosecution witnesses to testify falsely against

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[12] *Id.* at 24-25.

the accused-appellants, the testimonies of the former are entitled to full faith and credit.[13]

In view of the imposition of the penalty of life imprisonment on the accused-appellants, the case was elevated to the Court of Appeals for automatic review pursuant to this Court's ruling in *People v. Mateo*.[14]

As we previously stated at the outset, the Court of Appeals, in its assailed Decision of December 29, 2006, affirmed that of the RTC.

Accused-appellants appealed their convictions *via* a Notice of Appeal pursuant to Section 13(c), Rule 124 of the Rules of Criminal Procedure, as amended. With the elevation of the records to this Court and the acceptance of the appeal, the parties were required to file their respective supplemental briefs, if they so desired, within 30 days from notice.[15] In their respective Manifestations,[16] the parties waived the filing of supplemental briefs and instead merely adopted their earlier Briefs before the Court of Appeals.

In their Brief,[17] accused-appellants assign two errors allegedly committed by the trial court, to wit:

I.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE EXISTENCE OF CONSPIRACY IN THE CASE AT BAR.

II.

THE COURT *A QUO* ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY OF THE CRIMES CHARGED DESPITE THE PROSECUTION'S FAILURE TO PROVE THEIR GUILT BEYOND REASONABLE DOUBT.

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[13] *Id.* at 23.

[14] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[15] *Rollo*, p. 28.

[16] *Id.* at 29-31 and 32-34.

[17] CA *rollo*, pp. 59-72.

We are unconvinced that the trial court indeed committed the foregoing errors.

On the first assigned error, accused-appellants contend that the prosecution evidence was insufficient to establish beyond reasonable doubt the fact of conspiracy between them in the illegal drug sale. They point out that the testimony of the poseur-buyer, PO1 Familara, that it was Joseph who received the marked money from him, was contradictory to his and the other officers' testimonies that the same was recovered from Anthony by another arresting officer, PO3 Luna.

After a careful perusal of the transcripts of the testimonies of the three police officers who were involved in the buy-bust operation, we find no contradiction or inconsistency in the testimony of PO1 Familara. He and his fellow officer, SPO3 Matias, narrated that although PO1 Familara handed the marked money to Joseph, Joseph in turn handed the money to his brother, Anthony. It was only after taking the marked bills from Joseph that Anthony produced a sachet of *shabu* from his pocket which he handed to Joseph to give to the poseur-buyer. Thus, the fact that the marked bills were found in the possession of Anthony during the arrest was more than sufficiently explained.

Reviewing assiduously the prosecution's evidence, we conclude that the trial court correctly found that there was conspiracy between the accused-appellants in this case.

It is well-entrenched in our jurisprudence that:

**Conspiracy is always predominantly mental in composition** because it consists primarily of a meeting of minds and intent. By its nature, conspiracy is planned in utmost secrecy. **Hence, for collective responsibility to be established, it is not necessary that conspiracy be proved by direct evidence of a prior agreement to commit the crime** as only rarely would such agreement be demonstrable since, in the nature of things, criminal undertakings are rarely documented by agreements in writing.

But the courts are not without resort in the determination of its presence. The existence of conspiracy may be inferred and proved through the acts of the accused, whose conduct before, during and

after the commission of the crime point to a common purpose, concert of action, and community of interest. In short, conduct may establish conspiracy.

**An accepted badge of conspiracy is when the accused by their acts aimed at the same object, one performing one part and another performing another so as to complete it with a view to the attainment of the same object,** and their acts though apparently independent were in fact concerted and cooperative, indicating closeness of personal association, concerted action and concurrence of sentiments.[18] (Emphases ours.)

Thus, in *People v. Santos,*[19] which has similar factual antecedents as this case, the Court had the occasion to rule that:

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The same degree of proof necessary to prove the crime is required to support a finding of criminal conspiracy. Direct proof, however, is not essential to show conspiracy. It need not be shown that the parties actually came together and agreed in express terms to enter into and pursue a common design. Proof of concerted action before, during and after the crime, which demonstrates their unity of design and objective is sufficient. **As correctly held by the trial court, the act of appellant Santos in receiving the marked money from PO3 Luna and handing the same to appellant Catoc, who in turn gave a sachet containing *shabu* to appellant Santos to give the policeman, unmistakably revealed a common purpose and a community of interest indicative of a conspiracy between the appellants.** (Emphasis ours.)

As testified to by the police officers involved in the buy-bust operation, it was accused-appellant Joseph who negotiated with the poseur-buyer, PO1 Familara, received the buy-bust money, and handed the same to Anthony. Anthony, after receiving the money from Joseph, handed the latter the sachet of *shabu* to be given to PO1 Familara. It was Joseph who delivered the illegal drug to PO1 Familara. When Anthony was frisked during

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[18] *People v. Medina,* 354 Phil. 447, 457-458 (1998).

[19] G.R. No. 176735, June 26, 2008, 555 SCRA 578, 602-603.

the arrest, the police officers retrieved the marked money that Joseph gave him, together with other sachets of *shabu* and paraphernalia used in packing the illegal drug, such as several empty plastic bags, a disposable lighter and a pair of scissors. Clearly, there was concerted action between the brothers Joseph and Anthony before, during and after the offense which ably demonstrated their unity of design and objective to sell the dangerous drug.

Thus, we see no reason to disturb the RTC's finding, as affirmed by the Court of Appeals, that:

> While it was with accused Joseph Serrano that PO1 Familara transacted regarding the acquisition of *shabu* and to whom he paid the buy bust money, it was from accused Anthony Serrano that accused Joseph Serrano actually got the dangerous drugs subject of the transaction. From the above scenario, no other conclusion can be drawn but that both accused were engaged in the illegal trade.[20]

As for the second assigned error in their Brief, accused-appellants insist that the prosecution failed to establish their guilt beyond reasonable doubt. They contend that the RTC was mistaken in giving full faith and credence to the testimonies of the police officers and in upholding the presumption of regularity in the performance of said officers' official functions which they contend cannot overcome the constitutional presumption of innocence in their favor.

Contrary to the accused-appellants' assertion, their constitutional right to be presumed innocent was not infringed by the reliance of the trial court on the presumption of regularity in the performance of official functions on the part of the arresting officers. In several cases, this Court has relied on such a presumption of regularity in order to determine if the testimonies of the police officers who conducted the buy-bust operation deserve full faith and credit.[21] In *People v. Llamado*,[22] we held:

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[20] CA *rollo*, p. 23.

[21] *People v. Santos, supra* note 19; *Dimacuha v. People*, G.R. No. 143705, February 23, 2007, 516 SCRA 513, 525.

[22] G.R. No. 185278, March 13, 2009, 581 SCRA 544, 552.

In cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, **unless there be evidence to the contrary.** Moreover**, in the absence of proof of motive to falsely impute such a serious crime against the appellant**, the presumption of regularity in the performance of official duty, as well as the findings of the trial court on the credibility of witnesses, shall prevail over appellant's self-serving and uncorroborated denial. (Emphasis ours.)

The jurisprudence on this point cited in accused-appellants' Brief cannot be applied to their case. In *People v. Tan*,[23] *People v. Labarias*[24] and *People v. Dismuke*,[25] the accused had sufficiently proven irregularities in the conduct of the buy-bust operation and/or ill motives on the part of the police officers which rebutted the presumption of regularity in the performance of their duty. In the case at bar, accused-appellants did not prove any irregularity in the procedures undertaken by the police officers nor did they ascribe bad faith or any improper motive to the police officers involved. On the contrary, accused-appellant Joseph Serrano testified on cross-examination that he did not know of any reason for the police to file charges against him.[26]

Verily, we find that the degree of proof required in criminal cases has been met in this instance. Hence, there is no reason to deviate from both the lower courts' findings and conclusions that accused-appellants committed the offenses charged.

Fundamental is the principle that findings of the trial courts which are factual in nature and which involve the credibility of witnesses are accorded respect when no glaring errors; gross misapprehension of facts; and speculative, arbitrary and unsupported conclusions can be gathered from such findings. The reason for this is that the trial court is in a better position

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[23] 432 Phil. 171 (2002).

[24] G.R. No. 87165, January 25, 1993, 217 SCRA 483.

[25] G.R. No. 108453, July 11, 1994, 234 SCRA 51.

[26] TSN, March 10, 2004, p. 9.

to decide the credibility of witnesses, having heard their testimonies and observed their deportment and manner of testifying during the trial. The rule finds an even more stringent application where said findings are sustained by the Court of Appeals.[27]

For the successful prosecution of offenses involving the illegal sale of drugs under Section 5, Article II of Republic Act No. 9165, the following elements must be proven: (1) the identity of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*. [28]

Here, the records bear out that all the elements of the offense have been established beyond reasonable doubt.

The Court finds the testimonies of the prosecution witnesses credible, straightforward and corroborative of each other. Their testimonies sufficiently proved that a legitimate buy-bust operation took place wherein the accused-appellants were apprehended. Moreover, the *shabu* subject of the sale was brought to, and properly identified in, court. Accused-appellants were likewise positively identified as the persons who sold the sachet containing the crystalline substance which was later confirmed to be *shabu* according to the Chemistry Report of the forensic chemist.

PO1 Familara, the poseur-buyer, testified, thus:

Q Mr. Witness, did you proceed to the place of *alias* "Tune" as instructed by your chief, Major Galvan?

A Yes, sir. We went to the place. When we reached the place, my companions, SPO3 Leneal Matias and PO3 Carlo Luna positioned themselves in a place wherein they could see me.

Q And what is your role in this, you said buy-bust operation to be conducted?

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[27] *People v. Santos*, *supra* note 19 at 592.

[28] *Id.* at 592-593.

A I was assigned police poseur-buyer, sir.

Q Were you able to meet this *alias* "Tune"?

A Upon reaching the place, the confidential informant pointed to us the house wherein we saw a male person standing, sir.

Q And what did you do next when the confidential informant pointed to a person standing near the house?

A He told us that the place wherein a male person was standing is the house of Tune and the male person who was standing there is Tune's brother, sir.

Q So, what did you do next, Mr. Witness, when the house of Tune was pointed to you by the confidential informant?

A When we reached the house, the confidential informant greeted the brother of Tune being familiar to him, sir.

Q And what was (sic) the greetings all about made by the confidential informant to the brother of Tune?

A The confidential informant asked the male person, *Pare, kumusta na* and the male person answered, *Okey lang. Anong kailangan mo?*

Q Where were you and the members of your team when the informant greeted the brother of Tune?

A I was there together with the confidential informant, sir.

Q How about the other members of your team? Where were they?

A They positioned themselves in a place farther from us but they could see me, sir.

Q What else happened after the informant greeted the brother of Tune?

A The confidential informant told the brother of Tune that I will be buying *shabu* for two pesos (sic) so he knocked at the door and asked if *shabu* was available, sir.

Q Now, when the brother of *alias* Tune knocked on the door, to (*sic*) whose house did he knock?

A Joseph knocked at the door where he was standing, sir.

Q What happened next, Mr. Witness, after the brother of *alias* "Tune" knocked on the door near where he was standing?

A When *alias* "Tune" came out of the house, the confidential informant pointed him to me saying that that person is Tune, sir.

Q And what else happened after the man *alias* "Tune" came out from the house?

A Joseph and Tune talked and the confidential informant got the money from me so he can pay for the drugs, sir.

Q And what money did the confidential informant got from you after *alias* "Tune" came out of the house?

A The money which the confidential informant took from me where (sic) the two 100-peso bills where I placed my initials (sic) which will be used as buy-bust money for the operation, sir.

Q Did you give that money to the confidential informant?

A No, sir. I was the one who personally handed the money to Joseph.

Q Now, did you tell anything to Joseph when you handed the money?

A Nothing, sir. It was the confidential informant who talked with him, sir.

Q What happened after you gave the money to Joseph?

A After I have given the money to Tune's brother, Joseph again knocked at the door so Tune would come out of the house, sir.

Q Mr. Witness, could you tell us again to whom did you give the money which you said was marked?

A To one named Joseph, sir.

Q That Joseph is the *alias* "Tune"?

A No, sir. He is the brother of one *alias* "Tune."

Q After handing the money which you said was marked to Joseph, what happened?

A After I have given the money to Joseph, Joseph knocked at the door and when Tune opened the door and took the money from Joseph, Tune took [the] sachet of *shabu* from his pocket to be given to me. Tune gave first the *shabu* to Joseph and it was Joseph who handed the *shabu* to me because it was Joseph who was nearer to me, sir.

Q How far were you from *alias* "Tune" when he took out from his pocket one sachet of *shabu*?

A *Dito po hanggang dyan sa upuan.*

PROSEC ALBERTO -

Witness pointing to a distance, Your Honor, of at least two meters.

ATTY. SAMSON -

That would be at least three meters from the area where the witness is sitting to this chair.

PROSEC ALBERTO -

We will stipulate that the distance is three meters, Your Honor.

Q How about your distance to Joseph?
A About an arm's length, sir.

Q Now, what did Joseph do with the plastic sachet of *shabu* after *alias* Tune gave him the sachet of *shabu*?
A After that, he immediately handed to me the sachet of *shabu*, after which, I immediately grabbed his hand and tried to apprehend him, sir.

Q Who in particular gave you the plastic of *shabu*?
A The brother of Tune, sir.

Q What is the name of that brother?
A Joseph Serrano, sir.

Q Mr. Witness, if that Joseph Serrano is present in Court, will you be able to identify him?
A Yes, sir.

Q Please point to him if he is in Court?

COURT INTERPRETER -

Witness tapped the shoulder of a male person who when asked identified himself as Joseph Serrano.

PROSEC ALBERTO -

How about Anthony Serrano? Could you identify him?

A Yes, sir.

Q Please do, Mr. Witness, if he is in Court.

COURT INTERPRETER -

> Witness tapping the shoulder of a male person who when asked identified himself as Anthony Serrano.[29]

PO1 Familara further testified that when he grabbed Joseph's hand and tried to apprehend the latter, the rest of the buy-bust team approached and helped him in arresting the accused-appellants. Four (4) other plastic sachets of *shabu* and the marked two 100-peso bills, among others, were later recovered from Anthony.[30] As aforesaid, the testimonies of the other members of the buy-bust team, SPO3 Matias and PO3 Luna, substantially corroborated PO1 Familara's aforementioned testimony.

With respect to the charge of illegal possession of dangerous drugs under Section 11, Article II of Republic Act No. 9165 against accused-appellant Anthony Serrano, we also find that the elements of the offense have been established by the evidence of the prosecution.

In illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug.[31]

The testimonies of the prosecution witnesses, most notably that of the arresting officer, PO3 Luna, showed that four sachets containing white crystalline substance were recovered from accused-appellant Anthony when the latter was told to empty his pockets upon his apprehension.[32] As a result of a chemical analysis thereof, the substance in the plastic sachets was confirmed to be *shabu.*

In view of the positive and categorical testimonies of the prosecution witnesses, the denials of the accused-appellants must, perforce, fail.

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[29] TSN, May 27, 2003, pp. 13-19.

[30] *Id.* at 22 and 24.

[31] *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828, 846.

[32] TSN, October 7, 2003, pp. 8-9.

Mere denial cannot prevail over the positive testimony of a witness; it is self-serving negative evidence which cannot be accorded greater evidentiary weight than the declaration of credible witnesses who testify on affirmative matters. As between the categorical testimony that rings of truth, on one hand, and a bare denial, on the other, the former is generally held to prevail.[33]

Accused-appellants' guilt for the offenses charged against them has, therefore, been proven beyond reasonable doubt.

Under Section 5, Article II of Republic Act No. 9165, the sale of any dangerous drug, regardless of quantity and purity, is punishable by life imprisonment to death and a fine of Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). In the absence of any mitigating or aggravating circumstance, the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (₱500,000.00) imposed by the RTC on accused-appellants Joseph and Anthony Serrano in Criminal Case No. 12007-D and upheld by the Court of Appeals was proper.

Likewise sustained is the penalty of twelve (12) years and one (1) day to twenty (20) years imprisonment and a fine of Three Hundred Thousand Pesos (₱300,000.00) imposed on accused-appellant Anthony Serrano in Criminal Case No. 12008-D for illegal possession of *shabu*, the total quantity of which is 0.77 gram. Section 11, Article II of Republic Act No. 9165 imposes the penalty of imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00) if the quantities of dangerous drugs are less than five (5) grams.

**WHEREFORE,** premises considered, the instant appeal is *DENIED*. The Decision dated December 29, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00494 affirming the

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[33] *People v. Dumlao*, G.R. No. 181599, August 20, 2008, 562 SCRA 762, 769.

Decision of the Regional Trial Court of Pasig City, Branch 70, in Criminal Case No. 12007-D and Criminal Case No. 12008-D is hereby *AFFIRMED*. No costs.

**SO ORDERED.**

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

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**SECOND DIVISION**

[G.R. Nos. 180772 and 180776. May 6, 2010]

**LAND BANK OF THE PHILIPPINES [LBP],** *petitioner, vs.* **DOMINGO AND MAMERTO SORIANO,** *respondents.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); DETERMINATION OF JUST COMPENSATION; FORMULA. —** With the passage of Republic Act (R.A.) No. 6657 or the CARL in 1988, new guidelines were set for the determination of just compensation. x x x Consequently, two divergent formulae arose which prompted the Court to come up with a categorical pronouncement that, if just compensation is not settled prior to the passage of Republic Act No. 6657, it should be computed in accordance with the said law, although the property was acquired under Presidential Decree No. 27. The fixing of just compensation should therefore be based on the parameters set out in Republic Act No. 6657, with Presidential Decree No. 27 and Executive Order No. 228 having only suppletory effect. In the instant case, while the subject lands were acquired under Presidential Decree No. 27, the complaint for just

compensation was only lodged before the court on 23 November 2000 or long after the passage of Republic Act No. 6657 in 1988. Therefore, Section 17 of Republic Act No. 6657 should be the principal basis of the computation for just compensation. As a matter of fact, the factors enumerated therein had already been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of Republic Act No. 6657. The formula outlined in DAR Administrative Order No. 5, series of 1998 should be applied in computing just compensation, thus:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration

**2. POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTION; SOCIAL JUSTICE AND HUMAN RIGHTS; AGRARIAN AND NATURAL RESOURCES REFORM; THE LANDOWNER'S RIGHT TO JUST COMPENSATION SHOULD BE BALANCED WITH AGRARIAN REFORM. —** Section 4, Article XIII of the 1987 Constitution, mandates that the redistribution of agricultural lands shall be subject to the payment of just compensation. The deliberations of the 1986 Constitutional Commission on this subject reveal that just compensation should not do violence to the Bill of Rights, but should also not make an insurmountable obstacle to a successful agrarian reform program. Hence, the landowner's right to just compensation should be balanced with agrarian reform.

**3. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT NO. 6657 (THE COMPREHENSIVE AGRARIAN REFORM LAW); JUST COMPENSATION; ELUCIDATED. —** The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or

more before actually receiving the amount necessary to cope with his loss. To condition the payment upon LBP's approval and its release upon compliance with some documentary requirements would render nugatory the very essence of "prompt payment." Therefore, to expedite the payment of just compensation, it is logical to conclude that the 6% interest rate be imposed from the time of taking up to the time of full payment of just compensation.

**4. ID.; ID.; ID.; ID.; DETERMINATION OF JUST COMPENSATION IS A JUDICIAL FUNCTION.—** Anent the DARAB decision relating to the 0.2329 hectare, suffice it to say that the determination of just compensation is a judicial function. The DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. In the exercise of their functions, the courts still have the final say on what the amount of just compensation will be. Hence, we sustain the computation reached by the trial court.

**APPEARANCES OF COUNSEL**

*LBP Legal Services Group CARP Legal Services Department* for petitioner.

*Fe Rosario Pejo-Buelva* for respondents.

**D E C I S I O N**

**PEREZ, *J.*:**

For consideration is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by the Land Bank of the Philippines (LBP) seeking the annulment of the Decision[1] dated 9 October 2007 and the Resolution[2] dated 12 December 2007 issued by the Court of Appeals in CA-G.R. SP Nos. 89005 and 89288.

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[1] Penned by Associate Justice Myrna Dimaranan Vidal, and concurred in by Associate Justices Jose L. Sabio, Jr. and Noel G. Tijam.

[2] *Rollo*, pp. 86-87.

The controversy is hinged on the determination of just compensation for land covered by the Comprehensive Agrarian Reform Program (CARP).

First, the antecedents.

Domingo and Mamerto Soriano (respondents) are the registered owners of several parcels of rice land situated in Oas, Albay. Out of the 18.9163 hectares of land[3] owned by the respondents, 18.2820 hectares were placed under the Operations Land Transfer and the CARP pursuant to Presidential Decree No. 27[4] and Republic Act No. 6657, otherwise known as the Comprehensive Agrarian Reform Law.[5]

The LBP[6] pegged the value of 18.0491 hectares of land at ₱482,363.95[7] (₱133,751.65 as land value plus ₱348,612.30 incremental interest), while the remaining 0.2329 hectare was computed at ₱8,238.94.[8] Not satisfied with the valuation, respondents, on 23 November 2000, instituted a Complaint[9] for judicial determination of just compensation with the Regional Trial Court of Legazpi City,[10] sitting as a Special Agrarian Court

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[3] As stipulated in the pre-trial orders dated 14 January and 16 March 2004. CA *rollo*, pp. 122-127.

[4] Entitled "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 Therefor."

[5] *Rollo*, p. 44.

[6] Land Bank of the Philippines is a government banking institution designated under Section 64 of Republic Act No. 6654 as the financial intermediary of the agrarian reform program of the government. (See *Land Bank of the Philippines v. De Leon*, G.R. No. 164025, 8 May 2009). Under Section 1 of Executive Order No. 405, series of 1990, the Land Bank of the Philippines is charged with the initial responsibility of determining the value of lands placed under land reform and the just compensation to be paid for their taking. (See *Land Bank of the Philippines v. Luciano*, G.R. No. 165428, 25 November 2009).

[7] *Rollo*, p. 43.

[8] Per Department of Agrarian Reform Adjudication Board Decision dated 7 May 2000. *Rollo*, p. 22.

[9] *Id.* at 194-198.

[10] Presided by Judge Henry B. Basilla.

(SAC). Respondents alleged that they are entitled to an amount of not less than ₱4,500,000.00 as just compensation.[11]

On 21 February 2005, the SAC rendered a judgment, ordering LBP to pay the respondents ₱894,584.94. The dispositive portion reads:

> ACCORDINGLY, the just compensation of the 18.0491 hectares of irrigated riceland is ₱133,751.79, plus increment of 6% per annum computed annually beginning October 21, 1972, until the value is fully paid, and of the 0.2329 hectare of rain fed riceland is ₱8,238.94 plus 12% interest per annum, beginning August 17, 1998, until the value is fully paid or a total of ₱894,584.94 as of this date. Land Bank is ordered to pay the landowners Domingo Soriano and Mamerto Soriano said amount/land value in accordance with law.[12]

The SAC applied the formula prescribed under Executive Order No. 228 in determining the valuation of the property, *i.e.*, Land value = Average Gross Production x 2.5 x Government Support Price. It likewise granted compounded interest pursuant to Department of Agrarian Reform (DAR) Administrative Order No. 13, series of 1994, as amended by DAR Administrative Order No. 2, series of 2004.

Both parties disagreed with the trial court's valuation, prompting them to file their respective appeals with the Court of Appeals. The appellate court, however, affirmed the judgment of the trial court. It also upheld the award of compounded interest, thus:

> In the case at bar, the subject lands were taken under PD 27 and were covered by Operation Land Transfer, making the aforecited Administrative Order applicable. Hence, the Petitioners SORIANOs are entitled to the 6% compounded interest per annum from the date of taking on 21 October 1972 until full payment of the just compensation.[13]

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[11] *Rollo*, p. 197.

[12] *Id.* at 173.

[13] *Id.* at 30.

LBP moved for reconsideration but it was denied by the Court of Appeals on 12 December 2007.

LBP filed the instant petition seeking to nullify the appellate court's decision and resolution, particularly the amount awarded to respondents as just compensation.

Basic is the tenet that since respondents were deprived of their land, they are entitled to just compensation. Under Executive Order No. 228, the formula used to compute the land value is:

Land value = Average Gross Production (AGP) x 2.5
x Government Support Price (GSP)

With the passage of Republic Act (R.A.) No. 6657 or the CARL in 1988, new guidelines were set for the determination of just compensation. In particular, Section 17 provides, thus:

> Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations, and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation.

Consequently, two divergent formulae arose which prompted the Court to come up with a categorical pronouncement that, if just compensation is not settled prior to the passage of Republic Act No. 6657, it should be computed in accordance with the said law, although the property was acquired under Presidential Decree No. 27. The fixing of just compensation should therefore be based on the parameters set out in Republic Act No. 6657, with Presidential Decree No. 27 and Executive Order No. 228 having only suppletory effect.[14]

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[14] *Land Bank of the Philippines v. Heirs of Eleuterio Cruz*, G.R. No. 175175, 29 September 2008, 567 SCRA 31, 37-38; *Land Bank of the Philippines v. Heirs of Angel T. Domingo*, G.R. No. 168533, 4 February 2008, 543 SCRA 627, 638-639.

In the instant case, while the subject lands were acquired under Presidential Decree No. 27, the complaint for just compensation was only lodged before the court on 23 November 2000 or long after the passage of Republic Act No. 6657 in 1988. Therefore, Section 17 of Republic Act No. 6657 should be the principal basis of the computation for just compensation. As a matter of fact, the factors enumerated therein had already been translated into a basic formula by the DAR pursuant to its rule-making power under Section 49 of Republic Act No. 6657. The formula outlined in DAR Administrative Order No. 5, series of 1998 should be applied in computing just compensation, thus:

LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1)

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV = Market Value per Tax Declaration[15]

As much as this Court would like to determine the proper valuation based on the formula cited above, the records of this case are bereft of adequate data. To *write finis* to this case, we uphold the amount derived from the old formula. However, since the application of the new formula is a matter of law and thus, should be made applicable, the parties are not precluded from asking for any additional amount as may be warranted by the new formula.

On to the more pertinent issue. LBP assails the imposition of 6% interest rate on the 18.0491 hectares of lot valued at ₱133,751.65. It avers that the incremental interest due to the respondents should be computed from the date of taking on 21 October 1972, not up to full payment of just compensation but **up to the time LBP approved the payment of their just compensation claim and a corresponding deposit of the compensation proceeds was made by the bank**. LBP relies on the provisions of DAR Administrative Order No. 13, series

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[15] *Land Bank of the Philippines v. Celada*, G.R. No. 164876, 23 January 2006, 479 SCRA 495, 508.

of 1994, as amended, which substantially provides that "the grant of 6% yearly interest compounded annually shall be reckoned from 21 October 1972 up to the **time of actual payment** but not later than December 2006." LBP stresses that under said Administrative Order, **time of actual payment** is defined as the date when LBP approves the payment of the land transfer claim and deposits the compensation proceeds in the name of the landowner in cash and in bonds. In sum, LBP posits that the appellate court departed from the express provision of DAR Administrative Order No. 13, as amended, by imposing an interest to be reckoned from the time of taking up to the actual payment of just compensation.[16]

Respondents counter that the award of interest until full payment of just compensation was correctly adhered to by the lower courts in line with the Court's ruling in *Land Bank of the Philippines v. Imperial*,[17] which found it inequitable to determine just compensation based solely on the formula provided by DAR Administrative Order No. 13, as amended. According to respondents, the award of interest until full payment of just compensation is to ensure prompt payment. Moreover, respondents claim that the date LBP approves the payment of the land transfer claim and deposits the proceeds in the name of the landowner is not tantamount to actual payment because on said date, the release of the amount is conditioned on certain requirements.[18]

This issue has already been raised before the Court of Appeals by LBP, first, in its petition for review and, second, in its motion for reconsideration. The Court of Appeals, however, neglected to give a definitive ruling on the issue of computation of interest and merely echoed the trial court's ruling that respondents are entitled to the 6% compounded interest per annum from the date of taking on 21 October 1972 until full payment of just compensation.

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[16] *Rollo*, pp. 48-51.

[17] G.R. No. 157753, 12 February 2007, 515 SCRA 449.

[18] *Rollo*, p. 372.

At any rate, we cannot subscribe to the arguments of LBP.

Section 4, Article XIII of the 1987 Constitution, mandates that the redistribution of agricultural lands shall be subject to the payment of just compensation. The deliberations of the 1986 Constitutional Commission on this subject reveal that just compensation should not do violence to the Bill of Rights, but should also not make an insurmountable obstacle to a successful agrarian reform program. Hence, the landowner's right to just compensation should be balanced with agrarian reform.[19]

Administrative Order No. 13, as amended, was issued to compensate those who were effectively deprived of their lands by expropriation. LBP relies on said Administrative Order to justify its own computation of interest. A literal reading of this Administrative Order seems to favor LBP's interpretation with respect to the period covered by the interest rate. We quote the relevant portion of the Administrative Order:

> The grant of six percent (6%) yearly interest compounded annually shall be reckoned as follows:
>
> 3.1 Tenanted as of 21 October 1972 and covered under OLT
>
> - From 21 October 1972 up to the time of actual payment but not later than December 2006
>
> 3.2 Tenanted after 21 October 1972 and covered under OLT
>
> -From the date when the land was actually tenanted (by virtue of Regional Order of Placement issued prior to August 18, 1987) up to the time of actual payment but not later than December 2006
>
> Time of actual payment – is the date when the Land Bank of the Philippines (LBP) approves payment of the land transfer claim and deposits the compensation proceeds in the name of the landowner (LO) in cash and in bonds. The release of payment can be claimed by the landowner upon compliance with the documentary requirements for release of payment.[20]

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[19] *Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, 27 November 2008, 572 SCRA 108, 124.

[20] *Rollo*, p. 358.

However, as embodied in its Prefatory Statement, the intent of the Administrative Order was precisely to address a situation "where a number of landholdings remain unpaid in view of the non-acceptance by the landowners of the compensation due to low valuation. Had the landowner been paid from the time of taking his land and the money deposited in a bank, the money would have earned the same interest rate compounded annually as authorized under banking laws, rules and regulations."[21] The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.[22] To condition the payment upon LBP's approval and its release upon compliance with some documentary requirements would render nugatory the very essence of "prompt payment." Therefore, to expedite the payment of just compensation, it is logical to conclude that the 6% interest rate be imposed from the time of taking up to the time of full payment of just compensation.

Certainly, the trend of recent rulings bolsters this interpretation. In *Forform Development Corporation v. Philippine National Railways*,[23] the Philippine National Railways was directed to file the appropriate expropriation action over the land in question, so that just compensation due to its owner may be determined in accordance with the Rules of Court, with interest at the legal rate of 6% per annum from the time of taking until full payment is made. The Court in *Manila International Airport Authority v. Rodriguez*[24] ordered just compensation for the portion of respondent's lot actually occupied by the runway, with interest

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[21] *Id.* at 359.

[22] *Land Bank of the Philippines v. Orilla*, G.R. No. 157206, 27 June 2008, 556 SCRA 103, 117.

[23] G.R. No. 124795, 10 December 2008, 573 SCRA 350.

[24] G.R. No. 161836, 28 February 2006, 483 SCRA 619.

thereon at the legal rate of 6% per annum from the time of taking until full payment is made.

LBP also proffers that just compensation pertaining to the 0.2329 hectare valued at ₱8,238.94 with no pronouncement as to interest per the Department of Agrarian Reform Adjudication Board (DARAB) decision has already attained finality, hence, it cannot be modified.[25]

Anent the DARAB decision relating to the 0.2329 hectare, suffice it to say that the determination of just compensation is a judicial function.[26] The DAR's land valuation is only preliminary and is not, by any means, final and conclusive upon the landowner or any other interested party. In the exercise of their functions, the courts still have the final say on what the amount of just compensation will be.[27] Hence, we sustain the computation reached by the trial court.

**WHEREFORE,** the petition is *DENIED*. The Decision dated 9 October 2007 and the Resolution dated 12 December 2007 of the Court of Appeals in CA-G.R. SP Nos. 89005 and 89288 are hereby *AFFIRMED* without prejudice to the right of the parties for additional claims that may arise in the application of DAR Administrative Order No. 5, series of 1998 in relation to R.A. No. 6657.

**SO ORDERED.**

*Carpio (Chairperson), Corona,*[*] *Del Castillo,* and *Abad, JJ.,* concur.

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[25] *Rollo,* p. 54.

[26] *Land Bank of the Philippines v. J.L. Jocson,* G.R. No. 180803, 23 October 2009; *Land Bank of the Philippines v. Kumassie Plantation Company, Inc.*, G.R. Nos. 177404 and 178097, 25 June 2009; *National Power Corporation v. Bongbong,* G.R. No. 164079, 3 April 2007, 520 SCRA 290, 307; *Land Bank of the Philippines v. Natividad,* G.R. No. 127198, 16 May 2005, 458 SCRA 441, 450-451.

[27] *Land Bank of the Philippines v. Dumlao, supra* note 19 at 128.

[*] Per Resolution dated 25 June 2008, Associate Justice Renato C. Corona is designated an additional member in place of Associate Justice Arturo D. Brion, who was then the Director of Land Bank of the Philippines.

**SECOND DIVISION**

[G.R. No. 186134. May 6, 2010]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **JOEL ROA *Y* VILLALUZ,** *accused-appellant.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; DENIAL AND FRAME-UP; CANNOT PREVAIL OVER THE AFFIRMATIVE TESTIMONY OF TRUTHFUL WITNESSES. —** In any criminal prosecution, the defenses of denial and frame-up, like *alibi*, are considered weak defenses and have been invariably viewed by the courts with disfavor for they can just as easily be concocted but are difficult to prove. Negative in their nature, bare denials and accusations of frame-up cannot, as a rule, prevail over the affirmative testimony of truthful witnesses. The foregoing principle applies with equal, if not greater, force in prosecutions involving violations of Republic Act No. 9165, especially those originating from buy-bust operations. In such cases, the testimonies of the police officers who conducted the buy-bust are generally accorded full faith and credit, in view of the presumption of regularity in the performance of public duties. Hence, when lined against an unsubstantiated denial or claim of frame-up, the testimony of the officers who caught the accused red-handed is given more weight and usually prevails.

**2. ID.; ID.; PRESUMPTIONS; PRESUMPTION OF REGULARITY; MAY BE OVERCOME BY CLEAR EVIDENCE THAT THE POLICE OFFICERS FAILED TO PERFORM THEIR DUTIES OR THAT THEY WERE PROMPTED WITH ILL MOTIVE. —** In order to overcome the presumption of regularity, jurisprudence teaches us that there must be clear and convincing evidence that the police officers did not properly perform their duties or that they were prompted with ill motive.

**3. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); BUY-BUST OPERATION; NOT INVALIDATED BY MERE NON-COORDINATION WITH THE PHILIPPINE DRUG ENFORCEMENT AGENCY. —** [C]oordination with the PDEA

is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86 of Republic Act No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug related matters," the provision does not, by so saying, make PDEA's participation a condition *sine qua non* for every buy-bust operation. After all, a buy-bust is just a form of an *in flagrante* arrest sanctioned by Section 5, Rule 113 of the Rules of the Court, which police authorities may rightfully resort to in apprehending violators of Republic Act No. 9165 in support of the PDEA. A buy-bust operation is not invalidated by mere non-coordination with the PDEA.

**4. ID.; ID.; ID.; PRIOR SURVEILLANCE IS NOT A PREREQUISITE FOR THE VALIDITY THEREOF. —** The case of ***People v. Lacbanes*** is quite instructive: "In *People v. Ganguso*, it has been held that **prior surveillance is not a prerequisite for the validity of an entrapment operation, especially when the buy-bust team members were accompanied to the scene by their informant**. In the instant case, the arresting officers were led to the scene by the poseur-buyer. Granting that there was no surveillance conducted before the buy-bust operation, this Court held in *People v. Tranca*, that there is no rigid or textbook method of conducting buy-bust operations. Flexibility is a trait of good police work. **The police officers may decide that time is of the essence and dispense with the need for prior surveillance**."

**5. ID.; ID.; REQUIREMENTS ON THE CUSTODY OF SEIZED ITEMS; NON-COMPLIANCE THEREWITH WILL NOT NECESSARILY RENDER THE CONFISCATED ITEMS INADMISSIBLE; CONDITION. —** This Court has consistently ruled that non-compliance with the requirements of Section 21 of Republic Act No. 9165 will not necessarily render the items seized or confiscated in a buy-bust operation inadmissible. Strict compliance with the letter of Section 21 is not required if there is a clear showing that the integrity and the evidentiary value of the seized items have been preserved, *i.e.*, the items being offered in court as exhibits are, without a specter of doubt, the very same ones recovered in the buy-bust operation. Hence, once the possibility of substitution has been negated by evidence of an unbroken and cohesive chain of custody over

the contraband, such contraband may be admitted and stand as proof of the *corpus delicti* notwithstanding the fact that it was never made the subject of an inventory or was photographed pursuant to Section 21(1) of Republic Act No. 9165.

**6. REMEDIAL LAW; EVIDENCE; PRESENTATION OF EVIDENCE; AUTHENTICATION OF EVIDENCE; CHAIN OF CUSTODY; UNBROKEN CHAIN OF CUSTODY OVER THE SEIZED DRUG, DULY ESTABLISHED IN CASE AT BAR. —** A review of the evidence on record will show that the prosecution was able to establish an unbroken chain of custody over the *shabu* which it claims as having been sold and possessed by the appellant x x x . [T]he prosecution was able to account for each and every link in the chain of custody over the *shabu*, from the moment it was retrieved during the buy-bust operation up to the time it was presented before the court as proof of the *corpus delicti*. All told, the probability that the sachets taken from the appellant could have been switched for another is nil. The existence of the *shabu* sold and possessed by the appellant was, therefore, proven beyond reasonable doubt.

**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.*:**

At bench is an ordinary appeal[1] assailing the decision[2] dated 3 July 2008 of the Court of Appeals in CA-G.R. CR No. 02828. In the said decision, the appellate court affirmed the twin convictions of herein appellant Joel Roa for the sale and for possession of dangerous drugs in violation of Republic Act

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[1] Via a notice of appeal, pursuant to Section 13(c) of Rule 122 of the Rules of Court.

[2] Penned by Associate Justice Jose Catral Mendoza (now an Associate Justice of the Supreme Court) with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag concurring. *Rollo*, pp. 2-21.

No. 9165 or *The Comprehensive Dangerous Drugs Act of 2002*. The dispositive portion of the assailed decision reads:

> WHEREFORE, the February 23, 2007 Decision of the Regional Trial Court, Branch 82, Quezon City, in Criminal Cases Nos. Q-03-120826, is hereby AFFIRMED.[3]

The prosecution's version of the events leading to the indictment of the appellant may be summarized as follows:

At around 10:00 in the evening of 5 September 2003, the Quezon City Police District (QCPD) received information from an "asset" that a certain Joel Roa was peddling *shabu* somewhere along Senatorial Road in Barangay Batasan Hills.[4] Acting on this information, QCPD Chief Superintendent Raymund Esquival immediately formed a team of police officers to conduct a buy-bust operation with the objective of apprehending the suspected pusher in *flagrante delicto*.[5]

The buy-bust team was composed of Police Officer (PO) 2 Joel Galacgac, Special Police Officer (SPO) 1 Rodolfo Limin, SPO2 Cesar Nano, and SPO1 Michael Fernandez.[6] Before proceeding with the operation, PO2 Galacgac was designated as the team's *poseur*-buyer.[7]

The team arrived at the target area around 12:30 in the morning of 6 September 2003.[8] The "asset" and PO2 Galacgac proceeded towards the house of the appellant, while the other members of the buy-bust team positioned themselves in strategic places.[9]

The "asset" went inside the house, and, after about a minute, came out with the appellant. The "asset" then introduced PO2

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[3] *Id.* at 20.

[4] CA *rollo*, p. 79.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.* at 80.

[9] *Id.*

Galacgac to the appellant as a user who wants to buy *shabu*. The appellant readily agreed.[10]

The appellant handed PO2 Galacgac one (1) small plastic sachet with white crystalline substance. In turn, PO2 Galacgac handed the previously marked ₱100.00 bill to the appellant as payment. Thereafter, PO2 Galacgac scratched his head, which served as the signal to the other members of the buy-bust team that the transaction was completed. In an instant, the other members of the buy-bust team closed in and apprehended the appellant. Upon being frisked by SPO1 Limin, two (2) more small plastic sachets containing white crystalline substance were recovered from the appellant's right front pocket.[11] Later, PO2 Galacgac would mark the small plastic sachet containing white crystalline substance handed to him during the sale, while SPO1 Limin had already marked the sachets he was able to retrieve from frisking the appellant.[12]

The appellant was then brought to the police station.[13] At the police station, PO2 Galacgac and SPO1 Limin forwarded the marked sachets to their investigator, PO3 Diosdado Rocero, who, in turn, made a request for a confirmatory examination.[14]

Police Inspector (P/Insp.) Leonard Arban, a forensic chemist of the Philippine National Police (PNP), received the marked sachets together with the request for a confirmatory examination.[15] The test conducted by P/Insp. Arban yielded a positive result for methamphetamine hydrochloride — the contents of the sachets were *shabu*.[16]

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[10] *Id*.

[11] *Id*.

[12] *Rollo*, p. 18.

[13] CA *rollo*, p. 80.

[14] *Rollo*, p. 18.

[15] CA *rollo*, p. 81

[16] *Id*.

As a consequence of these events, two (2) separate criminal informations — one for violation of Section 5[17] of Republic Act No. 9165, and another for violation of Section 11[18] of the same law —were filed against appellant Joel Roa before the Regional Trial Court, Branch 82, in Quezon City. The informations[19] read:

**CRIMINAL CASE NO. Q-03-120826 (For Violation of Section 5, Article II of Republic Act No. 9165)**

**INFORMATION**

That on or about the 6th day of September 2003, in Quezon City, Philippines, the said accused, not being authorized by law to sell,

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[17] **Section 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[18] **Section 11**. *Possession of Dangerous Drugs*. - x x x:

(1) x x x;

(2) x x x;

(3) x x x;

(4) x x x;

(5) x x x;

(6) x x x;

(7) x x x; and

(8) x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(1) x x x;

(2) x x x; and

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), **if the quantities of dangerous drugs are less than five (5) grams of** x x x **methamphetamine hydrochloride or "*shabu*"** x x x. (emphasis supplied.)

[19] CA *rollo*, pp. 10-13.

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 white crystalline substance containing Methylamphetamine [sic] Hydrochloride, a dangerous drug.

**INFORMATION**

**CRIMINAL CASE NO. Q-03-120827 (For Violation of Section 11, Article II of Republic Act No. 9165)**

That on or about 6th day of September 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 four (0.04) gram of white crystalline substance containing Methylamphetamine [sic] Hydrochloride, a dangerous drug.

The appellant entered a plea of not guilty to both accusations, and a joint trial for the two interrelated charges thereafter ensued.[20]

On 23 February 2007, the trial court rendered a Decision,[21] finding the appellant guilty beyond reasonable doubt of violating Sections 5 and 11 of Republic Act No. 9165. The decretal portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered as follows:

a.) Re: Criminal Case No. Q-03-120826, the Court finds accused **JOEL ROA *y* VILLALUZ *guilty*** beyond reasonable doubt of violation of Section 5, Article II of R.A. No. 9165 and hereby sentences him to suffer the penalty of **LIFE IMPRISONMENT** and to **pay a fine in the amount of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS**.

b.) Re: Criminal Case No. Q-03-120827, the Court finds accused **JOEL ROA *y* VILLALUZ *guilty*** beyond reasonable doubt of violation of Section 11, Article II of the same Act and hereby sentences him to suffer the indeterminate penalty of imprisonment of **TWELVE (12)**

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[20] *Id.* at 22-23.

[21] *Id.* at 22-29.

**YEARS and ONE (1) DAY as MINIMUM to FOURTEEN (14) YEARS as MAXIMUM** and to **pay a fine of THREE HUNDRED THOUSAND (₱300,000.00) PESOS**;

In convicting the appellant, the trial court gave full faith and credence to the version of the prosecution as established by the open court narrations of PO2 Galacgac, SPO1 Limin and SPO2 Cesar Nano, coupled by the stipulated testimonies of SPO1 Michael Fernandez, PO3 Diosdado Rocero and P/Insp. Arban.

On appeal, the Court of Appeals found itself in agreement with the findings of the trial court, *en route* to rendering the decision that is now the subject of the present review.

In this appeal, the appellant asks the Court to consider his contrary version of events. The appellant denies that he was caught, *in flagrante,* selling and possessing *shabu* and claims that he was just a victim of a police frame-up.[22] He professes that on the morning of 6 September 2003, while he was eating inside his house on Senatorial Road, Barangay Batasan Hills, four (4) men suddenly barged in and arrested him for no valid reason.[23] Then, he was conducted by his captors, who turned out to be QCPD officers, to the police station, and was asked to produce ₱50,000.00 in exchange for his release.[24] Not having any money to satisfy the demand, the appellant alleges that the QCPD fabricated the present charges against him in order to justify the detention.[25]

In support of his denial, the appellant points out that the QCPD never coordinated with the Philippine Drug Enforcement Agency (PDEA) about conducting any buy-bust operation, violating in the process Section 86 of Republic Act No. 9165.[26] Neither did the QCPD conduct any surveillance prior to the

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[22] *Id.* at 50.

[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.* at 51.

execution of the purported buy-bust.[27] These circumstances, the appellant believes, discount the existence of a genuine buy-bust operation and lend credibility to his own version that he was merely a victim of a frame-up.[28]

At any rate, the appellant adds that his acquittal for the two charges is in order because the prohibited drugs allegedly taken from him and presented in evidence could not be accepted as adequate proof of the *corpus delicti*.[29] The *shabu* that the prosecution claims to have been unlawfully sold and possessed by the appellant was neither photographed nor made the subject of a physical inventory as required under Dangerous Drugs Board Regulation No. 3, Series of 1979.[30] The appellant argues that as a necessary result of this omission, the identity of the *shabu* presented in evidence becomes highly suspect.

We are not impressed.

*Appellant's Denial*

In any criminal prosecution, the defenses of denial and frame-up, like *alibi*, are considered weak defenses and have been invariably viewed by the courts with disfavor for they can just as easily be concocted but are difficult to prove.[31] Negative in their nature, bare denials and accusations of frame-up cannot, as a rule, prevail over the affirmative testimony of truthful witnesses.[32]

The foregoing principle applies with equal, if not greater, force in prosecutions involving violations of Republic Act No. 9165, especially those originating from buy-bust operations. In such cases, the testimonies of the police officers who conducted the buy-bust are generally accorded full faith and credit, in

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[27] *Id.* at 52.

[28] *Id.* at 53.

[29] *Id.* at 54.

[30] *Id.*

[31] *People v. Guira*, G.R. No. 186497, 17 September 2009.

[32] *People v. Beruega*, 430 Phil. 487, 500-501 (2002).

view of the presumption of regularity in the performance of public duties. Hence, when lined against an unsubstantiated denial or claim of frame-up, the testimony of the officers who caught the accused red-handed is given more weight and usually prevails.

In order to overcome the presumption of regularity, jurisprudence teaches us that there must be clear and convincing evidence that the police officers did not properly perform their duties or that they were prompted with ill motive.[33]

In pointing out that the buy-bust conducted by the QCPD was carried out without first coordinating with PDEA and without any prior surveillance, the appellant ascribes irregularity in the manner by which the police operatives of QCPD conducted their operations, thereby casting doubt on the testimony of the prosecution witnesses that a legitimate buy-bust was undertaken.

We are not convinced.

In the first place, coordination with the PDEA is not an indispensable requirement before police authorities may carry out a buy-bust operation. While it is true that Section 86[34] of

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[33] *People v. Bongalon*, 425 Phil. 96, 116 (2002).

[34] **Section 86.** *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions*. – The Narcotics Group of the PNP, the Narcotics Division of the NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves. x x x.

x x x x x x x x x

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: *Provided, however*, That when the investigation being conducted by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided, further*, **That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters**. (emphasis supplied)

Republic Act No. 9165 requires the National Bureau of Investigation, PNP and the Bureau of Customs to maintain "close coordination with the PDEA on all drug related matters," the provision does not, by so saying, make PDEA's participation a condition *sine qua non* for every buy-bust operation. After all, a buy-bust is just a form of an *in flagrante* arrest sanctioned by Section 5, Rule 113[35] of the Rules of the Court, which police authorities may rightfully resort to in apprehending violators of Republic Act No. 9165 in support of the PDEA.[36] A buy-bust

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[35] **Section 5.** *Arrest without warrant*; *when lawful*. — A peace officer or a private person may, without a warrant, arrest a person:

(a) **When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense**;

(b) x x x; and

(c) x x x.

In cases falling under paragraphs (a) and (b) above, the person arrested without a warrant shall be forthwith delivered to the nearest police station or jail and shall be proceeded against in accordance with Section 7 of Rule 112. (Emphasis supplied.)

[36] Even the Implementing Rules and Regulation (IRR) of Republic Act No. 9165 does not make PDEA's participation a mandatory requirement before the other law enforcement agencies may conduct buy-bust operations. Section 86(a) of the said IRR provides:

(a) Relationship/Coordination between PDEA and Other Agencies – The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA: ***Provided,*** **that the said agencies shall, as far as practicable, coordinate with the PDEA prior to anti-drug operations**; *Provided, further*, that, in any case said agencies shall inform the PDEA of their anti-drug operations within twenty-four hours from the time of the actual custody of the suspects or seizure of said drugs and substances, as well as paraphernalia and transport equipment used in illegal activities involving such drugs and/or substances, and shall regularly update the PDEA on the status of the cases involving the said anti-drug operations; *Provided furthermore*, that raids, seizures, and other anti-drug operations conducted by the PNP, the NBI, and other law enforcement agencies prior to the approval of this IRR shall be valid and authorized; ***Provided, finally,*** **that nothing in this IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from**

operation is not invalidated by mere non-coordination with the PDEA.

Neither is the lack of prior surveillance fatal. The case of ***People v. Lacbanes***[37] is quite instructive:

> In *People v. Ganguso*,[38] it has been held that **prior surveillance is not a prerequisite for the validity of an entrapment operation, especially when the buy-bust team members were accompanied to the scene by their informant**. In the instant case, the arresting officers were led to the scene by the poseur-buyer. Granting that there was no surveillance conducted before the buy-bust operation, this Court held in *People v. Tranca*,[39] that there is no rigid or textbook method of conducting buy-bust operations. Flexibility is a trait of good police work. **The police officers may decide that time is of the essence and dispense with the need for prior surveillance**. (Emphasis supplied.)

Failing to show any ill motive and improper performance of duty on the part of the police officers who caused his apprehension, the appellant's defenses of denial and frame-up must necessarily fail.

*Proof of Corpus Delicti*

The appellant also contends that the prosecution has failed to present competent evidence of the *corpus delicti*, by reason of the failure of the buy-bust team to make an inventory and photograph the prohibited drugs allegedly retrieved from the former. For this purpose, appellant cites a violation of Dangerous Drugs Board Regulation No. 3, Series of 1979.

We do not agree.

To begin with, the appellant cited a defunct regulation. Dangerous Drugs Board Regulation No. 3, Series of 1979 was

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> **effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court**. (Emphasis and underscoring supplied)

[37] 336 Phil. 933, 941 (1997).

[38] G.R. No. 115430, 23 November 1995, 250 SCRA 268, 278-279.

[39] G.R. No. 110357, 17 August 1994, 235 SCRA 455, 463.

already superseded by Section 21 of Republic Act No. 9165 and its Implementing Rules, which are now the prevailing laws relative to the requirements of making an inventory and photographing confiscated prohibited drugs and paraphernalia. It may not be amiss to point out that the *shabu* subject of this case was seized from the appellant upon his apprehension on 3 September 2003 — during which, Republic Act No. 9165 was already in effect.[40]

For appellant's position, support is not provided by the applicable law.

This Court has consistently ruled that non-compliance with the requirements of Section 21 of Republic Act No. 9165 will not necessarily render the items seized or confiscated in a buy-bust operation inadmissible.[41] Strict compliance with the letter of Section 21 is not required if there is a clear showing that the integrity and the evidentiary value of the seized items have been preserved, *i.e.*, the items being offered in court as exhibits are, without a specter of doubt, the very same ones recovered in the buy-bust operation.[42] Hence, once the possibility of substitution has been negated by evidence of an unbroken and cohesive chain of custody over the contraband, such contraband may be admitted and stand as proof of the *corpus delicti* notwithstanding the fact that it was never made the subject of an inventory or was photographed pursuant to Section 21(1) of Republic Act No. 9165.[43]

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[40] Republic Act No. 9165 took effect on 7 June 2002.

[41] *People v. Pringas*, G.R. No. 175928, 31 August 2007, 531 SCRA 828, 842-843; *People v. Teodoro*, G.R. No. 185164, June 22, 2009; *People of the Philippines v. Capco*, G.R. No. 183088, 17 September 2009; *People v. Alberto*, G.R. No. 179717, 5 February 2010.

[42] *Id.*

[43] **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

A review of the evidence on record will show that the prosecution was able to establish an unbroken chain of custody over the *shabu* which it claims as having been sold and possessed by the appellant:

1.) On the charge of sale, PO2 Galacgac testified that he placed his markings on the small plastic sachet containing white crystalline substance handed to him by the appellant during the operation.[44]

2.) On the charge of possession, PO2 Galacgac and SPO2 Cesar Nano recounted that they witnessed SPO1 Limin recover the two (2) small plastic sachets containing white crystalline substance from the accused at the *locus criminis* after he was bodily searched. Thereafter, SPO1 Limin marked the specimens he confiscated with his initials RL1 and RL2.[45]

3.) PO2 Galacgac and SPO1 Limin testified that after marking the sachets, they turned the same over to their investigator, PO3 Diosdado Rocero.[46] PO3 Diosdado Rocero confirmed the receipt of the marked sachets in his stipulated testimony, adding that he also prepared a request for confirmatory examination.[47]

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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.** (emphasis supplied.)

[44] *Rollo*, p. 18.

[45] *Id.*

[46] *Id.*

[47] CA *rollo*, p. 23.

4.) In turn, PNP forensic chemist P/Insp. Leonard Arban acknowledged in his testimony the receipt of the sachets along with the request for a confirmatory examination. He also stated that the test he conducted on the specimens yielded a positive result for methamphetamine hydrochloride, for which he issued a corresponding laboratory report. Finally, he attested that he turned over the specimen to the Evidence Custodian, which kept custody of the *shabu* until it was retrieved for purposes of the trial.[48]

Verily, the prosecution was able to account for each and every link in the chain of custody over the *shabu*, from the moment it was retrieved during the buy-bust operation up to the time it was presented before the court as proof of the *corpus delicti*. All told, the probability that the sachets taken from the appellant could have been switched for another is nil. The existence of the *shabu* sold and possessed by the appellant was, therefore, proven beyond reasonable doubt.

**WHEREFORE,** the instant appeal is *DENIED*. Accordingly, the decision of the Court of Appeals dated 3 July 2008 in CA-G.R. CR No. 02828 is hereby *AFFIRMED*. Costs against the appellant.

**SO ORDERED.**

*Carpio (Chairperson), Brion, Del Castillo,* and *Abad, JJ.*, concur.

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[48] *Rollo,* p. 5.

**THIRD DIVISION**

[G.R. No. 189402. May 6, 2010]

**LIGAYA SANTOS and ROBERT BUNDA,** *petitioners, vs.* **DOMINGO I. ORDA, JR.,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT THE PROPER REMEDY FOR A CASE DISMISSED. —** On the first issue, the petition for *certiorari* filed by respondent under Rule 65 of the Rules of Court is inappropriate. It bears stressing that the Order of the RTC, granting the motion of the prosecution to withdraw the Informations and ordering the case dismissed, is final because it disposed of the case and terminated the proceedings therein, leaving nothing to be done by the court. Thus, the proper remedy is appeal.

**2. ID.; ID.; ID.; NOT A SUBSTITUTE FOR APPEAL. —** It is elementary that the special civil action of *certiorari* is not and cannot be a substitute for an appeal, where the latter remedy is available, as it was in this case. A special civil action under Rule 65 cannot cure a party's failure to timely appeal the assailed decision or resolution. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal.

**3. ID.; ID.; ID.; DISMISSIBLE FOR BEING THE WRONG REMEDY; EXCEPTIONS. —** To be sure, a petition for *certiorari* is dismissible for being the wrong remedy. Indeed, we have noted a number of exceptions to this general rule, to wit: 1) when public welfare and the advancement of public policy dictate; 2) when the broader interest of justice so requires; 3) when the writs issued are null and void; 4) when the questioned order amounts to an oppressive exercise of judicial authority; 5) when, for persuasive reasons, the rules may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure; or 6) in other meritorious cases. None of the above exceptions are present in the instant case; hence, we apply the general rule. Respondent not having availed himself of the proper remedy to assail the dismissal of

the case against petitioners, the dismissal has become final and executory.

**4. ID.; CRIMINAL PROCEDURE; WARRANT OF ARREST; PROBABLE CAUSE; ELUCIDATED. —** The task of the Presiding Judge when an Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused. Probable cause is such set of facts and circumstances that would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested. In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction. Moreover, when confronted with a motion to withdraw an Information on the ground of lack of probable cause based on a resolution of the DOJ Secretary, the bounden duty of the trial court is to make an independent assessment of the merits of such motion. Having acquired jurisdiction over the case, the trial court is not bound by such resolution, but is required to evaluate it before proceeding further with the trial and should embody such assessment in the order disposing the motion.

**5. ID.; ID.; ID.; ID.; FINDING THAT NO PROBABLE CAUSE EXISTED, JUSTIFIED BY EVIDENCE ON RECORD. —** [W]e find that the RTC did not err in finding that no probable cause existed to indict the petitioners for the crime of murder. Neither did it gravely abuse its discretion in making said conclusion. There was no hint of whimsicality, nor of gross and patent abuse of discretion as would 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 on the part of the Presiding Judge. On the contrary, he came to the conclusion that there was no probable cause for petitioners to commit murder, by applying basic precepts of criminal law to the facts, allegations and evidence on record. Said conclusion was thoroughly explained in detail in the lengthy Order dated

September 30, 2005. We would like to stress that the purpose of the mandate of the judge to first determine probable cause is to insulate from the very start those falsely charged with crimes from the tribulations, expenses and anxiety of a public trial.

**APPEARANCES OF COUNSEL**

*Mañacop Law Office* for petitioners.

**D E C I S I O N**

**NACHURA, *J.*:**

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to reverse and set aside the Court of Appeals (CA) Decision[1] dated May 20, 2009 and its Resolution[2] dated September 10, 2009. The assailed Decision reversed and set aside the Orders dated September 30, 2005 and December 28, 2005 of the Regional Trial Court (RTC) of Parañaque City, Branch 274,[3] while the assailed Resolution denied the motion for reconsideration filed by petitioners Ligaya Santos (Ligaya) and Robert Bunda (Robert).

The facts of the case follow:

On April 2, 2001, Francis Orda (Francis), the son of respondent Domingo Orda, Jr., was shot to death in Parañaque City. He was then twenty years old and an engineering student.[4]

A certain Gina Azarcon (Gina) executed her sworn statement that she saw three male persons perpetrate the crime; two of them, later identified as Rolly Tonion (Rolly) and Jhunrey Soriano (Jhunrey), shot Francis inside his car. The City Prosecutor of Parañaque City thus filed an Information for the crime of

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[1] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Rebecca de Guia-Salvador and Sixto C. Marella, Jr., concurring; *rollo*, pp. 31-41.

[2] *Id.* at 55-57.

[3] *Rollo*, p. 40.

[4] *Id.* at 32.

murder against Rolly and Jhunrey, docketed as Criminal Case No. 01-0425. They pleaded "Not Guilty" during arraignment.[5]

Two more witnesses, Ernesto Regala (Ernesto) and his son, Dennis, surfaced. Dennis testified that before Francis was shot to death, the former went to the office of Ligaya, who was then a *Barangay* Chairperson, to deliver collections from the public toilet. When Dennis failed to return home, Ernesto proceeded to fetch him. They then saw Ligaya hand a gun to accused Rolly, saying, *"Gusto ko malinis na trabaho at walang bulilyaso, baka makaligtas na naman si Orda."* They learned the following day that, instead of respondent, it was Francis who was killed. Thereafter, Rolly asked Dennis to return to Ligaya the gun that Rolly used, but Dennis rebuffed such request. Ligaya later instructed Dennis to monitor the activities of respondent.[6] Hence, the Information was filed against Ligaya and a certain Edna Cortez. Upon further testimony of Gina, an Amended Information was filed implicating more accused, including petitioner Robert.[7]

Gina, Ernesto and Dennis later recanted their testimonies. On June 11, 2002, the Department of Justice (DOJ) issued a Joint Resolution directing the City Prosecutor to cause the withdrawal of the Informations for murder against the accused, holding that the prosecution witnesses' testimonies were not credible because of their recantation. On motion of the prosecution, the RTC, Branch 258, issued an Order dated July 5, 2005, allowing the withdrawal of the Informations against the accused and consequently recalling the warrants for their arrest.[8]

Respondent elevated the matter to the CA in CA-G.R. SP No. 72962. The CA nullified the aforesaid Order, declaring that RTC, Branch 258, committed grave abuse of discretion in allowing the withdrawal of the Informations without making

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[5] *Id.*

[6] *Id.*

[7] *Id.* at 32-33.

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

an independent evaluation on the merits of the case. On final review, this Court affirmed the CA decision in G.R. No. 158236 on September 1, 2004. Unsatisfied, Ligaya filed a motion for reconsideration.[9]

Pending the resolution of her motion, Ligaya filed an Urgent Petition for Bail before the RTC of Parañaque City, Branch 257, where the cases were subsequently re-raffled to upon the inhibition of the Presiding Judge of Branch 258. In opposition to the motion, the prosecution presented anew two witnesses, Sabino Frias (Sabino) and Jonas Agnote (Jonas). Sabino testified that, on that fateful day, he heard gunshots and saw three armed men run towards the parked van where Ligaya was. Jonas, on the other hand, revealed that Ligaya approached him to contact a hired killer who would be willing to assassinate respondent. He then contacted a certain "Dagul" to do the job. Jonas was likewise tasked to change the plate number of Ligaya's van. On December 29, 2004, the RTC debunked the petition for bail. [10]

Meanwhile, in G.R. No. 158236, the Court finally resolved petitioners' motion for reconsideration, holding that the RTC, Branch 258,[11] must make an independent evaluation of the records before allowing the withdrawal of the Informations against petitioners. This impelled Ligaya to file before the RTC, Branch 257, an Urgent Motion to Resolve Anew and on the Merits Previous Motion to Withdraw Criminal Informations Pursuant to the DOJ Finding on Lack of Probable Cause.[12]

The aforesaid incidents were assigned for resolution to the RTC, Branch 274, to which the case was re-raffled upon the inhibition of the Presiding Judge of Branch 257.[13]

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[9] *Id.* at 34.

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

[11] The case was re-raffled to Branch 257.

[12] *Rollo*, pp. 35-36.

[13] *Id.* at 36.

On September 30, 2005, the RTC issued an Order[14] dismissing the case for murder, ratiocinating that no probable cause existed to indict them for their crime. Consequently, it lifted the warrants for their arrests and ordered their immediate release from detention. The prosecution's motion for reconsideration was denied on December 28, 2005.[15]

Aggrieved, respondent filed a Petition for *Certiorari* before the CA, claiming that the RTC committed grave abuse of discretion in finding that no probable cause existed against the accused.

On May 20, 2009, the CA granted the petition, the dispositive portion of which reads:

> WHEREFORE, the *Petition for Certiorari* is hereby **GRANTED.** The *Orders* dated 30 September 2005 and 28 December 2005 of the Regional Trial Court of Paranaque City, Branch 274, are **REVERSED and SET ASIDE.** The Executive Judge of the Regional Trial Court of Parañaque City is **DIRECTED** to cause the re-raffle of Criminal Case No. 01- 0921 for appropriate proceedings.
>
> SO ORDERED.[16]

The CA concluded that the RTC turned a deaf ear to the crucial testimonial evidence of the prosecution that, more likely than not, the crime charged was committed by the accused. It specifically pointed out that Sabino positively identified the accused and related in detail their supposed participation in killing Francis. The court could not also ignore the statements made by Jonas at the risk of incriminating himself. With these, the CA found it necessary that a full blown trial be conducted to unearth the truth behind their testimonies. In disregarding the evidence presented by the prosecution, the CA declared that, indeed, the RTC committed grave abuse of discretion. It, however, clarified that, in making the above pronouncements, the court was not enunciating that the accused were guilty of the crime

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[14] *Id.* at 58-93.

[15] *Id.* at 36.

[16] *Id.* at 40.

charged.[17] For possible bias and prejudice, the court likewise ordered the inhibition of the Presiding Judge and the subsequent re-raffle of the case.[18]

On motion of petitioners, the CA clarified that the reversal of the RTC Orders carried with it the reversal of the trial court's finding that petitioners were entitled to bail.[19]

Hence, the present petition raising the following issues:

(a) Sec. 1, Rule 41 of the Rules of Court defines what are to be appealed. **"Appeal may be taken from a judgment or final order that completely disposes of the case."** The September 30, 2005 order of the RTC of Parañaque City dismissing the information for murder **"disposes of the action in its entirety and leaves nothing more to be done to complete the relief sought."** Hence, the remedy of the People of the Philippines is appeal. *[Dy Chun vs. Mendoza, L-25461, October 4, 1968, 25 SCRA 431]* The People and the private complainant did not appeal the September 30, 2005 Joint Order. Hence, the same became final and executory.

(b) **"Once a decision becomes final, even the court which rendered it cannot lawfully alter or modify the same especially where the alteration or modification is material or substantial."** [*Samson vs. Montejo, 9 SCRA 419; De la Cruz vs. Plaridel Surety and Insurance Co., 10 SCRA 727; Ocampo vs. Caluag, 19 SCRA 971]*

(c) On March 24, 2006, two (2) months after the September 30, 2005 final order has become final and executory, the private complainant Fiscal Domingo Orda, Jr. filed with the Court of Appeals a petition for *certiorari* questioning the orders of September 30, 2005 and December 28, 2005. *Certiorari* could not be a substitute for a lost appeal. **"Where petitioner has failed to file a timely appeal from the trial court's order, it could not longer avail of the remedy of the special civil action for *certiorari* in lieu of his lost right of appeal."** [*Mabuhay Insurance & Guaranty, Inc. vs. Court of Appeals, 32 SCRA 245; Mathay, Jr. vs. Court of Appeals, 312 SCRA 91*]

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[17] *Id.* at 37-39.

[18] *Id.* at 40.

[19] *Id.* at 56.

(d) The findings of fact of the Regional Trial Court of Parañaque City that there is no probable cause to warrant the filing of the information against the petitioners cannot be reviewed in the petition for *certiorari* because only jurisdictional issues may be raised in a *certiorari* proceedings. In a *certiorari* petition, **"the court is confined to question of jurisdiction. The reason is that the function of the writ of *certiorari* is to keep an inferior court within its jurisdiction and not to correct errors of procedure or mistakes in the judge's finding or conclusion."** [*Pacis vs. Averia, 18 SCRA 907; Albert vs. Court of First Instance of Manila, Branch VI, 23 SCRA 948; Estrada vs. Sto. Domingo, 28 SCRA 890*]

(e) Moreover, **"the findings and conclusions of the trial court command great respect and weight because the trial court has the opportunity to see and observe the demeanor of witnesses which the appellate court does not have."** [*People vs. Cristobal, L-13062, January 28, 1961, 1 SCRA 151; Medina vs. Collector of Internal Revenue, L-15113, January 28, 1961, 1 SCRA 302; Tuason vs. Luzon Stevedoring Company, Inc., L-13541, January 28, 1961, 1 SCRA 189; People vs. Sarmiento, L-19146, May 31, 1963, 8 SCRA 263*]

(f) The Joint Order of September 30, 2005 was issued by the Regional Trial Court in compliance with the decision of the Supreme Court that the trial court must act on the issue of probable cause using its own discretion. Reversing the September 30, 2005 Joint Order is like reversing the Supreme Court.

(g) The Court of Appeals denied the motion for reconsideration citing Sec. 1, Rule 41 of the Rules of Court providing **"that an order dismissing the action without prejudice is not appealable."** The Court of Appeals ruled that the remedy from the finding of fact and final order dismissing the information **"is to file a special civil action under Rule 65."**

(h) The final order of September 30, 2005 does not state that the dismissal is **"without prejudice."** There is nothing in the order of September 30, 2005 from which we could derive that the dismissal of the action is **"without prejudice."** While it may be true that the defense of double jeopardy may not be invoked by the petitioners simply because they were not yet arraigned, it does not follow that another information for murder could be filed against them on the same evidence that the court dismissed the information for lack of probable cause. A new information could still be filed against the petitioners

but the same must not be based on the same evidence already repudiated in the September 30, 2005 order.[20]

Simply put, the issues for resolution are: 1) whether a special civil action for *certiorari* under Rule 65 of the Rules of Court is the correct remedy in assailing the RTC decision allowing the withdrawal of the Informations and consequently dismissing the case for lack of probable cause; and 2) whether the CA erred in finding that there was probable cause against petitioners.

We grant the petition.

On the first issue, the petition for *certiorari* filed by respondent under Rule 65 of the Rules of Court is inappropriate. It bears stressing that the Order of the RTC, granting the motion of the prosecution to withdraw the Informations and ordering the case dismissed, is final because it disposed of the case and terminated the proceedings therein, leaving nothing to be done by the court. Thus, the proper remedy is appeal.[21]

Respondent filed with the CA the special civil action for *certiorari* under Rule 65 of the Rules of Court instead of an ordinary appeal, not because it was the only plain, speedy, and adequate remedy available to him under the law, but, obviously, to make up for the loss of his right to an ordinary appeal. It is elementary that the special civil action of *certiorari* is not and cannot be a substitute for an appeal, where the latter remedy is available, as it was in this case. A special civil action under Rule 65 cannot cure a party's failure to timely appeal the assailed decision or resolution. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal.[22]

To be sure, a petition for *certiorari* is dismissible for being the wrong remedy. Indeed, we have noted a number of exceptions

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[20] *Id.* at 5-7.

[21] *Fuentes v. Sandiganbayan,* G.R. No. 164664, July 20, 2006, 495 SCRA 784, 797.

[22] *Tanenglian v. Lorenzo*, G.R. No. 173415, March 28, 2008, 550 SCRA 348, 366-367.

to this general rule, to wit: 1) when public welfare and the advancement of public policy dictate; 2) when the broader interest of justice so requires; 3) when the writs issued are null and void; 4) when the questioned order amounts to an oppressive exercise of judicial authority; 5) when, for persuasive reasons, the rules may be relaxed to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure; or 6) in other meritorious cases.[23]

None of the above exceptions are present in the instant case; hence, we apply the general rule. Respondent not having availed himself of the proper remedy to assail the dismissal of the case against petitioners, the dismissal has become final and executory.[24]

For reasons that will be discussed below, even on the merits of the case, the CA erred in reversing the Orders of the RTC.

The task of the Presiding Judge when an Information is filed with the court is first and foremost to determine the existence or non-existence of probable cause for the arrest of the accused. Probable cause is such set of facts and circumstances that would lead a reasonably discreet and prudent man to believe that the offense charged in the Information or any offense included therein has been committed by the person sought to be arrested. In determining probable cause, the average man weighs the facts and circumstances without resorting to the calibrations of the rules of evidence of which he has no technical knowledge. He relies on common sense. A finding of probable cause needs only to rest on evidence showing that, more likely than not, a crime has been committed and that it was committed by the accused. Probable cause demands more than suspicion; it requires less than evidence that would justify conviction.[25]

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[23] *Id.* at 367.

[24] *First Women's Credit Corporation v. Baybay*, G.R. No. 166888, January 31, 2007, 513 SCRA 637, 647.

[25] *Baltazar v. People*, G.R. No. 174016, July 28, 2008, 560 SCRA 278, 293-294.

Moreover, when confronted with a motion to withdraw an Information on the ground of lack of probable cause based on a resolution of the DOJ Secretary, the bounden duty of the trial court is to make an independent assessment of the merits of such motion. Having acquired jurisdiction over the case, the trial court is not bound by such resolution, but is required to evaluate it before proceeding further with the trial and should embody such assessment in the order disposing the motion.[26]

Records show that the RTC, on motion of the prosecution, allowed the withdrawal of the Informations for murder, holding that the prosecution witnesses' testimonies were not credible. Pursuant to the Court's Decision in G.R. No. 158236, the RTC reviewed anew the records of the case and made an independent evaluation of the evidence presented to ascertain the existence or non-existence of probable cause to indict the petitioners. After such evaluation, the court, on September 30, 2005, dismissed the case for murder against the accused, including petitioners herein, ratiocinating that no probable cause existed to indict them for their crime. Consequently, it lifted the warrants for their arrest and ordered their immediate release from detention. The prosecution's motion for reconsideration was denied on December 28, 2005.

A closer scrutiny of the Order of the RTC reveals that the Presiding Judge allowed the withdrawal of the Informations, consequently dismissed the case against petitioners, and lifted the warrants for their arrest on the following grounds: 1) the incredibility of the earlier statements of Gina, Ernesto and Dennis because of their subsequent recantation;[27] 2) the improbability that Dennis and Ernesto saw and heard the conversations of the accused in view of the counter-evidence submitted by Ligaya, showing the physical set-up of her residence or building, the kind of door she maintained thereat, and the inner private room she had;[28] 3) the lack or insufficiency of evidence at the level

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[26] *Ark Travel Express, Inc. v. Abrogar*, G.R. No. 137010, August 29, 2003, 410 SCRA 148.

[27] *Rollo*, p. 87.

[28] *Id.* at 88.

of prosecution for purposes of determining probable cause;[29] and 4) the incredibility of the testimonies of Sabino and Jonas because of the absence of corroborating evidence.[30]

Given the foregoing, we find that the RTC did not err in finding that no probable cause existed to indict the petitioners for the crime of murder. Neither did it gravely abuse its discretion in making said conclusion. There was no hint of whimsicality, nor of gross and patent abuse of discretion as would 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 on the part of the Presiding Judge.[31] On the contrary, he came to the conclusion that there was no probable cause for petitioners to commit murder, by applying basic precepts of criminal law to the facts, allegations and evidence on record. Said conclusion was thoroughly explained in detail in the lengthy Order dated September 30, 2005. We would like to stress that the purpose of the mandate of the judge to first determine probable cause is to insulate from the very start those falsely charged with crimes from the tribulations, expenses and anxiety of a public trial.[32]

**WHEREFORE,** premises considered, the petition is *GRANTED*. The Court of Appeals Decision dated May 20, 2009 and its Resolution dated September 10, 2009 are *REVERSED* and *SET ASIDE*. The Orders of the Regional Trial Court, Branch 274, dated September 30, 2005 and December 28, 2005 are *REINSTATED*.

**SO ORDERED.**

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

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[29] *Id.*

[30] *Id.* at 89.

[31] *Baltazar v. People, supra* note 25, at 294-295.

[32] *Id.* at 294.

**THIRD DIVISION**

[G.R. No. 189602. May 6, 2010]

**HEIRS OF ALFREDO ZABALA, represented by MENEGILDA ZABALA, ROLANDO ZABALA, MANUEL ZABALA, MARILYN ZABALA, and ADELINA ZABALA,** *petitioners, vs.* **HON. COURT OF APPEALS, VICENTE T. MANUEL AND/OR HEIRS OF VICENTE T. MANUEL,** *respondents.*

**SYLLABUS**

**CIVIL LAW; SPECIAL CONTRACTS; COMPROMISE AGREEMENTS; ELUCIDATED. —** Under Article 2028 of the Civil Code, a compromise agreement is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. Compromise is a form of amicable settlement that is not only allowed, but also encouraged in civil cases. Contracting parties may establish such stipulations, clauses, terms, and conditions as they deem convenient, provided that these are not contrary to law, morals, good customs, public order, or public policy.

**APPEARANCES OF COUNSEL**

*Victor De Dios, Jr.* for petitioners.
*Ortiguera Zuniga Pomer Salariz Sison Law Office* for respondents.

**R E S O L U T I O N**

**NACHURA, *J.*:**

The parties to this Petition for *Certiorari* seek this Court's approval of their Compromise Agreement.

On April 1, 2002, respondent Vicente T. Manuel filed a Complaint[1] for ejectment with damages against Alfredo Zabala before the Municipal Trial Court in Cities (MTCC) of Balanga,

[1] *Rollo,* pp. 12-14.

Bataan. Respondent alleged that he was in actual and peaceful possession of a fishpond (Lot No. 1483) located in Ibayo, Balanga City. On October 15, 2001, Zabala allegedly entered the fishpond without authority, and dumped soil into the fishpond without an Environment Compliance Certificate. Zabala continued such action until the time of the filing of the Complaint, killing the crabs and the *bangus* that respondent was raising in the fishpond. Thus, respondent asked that Zabala be restrained from touching and destroying the fishpond; that Zabala be ejected therefrom permanently; and for actual and moral damages and attorney's fees.

Zabala promptly moved for the dismissal of the Complaint for non-compliance with the requirement under the Local Government Code to bring the matter first to *barangay* conciliation before filing an action in court.[2]

Respondent subsequently filed a Motion for Judgment[3] on the ground of petitioner's failure to file a responsive pleading or answer.

The MTCC, in an Order dated May 27, 2003, granted Zabala's motion and dismissed the Complaint, holding that respondent indeed violated the requirement of *barangay* conciliation.[4]

Respondent then appealed the ruling to the Balanga, Bataan Regional Trial Court (RTC).

In a decision dated March 30, 2004,[5] the RTC reversed the MTCC's May 27, 2003 Order and rendered judgment directing Zabala, his heirs or subalterns to immediately vacate Lot No. 1483 and restore respondent to his peaceful possession thereof. The RTC also directed Zabala to pay respondent actual damages, moral damages, and attorney's fees. The RTC found that Zabala did not, in fact, file an answer to the Complaint. Thus, under Section 6 of the Revised Rules on Summary

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[2] *Id.* at 16.

[3] *Id.* at 17-18.

[4] Order; *id.* at 19-20.

[5] *Id.* at 22-25.

Procedure, respondent was entitled to judgment on the pleadings. Based on the allegations in respondent's Complaint, the RTC held that respondent was entitled to the reliefs prayed for.

Zabala then filed a Petition for Review before the Court of Appeals (CA).

On December 19, 2008, the CA promulgated a Decision[6] upholding the RTC's reversal of the MTCC's Order. The CA held that, based on the allegations in the Complaint, the requirement for prior conciliation proceedings under the Local Government Code was inapplicable to the suit before the MTCC, the action being one for ejectment and damages, with application for a writ of preliminary injunction, even without the use of those actual terms in the Complaint. However, the CA granted Zabala's prayer for the deletion of the awards for actual and moral damages, and for attorney's fees.

Zabala filed a Motion for Reconsideration, which the CA denied in a Resolution dated August 26, 2009.

On October 9, 2009, Zabala's heirs filed this Verified Petition for *Certiorari*.[7] They prayed for the annulment of the CA's December 19, 2008 Decision and August 26, 2009 Resolution, and for the reinstatement of the MTCC's May 27, 2003 Order. In the alternative, they prayed that the Court remand the records to the MTCC, so that they could file their Answer, and that due proceedings be undertaken before judgment.

In a Resolution dated November 18, 2009, respondents were required to file their Comment on the Petition.

The parties now present before this Court a Compromise Agreement, *viz.*:

**COMPROMISE AGREEMENT**

THE PARTIES represented by their lawyers, respectfully submit the following compromise agreement:

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[6] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr., concurring; *id.* at 43-51.

[7] *Rollo*, pp. 3-11.

1. Private respondents acknowledge that the owner of the subject parcel of land and the improvements thereon are the petitioners[;]

2. Private respondents filed an ejectment case against the said owners before the lower court which granted the reliefs sought for (due to failure of petitioners to file their answer)[;]

3. For and in consideration of the amount of Two Hundred Thousand Pesos (₱200,000.00), receipt of the same is acknowledged hereof, private respondents hereby abandon the decision rendered in their favor by the lower courts and instead waive all their rights and interests to the subject property particularly their right to possession of the same and thus, hereby assure that petitioners Zabalas will have a peaceful, continuous and notious (sic) possession of the subject property.

WHEREFORE, it is respectfully prayed of the Honorable Court that this Compromise Agreement be duly approved.

Balanga City for Manila, April 8, 2010.

| | |
|---|---|
| For the petitioner heirs of Alfredo Zabala | For the respondents Vicente Manuel and/or Heirs of Vicente Manuel |
| By: | By: |
| (Signed)<br>**MENEGILDA ZABALA** | (Signed)<br>**PERFECTA MANUEL** |
| Assisted by: | Assisted by: |
| (Signed) | (Signed) |
| ATTY. VICTOR P. DE DIOS, JR.<br>Counsel for petitioners | ATTY. ANTONIO M. ORTIGUERA<br>Counsel for respondents[8] |

Under Article 2028 of the Civil Code, a compromise agreement is a contract whereby the parties, by making reciprocal concessions, avoid litigation or put an end to one already commenced. Compromise is a form of amicable settlement that is not only allowed, but also encouraged in civil cases.[9]

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[8] *Id.* at 59.

[9] *Harold v. Aliba*, G.R. No. 130864, October 2, 2007, 534 SCRA 478, 486.

Contracting parties may establish such stipulations, clauses, terms, and conditions as they deem convenient, provided that these are not contrary to law, morals, good customs, public order, or public policy.[10]

Thus, finding the above Compromise Agreement to have been validly executed and not contrary to law, morals, good customs, public order, or public policy, we approve the same.

**WHEREFORE,** the foregoing premises considered, the Compromise Agreement is hereby *APPROVED* and judgment is hereby rendered in accordance therewith. By virtue of such approval, this case is now deemed *TERMINATED*. No pronouncement as to costs.

**SO ORDERED.**

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

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**EN BANC**

[G.R. No. 191771. May 6, 2010]

**LIBERAL PARTY, represented by its president MANUEL A. ROXAS II and Secretary General JOSEPH EMILIO A. ABAYA,** *petitioner, vs.* **COMMISSION ON ELECTIONS, NACIONALISTA PARTY, represented by its President MANUEL B. VILLAR and NATIONALIST PEOPLE'S COALITION, allegedly represented by its chairman FAUSTINO S. DY, JR.,** *respondents.*

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[10] CIVIL CODE, Art. 1306.

**SYLLABUS**

**1. REMEDIAL LAW; CIVIL PROCEDURE; LIBERAL APPLICATION OF THE RULES; PROPRIETY THEREOF. —** We have indicated many times in the past that a primary factor in considering technical and procedural objections is the nature of the issues involved. We have been strict when the issues are solely confined to the parties' private interests and carry no massive ripple effects directly affecting the public, but have viewed with liberality the technical and procedural threshold issues raised when grave public interests are involved. Our liberality has even gone beyond the purely technical and procedural where Court intervention has become imperative. Thus, we have recognized exceptions to the threshold issues of ripeness and mootness of the petitions before us, as well as questions on *locus standi*. We have also brushed aside procedural technicalities where the issues raised, because of the paramount public interest involved and their gravity, novelty or weight as precedents deserve the Court's attention and active intervention.

**2. ID.; ID.; ID.; APPLIED IN ELECTION CASE WHERE THE ISSUE WAS THE DEFECTS IN ATTACHMENTS, NOT THE CORRECTNESS THEREOF. —** While the respondents placed in issue defects in the attachments to the petition, their objection is a formal one as they do not deny the existence and basic correctness of these attachments. We see no resulting harm or prejudice therefore if **we overrule the objection raised, given the weight of the counterbalancing factors we considered above.**

**3. ID.; ID.; DISMISSAL OF ACTIONS; FAILURE TO IMPLEAD PARTY NOT LEGALLY EXISTING, NOT A GROUND OF. — We do not find the failure to formally implead the NP-NPC a sufficient reason to dismiss the petition outright.** Without any finally confirmed registration in the coalition's favor, NP-NPC does not legally exist as a coalition with a personality separate and distinct from the component NP and NPC parties. **We find it sufficient that the NP and the NPC have separately been impleaded;** as of the moment, they are the real parties-in-interest as they are the parties truly interested in legally establishing the existence of their coalition. Again, we find no resulting harm or prejudice in the omission to implead NP-NPC, as the component parties have voiced out the concerns the coalition

would have raised had it been impleaded as a separate and properly existing personality.

**4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THAT GROUNDS CITED THEREIN ARE ERRORS OF LAW, READ AS *FACIAL OBJECTION* TO THE PETITION; CASE AT BAR.** — The respondents argue that the petition's cited grounds are mere errors of law and do not constitute grave abuse of discretion amounting to lack or excess of jurisdiction. This objection can be read as a *facial objection* to the petition or as a *substantive* one that goes into the merits of the petition. We will discuss under the present topic the facial objection, as it is a threshold issue that determines whether we shall proceed to consider the case or simply dismiss the petition outright. A facial objection is meritorious if, *expressly and on the face of the petition*, what is evident as cited grounds are erroneous applications of the law rather than grave abuse of discretion amounting to lack or excess of jurisdiction. **After due consideration, we conclude that the petition passes the facial objection test.** In *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, the Court, through former Chief Justice Artemio V. Panganiban, gave a very succinct exposition of grave abuse of discretion amounting to lack or excess of jurisdiction in relation to errors of law. x x x The most obvious ground cited in the petition that, if *properly established*, would constitute grave abuse of discretion is the alleged unwarranted action of the *en banc* in acting on the registration of the NP-NPC when the COMELEC's own Rules of Procedure provides that registration is under the jurisdiction of the Division at the first instance. This alleged error is more than an error of law. If this cited ground is correct, then the *en banc* acted without legal authority and thereby committed a jurisdictional transgression; its action, being *ultra vires*, would be a nullity. Another allegation of an *ultra vires* act is that the COMELEC, by appropriate resolution, ordered that August 17, 2009 be the cut-off date for the registration of parties, and yet approved the registration of NP-NPC long after this cut-off date had passed without any valid justification or reason for suspending the rule. For the *en banc* to so act was not a mere error of law. The grant of registration was an act *outside mandatory legal parameters* and was therefore done when the COMELEC no longer had the authority to act on it. In this sense, it is a proper allegation of grave abuse of discretion under Rule 64 of the

Rules of Court. **In our view, these jurisdictional challenges to the *en banc* Resolution, if established, constitute *ultra vires* acts that would render the Resolution void.**

**5. POLITICAL LAW; ELECTION LAWS; REGISTRATION OF A COALITION AND ACCREDITATION OF A DOMINANT MINORITY PARTY, DISTINGUISHED. —** The registration of a coalition and the accreditation of a dominant minority party are two separate matters that are substantively distinct from each other. **Registration** *is the act that bestows juridical personality for purposes of our election laws*; **accreditation,** *on the other hand, relates to the privileged participation that our election laws grant to qualified registered parties.* Section 2(5), Article IX-C of the Constitution and Rule 32 of the COMELEC Rules regulate the registration of political parties, organizations or coalitions of political parties. Accreditation as a dominant party is governed by COMELEC Resolution No. 8752, Section 1 of which states that the petition for accreditation shall be filed with the Clerk of the Commission who shall docket it as an SPP (DM) case, in the manner that the NP-NPC petition before the COMELEC was docketed. While the registration of political parties is a special proceeding clearly assigned to a Division for handling under the COMELEC Rules, no similar clear-cut rule is available for a petition for accreditation as a dominant party.

**6. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI* AND PROHIBITION; PROPER IN CASE AT BAR WHERE IT WAS SOUGHT TO PREVENT THE COMELEC FROM ACCREDITING A COALITION NOT REGISTERED AS A PARTY. —** Under the circumstances of the present case where the registration was handled at the *en banc*, action at the COMELEC ended upon the *en banc*'s issuance of the assailed Resolution; under Rule 13, Section 1(d) of the COMELEC Rules, a motion for reconsideration of an *en banc* ruling is a prohibited pleading, except in election offense cases. Any request for accreditation that may be filed is conceptually a separate matter for the COMELEC to handle. Thus, after the *en banc* issued the assailed Resolution resolving the NP-NPC's application for registration as a coalition, the COMELEC's part in *the registration process* was brought to a close, rendering the Resolution ripe for review by this Court. The present petition has openly stated its objective of forestalling the accreditation

of the respondent NP-NPC; the petition expressly and frontally sought the issuance of a writ of prohibition and restraining order *to prevent the COMELEC from accrediting a coalition that is not registered as a party*. The combination of a petition for *certiorari* and for prohibition under the circumstances of the present case is fully justified, as the registration and the accreditation that the petition covers are linked with and in fact sequentially follow one another. Accreditation can only be granted to a *registered* political party, organization or coalition; stated otherwise, a registration must first take place before a request for accreditation can be made. Once registration has been carried out, accreditation is the next natural step to follow. Where the registration is flawed for having been attended by grave abuse of discretion, as alleged in the petition, the filing of a petition for prohibition with a prayer for a preliminary injunction can only be expected as a logical remedial move; otherwise, accreditation, unless restrained, will follow. Thus, from the point of view of ***prohibition***, there is absolutely no prematurity as its avowed intent is in fact to forestall an event – the accreditation – that according to the assailed Resolution shall soon take place. From the point of view of the petition for ***certiorari*** questioning the registration made, no prematurity issue is involved as the nullification of a past and accomplished act is prayed for. **From these perspectives, the OSG objection based on prematurity is shown to be completely groundless**.

**7. POLITICAL LAW; ELECTION LAWS; RESOLUTION NO. 8646 ON THE REGISTRATION OF POLITICAL PARTIES; DEADLINE INCLUDES POLITICAL COALITIONS. —** Resolution No. 8646 simply states that August 17, 2009 is the "[L]ast day for filing petitions for registration of political parties," without mentioning "organizations and coalitions" in the way that the three entities are separately mentioned under Section 2(5), Article IX-C of the Constitution and Rule 32, Section 1 of the COMELEC Rules. Resolution No. 8646, however, is simply a listing of electoral activities and deadlines for the May 10, 2010 elections; it is not in any way a resolution aimed at establishing distinctions among "political parties, organizations, and coalitions." In the absence of any note, explanation or reason why the deadline only mentions political parties, the term "political parties" should be understood in its generic sense that covers political organizations and political coalitions as well. To rule otherwise is to introduce, through a COMELEC

deadline-setting resolution, a meaning or intent into Section 2(5), Article IX-C, which was not clearly intended by the Constitution or by the COMELEC Rules; Resolution No. 8646 would effectively differentiate between political parties, on the one hand, and political organizations and coalitions, on the other.

**8. ID.; ID.; ID.; DEADLINE OF REGISTRATION, MANDATORY; VIOLATED IN CASE AT BAR. —** x x x An examination of Resolution No. 8646 shows that the deadline for registration cannot but be a **firm and mandatory deadline** that the COMELEC has set. x x x [T]he whole electoral exercise may fail or at least suffer disruptions, if the deadlines are not observed. For this reason, the COMELEC has in the past in fact rejected applications for registration for having been filed out of time. x x x Given the mandatory nature of the deadline, subject only to a systemic change (as contrasted to an *ad hoc* change or a suspension of the deadline in favor of a party *in the course of application*), the *en banc* acted in excess of its jurisdiction when it granted the registration of NP-NPC as a coalition beyond the deadline the COMELEC itself had set; the authority to register political parties under mandatory terms is only up to the deadline. Effectively, the mandatory deadline is a jurisdictional matter that should have been satisfied and was not. Where conditions that authorize the exercise of a general power are wanting, fatal excess of jurisdiction results.

**9. ID.; ID.; POLITICAL COALITIONS; REQUIREMENT OF REGISTRATION. —** [P]olitical coalitions need to register in accordance with the established norms and procedures, if they are to be recognized as such and be given the benefits accorded by law to registered coalitions. Registered political parties carry a different legal personality from that of the coalition they may wish to establish with other similarly registered parties. If they want to coalesce with one another without the formal registration of their coalition, they can do so on their own in the exercise of their and their members' democratic freedom of choice, but they cannot receive official recognition for their coalition. Or they can choose to secure the registration of their coalition in order to be accorded the privileges accruing to registered coalitions, including the right to be accredited as a dominant majority or minority party. There are no ifs and buts about these constitutional terms.

**CARPIO, *J., separate concurring opinion:***

**POLITICAL LAW; ELECTION LAWS; COMELEC RULES OF PROCEDURE; REGISTRATION OF POLITICAL PARTIES; RESOLUTION 8646 PROVIDING DEADLINE FOR REGISTRATION COVERS COALITION OF POLITICAL PARTIES. — Section 1, Rule 32 of the COMELEC Rules of Procedure on registration of political parties lumps together "*political party, organization or coalition*" for purposes of registration**, thus: Section 1. Petition for Registration – **Any political party, organization or coalition of political parties seeking registration pursuant to Section 2(5), Subdivision C of Article IX of the Constitution** shall file with the Law Department of the Commission a petition duly verified by its President and Secretary-General, or any official duly authorized to do so under its Constitution and By-laws. The COMELEC issued Resolution 8646 *to supplement* Section 1, Rule 32 of its Rules of Procedure by providing the ***deadlines for registration*** for purposes of the 10 May 2010 elections. **Thus, Resolution 8646's deadline for registration of "political parties" on 17 August 2009 logically covers "*[a]ny political party, organization or coalition of political parties*" for under Section 1, Rule 32 of the Rules of Procedure, the term "political party" includes "*organization or coalition of political parties*."**

**CORONA, *J., dissenting opinion:***

**1. POLITICAL LAW; COMMISSION ON ELECTIONS (COMELEC); POWERS; CASES THAT MAY BE HEARD BY A DIVISION OF THE COMELEC OR BY COMELEC *EN BANC*; REGISTRATION OF POLITICAL PARTIES, ORGANIZATIONS AND COALITIONS, IS ADMINISTRATIVE IN NATURE, AND PROPERLY HEARD BY COMELEC *EN BANC*; CASE AT BAR. —** The power of the COMELEC to register political parties, organizations or coalitions is among the COMELEC's administrative powers that may be acted on directly by the COMELEC *en banc*. Not all cases relating to election laws filed before the COMELEC are required to be heard at the first instance by a Division of the COMELEC. Under the Constitution, the COMELEC exercises both administrative and quasi-judicial powers. **The COMELEC *en banc* can act directly on matters falling within its administrative powers**. It is only

when the exercise of quasi-judicial powers are involved that the COMELEC is mandated to decide cases first in division, and then, upon motion for reconsideration, *en banc*. This Court pronounced in *Baytan v. COMELEC* (subsequently reiterated in *Bautista v. COMELEC)* that the power of the COMELEC under Section 2(5), Article IX-C of the Constitution to register political parties, organizations or coalitions is administrative in nature. Thus, the COMELEC *en banc* acted properly when it took direct cognizance of the petition of the NP and the NPC [as a coalition]. x x x [I]t may also exercise its discretion to liberally construe its rules of procedure or even to suspend the said rules or any portion thereof in the interest of justice.

**2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; NOT PRESENT IN CASE AT BAR. —** Grave abuse of discretion is not simply an error in judgment but it is such capricious and whimsical exercise of judgment which is tantamount to lack of jurisdiction. Ordinary abuse of discretion is insufficient. The abuse of discretion must be grave, that is, the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. It must be so patent and gross as to amount to evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of the law. In other words, for a petition for *certiorari* to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion. Taking all these into consideration, the COMELEC cannot and should not be faulted or, more so, ascribed with grave abuse of discretion, for simply observing or following this Court's ruling in *Baytan* and *Bautista*.

**APPEARANCES OF COUNSEL**

*Cadiz and Tabayong and Pinoy Lawyers* for petitioner.

*The Solicitor General* for public respondent.

*Zamora Poblador Vasquez and Bretaña* for private respondent.

## D E C I S I O N

**BRION, *J.*:**

This case poses to the Court, at this very late stage of our election period, issues involving the registration of political coalitions, the grant of accreditation to the dominant parties under the first time ever automated election system in the country, and validity of the COMELEC *en banc*'s (*en banc*) authority to act on the registration of political coalitions.

The challenged ruling is a *Per Curiam* Resolution of the Commission on Elections (*COMELEC*)[1] dated April 12, 2010 in SPP-10-(DM) granting the application for registration of the Nacionalista Party–Nationalist People's Coalition (*NP-NPC or coalition*) and deferring the question of the coalition's dominant minority status to a future resolution. The challenge comes from the Liberal Party (*LP*)[2] through a petition for *certiorari* and prohibition[3] with a prayer for the issuance of a preliminary injunction or a status quo order. We issued a *status quo* order through our Resolution of April 20, 2010.

### I. THE BACKGROUND FACTS

#### a. General Background

On July 14, 2009, the COMELEC promulgated Resolution No. 8646 setting **August 17, 2009 as the last day for the filing of petitions for registration of political parties**. On January 21, 2010, the COMELEC promulgated Resolution No. 8752, providing, among others, for the rules for the filing of petitions for accreditation for the determination of the dominant

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[1] With Commissioners Ferrer, N.T., Tagle, L.N., Velasco, A.C., Yusoph, E.R., and Larrazabal, G.Y., concurring; Chairman Melo, J.A.R., and Sarmiento, R.V., dissenting.

[2] Represented by its President, Manuel A. Roxas II, and Secretary General, Joseph Emilio A. Abaya.

[3] Under Rule 64 and Rule 65 of the Rules of Court; with Urgent Application for Temporary Restraining Order *Status Quo Ante* and/or Writ of Preliminary Injunction.

majority party, the dominant minority party, ten major national parties, and two major local parties for the May 10, 2010 elections. Resolution No. 8752 also set the **deadline for filing of petitions for accreditation on February 12, 2010** and required that accreditation applicants be registered political parties, organizations or coalitions.

On February 12, 2010, the LP filed with the COMELEC its petition for accreditation as dominant minority party. On the same date, the Nacionalista Party (*NP*) and the Nationalist People's Coalition (*NPC*) filed a petition for registration as a coalition (*NP-NPC*) and asked that "it be recognized and accredited as the dominant minority party for purposes of the May 10, 2010 elections."[4] It was docketed as an SPP (DM) case, indicating – pursuant to COMELEC Resolution No. 8752 – that it was an accreditation case.

On February 23, 2010, the LP filed its Opposition[5] to the NP-NPC's petition on the following grounds:

1) The NP-NPC's petition should be denied since it was not a duly registered coalition of political parties at the time of filing of their petition for accreditation as dominant minority party;

2) The COMELEC *en banc* has no jurisdiction to entertain the petition for registration as a coalition because the petition should have been first brought before the proper Division;

3) The petition for registration as a coalition was filed with the Clerk of the Commission instead of the Law Department in violation of the COMELEC Rules of Procedure;

4) The petition for registration as a coalition was filed beyond the August 17, 2009 deadline set by the COMELEC; and

5) The respective chapters, incumbents and candidates of the NP and the NPC separately cannot be taken into account for purposes of accreditation as dominant minority party because the NP-NPC as a coalition is an entirely different entity.

[4] Annex "1", *supra* note 2.

[5] Annex "5", *supra* note 2.

The COMELEC issued an Order dated February 16, 2010 and a Notice of Hearing on February 17, 2010 setting for hearing the petitions for accreditation for the purpose of determining the dominant majority party, dominant minority party, ten (10) major national parties and two (2) major local parties in connection with the May 10, 2010 elections. Among the petitions set for hearing were the LP's and the NP-NPC's petitions for accreditation as the dominant minority party.[6]

On March 9, 2010, the LP presented Rep. Lualhati Antonino (a member of the NPC's National Convention) as its witness.[7] Rep. Antonino testified, among others, that the NPC National Convention did not authorize its National Central Committee to enter into a coalition with the NP,[8] and that neither the National Convention nor the general membership was ever consulted about the merger with the NP.[9]

On March 10, 2010, the NP-NPC presented former Gov. Faustino Dy, Jr. as its witness to refute Rep. Antonino's testimony.[10] On March 15, 2010, the LP and the NP-NPC filed their respective Memoranda.[11]

**b. The Assailed COMELEC Resolution**

On April 12, 2010, the *en banc* granted the NP-NPC's petition for registration as a coalition through the Resolution assailed in the present case. In the same Resolution, the *en banc* deferred the resolution of the NP-NPC's application for accreditation as dominant minority party.

**On the issue of jurisdiction**, the *en banc* citing *Baytan v. Comelec*[12] held that the registration of coalitions involves

[6] Petition, Annex "E", *supra* note 2.

[7] TSN, March 9, 2010, pp. 49-51.

[8] *Id.* at 72-73.

[9] *Id.* at 84-86.

[10] TSN, March 10, 2010, pp. 29-31.

[11] Petition, Annex "T" and Annex "U", *supra* note 2.

[12] G.R. No. 153945, February 4, 2003, 396 SCRA 703.

the exercise of its administrative powers and not its quasi-judicial powers; hence, the *en banc* can directly act on it. It further held that there is no constitutional requirement that a petition for registration of a coalition should be decided first by a division. In *Baytan*, the Court held that the Constitution merely vests the COMELEC's administrative powers in the "Commission on Elections," while providing that the COMELEC "*may sit en banc or in two divisions*." Thus, the *en banc* can act directly on matters falling within its administrative powers.

The *en banc* ruled further that although the NP-NPC's failure to file the petition with the Law Department constituted a violation of the COMELEC Rules of Procedure (*COMELEC Rules*), the *en banc* has the discretion to suspend the application of the rules in the interest of justice and speedy disposition of cases;[13] in any case, the authority to approve or deny the Law Department's recommendation on the registration of the coalition rests with the *en banc*.

On the **timeliness of the filing of the petition**, the *en banc* held that no rule exists setting a deadline for the registration *of coalitions*. It opined that the registration of a coalition is simply a recognition by the COMELEC of a political reality. It held that if the NP-NPC is genuine, then the approval of its registration by the COMELEC is a mere recognition of an "operative fact."

**On the merits**, the *en banc* found that both the NP and the NPC have validly agreed to join forces for political or election purposes. It held that the NP-NPC satisfactorily submitted all the documentary requirements to prove the merger's validity. It opined, too, that if the Constitution and By-Laws of either the NP or the NPC was violated by the merger, the representatives or members of either party possess the legal standing to question the coalition; the LP, a stranger to the internal dynamics of both parties, does not have this required standing.

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[13] COMELEC RULES, Rule 1, Section 4.

The *en banc* noted that no representative from either the NP or the NPC ever filed any formal opposition to the NP-NPC petition for registration and accreditation. It thus concluded that hardly any controversy existed for it to resolve. At the same time, it disregarded Rep. Antonino's testimony, since she lost her NPC membership when she admitted support for the candidacy of Sen. Manuel A. Roxas II – the Liberal Party candidate for vice-president – a ground provided under the Constitution and By-Laws of the NPC.[14]

**c. The Sarmiento Dissent**

Commissioner Rene V. Sarmiento dissented on various grounds.[15] **First**, he ruled that *the COMELEC sitting en banc had no jurisdiction over NP-NPC's petition for registration as a coalition and accreditation as dominant minority party.*

Rule 32 of the COMELEC Rules governs the registration of coalitions. Rule 32 is found under Letter F of the Rules entitled "Special Proceedings." According to Section 3 of the COMELEC Rules, the Commission sitting in two (2) Divisions, shall have jurisdiction to hear and decide cases falling under special proceedings, with the exception of the accreditation of citizens' arms of the COMELEC. The dissent concluded that the present petition is within the jurisdiction of the COMELEC sitting in Division and not of the COMELEC sitting *en banc,* citing *Villarosa v. COMELEC.*[16]

Commissioner Sarmiento **secondly** took the position that *the relaxation of the Rules is inappropriate in the present case.*

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[14] Section 7 of the NPC's Constitution and By-Laws states:

Section 7. Loss of Membership. – Membership from the Party shall be lost by:

x x x x x x x x x

b. Affiliation with or active support of another political party and/or opposing the Party's official candidates, unless otherwise authorized by the National Central Committee as provided in Section 2 of this Article.

[15] Petition, Annex "A", *supra* note 2.

[16] G.R. No. 133927, November 29, 1999, 319 SCRA 470.

In general, election laws may be divided into three parts for purposes of applying the rules of statutory construction. The first part refers to the provisions for the conduct of elections that election officials are required to follow; these provisions are merely directory. The second part covers those provisions that candidates for office are required to comply with and are necessarily mandatory. The last part embraces those procedural rules designed to ascertain, in case of dispute, the actual winner in the elections; this requires liberal construction. The NP-NPC's petition falls under the second part, so the applicable requirements of law are mandatory. The dissent argued that the relaxation of the rules is not applicable to the present case, because it does not involve the determination of the will of the electorate; thus, the rules governing the registration of coalitions should be construed strictly and not liberally.

Commissioner Sarmiento's **third point** is that *no valid coalition was formed between the NP and the NPC.*

He pointed out that the Constitutions and By-Laws of both parties require that the parties' respective National Conventions give their approval before their parties can enter into any coalition agreement with another political party. The dissent found that the records are bereft of any proof that the National Conventions of both the NP and the NPC authorized their officers to form the NP-NPC. The dissent held that the action of the Executive Committees of the NP and the NPC in issuing the Joint Resolution (declaring the NP-NPC merger) was a clear violation of the parties' Constitutions and By-Laws and was thus *ultra vires* and void.

The dissent also branded the NP-NPC as a sham whose sole purpose was to secure dominant minority party status. The Commissioner noted that members of the NP and NPC are pitted against each other and are vying for the same election positions – an absurd situation in a coalition, since no alliance for a common cause can exist if members of the component parties are competing against each other for the same positions.

Commissioner Sarmiento pointed out as his **last point** that *the NP-NPC cannot seek accreditation as the dominant*

*minority party without the requisite recognition by the COMELEC.*

COMELEC Resolution No. 8752 requires that only political parties duly registered with the COMELEC may seek accreditation as a dominant party. At the time the NP-NPC filed its petition for accreditation on February 12, 2010, it was still seeking registration as a coalition of political parties. By filing the petition, both the NP and the NPC admitted that the COMELEC had not extended any recognition to their coalition; without the requisite recognition and registration, the NP-NPC could not seek accreditation as the dominant minority party for the May 10, 2010 elections.

The dissent also noted that the NP-NPC could no longer seek accreditation since the deadline for filing a petition for accreditation had lapsed. Finally, while the NP and NPC are both duly accredited political parties, their recognition cannot benefit the NP-NPC, since the latter seeks accreditation as an entity separate and distinct from both the NP and the NPC.

## II. THE PETITION

The LP now assails the April 12, 2010 COMELEC Resolution for having been issued with grave abuse of discretion, as follows:

1) The COMELEC *en banc* has no jurisdiction *at the first instance* to entertain petitions for registration of political coalitions;

2) The COMELEC gravely abused its discretion when it allowed the registration of the purported NP-NPC coalition despite the lapse of the deadline for registration;

3) The COMELEC gravely abused its discretion when it allowed the registration of the purported NP-NPC coalition despite patent and manifest violations of the NPC Constitution and By-Laws; and

4) The purported NP-NPC coalition is a bogus, sham and paper coalition that makes a mockery of the electoral process.[17]

[17] Petition, *supra* note 2.

In support of its petition, the petitioner attached the Sworn Affidavits of two prominent members of the NPC, namely: Atty. Sixto S. Brillantes (the current NPC Legal Counsel) and Daniel Laogan (a member of the NPC's National Central Committee) to show that the NP-NPC was entered into without consultations; much less, the approval of the NPC's National Convention which was not even convened.[18]

**a. Comments from the OSG and the COMELEC**

On April 27, 2010, the Office of the Solicitor General (*OSG*) filed a "Manifestation and Motion In Lieu of Comment." The OSG manifested that the duty to appear and defend on their behalf and on behalf of the COMELEC falls on the respondents, since they are the real parties interested in upholding the assailed COMELEC Resolution. The COMELEC, as a mere nominal party, does not need to file a separate comment. We responded to the OSG's manifestation by requiring the COMELEC to file its own comment, which it did on May 4, 2010.

On the merits, the OSG argues that the present petition is premature. It notes that the petition's real thrust is to foreclose the possibility that respondent NP-NPC would be declared the dominant minority party in the coming May 10, 2010 elections. The OSG emphasizes that the assailed COMELEC Resolution only affirmatively resolved the registration of the NP-NPC, not its accreditation. Thus, the petition's core issue is not yet ripe for adjudication. As expressly indicated in the assailed Resolution, the accreditation has yet to be the subject of a coming separate resolution.

The OSG also argues that no violation of due process attended the registration process, since the petitioner was given the opportunity to be heard. The OSG notes that the petitioner filed its Opposition to the NP-NPC's application for registration and accreditation before the COMELEC. In addition, hearings were scheduled and held where the COMELEC allowed the petitioner to submit its evidence, both testimonial and documentary.

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[18] *Id.* at 43-46.

The COMELEC's comment is practically a reiteration of the rulings in the assailed Resolution, heretofore summarized. For this reason, we shall no longer reflect on and repeat the COMELEC's positions in detail.

**b. The NP-NPC Coalition's Comment**

In their Comment, the respondents argue that the present petition should be dismissed outright since it is plagued with ***procedural infirmities***.

*Firs*t, the respondents contend that the petitioner violated Section 5(2) of Rule 64 of the Rules of Court which requires that the petition be accompanied by certified true copies of such material portions of the record the petition referred to. The respondents point out that the petitioner failed to attach the required certified true copies of the documents to its petition.

*Second*, the respondents argue that the petitioner unjustifiably failed to implead the NP-NPC as a party to the present case. The respondents contend that NP-NPC is a real party-in-interest, as well as an indispensable party without the participation of which no final determination of the case can be secured.

*Third*, the respondents argue that the present petition *raises* mere errors of judgment that are not within the Court's authority to act upon under its *certiorari* jurisdiction, since the present petition merely assails the *en banc*'s appreciation of facts and evidence.

***On the merits***, the respondents aver that the *en banc* did not commit grave abuse of discretion in granting the registration of the NP-NPC.

*First*, the respondents argue that that the *en banc* had jurisdiction to entertain their petition for registration of the NP-NPC. The respondents emphasize that the NP-NPC's registration falls within the ambit of the COMELEC's administrative powers; hence, the *en banc* properly assumed jurisdiction over their petition.

The respondents cite *Baytan v. COMELEC*[19] as authority for its position. The Court held in this cited case that the COMELEC's administrative powers include the registration of political parties and coalitions under Section 2 (5) of Article IX of the Constitution. The Court also ruled that since the Constitution merely vests the COMELEC's administrative powers in the "Commission on Elections" while providing that the COMELEC may sit *en banc* or in two Divisions, the *en banc* can act directly on matters falling within its administrative powers.

*Second*, the respondents also contend that their petition for registration as a coalition is not time-barred. They argue that the August 17, 2009 deadline applied only to "political parties"; and to "parties, organizations and coalitions under the party-list system." The respondents emphasize that there is no deadline for petitions for the registration of coalition of parties, since COMELEC Resolution No. 8646 has not specifically set a deadline. Thus, they conclude that the August 17, 2009 deadline *applies only to the registration of new and unregistered political parties, and not to the registration of coalitions between previously registered political parties such as the NP and the NPC.*

*Third*, the respondents point out that the NP-NPC was validly formed, and that the requisite approvals were duly obtained. The respondents contend that the *en banc*'s factual findings on the formation of the coalition and the submission and approval of the requisite documents are supported by substantial evidence, and thus are final and binding on this Court. The respondents emphasize that the 1993 Revised Rules of the NP does not require the approval of the National Convention for purposes of coalescing with another political party; neither do the Rules confer on the National Convention the power to approve a coalition with another political party. Similarly, the respondents point out that the NPC's Constitution and By-Laws is silent on and does not confer any power to approve a coalition with another political party. The respondents emphasize that they cannot violate a non-existent requirement; Rep. Antonino in

[19] *Supra* note 13.

fact affirmed that there is no specific provision in the NPC's Constitution and By-Laws relating to a coalition with another party.

The respondents argue that NPC Chairman Dy's testimony adequately showed that the NP-NPC was entered into after meetings and consultations with party members and the NPC national organization; in fact, 70%-75% of those consulted supported the coalition. The respondents also aver that it is a common party practice that the NPC National Convention decides through a series of small meetings of leaders and members, whether to arrive at a consensus.

The respondents point out that, to date, no member of the NP or NPC has ever expressed his or her objection to the NP-NPC. The respondents emphasize that the wisdom of entering into a coalition is strictly an internal matter; and no third party such as the LP, not even the courts, can interfere. The respondents cite *Sinaca v. Mula*[20] as authority that political parties are generally free to conduct their internal affairs free from judicial supervision.

*Fourth*, the respondents contend that Commissioner Sarmiento's thesis that the coalition is a sham since they are fielding contending candidates is baseless. As explained in the hearings, the NP and NPC agreed on an arbitration procedure to settle these conflicts, although no arbitration has taken place to date, since the registration of the NP-NPC has not attained finality.

*Fifth*, the respondents contend that the newspaper reports presented by the petitioner to show that there was no valid NP-NPC is inadmissible and carries no probative value for being hearsay. The respondents further argue that the affidavits of Atty. Sixto Brillantes and Daniel Laogan, attached to the present petition, are inadmissible as the Court cannot receive evidence or conduct a trial *de novo* under its *certiorari* jurisdiction. In addition, the respondents argue that the affidavits are hearsay evidence, since Atty. Brillantes and Daniel Laogan

[20] 373 Phil. 896 (1999).

were never presented during the hearings before the *en banc* and were not subjected to cross-examination. Finally, the respondents point out that the subject matter of Atty. Brillantes' affidavit is covered by the attorney-client privilege; he was the NPC's general counsel who represented the NPC in all legal proceedings.

## III. THE ISSUES

The parties' positions raise the following issues for resolution:

1. Preliminary Issues:
    a. Should the petition be dismissed outright for procedural and technical infirmities?
    b. Is the present petition premature since its object is to foreclose a ruling on the unsettled NP-NPC issue?
    c. Is the NP-NPC petition before the COMELEC, viewed as a petition for registration, time-barred?
        i. Is the NP-NPC an "operative fact" that the COMELEC simply has to note and recognize without need of registration?
2. Does the *en banc* have jurisdiction *at the first instance* to entertain the petition?
3. On the merits and assuming that the *en banc* has jurisdiction, did it gravely abuse its discretion when it allowed the registration of the NP-NPC?
    a. Was due process observed in granting the registration?
    b. Did the coalition take place as required by law:
        i. in terms of compliance with internal rules of the NP and the NPC?
        ii. in terms of the consent to or support for, and the lack of objection to, the coalition?

## IV. THE COURT'S RULING

**We find the petition meritorious.**

**a. Preliminary Considerations**

***1. The technical and procedural questions***

We have indicated many times in the past that a primary factor in considering technical and procedural objections is the nature of the issues involved. We have been strict when the issues are solely confined to the parties' private interests and carry no massive ripple effects directly affecting the public,[21] but have viewed with liberality the technical and procedural threshold issues raised when grave public interests are involved.[22] Our liberality has even gone beyond the purely technical and procedural where Court intervention has become imperative.[23] Thus, we have recognized exceptions to the threshold issues of ripeness[24] and mootness[25] of the petitions before us, as well

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[21] See, for example, our ruling in *Pates v. COMELEC*, G.R. No. 184915, June 30, 2009 where we refused to relax the strict application of procedural rules.

[22] See *David v. Macapagal-Arroyo*, G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, 171424, May 3, 2006, 489 SCRA 160. "Strong reasons of public policy and the importance of these cases to the public demands that we settle the issues promptly and definitely, brushing aside, if we must technicalities of procedure." See also J. Ynares-Santiago's Separate Concurring Opinion in *Province of North Cotobato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, G.R. Nos. 183591, 183752, 183893, 183951, 183962, October 14, 2008, 568 SCRA 402.

[23] See *Osmena v. Comelec*, G.R. Nos. 100318, 100308, 100417, 100420, July 30, 1991, 199 SCRA 750, where the Court held that where serious constitutional questions are involved, the "transcendental importance" to the public of the cases involved demands that they be settled promptly and definitely brushing aside technicalities of procedures.

[24] See *Province of North Cotobato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP), supra* note 23, citing *Guingona, Jr. v. Court of Appeals*, 354 Phil. 415, 427-228 (1998) and *Francisco, Jr. v. House of Representatives*, 460 Phil. 830, 901-902 (2003).

[25] See *Santiago v. Court of Appeals*, G.R. No. 121908, January 26, 1998, 285 SCRA 16, 22; *Quizon v. COMELEC*, G.R. No. 177927, February 15, 2008, 545 SCRA 635.

as questions on *locus standi*.[26] We have also brushed aside procedural technicalities where the issues raised, because of the paramount public interest involved and their gravity, novelty or weight as precedents deserve the Court's attention and active intervention.[27]

We see every reason to be liberal in the present case in view of interests involved which are indisputably important to the coming electoral exercise now fast approaching. The registration of political parties, their accreditation as dominant parties, and the benefits these recognitions provide – particularly, the on-line real time electronic transmission of election results from the Board of Election Inspectors (*BEI*) through the Precinct Count Optical Scan (*PCOS*) machines; the immediate access to official election results; the *per diems* from the government that watchers of accredited parties enjoy; and the representation at the printing, storage and distribution of ballots that the dominant-party status brings – constitute distinct advantages to any party and its candidates, if only in terms of the ready information enabling them to react faster to developing situations.[28] The

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[26] See *Francisco v. House of Representatives*, *supra* note 25. See *De Guia v. Comelec*, G.R. No. 104712, May 6, 1992, 208 SCRA 420, where the Court held that the importance of the issues involved concerning as it does the political exercise of qualified voters affected by the apportionment, necessitates the brushing aside of the procedural requirements of *locus standi.* See also *Aquino v. Comelec*, 84 Phil. 368 (1949) where the Court resolved to pass upon the issues raised due to the "far-reaching implications" of the petition notwithstanding its categorical statement that the petitioner therein had no personality to file the suit.

[27] See *Province of North Cotobato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP)*, *supra* note 23. See also *Integrated Bar of the Phils. v. Hon. Zamora*, 392 Phil. 618 (2000).

[28] The law accords special treatment to political parties. See *Laban ng Demokratikong Pilipino v. COMELEC*, G.R. No. 161265, February 24, 2004, 423 SCRA 665, 678. The dominant majority party and the dominant minority party as determined by the COMELEC are entitled to: (a)examination and testing of equipment or devise of the Automated Election System and opening of the source code for review (Section 14, Republic Act (RA) No. 8436 as amended); (b) assignment of official watchers (Section 26, RA 7166, as amended); (c) assignment of watchers in the printing,

value of these advantages exponentially rises in an election under an automated system whose effectiveness and reliability, even at this late stage, are question marks to some. To the public, the proper registration and the accreditation of dominant parties are evidence of equitable party representation at the scene of electoral action, and translate in no small measure to transparency and to the election's credibility.

Thus, our focus is on the core issues that confront us and the parties, by-passing the technical and procedural questions raised *that do not anyway affect the integrity of the petition before us or prejudice the parties involved,* and concentrating as well on the issues that would resolve the case soonest so that the parties involved and the COMELEC can move on to their assigned time-sensitive roles and tasks in the coming elections.

We note that while the respondents placed in issue defects in the attachments to the petition, their objection is a formal one as they do not deny the existence and basic correctness of these attachments. We see no resulting harm or prejudice therefore if **we overrule the objection raised, given the weight of the counterbalancing factors we considered above.**[29]

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storage and distribution of official ballots (Section 15, RA 8436, as amended) ; (d) spend more per voter for election campaign together with the candidate than a candidate without a political party (Section 13, RA 7166); (e) affix the signatures and thumbmarks of their assigned watchers on the printed election returns (Section 22, RA 8436, as amended); (f) a copy of the printed election returns (Section 22, RA 8436, as amended); (g) affix the signatures and thumbmarks of their assigned watchers on the printed certificates of canvass (Section 26, RA 8436, as amended); and (h) a copy of the printed Certificate of Canvass (Section 26, RA 8436, as amended).

[29] See *Van Melle Phils. Inc. v. Endaya,* G.R. No. 143132, Sept. 23, 2003, 411 SCRA 528, ruling on the petitioner's failure to attach certified copies of material pleadings, held:

In a case of recent vintage, we held that while a petition for *certiorari* must be accompanied by a duplicate original or certified true copy of the judgment, order, resolution or ruling subject thereof, there is no requirement that all other relevant documents attached to the petition should be certified true copies as well. The CA nevertheless outrightly dismissed the petition

**We do not likewise find the failure to formally implead the NP-NPC a sufficient reason to dismiss the petition outright.** Without any finally confirmed registration in the coalition's favor, NP-NPC does not legally exist as a coalition with a personality separate and distinct from the component NP and NPC parties. **We find it sufficient that the NP and the NPC have separately been impleaded;** as of the moment, they are the real parties-in-interest as they are the parties truly interested in legally establishing the existence of their coalition. Again, we find no resulting harm or prejudice in the omission to implead NP-NPC, as the component parties have voiced out the concerns the coalition would have raised had it been impleaded as a separate and properly existing personality.

The respondents next argue that the petition's cited grounds are mere errors of law and do not constitute grave abuse of discretion amounting to lack or excess of jurisdiction. This objection can be read as a *facial objection* to the petition or as a *substantive* one that goes into the merits of the petition. We will discuss under the present topic the facial objection, as it is a threshold issue that determines whether we shall proceed to consider the case or simply dismiss the petition outright.

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on account of the petitioners' failure to append certified true copies of certain relevant documents referred to therein.

In any event, we agree with the petitioners that even assuming that the Rules require all attachments to a petition for *certiorari* to be certified true copies, the CA should have nevertheless taken cognizance of the petition. It has been the consistent holding of this Court that cases should be determined on the merits, after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. In so doing, the ends of justice would be better served. Rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. A strict and rigid application of the rules that would result in technicalities that tend to frustrate rather than promote substantial justice must be avoided.

Thus, in dismissing the petition before it, the appellate court clearly put a premium on technicalities and simply brushed aside the issue posed by the petitioners — whether the labor arbiter committed a grave abuse of his discretion amounting to lack or excess of jurisdiction in denying the respondent's motion to dismiss on the ground that the SEC (now the RTC) had exclusive jurisdiction over the said complaint.

A facial objection is meritorious if, *expressly and on the face of the petition*, what is evident as cited grounds are erroneous applications of the law rather than grave abuse of discretion amounting to lack or excess of jurisdiction. **After due consideration, we conclude that the petition passes the facial objection test.**

In *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*,[30] the Court, through former Chief Justice Artemio V. Panganiban, gave a very succinct exposition of grave abuse of discretion amounting to lack or excess of jurisdiction in relation to errors of law. The Court then said:

> A writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction. The writ cannot be used for any other purpose, as its function is limited to keeping the inferior court within the bounds of its jurisdiction.
>
> x x x x x x x x x
>
> "Without jurisdiction" means that the court acted with absolute lack of authority. There is "excess of jurisdiction" when the court transcends its power or acts without any statutory authority. "Grave abuse of discretion" implies such capricious and whimsical exercise of judgment as to be equivalent to lack or excess of jurisdiction; in other words, power is exercised in an arbitrary or despotic manner by reason of passion, prejudice, or personal hostility; and such exercise is so patent or so gross as to amount to an evasion of a positive duty or to a virtual refusal either to perform the duty enjoined or to act at all in contemplation of law.
>
> Between an appeal and a petition for *certiorari*, there are substantial distinctions which shall be explained below.
>
> *As to the Purpose*. *Certiorari* is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. In *Pure Foods Corporation v. NLRC*, we explained the simple reason for the rule in this light:
>
> "When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being

[30] G.R. No. 156067, August 11, 2004, 436 SCRA 123, 133-134.

> exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of *certiorari*."

The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court — **on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision**. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*. Where the error is not one of jurisdiction, but of an error of law or fact — a mistake of judgment — appeal is the remedy. [Emphasis supplied.]

The most obvious ground cited in the petition that, if *properly established,* would constitute grave abuse of discretion is the alleged unwarranted action of the *en banc* in acting on the registration of the NP-NPC when the COMELEC's own Rules of Procedure provides that registration is under the jurisdiction of the Division at the first instance. This alleged error is more than an error of law. If this cited ground is correct, then the *en banc* acted without legal authority and thereby committed a jurisdictional transgression;[31] its action, being *ultra vires,* would be a nullity.

Another allegation of an *ultra vires* act is that the COMELEC, by appropriate resolution, ordered that August 17, 2009 be the cut-off date for the registration of parties, and yet approved the registration of NP-NPC long after this cut-off date had passed without any valid justification or reason for suspending the rule. For the *en banc* to so act was not a mere error of law. The grant of registration was an act *outside mandatory legal parameters* and was therefore done when the COMELEC no longer had the authority to act on it. In this sense, it is a

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[31] Petition, *supra* note 2, at 3-4.

proper allegation of grave abuse of discretion under Rule 64 of the Rules of Court.

**In our view, these jurisdictional challenges to the *en banc* Resolution, if established, constitute *ultra vires* acts that would render the Resolution void.**

**b. Prematurity**

**Is the present petition premature, since its object is to foreclose a ruling on the unsettled NP-NPC accreditation issue?**

This is another threshold issue, raised this time by the OSG, and we rule that the OSG's objection has no merit.

The root of the present petition is the NP-NPC petition before the COMELEC for registration as a coalition and accreditation as the dominant minority party. While the *en banc* claimed that it had jurisdiction over the registration of coalitions and in fact decreed the NP-NPC's registration, it strangely did not rule on the accreditation aspect of the petition.

The registration of a coalition and the accreditation of a dominant minority party are two separate matters that are substantively distinct from each other. **Registration** *is the act that bestows juridical personality for purposes of our election laws*;[32] **accreditation,** *on the other hand, relates to the privileged participation that our election laws grant to qualified registered parties*.[33]

Section 2(5), Article IX-C of the Constitution and Rule 32 of the COMELEC Rules regulate the registration of political parties, organizations or coalitions of political parties. Accreditation as a dominant party is governed by COMELEC Resolution No. 8752, Section 1 of which states that the petition for accreditation shall be filed with the Clerk of the Commission who shall docket it as an SPP (DM) case, in the manner that

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[32] Joaquin G. Bernas, SJ, *The 1987 Constitution of the Republic of the Philippines* (2003).

[33] *Supra* note 1.

the NP-NPC petition before the COMELEC was docketed. While the registration of political parties is a special proceeding clearly assigned to a Division for handling under the COMELEC Rules,[34] no similar clear-cut rule is available for a petition for accreditation as a dominant party. We thus make no statement on this point, as it is not a matter in issue.

Under the circumstances of the present case where the registration was handled at the *en banc*, action at the COMELEC ended upon the *en banc*'s issuance of the assailed Resolution; under Rule 13, Section 1(d) of the COMELEC Rules, a motion for reconsideration of an *en banc* ruling is a prohibited pleading, except in election offense cases. Any request for accreditation that may be filed is conceptually a separate matter for the COMELEC to handle. Thus, after the *en banc* issued the assailed Resolution resolving the NP-NPC's application for registration as a coalition, the COMELEC's part in *the registration process* was brought to a close, rendering the Resolution ripe for review by this Court.

The present petition has openly stated its objective of forestalling the accreditation of the respondent NP-NPC; the petition expressly and frontally sought the issuance of a writ of prohibition and restraining order *to prevent the COMELEC from accrediting a coalition that is not registered as a party*.

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[34] Section 1, Rule 32 of the COMELEC Rules on Special Proceedings states:

> Section 1. *Petition for Registration.* - Any political party, organization or coalition of political parties seeking registration pursuant to Section 2 (5), Subdivision C of Article IX of the Constitution shall file with the Law Department of the Commission a petition duly verified by its President and Secretary-General, or any official duly authorized to do so under its Constitution and By-Laws.

The above-cited rule should be read in relation to Section 3, Rule 3 of the COMELEC Rules which states:

> Sec. 3. *The Commission Sitting in Divisions*. – The Commission shall sit in two (2) Divisions to hear and decide protests or petition in ordinary actions, special actions, special cases, provisional remedies, contempt, and special proceedings except in accreditation of citizen's arms of the Commission.

The combination of a petition for *certiorari* and for prohibition under the circumstances of the present case is fully justified, as the registration and the accreditation that the petition covers are linked with and in fact sequentially follow one another. Accreditation can only be granted to a *registered* political party, organization or coalition; stated otherwise, a registration must first take place before a request for accreditation can be made. Once registration has been carried out, accreditation is the next natural step to follow.

Where the registration is flawed for having been attended by grave abuse of discretion, as alleged in the petition, the filing of a petition for prohibition with a prayer for a preliminary injunction can only be expected as a logical remedial move; otherwise, accreditation, unless restrained, will follow. Thus, from the point of view of ***prohibition***, there is absolutely no prematurity as its avowed intent is in fact to forestall an event – the accreditation – that according to the assailed Resolution shall soon take place. From the point of view of the petition for ***certiorari*** questioning the registration made, no prematurity issue is involved as the nullification of a past and accomplished act is prayed for. **From these perspectives, the OSG objection based on prematurity is shown to be completely groundless**.

**c. <u>Timeliness</u>**

**Is the NP-NPC petition before the COMELEC, viewed as a petition for registration, time-barred?**

This issue, raised by the petitioner, strikes at the heart of the petition that the assailed COMELEC Resolution passed upon, and that the divided *en banc* decided in the NP-NPC's favor.

**Our short answer to the question posed is: yes, the NP-NPC's petition for registration as a coalition is time-barred. Thus, the *en banc* was wrong in ordering the out-of-time registration of the NP-NPC coalition.**

Admittedly, Resolution No. 8646 simply states that August 17, 2009 is the "[L]ast day for filing petitions for registration

of political parties," without mentioning "organizations and coalitions" in the way that the three entities are separately mentioned under Section 2(5), Article IX-C of the Constitution and Rule 32, Section 1 of the COMELEC Rules. Resolution No. 8646, however, is simply a listing of electoral activities and deadlines for the May 10, 2010 elections; it is not in any way a resolution aimed at establishing distinctions among "political parties, organizations, and coalitions." In the absence of any note, explanation or reason why the deadline only mentions political parties, the term "political parties" should be understood in its generic sense that covers political organizations and political coalitions as well.

To rule otherwise is to introduce, through a COMELEC deadline-setting resolution, a meaning or intent into Section 2(5), Article IX-C, which was not clearly intended by the Constitution or by the COMELEC Rules; Resolution No. 8646 would effectively differentiate between political parties, on the one hand, and political organizations and coalitions, on the other.

In fact, no substantial distinction exists among these entities germane to the act of registration that would justify creating distinctions among them in terms of deadlines. Such distinctions in the deadlines for the registration of political organizations and coalitions, if allowed, may even wreak havoc on the procedural orderliness of elections by allowing these registrations to introduce late and confusing signals to the electorate, not to mention their possible adverse effects on election systems and procedures. This, the *en banc* very well knows, and their lack of unanimity on the disputed point of timeliness shows how unusual the majority's reading has been.

The *en banc*'s failure to follow its own rules on deadlines may, at first blush, be a negligible error that does not affect its jurisdiction (assuming for the sake of argument that the *en banc* has the authority to act at the first instance). An examination of Resolution No. 8646, however, shows that the deadline for registration cannot but be a **firm and mandatory deadline** that the COMELEC has set.

We note in this regard that the registration of parties is the first in a list of election-related activities that peaks in the voting on May 10, 2010. This list takes into account the close step-by-step procedure the COMELEC has to undertake in implementing the automated election system (*AES*). We note, too, that a closely related activity is the holding of political conventions to select and nominate official party candidates for all election positions, scheduled on October 21, 2009,[35] and November 20, 2009 was the deadline for the filing of the certificates of candidacy for all elective positions – an undertaking that required the candidates' manifestation of their official party affiliation. There is also a host of election activities in which officially registered parties have to participate, principally: the examination and testing of equipment or devices for the AES and the opening of source codes for review;[36] the nomination of official watchers;[37] and the printing, storage and distribution of official ballots wherein accredited political parties may assign watchers.[38] Of course, registered political parties have very significant participation on election day, during the voting and thereafter; the COMELEC needs to receive advance information and make arrangements on which ones are the registered political parties, organizations and coalitions.

All these are related to show that the COMELEC deadline cannot but be ***mandatory;*** the whole electoral exercise may fail or at least suffer disruptions, if the deadlines are not observed. For this reason, the COMELEC has in the past in fact rejected applications for registration for having been filed out of time. A case in point is the application of the political party Philippine Guardians Brotherhood, Inc.,[39] where the COMELEC denied the plea for registration for having been

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[35] Pursuant to Section 13, R.A. 9369.

[36] Sec. 13 of RA 8436, as amended by RA 9369.

[37] Section 26 of RA 7166, as amended by RA 9369.

[38] Section 15 of RA 8436, as amended by RA 9369.

[39] Whose case came to us as *Philippine Guardians Brotherhood, Inc. v. Commission on Elections*, G.R. No. 190529, May 1, 2010.

filed out of time,[40] among other grounds. Philippine Guardians Brotherhood might not have been the only political party whose application for registration was denied at the COMELEC level for late filing. We are sure that all these other organizations would now cry foul – and rightly so – because of the denial of their applications on the ground of late filing, when the NP-NPC has been made an exception without rhyme or reason.

Given the mandatory nature of the deadline, subject only to a systemic change (as contrasted to an *ad hoc* change or a suspension of the deadline in favor of a party *in the course of application*), the *en banc* acted in excess of its jurisdiction when it granted the registration of NP-NPC as a coalition beyond the deadline the COMELEC itself had set; the authority to register political parties under mandatory terms is only up to the deadline. Effectively, the mandatory deadline is a jurisdictional matter that should have been satisfied and was not. Where conditions that authorize the exercise of a general power are wanting, fatal excess of jurisdiction results.[41]

Separately from the above consideration, we view the *en banc*'s position that the deadline for registration is only for "political parties" and not for "organizations and coalitions" to be preposterous, given the importance of the participation of political parties in the election process and the rigid schedules that have to be observed in order to implement automated elections as efficiently and as harmoniously as possible. We note that the COMELEC has not even bothered to explain why it imposed a deadline applicable only to political parties, but not to political organizations and coalitions. **In our view, this kind of ruling was patently unreasonable, made as it was without basis in law, in fact or in reason; and was a grave abuse of**

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[40] COMELEC Resolution No. 8679 dated October 13, 2009, in relation to SPP No. 09-004 (MP).

[41] See *Land Bank of the Philippines v. Court of Appeals*, G.R. No. 129368, August 25, 2003, 409 SCRA 455, 480, citing *Conners v. City of Knoxville*, 189 S.W. 870 (1916). See also Jones and De Villars, *Principles of Administrative Law*, Carswell, 1985, pp. 109-110.

**discretion that fatally afflicted the assailed COMELEC Resolution.**[42]

**1. *The "Operative Fact" Issue***

Other than the matter of timeliness which is an open-and-shut consideration under the clear deadline imposed, the more important issue is raised by the statement in the assailed Resolution that the coalition was an "operative fact" that the *en banc* could note and thereafter recognize, thereby implying that coalitions of political parties may not need any separate registration if the component parties are already registered.

Whether one party would coalesce or work together in partnership, or in close collaboration with another party for purposes of an electoral exercise, is a matter that the law *as a rule* does not and cannot regulate. This is a part of the freedom of choice derived from the freedom of individuals constituting the political parties to choose their elected leaders,[43] as well as from the concepts of democracy and sovereignty enshrined in our Constitution.[44] This is a freedom, too, that cannot but be related to individuals' associational rights under the Bill of Rights.[45] We mention this freedom, as it was apparently the basis for the "operative fact" that the assailed COMELEC Resolution spoke of. In effect, the assailed Resolution implied that registered political parties are well within their right to coalesce; and that this coalition, once proven, should already bind the COMELEC, rendering registration a mere recognition of an operative fact, *i.e.*, a mere ministerial formality.

We categorically reject this COMELEC position and its implication; the freedom to coalesce or to work together in an

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[42] See *Information Technology Foundation of the Philippines v. Commission on Elections*, G.R. No. 159939, January 13, 2004, 419 SCRA 141, 148, 168, where the Court held that COMELEC gravely abused its discretion in arbitrarily failing to observe its own rules, policies and guidelines in the bidding process, thereby negating a fair, honest and competitive bidding.

[43] CONSTITUTION, Article V, Section 1.

[44] *Id.,* Article II, Section 1.

[45] *Id.,* Article III, Section 8.

election to secure the vote for chosen candidates is different from the formal recognition the Constitution requires for a political party, organization or coalition to be entitled to full and meaningful participation in the elections and to the benefits that proceed from formal recognition. Registration and the formal recognition that accompanies it are required, as the words of the Constitution themselves show, because of the Constitution's concern about the character of the organizations officially participating in the elections. Thus, the Constitution specifies religious and ideological limitations, and in clear terms bars alien participation and influence in our elections. This constitutional concern, among others, serves as a reason why registration is not simply a checklist exercise, but one that requires the exercise of profound discretion and quasi-judicial adjudication by the COMELEC.[46] Registration must be undertaken, too, under the strict formalities of the law, including the time limits and deadlines set by the proper authorities.

Explained in these terms, it is easy to discern why the "operative fact" that the assailed Resolution speaks of cannot simply be equated with the formal requirement of registration, and why this process should be handled in all seriousness by the COMELEC. To carry this statement further, the Constitution itself has spoken on the matter of registration and the applicable processes and standards; there can be no dispute about the wisdom, propriety, reasonableness or advisability of the constitutional provision and the standards and processes it imposed. Only the people as a sovereign can dwell on these matters in their consideration of the Constitution in a properly called political exercise. In this sense, the question of whether a coalition of registered parties still needs to be registered is a *non-issue* for being beyond the power of this Court to resolve; this Court can only rule that the Constitution has set the norms and procedures for registration, and these have to be followed.

To sum up, political coalitions need to register in accordance with the established norms and procedures, if they are to be

[46] See Bernas, *supra* note 32, explaining the concept of registration.

recognized as such and be given the benefits accorded by law to registered coalitions. Registered political parties carry a different legal personality from that of the coalition they may wish to establish with other similarly registered parties. If they want to coalesce with one another without the formal registration of their coalition, they can do so on their own in the exercise of their and their members' democratic freedom of choice, but they cannot receive official recognition for their coalition. Or they can choose to secure the registration of their coalition in order to be accorded the privileges accruing to registered coalitions, including the right to be accredited as a dominant majority or minority party. There are no ifs and buts about these constitutional terms.

**2. *The Jurisdictional and Other Questions Raised***

Aside from the threshold and timeliness questions we have extensively discussed, this case raises other important questions as well that, without the time constraints the coming elections impose on us, would have been fertile areas for discussion in exploring the limits and parameters of COMELEC authority on the registration of coalitions. These questions, however, are not for us to answer now, given our time constraints and the decisive impact on the present case of our ruling on timeliness. Thus, we reserve for another case and another time the answers to these no less important questions.

We solely rule for now that the *en banc* gravely abused its discretion when it disregarded its own deadline in ruling on the registration of the NP-NPC as a coalition. In so ruling, we emphasize that the matter of party registration raises critical election concerns that should be handled with discretion commensurate with the importance of elections to our democratic system. The COMELEC should be at its most strict in implementing and complying with the standards and procedures the Constitution and our laws impose.

In light of the time constraints facing the COMELEC and the parties as the election is no more than a week away, we find it compelling to declare this Decision immediately executory.

**WHEREFORE,** premises considered, we hereby *GRANT* the petition and, accordingly, *NULLIFY* and *SET ASIDE* the Resolution of the Commission on Elections dated April 12, 2010 in the application for registration of the Nacionalista Party-Nationalist People's Coalition as a political coalition, docketed as SPP-10-(DM). The Commission on Elections is *DECLARED BARRED* from granting accreditation to the proposed NP-NPC Coalition in the May 10, 2010 elections for lack of the requisite registration as a political coalition. **This Decision is declared immediately executory.** No costs.

**SO ORDERED.**

*Puno, C.J., Nachura, Leonardo-de Castro, Peralta, Del Castillo, Abad, Villarama, Jr., Perez,* and *Mendoza, JJ.,* concur.

*Carpio, J.,* see separate concurring opinion.

*Carpio Morales, J.,* concurs with separate opinion of J. Carpio.

*Corona, J.,* reserves his right to write a separate opinion.

*Velasco, Jr., J.,* no part.

*Bersamin, J.,* no part due to a niece being affiliated with a party.

## SEPARATE CONCURRING OPINION

**CARPIO, *J.*:**

I vote to grant the petition. *First*, the petition to register the political coalition of the Nacionalista Party (NP) and the Nationalist People's Coalition (NPC) was **filed out of time**. *Second*, the NP and NPC officers who signed the coalition agreement **acted without authority** in violation of their parties' respective Constitutions and By-Laws.

### *NP and NPC's Petition Filed Out of Time*

The Commission on Elections (COMELEC) released the list of **all deadlines** relating to the 10 May 2010 elections on 14 July 2009 as embodied in Resolution No. 8646 (Resolution 8646),

or more than nine months before the start of the election period.[1] ***First* on the list of deadlines is the last day for filing petitions for "*registration of political parties*" which is 17 August 2009**, or over three months before the deadline to file certificates of candidacy on 30 November 2009. The generous time-gap between party registration and filing of certificates of candidacy rests on two grounds: (1) to give the COMELEC ample time to comply with the constitutional mandate to "[r]egister, *after sufficient publication*, political parties, organizations, or *coalitions* which, in addition to other requirements, *must present their platform or program of government*"[2] thus ensuring efficiency in the registration process (as publication and confirmatory hearings expectedly take time); and (2) to give political parties and coalitions ample time to hold *post-registration* conventions to nominate their candidates, a requirement for seeking office, thus eliminating inter-party or inter-coalition rivalries.

As major political parties, respondents NP and NPC are charged with knowing the deadline to register coalitions. Despite such knowledge, NP and NPC chose not to coalesce and seek registration before the 17 August 2009 deadline. Instead, NP and NPC fielded their own candidates for national and local positions for the 10 May 2010 elections, submitting separate nomination papers to the COMELEC. It was only on 12 February 2010, **almost six months after the deadline under Resolution 8646 had lapsed**, that NP and NPC sought to register their so-called coalition, coupled with a prayer for the coalition's accreditation as dominant minority party. What triggered the NP and NPC to coalesce deep into the election period, long past the COMELEC deadline to register their coalition? Petitioner Liberal Party sheds light:

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[1] This is consistent with the COMELEC's practice to release ahead of the election period the list of election related deadlines. Thus, for the 14 May 2007 elections, it released the list on 30 August 2006 (Resolution No. 7707) and for the 10 May 2004 elections, on 25 November 2003 (Resolution No. 6420) (Petition, pp. 31-32).

[2] Section 2(5), Article IX-C (emphasis supplied).

[T]the alleged "NP-NPC Coalition" was supposedly entered into only on 28 January 2010 as indicated in their Joint Resolution, *a day after the COMELEC promulgated the Resolution No. 8752 which, among others, provides for the rules and criteria for the accreditation [of] the dominant minority party*. The NP and NPC, in a desperate afterthought, belatedly forged the alleged NP-NPC Coalition," after having known the criteria for the accreditation of [the] dominant minority party and the obvious fact that *neither of them as individual political parties can even be at par with the Liberal Party position*, as in fact it was also declared as the [d]ominant [m]inority [p]arty during the last May 2007 [e]lections.[3] (Emphasis supplied)

In its assailed resolution, the COMELEC entertained the NP and NPC's application for registration because "there is no resolution setting a deadline for the registration of coalitions."[4] Respondents NP and NPC agree, emphasizing that under Resolution 8646, the word "coalitions" is found only in the deadline for the registration of parties under the party-list system.[5]

A simple referral to its own procedural rules could have spared the COMELEC from committing an egregious error. **Section 1, Rule 32 of the COMELEC Rules of Procedure on registration of political parties lumps together "*political party, organization or coalition*" for purposes of registration**, thus:

Section 1. Petition for Registration – **Any political party, organization or coalition of political parties seeking registration pursuant to Section 2(5), Subdivision C of Article IX of the Constitution** shall file with the Law Department of the Commission a petition duly verified by its President and Secretary-General, or any official duly authorized to do so under its Constitution and By-laws. (Boldfacing and underscoring supplied)

The COMELEC issued Resolution 8646 *to supplement* Section 1, Rule 32 of its Rules of Procedure by providing the ***deadlines***

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[3] Petition, p. 48.

[4] COMELEC Resolution in SPP No. 10-005 (DM), dated 12 April 2010, p. 7.

[5] NP-NPC Coalition Comment, pp. 22-24.

***for registration*** for purposes of the 10 May 2010 elections. **Thus, Resolution 8646's deadline for registration of "political parties" on 17 August 2009 logically covers *"[a]ny political party, organization or coalition of political parties"* for under Section 1, Rule 32 of the Rules of Procedure, the term "political party" includes "*organization or coalition of political parties*."**

NP and NPC's submission that **only** *coalitions under the party-list system* are covered by Resolution 8646 defies common sense and logic. Parties under the party-list system represent sectors seeking membership only in the House of Representatives. In contrast, regular political parties or their coalitions field candidates in the executive and legislative branches and, for the legislature, in both lower and upper Houses.[6] Hence, for purposes of preventing "inter-coalition rivalries" and bogus coalitions, it is illogical and nonsensical for the COMELEC to schedule way ahead of elections the screening for registrants under the party-list system and leave open the door, up until the eve of elections, for registrants under the regular system.

By entertaining and granting relief to a very stale registration application, the COMELEC negated the purpose of the party nomination process. Thus, we are now treated with the spectacle of NP and NPC rival candidates, supposed "coalition-mates," campaigning against each other and attacking each other's program of governance who, as "coalition members," should ideally hew along the same principles and policies.[7]

Worse still, the COMELEC betrayed its *raison d'être* of ensuring "free, ***orderly***, honest, peaceful, and ***credible*** elections"[8]

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[6] Thus, the so-called coalition under review is fielding candidates for President, Vice-President, Senators, Representatives, Governors, Vice-Governors, Mayors, Vice-mayors and Councilors.

[7] Thus introducing to the lexicon of election law the oxymoron "hostile coalition."

[8] Sections 2(4) and 4, Article IX-C of the Constitution (emphasis supplied).

by undermining the constitutional policy of fostering stable, party-based, program-driven electoral system.[9] The constitutional mandate that the COMELEC "[r]egister, after sufficient publication, political parties, organizations, or coalitions which, in addition to other requirements, must present their platform or program of government x x x" is meant to insure free, ***orderly***, honest, peaceful and ***credible*** elections. The early screening of party or coalition registrants implements this policy. Because the COMELEC ignored its self-imposed deadline, a dubious, hastily patched coalition has now belatedly entered the electoral system, flouting a constitutionally rooted policy.

### *The NP and NPC Coalesced in Violation of their Constitutions and By-Laws*

The NP-NPC coalition was created through Joint Resolution No. 01-2010, dated 28 January 2010 (Coalition Resolution), **signed by two national officers of the NP and three national officers of the NPC**.[10] Under the Coalition Resolution, the NP and NPC:

> RESOLVED, by the *Executive Committee* of the Nacionalista Party and the *Executive Committee* of the Nationalist People's Coalition to unite and coalesce into a single opposition political group, to be known as the "NP-NPC Coalition[.][11] (Emphasis supplied)

**However, there is no "Executive Committee" under the Constitutions and By-Laws of the NP and NPC**. What the Constitutions and By-Laws of the NP and NPC provide are "National Central Committees."[12] Under each party's structural

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[9] As textualized in Section 6, Article IX-C of the Constitution which provides: "A free and open party system shall be allowed to evolve according to the free choice of the people, x x x."

[10] By Faustino S. Dy, Jr, Chairman, Frisco San Juan, President and Michael John R. Duavit, Secretary General for NPC and by Manuel B. Villar, President and Alan Peter S. Cayetano, Secretary General for NP.

[11] Records, p. 69.

[12] For the NP, the National Central Committee is composed of the national officers of the party, two senators, four members of the House of Representatives, two provincial governors, two mayors, three members

hierarchy, the National Central Committee is subordinate to the National Convention, the central decision-making body.[13]

The records are bereft of formal authorization from either the NP and NPC National Central Committees or their National Conventions for the Coalition Resolution signatories to sign Joint Resolution No. 01-2010. True, the NP's National Central Committee is granted the authority to "deliberate and decide upon all matters respecting x x x coalition [sic],"[14] but this presupposes a ***collegial action***, not the unilateral moves of a few members (two to be exact) acting without the consent of, much less notice to, the National Central Committee members. The lack of authorization on the NPC's side was highlighted during the COMELEC hearings where NPC Chairman Faustino Dy, Jr. revealed that he merely talked to party members. When pressed, NPC Chairman Dy, Jr. admitted that he failed to confer with several members,[15] including a National Central Committee

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of the advisory council, five members of sectoral group representatives and two members-at-large. The National Officers are the President, Executive Vice-President, Secretary General, thirteen National Vice-Presidents (regional chairmen), treasurer and Chief Legal Counsel (Section 24, Article IV, Revised Rules of the Nacionalista Party). For the NPC, its National Central Committee is composed of "such members as may be provided by the national convention" (Section 3, Article VI,NPC Constitution and By-Laws). Its current membership cannot be determined from the records.

[13] Section 14, Article IV of the 1993 Revised Rules of the Nacionalista Party provides: "**Supreme Authority of the Party**. The supreme authority of the Party shall reside in the National Convention. Decisions of the National Convention may be revered, altered or modified only by the National Convention itself." Similarly, Section 1, Article VI of the NPC's Constitution and By-Laws provides: "**The National Convention**. The National Convention supreme authority of the Party which has the final decision on all matters, issues or conflicts involving the Party or its members."

[14] Section 25(d), Article V, 1993 Revised Rules of the Nacionalista Party. The NPC's Constitution and By-Laws carry no parallel provision although it vests on the National Central Committee "all the powers of the National Convention when the same is not in session x x x." (Section 2(i), Article VI, NPC Constitution and By-Laws).

[15] Such as Negros Oriental Governor Emilio Macias II, Southern Leyte Governor Marissa Lerias, Camiguin Governor Jurdin Romualdo, Congresswoman Rizalina Seachon-Lanete, Congressman Arnulfo Fuentebella,

member, Darlene Antonino, not because she was unavailable but because her mother, a former member of the House of Representatives, is supporting the national candidates of another party.[16] Another NPC National Central Committee member, Daniel Laogan, confirmed that he first heard of the NP-NPC coalition in the newspapers.[17] **More damning still is the disclosure of NPC's own General Counsel Atty. Sixto Brillantes, an NPC national officer and thus member of its National Central Committee, that there was no "meeting or assembly that discussed the issue of coalition**."[18]

No amount of invocation of technical rules of evidence (such as the rules on admission of hearsay evidence and attorney-client communication which NP and NPC invoked in their Comment[19]) can stifle the truth of Laogan and Brillantes' disclosures. The COMELEC and certainly this Court enjoy ample leeway in admitting credible evidence to perform the task at hand. Indeed, it would defeat the purpose of this proceeding for the Court to close its eyes to undisputed, material proof only because their sources cannot verbally attest to their words. At any rate, Atty. Brillantes' statement that there was no NPC "meeting or assembly that discussed the issue of coalition" involves no attorney-client "communication."[20] It is a statement of a negative fact made not so much in Atty. Brillantes' capacity as NPC's party counsel but as NPC national officer and member of its National Central Committee.

The lack of authority of the Coalition Resolution signatories would have been cured if the coalition's Constitution and By-

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Congressman Rodolfo Plaza, Congressman Jules Ledesma, Claude Bautista, Manny Piñol, Kimi Cojuangco, Enrique Cojuangco, Ramon Durano, and President Emeritus Ernesto Maceda.

[16] TSN (Faustino S. Dy, Jr.), 11 March 2010, pp. 17-41.

[17] Petition, Annex "EE".

[18] Petition, Annex "DD".

[19] NP-NPC Coalition Comment, pp. 36-39.

[20] *E.g.* verbal statements, documents or papers entrusted to the counsel or facts learned by counsel through the act or agency of his client. (REGALADO, *II REMEDIAL LAW COMPENDIUM* 711 (10th ed.)

Laws, no doubt drafted by Coalition Resolution signatories, were submitted to the parties' respective National Central Committees or general memberships for ratification. However, no such curative process took place because the heads[21] of NP and NPC took it upon themselves to "ratify" the coalition's Constitution and By-Laws they had written.

Thus, not only were the NP and NPC National Central Committees and general memberships denied participation in the coalition-building, they are now bound without their consent to a supra-Constitution placing the NP and NPC under the control of a "National Coalition Committee." Styled as "the **supreme authority** and administrative arm of the Coalition,"[22] this supra-party body is vested under the coalition's Constitution and By-Laws with sweeping powers such as the authority to "act upon such matters and transact such business as it may deem necessary or appropriate"[23] and to "**format the platform and ideology of the Party and amend the same when circumstances warrant**."[24]

These powers are concentrated on the National Coalition Committee's six members,[25] elected by the NP and NPC's "Executive Committees," and who are also the coalition's national officers. To repeat, the NP and NPC's Constitutions and By-Laws do not provide for an "Executive Committee." There are no resolutions of the NP and NPC's respective general memberships authorizing the creation of either an "Executive Committee" within their respective parties or of a supra-party "National Coalition Committee" with the power to amend the platform and ideology of their respective parties. Clearly, the

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[21] Through Joint Resolution No. 02-2010, dated 6 February 2010, signed by NP President Manuel Villar and NPC Chairman Faustino S. Dy, Jr.

[22] Section 1, Article VI, NP-NPC Coalition Constitution and By-Laws.

[23] Section 3(b), Article V, NP-NPC Coalition Constitution and By-Laws.

[24] Section 3(e), Article V, NP-NPC Coalition Constitution and By-Laws. (Emphasis supplied)

[25] Manuel B. Villar, Faustino S. Dy. Jr., Luis R. Villafuerte, Frisco San Juan, Alan Peter Cayetano and Rimpy Bondoc.

so-called "Executive Committees" of the NP and NPC have no authority to act for and bind their respective parties. Neither does the so-called "National Coalition Committee" have authority to bind both NP and NPC.

The COMELEC would have been left with no choice but to deny registration to the NP-NPC coalition had it passed upon the validity of the Coalition Resolution. Instead, it refused to reach the merits of this issue by finding petitioner Liberal Party without personality to raise the matter.[26] It could not have been lost on the COMELEC that the NP and NPC coalition's request for registration was merely a *preliminary step* to its ultimate goal of obtaining the coveted accreditation as dominant minority political party[27] entitling the coalition to the sixth copy of the election returns.[28] **As the political party accorded this status in the 2007 elections, petitioner Liberal Party will certainly be prejudiced by the registration of the NP-NPC coalition as a preliminary step for the coalition's accreditation as the dominant minority party**. **Thus, petitioner is possessed with legal personality to question the registration of the NP-NPC coalition.**

***Orderly and Credible Elections***

The NP and NPC's stale request for registration of their coalition is nothing but a strategic election move by some of their officers. Determined to secure accreditation as dominant minority party and thus enjoy an election privilege the law attaches

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[26] COMELEC Resolution in SPP No. 10-005 (DM), dated 12 April 2010, pp. 8-9.

[27] Thus, in their petition before the COMELEC, NP and NPC's second prayer was for the coalition's accreditation as the dominant minority party (on which the COMELEC deferred ruling). The NP and NPC also resolved in their Coalition Resolution to "obtain accreditation of the NP-NPC COALITION as the Dominant Minority Political Party." (Records, p. 69)

[28] Under Section 22, B(6) of Republic Act No. 9369. With the maiden, nationwide use of an automated system in the 10 May 2010 elections, which dispenses with all paper-trail except the canvassed-ballots and election return print-outs, the latter has become a prized document to protect votes, and perhaps, substantiate future legal actions.

to that status, these officers belatedly devised a coalition despite lack of authorization by their parties' governing bodies. A more assiduous devotion to its core function as sentinel of "free, ***orderly***, honest, peaceful, and ***credible*** elections" would have steeled the COMELEC to withhold its blessing to this belated and unauthorized political union.

Clearly, in issuing the assailed resolution the COMELEC committed grave abuse of discretion for violating its own rules as well as its constitutional mandate of insuring orderly and credible elections. It does not matter whether this case involves the administrative or quasi-judicial functions of the COMELEC. Under Section 1, Article VIII of the Constitution, this Court has the power to determine "whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." The act assailed before this Court may be executive, quasi-judicial or legislative in nature. Moreover, Section 7, Article IX-A of the Constitution provides that "[u]nless 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." Such COMELEC decision, order, or ruling may arise from its administrative or quasi-judicial functions.

Accordingly, I vote to **GRANT** the petition, **SET ASIDE** the COMELEC Resolution dated 12 April 2010 in SPP No. 10-005 (DM), and **DIRECT** the COMELEC to desist from conducting further proceedings in SPP No. 10-005 (DM).

## DISSENTING OPINION

**CORONA, *J.*:**

The majority opinion is well-reasoned out. However, a careful study and circumspect reflection of the case lead me to the conclusion that the Commission on Elections (COMELEC) committed no grave abuse of discretion in this case that will justify the grant of the extraordinary writ of *certiorari*.

Thus, I dissent.

My opinion is primarily anchored on the ground that the power of the COMELEC to register political parties, organizations or coalitions is among the COMELEC's administrative powers that may be acted on directly by the COMELEC *en banc*.

Not all cases relating to election laws filed before the COMELEC are required to be heard at the first instance by a Division of the COMELEC.[1] Under the Constitution, the COMELEC exercises both administrative and quasi-judicial powers. **The COMELEC *en banc* can act directly on matters falling within its administrative powers**.[2] It is only when the exercise of quasi-judicial powers are involved that the COMELEC is mandated to decide cases first in division, and then, upon motion for reconsideration, *en banc*.[3]

This Court pronounced in *Baytan v. COMELEC*[4] (subsequently reiterated in *Bautista v. COMELEC*[5]) that the power of the COMELEC under Section 2(5), Article IX-C of the Constitution to register political parties, organizations or coalitions is administrative in nature. Thus, the COMELEC *en banc* acted properly when it took direct cognizance of the petition of the NP and the NPC.

Furthermore, the test for determining whether a particular power of the COMELEC is administrative (and may therefore be acted on directly by the COMELEC *en banc*) or quasi-judicial (and should therefore be brought first to a Division of the COMELEC) employed in the earlier case of *Villarosa v. COMELEC*[6] can be said to have been modified by the more recent case of *Baytan*. Indeed, *Villarosa* as circumscribed by

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[1] *Municipal Board of Canvassers of Glan v. COMELEC*, 460 Phil. 426 (2003).

[2] *Id.*; *Baytan v. COMELEC*, 444 Phil. 812 (2003).

[3] *Id.*

[4] *Supra* note 2.

[5] 460 Phil. 459 (2003).

[6] G.R. No. 133927, 29 November 1999, 319 SCRA 470.

*Baytan* may be implied from *Bautista*. While it referred to the *Villarosa* test, *Bautista* invoked and reiterated *Baytan*'s delineation of the administrative and quasi-judicial functions of the COMELEC.[7]

Since the COMELEC *en banc* has the authority to directly take cognizance of the petition for registration of the NP and the NPC as a coalition, as an independent constitutional body, it may also exercise its discretion to liberally construe its rules of procedure or even to suspend the said rules or any portion thereof in the interest of justice.

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[7] In particular, the Court declared the following in *Bautista*:

In *Baytan v. COMELEC*, the Court expounded on the administrative and quasi-judicial powers of the COMELEC. The Court explained:

> Under Section 2, Article IX-C of the 1987 Constitution, the COMELEC exercises both administrative and quasi-judicial powers. The COMELEC's administrative powers are found in Section 2 (1), (3), (4), (5), (6), (7), (8), and (9) of Article IX-C. The 1987 Constitution does not prescribe how the COMELEC should exercise its administrative powers, whether *en banc* or in division. The Constitution merely vests the COMELEC's administrative powers in the "Commission on Elections," while providing that the COMELEC "may sit *en banc* or in two divisions." ***Clearly, the COMELEC en banc can act directly on matters falling within its administrative powers***. Indeed, this has been the practice of the COMELEC both under the 1973 and 1987 Constitutions.
>
> On the other hand, ***the COMELEC's quasi-judicial powers are found in Section 2 (2) of Article IX-C***, to wit:
>
> > "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."

Grave abuse of discretion is not simply an error in judgment but it is such capricious and whimsical exercise of judgment which is tantamount to lack of jurisdiction.[8] Ordinary abuse of discretion is insufficient. The abuse of discretion must be grave, that is, the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility.[9] It must be so patent and gross as to amount to evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of the law. In other words, for a petition for *certiorari* to prosper, there must be a clear showing of caprice and arbitrariness in the exercise of discretion.[10] Taking all these into consideration, the COMELEC cannot and should not be faulted or, more so, ascribed with grave abuse of discretion, for simply observing or following this Court's ruling in *Baytan* and *Bautista*.

Even assuming for the sake of argument that the COMELEC *en banc* was wrong when it acted directly on the petition of the NP and the NPC, the COMELEC *en banc* committed a mere error of judgment as it based its decision on the Court's ruling in *Baytan* and *Bautista*. Such error of judgment is not correctible by the writ of *certiorari*.

Accordingly, I respectfully vote to dismiss the petition.

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[8] *Dueñas, Jr. v. House of Representatives Electoral Tribunal*, G.R. No. 185401, 21 July 2009, 593 SCRA 316, 344.

[9] *Id.*

[10] *Id.*, p. 345.

**EN BANC**

[G.R. No. 191846. May 6, 2010]

**TEOFISTO GUINGONA, JR., BISHOP LEO A. SORIANO, QUINTIN S. DOROMAL, FE MARIA ARRIOLA, ISAGANI R. SERRANO, and ENGR. RODOLFO LOZADA,** *petitioners, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

**SYLLABUS**

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; WHERE PETITION ANCHORED ON PEOPLE'S RIGHT TO INFORMATION ON MATTERS OF PUBLIC CONCERN, ANY CITIZEN CAN BE THE REAL PARTY IN INTEREST. —** In order that a petition for *mandamus* may be given due course, it must be instituted by a party aggrieved by the alleged inaction of any tribunal, corporation, board, or person, which unlawfully excludes said party from the enjoyment of a legal right. However, if the petition is anchored on the people's right to information on matters of public concern, any citizen can be the real party in interest. The requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen, and therefore, part of the general public which possesses the right. There is no need to show any special interest in the result. It is sufficient that petitioners are citizens and, as such, are interested in the faithful execution of the laws.

**2. ID.; ID.; ID.; ID.; THE INFORMATION SOUGHT MUST NOT BE AMONG THOSE EXEMPTED FROM THE CONSTITUTIONAL GUARANTEE.—** It is not enough, however, that the information petitioners seek in a writ of *mandamus* is a matter of public concern. For *mandamus* to lie in a given case, the information must not be among the species exempted by law from the operation of the constitutional guarantee. In this case, respondent Comelec failed to cite any provision of law exempting the information sought by petitioners from the coverage of the government's constitutional duty to disclose fully information of public concern.

**3. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT TO INFORMATION; INTERTWINED WITH THE GOVERNMENT'S CONSTITUTIONAL DUTY OF FULL PUBLIC DISCLOSURE OF ALL TRANSACTIONS INVOLVING PUBLIC INTEREST. —** Section 7, Article III of the Constitution enshrines the people's fundamental right to information, thus: Sec. 7. The right of the people to information on matters of public concern shall be recognized. **Access to official records, and to documents**, and papers **pertaining to official acts, transactions,** or decisions, as well as to government research data used as basis for policy development, **shall be afforded the citizen**, subject to such limitations as may be provided by law. In *Valmonte v. Belmonte, Jr.*, the Court explained the rationale of the right to information in this wise: The cornerstone of this republican system of government is delegation of power by the people to the State. In this system, governmental agencies and institutions operate within the limits of the authority conferred by the people. **Denied access to information on the inner workings of government, the citizenry can become prey to the whims and caprices of those to whom the power had been delegated.** The postulate of public office is a public trust, institutionalized in the Constitution to protect the people from abuse of governmental power, would certainly be mere empty words if access to such information of public concern is denied x x x. **The right to information goes hand-in-hand with** the constitutional policies of **full public disclosure** and honesty in the public service. It is meant to enhance the widening role of the citizenry in governmental decision-making as well as in checking abuse in government. The people's constitutional right to information is intertwined with the government's constitutional duty of full public disclosure of all transactions involving public interest. For every right of the people, there is a corresponding duty on the part of those who govern to protect and respect that right. Section 28, Article II of the Constitution succinctly expresses this state policy: Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a **policy of full public disclosure of all its transactions involving public interest.**

**4. ID.; ID.; ID.; ID.; LIMITED TO MATTERS OF PUBLIC CONCERN; WHAT CONSTITUTES MATTERS OF PUBLIC CONCERN.—** In *Legaspi v. Civil Service Commission*, the Court explained that the people's right to information is limited to matters of

public concern. The Court then formulated a broad definition of what constitutes matters of public concern, to wit: In determining whether or not a particular information is of public concern, there is no rigid test which can be applied. "Public concern" like "public interest" is a term that eludes exact definition. Both terms embrace **a broad spectrum of subjects which the public may want to know, either because such matters directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen**. In the final analysis, it is for the courts to determine in a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public. There can be no doubt that the coming 10 May 2010 elections is a matter of great public concern.

**5. ID.; ID.; DECLARATION OF PRINCIPLES AND STATE POLICIES; CONSTITUTIONAL DUTY TO DISCLOSE INFORMATION OF PUBLIC CONCERN; MAY BE COMPELLED BY *MANDAMUS*. —** In *Legaspi v. Civil Service Commission,* the Court stressed that the constitutional duty to disclose information of public concern may be compelled by *mandamus*, to wit: Thus, while the manner of examining public records may be subject to reasonable regulation by the government agency in custody thereof, **the duty to disclose the information of public concern, and to afford access to public records cannot be discretionary** on the part of said agencies. Certainly, its performance cannot be made contingent upon the discretion of such agencies. Otherwise, the enjoyment of the constitutional right may be rendered nugatory by any whimsical exercise of agency discretion. **The constitutional duty, not being discretionary, its performance may be compelled by a writ of *mandamus* in a proper case.**

**6. ID.; ID.; CONSTITUTIONAL COMMISSIONS; COMMISSION ON ELECTIONS (COMELEC); MAY BE COMPELLED TO EXPLAIN FULLY ITS PREPARATIONS FOR THEN COMING 10 May 2010 ELECTIONS. —** [P]etitioners' prayer to compel Comelec to explain fully its preparations for the coming 10 May 2010 elections finds overwhelming support in the Constitution, specifically under Section 7 of Article III and Section 28 of Article II on the people's right to information and the State's corresponding duty of full public disclosure of all transactions involving public interest; the jurisprudential

doctrines laid down in *Valmonte v. Belmonte, Jr.*, *Legaspi v. Civil Service Commission*, and *Akbayan Citizens Action Party v. Aquino*; as well as Section 52(j) of Batas Pambansa Blg. 881 otherwise known as the Omnibus Election Code; Section 5(e) of Republic Act No. 6713 otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees; Section 3 of Republic Act No. 9184 otherwise known as the Government Procurement Reform Act; Sections 1, 11, and 12 of Republic Act No. 9369 otherwise known as An Act Amending Republic Act No. 8436; and Section 2 of Republic Act No. 9525 otherwise known as An Act Appropriating ₱11 Billion as Supplemental Appropriations for an Automated Election System. Respondent Comelec cannot shirk its constitutional duty to disclose fully to the public complete details of all information relating to its preparations for the 10 May 2010 elections without violating the Constitution and relevant laws. No less than the Constitution mandates it to enforce and administer election laws. The Comelec chairman and the six commissioners are beholden and accountable to the people they have sworn to serve. This Court, as the last bulwark of democracy in this country, will spare nothing in its constitutionally granted powers to ensure that the fundamental right of the people to information on matters of public concern, especially on matters that directly affect our democratic processes, is fully guaranteed, protected, and implemented.

**CORONA, *C.J., dissenting opinion:***

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; REQUISITES. —** *Mandamus* is a remedy in cases where any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station. For *mandamus* to lie, the duty must not only be ministerial but must also be a duty enjoined by law, a duty which the tribunal or person **unlawfully neglects to perform**. Before *mandamus* is issued, the following requisites should be satisfied: (1) petitioner must show a clear legal right to the act demanded; thus, it will never be issued in doubtful cases; (2) respondent must have the duty to perform the act because the same is mandated by law; (3) respondent unlawfully neglects the performance of the duty enjoined by law; (4) the act to be performed is

ministerial, not discretionary and (5) there is no other plain, speedy and adequate remedy in the ordinary course of law.

**2. ID.; ID.; ID.; WRIT OF *MANDAMUS* ISSUED AGAINST COMELEC, IMPROPER; COMELEC'S ALLEGED UNLAWFUL NEGLIGENCE IN PERFORMANCE OF ITS DUTY BASED ON MASS MEDIA ACCOUNTS, BASELESS; CASE AT BAR. —** By issuing a writ of *mandamus* against the COMELEC, the *ponencia* effectively indicts that body for unlawful negligence in the performance of its duty. Yet, **nowhere did the *ponencia* make a finding that the COMELEC was guilty of non-feasance** with respect to the matters that the said body had been ordered to produce. There is thus a gaping hole in the *ponencia*'s reasoning. This significant and substantial omission not only makes the issuance of *mandamus* against the COMELEC baseless. It is contrary to the presumption of regularity in the COMELEC's performance of its official duty and, more importantly, it violates the entitlement of that body to substantive due process. x x x [The ponencia] took judicial cognizance of "facts" simply because these were "widely reported in print and broadcast media." The rule, however, is that courts cannot take judicial notice of newspaper accounts, which is hearsay evidence twice removed. What compounds this is that such hearsay evidence is being used as the basis by the Court as it dangerously dips its finger into the exclusive constitutional authority of the COMELEC to "[e]nforce and administer all laws relative to the conduct of an election" by compelling the COMELEC through *mandamus* to produce the things it is required to furnish the public in this case.

**3. ID.; ID.; ID.; ID.; ORDER COMPELLING COMELEC TO PRODUCE RECORDS WITHIN TWO DAYS, TYRANNICAL; CASE AT BAR. —** The *ponencia* commits yet another major lapse when it simply brushed aside a significant point raised by the COMELEC's – petitioners' failure to prove that they made a request to the COMELEC to release the records or information mentioned in the petition. x x x Such failure on the part of petitioners is fatal to their petition because *mandamus* requires the exhaustion of available administrative remedies. x x x [T]he order to produce various documents is tyrannical as it is unreasonable. It requires the COMELEC to produce those things within a period of two days only! Yet, with four days remaining before the May 10, 2010 elections, the hands of the COMELEC

are already full as that body attends to the urgent last minute concerns of the elections. x x x The law does not exact compliance with the unreasonably impossible and impossibly unreasonable.

**VELASCO, JR., *J., dissenting opinion:***

**1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; ISSUANCE NOT PROPER AS THE SAME IS BASED ON MEDIA REPORTS, WITHOUT BASES AND RESPONDENT COMELEC NOT PREVIOUSLY REQUESTED TO RELEASE PUBLIC DOCUMENTS OF PUBLIC CONCERN. —** The majority grants *mandamus* on the basis of alleged media reports on the probability that there will be failure of automated elections and that the Commissions on Elections (COMELEC) is withholding relevant documents and information necessary to insure a successful automated elections. x x x I cannot see myself clear as to why traversed media reports should be made the basis of a judgment, let alone justify an order for the COMELEC to perform a duty, assuming it is ministerial, imposed by law. [P]etitioners have not proved that COMELEC has been neglecting, in an unlawful manner, the performance of its duty *vis-à-vis* the conduct of a credible automated elections. Hence, prudence dictates that the Court refrains from interfering. [O]n the matter of petitioners' right to certain information, there is no proof, so COMELEC claims, that petitioners had requested the release of the public documents of public concern mentioned in their petition.

**2. ID.; ID.; ID.; ISSUANCE NOT PRACTICAL BECAUSE OF TIME CONSTRAINTS. —** The *ponencia* itself states that the forthcoming political exercise is less than five days away. It is four days away to be precise. And two of the four days fall on a Saturday and Sunday, ordinarily non-working days in government offices. x x x A working system that will introduce confusion, uncertainty or impossibility should be avoided. Unwittingly, the majority expects the COMELEC to perform acts which are well-nigh physically impossible to accomplish within a very limited period of time and would virtually disrupt the workings and schedules of the poll body at this late stage of electoral exercise on the basis of petitioners' fear of failure of elections.

**ABAD, *J., dissenting opinion:***

**POLITICAL LAW; CONSTITUTIONAL LAW; CONSTITUTIONAL COMMISSIONS; COMELEC; SUCCESS OF THE COMING ELECTION SHOULD BE THE PRIMARY CONCERN. —** I believe that every responsible citizen should help make a success of the election scheduled four days from today. If it fails, despite all the cooperation given the COMELEC, then that would be the time to inquire why it failed and make those who contributed to such failure account for their actions or omissions, a role that does not belong to the Supreme Court.

**APPEARANCES OF COUNSEL**

*Saguisag Carao and Associates* for petitioners.
*The Solicitor General* for respondent.

**R E S O L U T I O N**

**CARPIO, *J.*:**

**The Case**

In this special civil action for *mandamus* filed on 23 April 2010, petitioners invoke their constitutional rights to suffrage and to information in compelling respondent Commission on Elections (Comelec) to explain fully the complete details of its preparations for the 10 May 2010 elections, in view of the unraveling of alarming events of late.

**The Antecedents**

Petitioners cite various recent media reports, as follows:

1. Smartmatic-Total Information Management Corporation supplied the wrong ultraviolet ink used in the printing of the ballots for the May 2010 elections. The security marks were unreadable by the Precinct Count Optical Scan (PCOS) machines. This prompted Comelec to disable the ultraviolet light detector in the PCOS machines, and to buy ultraviolet lamps for ₱30 million.

Director Ferdinand Rafanan of the Comelec's legal department, who challenged Comelec's decision to buy ultraviolet lamps, was quoted as saying, "Why is Comelec shouldering this expense when it was not its fault that this deficiency came about."

2. Senate Minority Leader Aquilino Pimentel, Jr. then disclosed that election officials bought nearly two million ballot secrecy folders for the May 2010 elections at an overpriced rate of ₱380 each without any public bidding. Comelec promptly canceled the awarding of the ₱690 million contract for the supply and delivery of the ballot secrecy folders, which the Bids and Awards Committee of Comelec had recommended to be awarded to OTC Paper Supply for 1,815,000 ballot secrecy folders.

3. Another whistle blower, Dr. Arwin Serrano, the citizen's arm representative to the Comelec's Bids and Awards Committee, asked that the bidding for indelible ink be probed as well. According to Serrano, there were two bidders initially. After screening, Texas Resources Corporation was left as the sole bidder. Upon testing of a sample of its indelible ink, the product failed. The ink easily washed off and the mark left by it only appeared after the lapse of a few hours. Undeterred by the failed test, Comelec still used the ink supplied by Texas Resources Corporation.

4. Comelec tried to re-bid the contract for the indelible ink. However, it backtracked on its plan saying that the lone bidder did not fail the test after all. Comelec spokesperson James Jimenez was quoted as saying, "It looks like there is no need to actually re-bid it, not to mention the fact that there is really not enough time left for that."

5. On the second day of the overseas absentee voting in Hong Kong, the PCOS machines at precincts 15 and 16 at the Bayanihan Kennedytown Center failed to accept promptly the ballots shortly after the precincts reopened

at 8 a.m. Inspection of the ballots showed no stray or ambiguous marks that could result in their rejection by the PCOS machines. Smartmatic officials blamed the combination of cold and humidity in Hong Kong for the malfunctioning machines.

6. In an interview, Cesar Flores, president of Smartmatic, admitted that "Machines will break on election day, and machines will have to go to contingency procedures and there will be replacements, and there will be cases where no replacements will be available and the Board of Election Inspectors (BEIs) will have to resort to the next-door machines." Flores explained that hiccups could either be due to hardware failure or operational failure if the paper was inserted incorrectly or some connections were not plugged in. Flores continued, "It's very important that we say these things to the public and we manage the expectations of people. If you're planning on getting your headlines from machines broken, you're going to run out of space on your front page on election day."

7. This series of unfortunate events and worrisome admissions notwithstanding, the Comelec subsequently approved a resolution awarding Smartmatic a contract amounting to ₱500 million for the tracking and delivery services of official ballots. No bidding was held for the contract, which Comelec claimed to be an emergency procurement.

8. In an *en banc* resolution detailing the general instructions on the actual conduct of elections, Comelec specifically instructed BEIs not to key in their digital signatures before the PCOS machines transmit election results. Thus, any PCOS machine, including the reserves totaling 10,000 machines, can transmit election results to Comelec's central server even without digital authentication. The results can still be tallied as official results. In other words, even ballots that are not officially printed can be used in any PCOS machine. Official ballots are no longer precinct-specific. The volume of

ballots can no longer be monitored. Petitioners call this Court's attention to the fact that reserve PCOS machines can be used to transmit pre-loaded results.

The Court further takes judicial notice of the fact, as widely reported in print and broadcast media, that with just six days to go before the 10 May 2010 elections, Comelec recalled 76,000 compact flash cards following widespread failure of the PCOS machines to read and tally the votes during the machine test conducted by Comelec and Smartmatic. Comelec spokesman James Jimenez was quoted as saying, "Right now we are assuming that all of the machines were affected. We have stopped the testing and are pulling out all memory cards for reconfiguration."

Prior to this, Comelec unanimously discarded the proposal of information technology experts for a parallel manual count to safeguard the integrity and credibility of the election results.

In light of the foregoing alarming developments, petitioners pray that the Court order respondent Comelec to explain the complete details of its preparations for the impending 10 May 2010 elections, specifically:

1. The status of its negotiations for election supplies and paraphernalia, including contracts that did not undergo the bidding process;
2. Nature and security of the machines, memory card, and other software and facilities to be used for the elections, including its current anti-hacking/tampering strategy of the votes and the electoral results;
3. Content of the source code review mandated by RA 9369, and modes of access by the public to the source code;
4. Schedule, venue, and specifications of the random manual audit mandated by RA 9369;
5. Terms and protocols under which manual voting would be implemented in case failure of elections is to be declared;
6. Its readiness to shift to manual voting and the details adopted to ensure that the results cannot be manipulated;

7. Certification from the Technical Evaluation Committee that the entire AES is 100% fully functional and that a continuity plan is already in place pursuant to Section 11[1] of RA 9369;

8. Certification protocol and the actual certification issued by DOST certifying that the 240,000 BEI's all over the country are trained to use the AES as required by Section 3[2] of RA 9369.

9. Status of investigations and prosecutions of the offenders behind the procurement scandals besetting the commission of late, including those mentioned in the petition.

In its Comment filed on 4 May 2010, respondent Comelec contends petitioners have no legal standing to file the present special civil action for *mandamus*. Respondent insists petitioners have no valid cause of action against it. Respondent argues there is no proof petitioners had requested the release of the public documents mentioned in the petition; hence, the extraordinary writ of *mandamus* is legally unavailing. Respondent Comelec maintains that the issues raised by petitioners have already been decided in *Roque v. Comelec*, where this Court

[1] SEC. 11. Section 9 of Republic Act No. 8436 is hereby amended to read as follows:

"SEC.13. *Continuity Plan*. - The AES shall be so designed to include a continuity plan in case of a systems breakdown or any such eventuality which shall result in the delay, obstruction or nonperformance of the electoral process. Activation of such continuity and contingency measures shall be undertaken in the presence of representatives of political parties and citizen's arm of the Commission who shall be notified by the election officer of such activation.

"All political parties and party-lists shall be furnished copies of said continuity plan at their official addresses as submitted to the Commission. The list shall be published in at least two newspaper of national of circulation and shall be posted at the website of the Commission at least fifteen (15) days prior to the electoral activity concerned."

[2] SEC. 3. Section 3 of Republic Act No. 8436 is hereby amended to read as follows:

"SEC 3. *Board of Election Inspectors*. - Where AES shall be adopted, at least one member of the Board of Election Inspectors shall be an information technology-capable person, who is trained or certified by the DOST to use the EAS. Such certification shall be issued by the DOST, free of charge."

held that "failure of elections consequent to voting machines failure would, in fine, be a very remote possibility" and that although the "AES has its flaws, Comelec and Smartmatic have seen to it that the system is well-protected with sufficient security measures." Respondent thus prays that the petition be dismissed for lack of merit.

**The Court's Ruling**

The Court, after a careful study of the case and mindful of the transcendental importance of the matters raised, grants the petition in part.

In order that a petition for *mandamus* may be given due course, it must be instituted by a party aggrieved by the alleged inaction of any tribunal, corporation, board, or person, which unlawfully excludes said party from the enjoyment of a legal right.[3] However, if the petition is anchored on the people's right to information on matters of public concern, any citizen can be the real party in interest. The requirement of personal interest is satisfied by the mere fact that the petitioner is a citizen, and therefore, part of the general public which possesses the right.[4] There is no need to show any special interest in the result. It is sufficient that petitioners are citizens and, as such, are interested in the faithful execution of the laws.[5]

The petitioners in this case are Teofisto Guingona, Jr., Bishop Leo A. Soriano, Jr., Quintin S. Doromal, Fe Maria Arriola, Isagani R. Serrano, and Engr. Rodolfo Lozada. All are Filipino citizens. They are thus clothed with personality to institute this special civil action for *mandamus*.

Coming now to the substantive issues, Section 7, Article III of the Constitution enshrines the people's fundamental right to information, thus:

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[3] *Legaspi v. Civil Service Commission,* 234 Phil. 521 (1987).

[4] *Akbayan Citizens Action Party v. Aquino,* G.R. No. 170516, 16 July 2008, 558 SCRA 468.

[5] *Id*.

Sec. 7. The right of the people to information on matters of public concern shall be recognized. **Access to official records, and to documents**, and papers **pertaining to official acts, transactions,** or decisions, as well as to government research data used as basis for policy development, **shall be afforded the citizen**, subject to such limitations as may be provided by law. (Emphasis supplied)

In *Valmonte v. Belmonte, Jr.*,[6] the Court explained the rationale of the right to information in this wise:

The cornerstone of this republican system of government is delegation of power by the people to the State. In this system, governmental agencies and institutions operate within the limits of the authority conferred by the people. **Denied access to information on the inner workings of government, the citizenry can become prey to the whims and caprices of those to whom the power had been delegated.** The postulate of public office is a public trust, institutionalized in the Constitution to protect the people from abuse of governmental power, would certainly be mere empty words if access to such information of public concern is denied x x x.

x x x **The right to information goes hand-in-hand with** the constitutional policies of **full public disclosure** and honesty in the public service. It is meant to enhance the widening role of the citizenry in governmental decision-making as well as in checking abuse in government. (Emphasis supplied)

The people's constitutional right to information is intertwined with the government's constitutional duty of full public disclosure of all transactions involving public interest. For every right of the people, there is a corresponding duty on the part of those who govern to protect and respect that right. Section 28, Article II of the Constitution succinctly expresses this state policy:

Sec. 28. Subject to reasonable conditions prescribed by law, the State adopts and implements a **policy of full public disclosure of all its transactions involving public interest.** (Emphasis supplied)

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[6] 252 Phil. 264, 271-272 (1989).

In *Legaspi v. Civil Service Commission*,[7] the Court explained that the people's right to information is limited to matters of public concern. The Court then formulated a broad definition of what constitutes matters of public concern, to wit:

> In determining whether or not a particular information is of public concern, there is no rigid test which can be applied. "Public concern" like "public interest" is a term that eludes exact definition. Both terms embrace **a broad spectrum of subjects which the public may want to know, either because such matters directly affect their lives, or simply because such matters naturally arouse the interest of an ordinary citizen**. In the final analysis, it is for the courts to determine in a case by case basis whether the matter at issue is of interest or importance, as it relates to or affects the public. (Emphasis supplied)

There can be no doubt that the coming 10 May 2010 elections is a matter of great public concern. On election day, the country's registered voters will come out to exercise the sacred right of suffrage. Not only is it an exercise that ensures the preservation of our democracy, the coming elections also embodies our people's last ounce of hope for a better future. It is the final opportunity, patiently awaited by our people, for the peaceful transition of power to the next chosen leaders of our country. If there is anything capable of directly affecting the lives of ordinary Filipinos so as to come within the ambit of a public concern, it is the coming elections, more so with the alarming turn of events that continue to unfold. The wanton wastage of public funds brought about by one bungled contract after another, in staggering amounts, is in itself a matter of grave public concern.

It is not enough, however, that the information petitioners seek in a writ of *mandamus* is a matter of public concern. For *mandamus* to lie in a given case, the information must not be among the species exempted by law from the operation of the constitutional guarantee.[8] In this case, respondent Comelec failed to cite any provision of law exempting the information sought

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[7] *Supra* note 3 at 535.

[8] *Id*.

by petitioners from the coverage of the government's constitutional duty to disclose fully information of public concern.

Respondent's claim that there is no proof a request has been made for the release of the public records mentioned in the petition is belied by its allegation in its own Comment that this matter has already been addressed in the recent case of *Roque v. Comelec*.[9] Quoting the Court's ruling in that case on the issue of disclosure of the source code, respondent unwittingly admits a prior request for disclosure:

> The fact that a source code review is not expressly included in the Comelec schedule of activities is not an indication, as petitioners suggest, that Comelec will not implement such review. Comelec, in its Comment on the Motion for Reconsideration, manifests its intention to make available and open the source code to all political and interested parties, but under a controlled environment to obviate replication and tampering of the source code.[10]

Petitioners in *Roque v. Comelec*[11] in fact pressed Comelec for a source code review. To this day, however, Comelec has yet to disclose the source code as mandated by law. In any case, considering the lack of material time, the Court in the exercise of its equity jurisdiction may even dispense with the requirement of proof of a prior demand in this case.

The Court may, and given the alarming developments of late in the run-up to the 10 May 2010 elections, should compel Comelec to disclose fully the complete details of its preparations. In *Legaspi v. Civil Service Commission*,[12] the Court stressed that the constitutional duty to disclose information of public concern may be compelled by *mandamus*, to wit:

> Thus, while the manner of examining public records may be subject to reasonable regulation by the government agency in custody thereof, **the duty to disclose the information of public concern**, **and to afford**

[9] G.R. No. 188456, 10 February 2010.

[10] Respondent's Comment, pp. 19-20.

[11] *Supra* note 9.

[12] *Supra* note 3 at 533.

**access to public records cannot be discretionary** on the part of said agencies. Certainly, its performance cannot be made contingent upon the discretion of such agencies. Otherwise, the enjoyment of the constitutional right may be rendered nugatory by any whimsical exercise of agency discretion. **The constitutional duty, not being discretionary, its performance may be compelled by a writ of *mandamus* in a proper case.** (Emphasis supplied)

Section 52(j) of Batas Pambansa Blg. 881, otherwise known as the Omnibus Election Code, mandates that Comelec shall carry out a continuing and systematic campaign to educate the public and fully inform the electorate about election laws, procedures, decisions, and other matters relative to the work and duties of the Comelec and the necessity of clean, free, orderly, and honest electoral processes. It provides:

Section 52. *Powers and functions of the Commission on Elections*. - In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall:

(j) **Carry out a continuing and systematic campaign through newspapers of general circulation, radios and other media forms to educate the public and fully inform the electorate about election laws, procedures, decisions, and other matters relative to the work and duties of the Commission** and the necessity of clean, free, orderly, and honest electoral processes. (Emphasis supplied)

Section 5(e) of Republic Act No. 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, requires that all public documents must be made accessible to, and readily available for inspection by, the public within reasonable working hours. It states:

Section 5. *Duties of Public Officials and Employees.* - In the performance of their duties, **all public officials and employees are under obligation to:**

e) **Make documents accessible to the public**. - **All public documents must be made accessible to, and readily available for**

**inspection by, the public within reasonable working hours.** (Emphasis supplied)

Section 3 of Republic Act No. 9184, otherwise known as the Government Procurement Reform Act, lays down the following categorical and definitive principles governing government procurement:

Section 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:**

(a) **Transparency in the procurement process and in the implementation of procurement contracts.**

(b) Competitiveness by extending equal opportunity to enable private contracting parties who are eligible and qualified to participate in public bidding.

(c) Streamlined procurement process that will uniformly apply to all government procurement. The procurement process shall be simple and made adaptable to advances in modern technology in order to ensure an effective and efficient method.

(d) **System of accountability where both the public officials directly or indirectly involved in the procurement process as well as in the implementation of procurement contracts and the private parties that deal with government are, when warranted by circumstances, investigated and held liable for their actions relative thereto.**

(e) **Public monitoring of the procurement process and the implementation of awarded contracts** with the end in view of guaranteeing that these contracts are awarded pursuant to the provisions of this Act and its implementing rules and regulations, and that all these contracts are performed strictly according to specifications. (Emphasis supplied)

Section 1 of Republic Act No. 9369, otherwise known as An Act Amending Republic Act No. 8436, declares as a state policy a transparent and credible election process, thus:

SECTION 1. *Declaration of Policy*. - **It is the policy of the State to ensure** free, **orderly, honest,** peaceful, **credible, and informed elections,** plebiscites, referenda, recall, and other similar electoral exercises by improving on the election process and adopting systems, which shall involve the use of an automated election system that will ensure the secrecy and sanctity of the ballot and all election, consolidation, and transmission documents **in order that the process shall be transparent and credible** and that the results shall be fast, accurate, and reflective of the genuine will of the people. (Emphasis supplied)

Section 2 of Republic Act No. 9525, otherwise known as An Act Appropriating ₱11 Billion as Supplemental Appropriations for an Automated Election System, conditions the disbursement of the funds on the adoption of measures that will guarantee transparency and accuracy in the selection of the relevant technology of the machines to be used in the elections. It provides:

Section 2. *Use of Funds***.** - The amounts herein appropriated shall be used for the purposes indicated and subject to: (i) the relevant special and general provisions of Republic Act No. 9498, or the FY 2008 General Appropriations Act, as reenacted, and subsequent General Appropriations Acts, and (ii) the applicable provisions of Republic Act No. 8436, entitled: "An Act Authorizing the Commission on Elections to Use an Automated Election System in the May 11, 1998 National or Local Elections and in subsequent National and Local Electoral Exercises, Providing Funds Therefor and for Other Purposes", as amended by Republic Act No. 9369: ***Provided, however,* That disbursement of the amounts herein appropriated or any part thereof shall be authorized only in strict compliance with the Constitution, the provisions of Republic Act No. 9369 and other election laws incorporated in said Act** so as to ensure the conduct of a free, orderly, clean, honest and credible election and shall adopt such measures that will guarantee **transparency and accuracy in the selection of the relevant technology of the machines** to be used on May 10, 2010 automated national and local election. (Emphasis supplied)

Section 11 of Republic Act No. 9369 requires a continuity plan in case of a systems breakdown resulting in delay, obstruction, or nonperformance of the automated election system, thus:

SEC. 11. Section 9 of Republic Act No. 8436 is hereby amended to read as follows:

"SEC.13. *Continuity Plan.* - **The AES shall be so designed to include a continuity plan in case of a systems breakdown or any such eventuality which shall result in the delay, obstruction, or nonperformance of the electoral process.** Activation of such continuity and contingency measures shall be undertaken in the presence of representatives of political parties and citizen's arm of the Commission who shall be notified by the election officer of such activation.

"**All political parties and party-lists shall be furnished copies of said continuity plan** at their official addresses as submitted to the Commission. **The list shall be published in at least two newspapers of national circulation and shall be posted at the website of the Commission at least fifteen (15) days prior to the electoral activity concerne**d." (Emphasis supplied)

Section 12 of Republic Act No. 9369 also mandates that the equipment or device for the automated election system shall be open for examination and testing by political parties, candidates, or their representatives. More importantly, the law provides that once a technology is selected for implementation, the Comelec shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review, thus:

SEC. 12. Section 10 of Republic Act No. 8436 is hereby amended to read as follows:

"SEC.14. *Examination and Testing of Equipment or Device of the AES and Opening of the Source Code for Review*. - The Commission shall allow the political parties and candidates or their representatives, citizens' arm or their representatives to examine and test:

"The equipment or device to be used in the voting and counting on the day of the electoral exercise, before voting starts. Test ballots and test forms shall be provided by the Commission.

"Immediately after the examination and testing of the equipment or device, parties and candidates or their representatives, citizen's arms or their representatives, may submit a written comment to the

election officer who shall immediately transmit it to the Commission for appropriate action.

"The election officer shall keep minutes of the testing, a copy of which shall be submitted to the Commission together with the minute of voting."

**"Once an AES technology is selected for implementation, the Commission shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof**." (Emphasis supplied)

In sum, petitioners' prayer to compel Comelec to explain fully its preparations for the coming 10 May 2010 elections finds overwhelming support in the Constitution, specifically under Section 7 of Article III and Section 28 of Article II on the people's right to information and the State's corresponding duty of full public disclosure of all transactions involving public interest; the jurisprudential doctrines laid down in *Valmonte v. Belmonte, Jr.*, *Legaspi v. Civil Service Commission*, and *Akbayan Citizens Action Party v. Aquino*; as well as Section 52(j) of Batas Pambansa Blg. 881 otherwise known as the Omnibus Election Code; Section 5(e) of Republic Act No. 6713 otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees; Section 3 of Republic Act No. 9184 otherwise known as the Government Procurement Reform Act; Sections 1, 11, and 12 of Republic Act No. 9369 otherwise known as An Act Amending Republic Act No. 8436; and Section 2 of Republic Act No. 9525 otherwise known as An Act Appropriating ₱11 Billion as Supplemental Appropriations for an Automated Election System.

Respondent Comelec cannot shirk its constitutional duty to disclose fully to the public complete details of all information relating to its preparations for the 10 May 2010 elections without violating the Constitution and relevant laws. No less than the Constitution[13] mandates it to enforce and administer election

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[13] Section 2(1) of Article IX(C) of the Constitution.

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

(1) Enforce and administer all laws and regulations relative to the conduct of an election, plebiscite, initiative, referendum, and recall.

laws. The Comelec chairman and the six commissioners are beholden and accountable to the people they have sworn to serve. This Court, as the last bulwark of democracy in this country, will spare nothing in its constitutionally granted powers to ensure that the fundamental right of the people to information on matters of public concern, especially on matters that directly affect our democratic processes, is fully guaranteed, protected, and implemented.

However, due to the proximity of the 10 May 2010 elections which is less than five days away, we shall grant only the specific reliefs prayed for by petitioners which by necessity must be disclosed before the 10 May 2010 elections or are expressly mandated by law to be disclosed or performed in connection with the holding of the 10 May 2010 elections. Petitioners can press Comelec for the other reliefs after the 10 May 2010 elections, and if they still fail to secure such reliefs, they may take such actions as may be allowed under the law.

**WHEREFORE,** we *GRANT* the petition in part. Respondent Commission on Elections is *ORDERED*, within two (2) days from receipt of this Resolution, to disclose to petitioners and the public the following:

1. The nature and security of all equipment and devices, including their hardware and software components, to be used in the 10 May 2010 automated elections, as provided for in Section 7[14] of Republic Act No. 9369;

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[14] SEC. 7. Section 7 of Republic Act No. 8436 is hereby amended to read as follows:

"SEC.6. *Minimum System Capabilities*. - "The automated election system must at least have the following functional capabilities:

(a) Adequate security against unauthorized access;

(b) Accuracy in recording and reading of votes as well as in the tabulation, consolidation/canvassing, electronic transmission, and storage of results;

(c) Error recovery in case of non-catastrophic failure of device;

(d) System integrity which ensures physical stability and functioning of the vote recording and counting process;

(e) Provision for voter verified paper audit trail;

2. The source code for review by interested parties as mandated by Section 12[15] of Republic Act No. 9369;

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(f) System auditability which provides supporting documentation for verifying the correctness of reported election results;

(g) An election management system for preparing ballots and programs for use in the casting and counting of votes and to consolidate, report and display election result in the shortest time possible;

(h) Accessibility to illiterates and disable voters;

(i) Vote tabulating program for election, referendum or plebiscite;

(j) Accurate ballot counters;

(k) Data retention provision;

(l) Provide for the safekeeping, storing and archiving of physical or paper resource used in the election process;

(m) Utilize or generate official ballots as herein defined;

(n) Provide the voter a system of verification to find out whether or not the machine has registered his choice; and

(o) Configure access control for sensitive system data and function.

"In the procurement of this system, the Commission shall develop and adopt an evaluation system to ascertain that the above minimum system capabilities are met. This evaluation system shall be developed with the assistance of an advisory council."

[15] SEC. 12. Section 10 of Republic Act No. 8436 is hereby amended to read as follows:

"SEC.14. *Examination and Testing of Equipment or Device of the AES and Opening of the Source Code for Review*. - The Commission shall allow the political parties and candidates or their representatives, citizens' arm or their representatives to examine and test:

"The equipment or device to be used in the voting and counting on the day of the electoral exercise, before voting starts. Test ballots and test forms shall be provided by the Commission.

"Immediately after the examination and testing of the equipment or device, parties and candidates or their representatives, citizen's arms or their representatives, may submit a written comment to the election officer who shall immediately transmit it to the Commission for appropriate action.

"The election officer shall keep minutes of the testing, a copy of which shall be submitted to the Commission together with the minute of voting."

**"Once an AES technology is selected for implementation, the Commission shall promptly make the source code of that technology available and open to any interested political party or groups which may conduct their own review thereof**." (Emphasis supplied)

3. The terms and protocols of the random manual audit, as mandated by Section 24[16] of Republic Act No. 9369;

4. A certification from the Technical Evaluation Committee that the entire Automated Election System is fully functional and that a continuity plan is already in place, as mandated by Sections 9[17] and 11[18] of Republic Act No. 9369; and

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[16] SEC. 24. A new Section 29 is hereby provided to read as follows:

"SEC 29. *Random Manual Audit*. - Where the AES is used, there shall be a random manual audit in one precinct per congressional district randomly chosen by the Commission in each province and city. Any difference between the automated and manual count will result in the determination of root cause and initiate a manual count for those precincts affected by the computer or procedural error."

[17] SEC. 9. New Sections 8, 9, 10, and 11 are hereby provided to read as follows:

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"SEC. 11. Functions of the Technical Evaluation Committee. – The Committee shall certify, through an established international certification entity to be chosen by the Commission from the recommendations of the Advisory Council, not later than three months before the date of the electoral exercise, categorically stating that the AES, including its hardware and software components, is operating properly, securely, and accurately, in accordance with the provisions of this Act based, among others, on the following documented results:

1. The successful conduct of a field testing process followed by a mock election event in one or more cities/municipalities;

2. The successful completion of audit on the accuracy, functionality, and security controls of the AES software;

3. The successful completion of a source code review;

4. A certification that the source code is kept in escrow with the Bangko Sentral ng Pilipinas;

5. A certification that the source code reviewed is one and the same as that used by the equipment;

6. The development, provisioning, and operationalization of a continuity plan to cover risks to the AES at all points in the process such that a failure of elections, whether at voting, counting, or consolidation, may be avoided. xxx

[18] SEC. 11. Section 9 of Republic Act No. 8436 is hereby amended to read as follows:

"SEC.13. *Continuity Plan*. - The AES shall be so designed to include a continuity plan in case of a systems breakdown or any such eventuality

5. The certification protocol and the actual certification issued by the Department of Science and Technology that the 240,000 Board of Election Inspectors all over the country are trained to use the Automated Election System, as required by Section 3[19] of Republic Act No. 9369.

This Resolution is immediately executory.

**SO ORDERED.**

*Puno, C.J., Carpio Morales, Nachura, Leonardo-De Castro, Brion, Peralta, Bersamin, Del Castillo, Villarama, Jr., Perez,* and *Mendoza, JJ.,* concur.

*Corona* and *Velasco, Jr., JJ.,* reserves their right to submit a separate dissenting opinion.

*Abad, J.,* see dissenting opinion.

## DISSENTING OPINION

**CORONA, *J.*:**

Aware of its distinct role in the constitutional scheme, the Court declared "judicial supremacy is never judicial superiority

which shall result in the delay, obstruction, or nonperformance of the electoral process. Activation of such continuity and contingency measures shall be undertaken in the presence of representatives of political parties and citizen's arm of the Commission who shall be notified by the election officer of such activation.

"All political parties and party-lists shall be furnished copies of said continuity plan at their official addresses as submitted to the Commission. The list shall be published in at least two newspapers of national circulation and shall be posted at the website of the Commission at least fifteen (15) days prior to the electoral activity concerned."

[19] SEC. 3. Section 3 of Republic Act No. 8436 is hereby amended to read as follows:

"SEC 3. *Board of Election Inspectors*. - Where AES shall be adopted, at least one member of the Board of Election Inspectors shall be an information technology-capable person, who is trained or certified by the DOST to use the AES. Such certification shall be issued by the DOST free of charge."

(for it is co-equal with the other branches) or judicial tyranny (for it is supposed to be the least dangerous branch)."[1] Rather, it is the conscious and cautious awareness and acceptance of the Court's proper place in the overall scheme of government with the objective of asserting and promoting the supremacy of the Constitution.[2]

Regrettably, the majority opinion may have either inadvertently overlooked the duty of self-consciousness imposed by the Court upon itself or overeagerly sidestepped such duty at the expense of an independent constitutional body, the Commission on Elections (COMELEC). In any case, the Court may have scored positive points[3] with the public but trespassed on the constitutional prerogatives of the COMELEC. At the same time, the *ponencia* may have also wittingly or unwittingly contributed to the very problems that it was supposed to be addressing.

Thus, I dissent.

*Mandamus* is a remedy in cases where any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station.[4] For *mandamus* to lie, the duty must not only be ministerial but must also be a duty enjoined by law, a duty which the tribunal or person **unlawfully neglects to perform**.[5] Before *mandamus* is issued, the following requisites should be satisfied:

(1) petitioner must show a clear legal right to the act demanded; thus, it will never be issued in doubtful cases;[6]

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[1] *Dueñas, Jr. v. House of Representatives Electoral Tribunal*, G.R. No. 185401, 21 July 2009, 593 SCRA, 316.

[2] *Id*.

[3] In layman's term, this is simply a "*pogi* point." However, it is not the business of the Court to win public approbation. Indeed, the Court is a counter-majoritarian force. Its duty is to provide a check to the possible excesses of the majority.

[4] Section 3, Rule 65, Rules of Court.

[5] *Id*.

[6] *Pefianco v. Moral*, 379 Phil.468 (2000).

(2) respondent must have the duty to perform the act because the same is mandated by law;

(3) respondent unlawfully neglects the performance of the duty enjoined by law;

(4) the act to be performed is ministerial, not discretionary and

(5) there is no other plain, speedy and adequate remedy in the ordinary course of law.[7]

By issuing a writ of *mandamus* against the COMELEC, the *ponencia* effectively indicts that body for unlawful negligence in the performance of its duty. Yet, **nowhere did the *ponencia* make a finding that the COMELEC was guilty of non-feasance** with respect to the matters that the said body had been ordered to produce. There is thus a gaping hole in the *ponencia*'s reasoning. This significant and substantial omission not only makes the issuance of *mandamus* against the COMELEC baseless. It is contrary to the presumption of regularity in the COMELEC's performance of its official duty and, more importantly, it violates the entitlement of that body to substantive due process.

This is not all, however. The *ponencia* accepted petitioners' claims hook, line and sinker. It treated as facts the media reports cited by petitioners. Worse, it took judicial cognizance of "facts" simply because these were "widely reported in print and broadcast media." The rule, however, is that courts cannot take judicial notice of newspaper accounts, which is hearsay evidence twice removed.[8] What compounds this is that such hearsay evidence is being used as the basis by the Court as it dangerously dips its finger into the exclusive constitutional authority of the COMELEC to "[e]nforce and administer all laws relative to the conduct of an election"[9] by compelling the COMELEC

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[7] Section 3, Rule 65, Rules of Court.

[8] *State Prosecutors v. Muro*, A.M. No.RTJ-92-876, 19 September 1994, 236 SCRA 505.

[9] Section 2(1), Article IX-C, Constitution.

through *mandamus* to produce the things it is required to furnish the public in this case. Lest the Court forget, it is timely to point out:

> [I]n the matters of the administration of the laws relative to the conduct of elections, we must not by any excessive zeal take away from the [COMELEC] the initiative which by constitutional and legal mandates properly belongs to it.[10]

And there is more. The *ponencia* commits yet another major lapse when it simply brushed aside a significant point raised by the COMELEC's – petitioners' failure to prove that they made a request to the COMELEC to release the records or information mentioned in the petition. The *ponencia* made short shrift of this critical matter by referring to the COMELEC's admission as regards to the request for a review of the source code. However, the information as to the source code is but one of the many and varied matters subject of the petition. It cannot and it should not be considered as a request for all the other information sought by petitioners.[11] Such failure on the part of

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[10] *Sumulong v. COMELEC*, 73 Phil. 288 (1924).

[11] In particular, petitioners pray that the Court order the COMELEC to provide them with the "official and complete details" of (a) the status of its negotiations for election supplies and paraphernalia, including contracts that did not undergo the bidding process; (b) the nature and security of the machines, memory-card, and other software and facilities to be used for the May 10, 2010 automated elections, including its current anti-hacking/tampering strategy over the votes and the electoral results; (c) the content of the source code review mandated by RA 9369, and terms and modes of access by the public to said source code; (d) the schedule, venue, and specifications of the random manual audit mandated by RA 9369; (e) the terms and protocols under which manual voting would be implemented in case failure of elections is to be declared; (f) its readiness to shift to manual voting and the details adopted to ensure that the results cannot be manipulated under a Garci type of operation; (f) a certification from the Technical Evaluation Committee that the entire automated election system (AES) is 100% fully functional and that a continuity plan is already in place pursuant to Section 11 of RA 9369; (g) a certification protocol and the actual certification issued by the Department of Science and Technology (DOST) certifying that the 240,000 board of election inspectors (BEIs) all over the country are trained to use the AES as required by Section 3 of RA 9369 and (h) the status of investigations and prosecutions of the offenders

petitioners is fatal to their petition because *mandamus* requires the exhaustion of available administrative remedies.[12] Petitioners did not exhaust the administrative remedies available to them when they filed a petition directly to this Court without having made a prior request to the COMELEC for the production of the information that they seek in this case.

Added to the litany of mistakes of the *ponencia*, the order to produce various documents[13] is tyrannical as it is unreasonable. It requires the COMELEC to produce those things within a period of two days only! Yet, with four days remaining before the May 10, 2010 elections, the hands of the COMELEC are already full as that body attends to the urgent last minute concerns of the elections. As it is, and based on the very same media reports upon which the *ponencia* greatly relied upon,[14] the COMELEC is already flooded with a multitude of concerns and it is sorely running out of time to address the said concerns. Yet, the Court imposes an additional burden that is made all the more heavy by the tyranny of time within which that burden is supposed to be overcome. The law does not exact compliance with the unreasonably impossible and impossibly unreasonable.

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[12] *Systems Plus Computer College of Caloocan City v. Local Government of Caloocan City*, 455 Phil. 956 (2003).

[13] In particular, the COMELEC is ordered to produce the following information: (a) the nature and security of all equipment and devices, including their hardware and software components, to be used in the May 10, 2010 automated elections, as provided for in Section 7 of RA 9369; (b) the source code and the modes by which any interested political party or group may conduct its own source code review, as mandated by Section 12 of RA 9369; (c) the terms and protocols of the random manual audit, as mandated by Section 24 of RA 9369; (d) a certification from the Technical Evaluation Committee that the entire AES is fully functional and that a continuity plan is ready in place, as mandated by Sections 9 and 11 of RA 9369 and (e) the certification protocol and the actual certification issued by the DOST that the 240,000 BEIs all over the country are trained to use the AES, as required by Section 3 of RA 9369.

[14] This point is made only to meet the *ponencia* in its own level and to show the absurdity of its consequences even based on its own premise. Therefore, this should not be taken to be contradictory to the position made earlier in this opinion that it was improper to issue a writ of mandamus based solely on media accounts.

All things considered, fidelity to our role in the constitutional scheme, as well as prudence and respect for an independent constitutional body call for the immediate recall of the *mandamus* writ issued against the COMELEC.

Accordingly, I respectfully vote to dismiss the petition.

## DISSENTING OPINION

**VELASCO, JR., *J.*:**

For two compelling reasons, I regret my inability to agree with the majority, granting, albeit in part, the petition of Teofisto Guingona, Jr., *et al.*, for *mandamus*.

The first reason relates to the propriety of issuing the writ of *mandamus* under the factual premises surrounding the case. The majority grants *mandamus* on the basis of alleged media reports on the probability that there will be failure of automated elections and that the Commission on Elections (COMELEC) is withholding relevant documents and information necessary to insure a successful automated elections. The COMELEC 's position on the matter is to the contrary, however. Be that as it may, I cannot see myself clear as to why traversed media reports should be made the basis of a judgment, let alone justify an order for the COMELEC to perform a duty, assuming it is ministerial, imposed by law. The Court can take judicial notice that the COMELEC has been conducting a campaign, through print, broadcast and electronic media, to educate and inform the voting public about the automated elections and the preparations it has undertaken in that regard.

*Mandamus*, to stress, shall issue when any tribunal, board, or officer unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station.[1] The remedy may also be availed of to challenge any attempt to obstruct the exercise of a citizen of his right to information.[2] With the view I take of the case, petitioners have

[1] RULES OF COURT, RULE 65, Sec. 3.

[2] *Bantay Republic Act or BA-RA 7941 v. Commission on Elections*, G.R. Nos. 177271 & 177314, May 4, 2007, 523 SCRA 1, 14-15.

not proved that COMELEC has been neglecting, in an unlawful manner, the performance of its duty *vis-a-vis* the conduct of a credible automated elections. Hence, prudence dictates that the Court refrains from interfering. As we wrote in *Sumulong v. COMELEC*,[3] "[I]n the matters of the admininstration of laws relative to the conduct of elections, we must not by any excessive zeal take away from [COMELEC] the initiative which by constitutional and legal mandates properly belongs to it." And lest it be overlooked on the matter of petitioners' right to certain information, there is no proof, so COMELEC claims, that petitioners had requested the release of the public documents of public concern mentioned in their petition.

The second reason involves practicalities, in light of time constraints. The *ponencia* itself states that the forthcoming political exercise is less than five days away. It is four days away to be precise. And two of the four days fall on a Saturday and Sunday, ordinarily non-working days in government offices. Yet, the majority would have COMELEC, within two (2) days from receipt of the Court's Resolution, disclose and explain to the petitioners and the public who care to observe, at least before the voting precincts open on May 10, 2010, (1) the nature and security of the PCOS machines, including then hardware and software components; (2) the source code and the modes of source code review; and (3) the terms and protocols of the random manual audit. Are these orders reasonably doable within the time frame alloted to COMELEC, given other election matters, equally, if not more, pressing on the poll body? I honestly doubt it.

A working system that will introduce confussion, uncertainty on impossibility should be avoided.[4] Unwittingly, the majority expects the COMELEC to perform acts which are well-nigh physically impossible to accomplish within a very limited period of time and would virtually disrupt the workings and schedules

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[3] 73 Phil. 288 (1942).

[4] *Sesbreño v. CA*, G.R. No. 106588, March 24, 1997, 270 SCRA 360. See Laurel, *STATUTORY CONSTRUCTION* 172-173 (1999); citing *Shannon Realities v. Ville de St. Michel*, A.C. 185, 192.

of the poll body at this late stage of electoral exercise on the basis of petitioner's fear of failure of elections.

I vote to deny the petition.

## DISSENTING OPINION

**ABAD, *J.*:**

When the Court took up this case on Tuesday, May 4, 2010, a number of Justices, including myself, voted to grant the petition provided that it would be revised to show that the Court makes no judgment that the Commission on Elections (COMELEC) has failed to comply with what Republic Act 8436 requires of it in the conduct of the May 10, 2010 Automated Election System or, if it failed in any way, that the COMELEC has no just reason for such failure or has taken no steps to remedy the situation.

The Justices with me had insisted that the Court's non-condemnation of the COMELEC be made clear. We did not want to add at this time to that body's woes or to exacerbate the public fear regarding the conduct of the country's first automated election. I believe that every responsible citizen should help make a success of the election scheduled four days from today. If it fails, despite all the cooperation given the COMELEC, then that would be the time to inquire why it failed and make those who contributed to such failure account for their actions or omissions, a role that does not belong to the Supreme Court.

Unfortunately, I am not satisfied that the opinion of the Court as revised after the voting reflects the revisions that some of the Justices who voted conditionally envisioned. Surely this is not the fault of the *ponente* but a divergence of view regarding how best to write what the Court collectively thinks. Still I cannot join the majority opinion for this reason.

Since the shortness of time does not permit me to elaborate on this dissenting opinion as I would like to, I reserve the right to submit a supplemental dissenting opinion later on.

**SECOND DIVISION**

[G.R. No. 160718. May 12, 2010]

**ANUNCIO C. BUSTILLO, EMILIO SUMILHIG, JR., and AGUSTIN BILLEDO, JR.,** *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

**SYLLABUS**

**1. CRIMINAL LAW; REPUBLIC ACT 3019, SECTION 3 (e) THEREOF; ELEMENTS; ONLY THE FIRST ELEMENT WAS PROVEN IN CASE AT BAR.—** The *Sandiganbayan* based its conviction of (Mayor) Bustillo, (Vice-Mayor) Billedo and (Councilor) Sumilhig on the finding that they conspired to effect the transfer of the vehicles to the prejudice of the Municipality of Bunawan in violation of the provision of Section 3(e) of RA 3019. xxx. The elements of the offense are as follows: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they caused undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence. In this case, only the first element was proven. At the time material to this case, all the petitioners are public officers, namely, Bustillo as Municipal Mayor, Billedo as Vice Mayor, and Sumilhig as member of the *Sangguniang Bayan*. All the other elements were not present.

**2. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; PRESUMPTION OF REGULARITY OF OFFICIAL ACTS; EVERY REASONABLE INTENDMENT WILL BE MADE IN SUPPORT OF THE PRESUMPTION AND IN CASE OF DOUBT AS TO AN OFFICER'S ACT BEING LAWFUL OR UNLAWFUL, CONSTRUCTION SHOULD BE IN FAVOR OF ITS LAWFULNESS.—** We find no evidence on record which would show that petitioners were motivated by bad faith when they transferred the vehicles to SFWD. Bustillo, as Mayor, is authorized by law to enter into contracts for and in behalf of the local government unit. Billedo, as Vice

Mayor, acted as the Presiding Officer of the *Sangguniang Bayan* and did not even vote for the passage of Resolution No. 95-27. Said Resolution was unanimously passed by the *Sangguniang Bayan* and Sumilhig was only one of those who voted for its passage. In sum, the petitioners have in their favor the presumption of regularity in the performance of official duties which the records failed to rebut. The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption in rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness.

**APPEARANCES OF COUNSEL**

*Ceferino S. Paredes, Jr.* for petitioners.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

It is disputably presumed that official duty has been regularly performed. In this case, this presumption remains unrebutted; hence, petitioners who were charged with violations of Section 3(e) of Republic Act (RA) No. 3019, deserve an acquittal. It was not proven that they gave undue preference or acted in evident bad faith in effecting the transfer of the properties owned by the local government unit.

This Petition for Review on *Certiorari*[1] assails the July 31, 2003 Decision[2] of the *Sandiganbayan* in Criminal Case No. 24741, finding herein petitioners guilty beyond reasonable doubt of violation of Section 3(e) of RA 3019. Also assailed is the

[1] *Rollo*, pp. 9-41.

[2] Records, Vol. II, pp. 808-835; penned by Associate Justice Godofredo L. Legaspi and concurred in by Associate Justices Edilberto G. Sandoval and Norberto Y. Geraldez.

November 6, 2003 Resolution[3] denying the Motion for Reconsideration.

***Factual Antecedents***

Congressman Ceferino Paredes, Jr. (Congressman Paredes) used a portion of his Countryside Development Fund (CDF) to purchase one unit of Toyota Tamaraw FX and six units of Kawasaki motorcycles. All vehicles were registered in the name of the Municipality of Bunawan and were turned over to the municipality through its mayor, herein petitioner Anuncio C. Bustillo (Bustillo).

On May 17, 1995, the *Sangguniang Bayan* of Bunawan passed Resolution No. 95-27[4] which authorized the transfer without cost of the aforesaid vehicles to the San Francisco Water District (SFWD). Pursuant thereto, Bustillo executed on June 19, 1995, a Deed of Transfer[5] relative to the aforementioned vehicles in favor of the SFWD represented by its General Manager, Elmer T. Luzon (Luzon).

On July 27, 1995, the *Sangguniang Panlalawigan* of Agusan del Sur passed Resolution No. 183[6] disapproving the *Sangguniang Bayan's* Resolution No. 95-27 for being violative of Section 381[7] of RA 7160 or the Local Government Code. On August 17, 1995, it passed Resolution No. 246[8] canceling and declaring

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[3] *Id.* at 978-979.

[4] *Id.* Vol. I, pp. 251-252.

[5] *Id.* at 253-254.

[6] *Id.* at 255-257.

[7] Section 381. *Transfer Without Cost.* – Property which has become unserviceable or is no longer needed may be transferred without cost to another office, agency, subdivision or instrumentality of the national government or another local government unit at an appraised valuation determined by the local Committee on Awards. Such transfer shall be subject to the approval of the sanggunian concerned making the transfer and by the head of the office, agency, subdivision, instrumentality or local government unit receiving the property.

[8] Records, Vol. I, pp. 258-259.

the Deed of Transfer as null and void for being highly irregular and grossly violative of Section 381 of RA 7160.

On May 23, 1996, a complaint[9] was filed charging Bustillo, Vice-Mayor Agustin Billedo, Jr. (Billedo), and *Sangguniang Bayan* members Teogenes Tortor (Tortor), Emilio Sumilhig, Jr. (Sumilhig), Ruth C. Orot (Orot), and Ernesto Amador, Jr., with violation of Section 3(e) of RA 3019. Also included in the complaint were Antonio Taotao and Luzon, the Board Secretary and General Manager, respectively, of SFWD.

On August 13, 1996, the Office of the Ombudsman for Mindanao issued a Resolution which provides:

> WHEREFORE, PREMISES CONSIDERED, this Office finds probable cause to prosecute respondents Antonio C. Bustillo, Agustin Billedo, Jr., Teogenes Tortor, Emilio Sumilhig, Jr., Ruth C. Orot, Ernesto Amador, Jr., and Elmer T. Luzon for violation of Section 3 (e) of Republic Act 3019. It is hereby recommended that the enclosed Information be filed with the Sandiganbayan against the above-named respondents.
>
> FINDING insufficient evidence to hold respondent Antonio Taotao, Board Secretary of SFWD, liable for the charge, let the instant case against him be dismissed.
>
> SO RESOLVED.[10]

Consequently, on June 24, 1998, an Information was filed with the *Sandiganbayan* docketed as Criminal Case No. 24741 charging Bustillo, Billedo, Tortor, Sumilhig, Orot, Amador, and Luzon, for violation of Section 3(e) of RA 3019, committed as follows:

> That on or about 19 June 1995, or shortly prior or subsequent thereto, in San Francisco, Agusan del Sur, and within the jurisdiction of this Honorable Court, the accused Anuncio C. Bustillo, a public officer being then the Mayor of Bunawan, Agusan del Sur, with salary grade 27, Agustin Billedo, Jr., Vice Mayor of Bunawan, Agusan del Sur, Teogenes Tortor, Emilio Sumilhig, Jr., Ruth C. Orot, Ernesto

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

[10] *Id.* at 6.

Amador, being then members of the Sangguniang Bayan (SB) of Bunawan, and Elmer T. Luzon, General Manager of San Francisco Water District (SFWD), all public officers with salary grades below 27, committing the offense in relation to their official duties and taking advantage of their official positions, conspiring and confederating with each other [sic], thru evident bad faith, did there and then, willfully, unlawfully and criminally, cause undue injury to the government, by passing Sangguniang Bayan Resolution No. 95-27 which transferred without cost one (1) unit of Tamaraw FX vehicle and six (6) units of KE Kawasaki motorcycles purchased for the Municipality of Bunawan out of the Countryside Development Fund of Congressman Ceferino Paredes, Jr. and municipal counterpart fund and which were newly purchased and in perfect running condition, to the San Francisco Water District in violation of Section 381 of R.A. 7160, and despite the subsequent nullification of SB Resolution No. 95-27 by the Sangguniang Panlalawigan of Agusan del Sur and the repeated demands by the municipal government of Bunawan, accused Elmer T. Luzon and the San Francisco Water District refused to surrender the afore-enumerated motor vehicle and motorcycles to the Municipality of Bunawan, thereby depriving it of the possession, ownership and use thereof, to the damage and prejudice of said local government unit.

CONTRARY TO LAW.[11]

All the accused posted their respective bail for their provisional liberty, with the exception of Orot who died on June 28, 1998.[12]

On April 16, 1999, Bustillo, Billedo, Tortor and Sumilhig entered pleas of "Not Guilty."[13]

During pre-trial conference[14] held on June 7, 1999, the following facts were admitted by both the prosecution and the defense:

"1) At the time material to this case all the accused are public officers namely, Anuncio C. Bustillo as Municipal Mayor and Agustin

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

[12] *Id.* at 38-41.

[13] *Id.* at 86-89.

[14] *Id.* at 109-113.

Billedo, Jr., as Vice Mayor, Teogenes Tortor and Emilio Sumilhig, Jr., as members of the Sangguniang Bayan all of the Municipality of Bunawan, Agusan del Sur;

2) That during the local election held on May 8, 1995, accused Anuncio C. Bustillo was not re-elected as Mayor of the Municipality of Bunawan, Agusan del Sur;

3) That on May 17, 1995, the Sangguniang Bayan of Bunawan, Agusan del Sur, during its 17th regular session passed Resolution No. 95-27 transferring without any consideration and cost to the San Francisco Water District the following properties: one (1) unit of Tamaraw Toyota FX and six (6) units of Kawasaki Motorcycles; Accused Agustin Billedo, Jr., Teogenes Tortor and Emilio Sumilhig, Jr., were among the members of the said council who voted to approve said Resolution;

4) That on June 19, 1995, accused Anuncio C. Bustillo in behalf of the Municipality of Bunawan, Agusan del Sur executed a Deed of Transfer relative to the above mentioned vehicles in favor of San Francisco Water District represented by Elmer T. Luzon, General Manager;

5) That on July 27, 1995, the Sangguniang Panlalawigan of Agusan del Sur in its 3rd regular session passed Resolution No. 183, series of 1995 disapproving Sangguniang Bayan Resolution No. 95-27 of the Municipality of Bunawan;

6) That on August 17, 1995, the Sangguniang Panlalawigan of Agusan del Sur passed Resolution No. 246, series of 1995, canceling and declaring the aforementioned Deed of Transfer executed by and between the Municipality of Bunawan and San Francisco Water District as null and void;

7) That, in a letter dated July 11, 1995, of Leonardo Barrios, Municipal Mayor of Bunawan, Agusan del Sur addressed to the Director of San Francisco Water District, it was requested that the subject Tamaraw FX and Kawasaki Motorcycles owned by the Municipality of Bunawan, Agusan del Sur be returned to the Municipality of Bunawan;

8) That in response to said letter dated July 11, 1995, of Municipal Mayor Leonardo Barrios, Antonio Tao-Tao, Acting Board Secretary of San Francisco Water District on his letter dated July 16, 1995, refused to return the subject vehicles;

9) That the subject vehicles are all newly purchased and serviceable and in good running condition at the time of the transfer in question";

The other set of facts agreed upon were:

a) That the purchase price or value of the Toyota Tamaraw FX was ₱400,000.00 and the six (6) units Kawasaki Motorcycles ₱305,100.00, or a total purchase price or value of ₱705,100.00 Pesos;

b) That Resolution No. 95-27 was unanimously approved by the members of the Sangguniang Bayan of Bunawan, Agusan del Sur and was not judicially declared null and void.

On June 15, 1999, the SFWD executed a Deed of Donation[15] effecting the transfer of the aforesaid vehicles in favor of the Municipality of Bunawan because according to SFWD, the water projects funded by the CDF of Congressman Paredes were already completed.

Thereafter, Luzon and Amador also entered pleas of "Not Guilty."

On December 9, 1999, the *Sandiganbayan* was informed of the death of Tortor.[16]

During trial, the prosecution presented three witnesses, namely: 1) Florencia Ilorde, 2) Lilia J. Nacorda, and 3) Leonardo Barrios. After the testimonies of the witnesses and the admission of its exhibits, the prosecution rested its case.[17]

On December 6, 1999, herein petitioners filed a Demurrer to Evidence[18] but it was denied[19] for lack of merit. Luzon's Demurrer to Evidence[20] was likewise denied on February 4, 2000.[21] Thus,

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[15] *Id.* at 253-254.

[16] *Id.* at 373-374.

[17] *Id.* at 241-300; 327-333; 368-371; 432-434.

[18] *Id.* at 344-346.

[19] *Id.* at 441.

[20] *Id.* at 450-462.

[21] *Id.* at 464.

the defense presented its evidence. Four witnesses, namely: 1) Luzon, 2) Benigno G. Asis, 3) Sumilhig, and 4) Ceferino S. Paredes, were presented along with other exhibits.

***Ruling of the Sandiganbayan***

On July 31, 2003, the *Sandiganbayan* rendered its Decision[22] finding petitioners guilty beyond reasonable doubt of violation of Section 3(e) of RA 3019. Luzon and Amador were acquitted for failure of the prosecution to prove their guilt beyond reasonable doubt. The case against Tortor and Orot was dismissed on account of their demise.

Petitioners filed a Motion for Reconsideration[23] which was denied in a Resolution dated November 6, 2003.[24]

**Issue**

Hence this Petition for Review on *Certiorari* faulting the *Sandiganbayan* for finding petitioners guilty of violation of Section 3(e) of RA 3019.

**Our Ruling**

The *Sandiganbayan* based its conviction of (Mayor) Bustillo, (Vice-Mayor) Billedo and (Councilor) Sumilhig on the finding that they conspired to effect the transfer of the vehicles to the prejudice of the Municipality of Bunawan in violation of the provision of Section 3(e) of RA 3019.

Section 3(e) of RA 3019 provides:

> Section 3. Corrupt practices of public officers. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> x x x x x x x x x
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits,

[22] *Id.*, Vol. II, pp. 808-835.

[23] *Id.* at 841-861.

[24] *Id.* at 978-979.

advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of the offense are as follows: (1) that the accused are public officers or private persons charged in conspiracy with them; (2) that said public officers commit the prohibited acts during the performance of their official duties or in relation to their public positions; (3) that they caused undue injury to any party, whether the Government or a private party; (4) that such injury is caused by giving unwarranted benefits, advantage or preference to such parties; and (5) that the public officers have acted with manifest partiality, evident bad faith or gross inexcusable negligence.[25]

In this case, only the first element was proven. At the time material to this case, all the petitioners are public officers, namely, Bustillo as Municipal Mayor, Billedo as Vice Mayor, and Sumilhig as member of the *Sangguniang Bayan*.

All the other elements were not present. It cannot be denied that the transfer of the vehicles to SFWD was made in furtherance of the purpose for which the funds were released which is "to help in the planning, monitoring and coordination of the implementation of the waterworks projects located throughout the Province of Agusan del Sur." The Deed of Donation expressly provided that the subject vehicles shall be used for the same purpose for which they were purchased.

Moreover, the transfer was made to ensure the success of the implementation of the CDF-funded waterworks projects of the province of Agusan del Sur. In the Memorandum of Agreement dated February 10, 1993, SFWD was designated to implement, control or supervise all the CDF-funded waterworks projects. Clearly, the vehicles were donated to SFWD not because it was given any preference, unwarranted benefits or undue advantage, but in recognition of its technical expertise.

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[25] *Evangelista v. People,* 392 Phil. 449, 456 (2000).

We find no evidence on record which would show that petitioners were motivated by bad faith when they transferred the vehicles to SFWD. Bustillo, as Mayor, is authorized by law to enter into contracts for and in behalf of the local government unit. Billedo, as Vice Mayor, acted as the Presiding Officer of the *Sangguniang Bayan* and did not even vote for the passage of Resolution No. 95-27. Said Resolution was unanimously passed by the *Sangguniang Bayan* and Sumilhig was only one of those who voted for its passage.

In sum, the petitioners have in their favor the presumption of regularity in the performance of official duties which the records failed to rebut. The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption in rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness.[26]

**WHEREFORE,** the July 31, 2003 Decision of the *Sandiganbayan* in Criminal Case No. 24741 and its November 6, 2003 Resolution are *REVERSED* and *SET ASIDE*. Petitioners Anuncio C. Bustillo, Agustin Billedo, Jr. and Emilio Sumilhig, Jr., are hereby *ACQUITTED* for failure to prove their guilt beyond reasonable doubt.

**SO ORDERED.**

*Carpio (Chairperson), Brion, Abad,* and *Perez, JJ.*, concur.

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[26] *People v. De Guzman*, G.R. No. 106025, February 9, 1994, 299 SCRA 795, 799.

**SECOND DIVISION**

[G.R. No. 170956. May 12, 2010]

**FELISA R. FERRER,** *petitioner, vs.* **DOMINGO CARGANILLO, SERGIO CARGANILLO, SOLEDAD AGUSTIN and MARCELINA SOLIS,** *respondents.*

**SYLLABUS**

**1. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY; DARAB RULES OF PROCEDURE; AGRARIAN REFORM ADJUDICATORS ARE NOT BOUND BY TECHNICAL RULES OF PROCEDURE AND EVIDENCE IN THE RULES OF COURT NOR SHALL THE LATTER APPLY EVEN IN A SUPPLETORY CHARACTER.—** The DARAB Rules of Procedures explicitly provides that the Agrarian Reform Adjudicators are not bound by technical rules of procedure and evidence in the Rules of Court nor shall the latter apply even in a suppletory manner. Thus, we find that the DARAB erred in holding the *Katulagan* as inadmissible since it was not formally offered and admitted. Moreover, reliance on our ruling in *People v. Mongado*, *i.e.*, that "[t]he court shall consider no evidence which has not been formally offered," is misplaced. We simply cannot find any legal basis for the DARAB to cite our ruling in a *criminal* case; the fundamental rule found in Rule 132 of the Rules of Court does not find any application in this agrarian case.

**2. REMEDIAL LAW; EVIDENCE; ADMISSIONS; IT IS TOTALLY AGAINST HUMAN NATURE TO JUST REMAIN RETICENT AND SAY NOTHING IN THE FACE OF FALSE ACCUSATIONS.—** We disagree with the findings of fact of the CA and the agencies below. The confluence of evidence shows that Felisa has clearly and convincingly established her allegation that Domingo subleased his landholding to Sergio xxx. Domingo did not even affirm or deny in his answer that Estimada conducted an investigation and during such investigation, he admitted that he subleased subject landholding. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations. The natural instinct of man impels him to resist an unfounded imputation.

Hence, silence in such cases is almost always construed as implied admission of the truth thereof.

**3. ID.; ID.; GENERAL STATEMENTS, WHICH ARE MERE CONCLUSIONS OF LAW AND NOT FACTUAL PROOF, ARE UNAVAILING AND DO NOT SUFFICE.—** Likewise, the attestations of BARC Chairman Costales and *Barangay Kagawad* Frago that Domingo never violated his agreement with Felisa or any provision of the Land Reform Code, are conclusions of law bereft of any factual basis. Time and again, we have held that general statements, which are mere conclusions of law and not factual proof, are unavailing and do not suffice.

**4. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY; REPUBLIC ACT NO. 3844; SUBLEASING AN AGRICULTURAL LEASE IS PROHIBITED; EXCEPTION; NOT PRESENT IN CASE AT BAR.—** Republic Act (RA) No. 3844 or the Agricultural Land Reform Code is the governing statute in actions involving leasehold of agricultural land. The pertinent provisions thereof state as follows: Sec. 36. *Possession of Landholding; Exceptions*. — Notwithstanding any agreement as to the period or future surrender of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding **except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:** x x x (7) the **lessee employed a sub-lessee on his landholding** in violation of the terms of paragraph 2 of Section twenty seven. xxx The prohibition against subleasing an agricultural lease has already been in our statute books even prior to the enactment of RA 3844. RA 1199, of The Agricultural Tenancy Act enacted in 1954, similarly provides that: SECTION 24. Prohibitions to Tenant: — x x x (2) **It shall be unlawful for a share-tenant to employ a sub-tenant to furnish labor or any phase of the work required of him** under this Act, except in cases of illness or any temporary incapacity on his part, in which eventuality the tenant or any member of his immediate farm household is under obligation to report such illness or incapacity to the landholder. Payment to the sub-tenant, in whatever form, for services rendered on the land under this circumstance, shall be for the account of the tenant. However, Section 4 of RA 3844 declared all share tenancy to be contrary to public policy and, in its

stead, provided for the compulsory conversion of the sharing system into leasehold system where the tenant continues in possession of the land for cultivation. In this case, Domingo subleased his agricultural landholding to Sergio. It is prohibited, except in the case of illness or temporary incapacity where he may employ laborers. Domingo does not claim illness or temporary incapacity in his Answer. Therefore, we hereby declare the dispossession of Domingo and Sergio from the subject agricultural land of the leaseholder.

**5. ID.; ID.; 1994 DARAB NEW RULES OF PROCEDURES; ONLY ONE MOTION FOR RECONSIDERATION IS ALLOWED; GROUNDS; RECEPTION OF NEW EVIDENCE NOT WITHIN THE OFFICE OF A MOTION FOR RECONSIDERATION.—** Section 12, Rule VIII of the 1994 DARAB New Rules of Procedures provide that "only one motion for reconsideration shall be allowed a party which shall be based on the **ground** that: **(a) the findings of facts in the said decision, order or resolution are not supported by substantial evidence, or (b) the conclusions stated therein are against the law and jurisprudence.**" As expressed by the Rule, the office of the Motion for Reconsideration is not for the reception of new evidence. Hence, when Felisa submitted new pieces of evidence in her Supplemental Motion for Reconsideration, she went beyond the stated purpose of the Motion for Reconsideration. In which case, we rule that the new evidence presented by Felisa in the Supplemental Motion for Reconsideration with Manifestation to the DARAB cannot be admitted.

**6. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW; IF THERE IS NO ISSUE PRESENTED, THERE IS NO CONTROVERSY TO RESOLVE.—** We exhaustively went over the Petition for Review and Felisa's Memorandum submitted to the CA and found the same bereft of any issue, whether of fact or law, involving the case against Soledad. In her petition before the CA, Felisa presented the following arguments: (1) The DARAB erred in holding that there exists no valid ground to warrant the ejectment of Domingo and Sergio; and (2) The DARAB erred in considering only the issue of subleasing without giving credence to the issue of non-payment of lease rentals as ground for ejectment. Nowhere in the discussion portion of either pleadings can the name Soledad be found.

Moreover, the issue presented in the case against Soledad is alleged subleasing and not non-payment of lease rentals. If there is no issue presented, then there is no controversy to resolve.

**7. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY; AGRICULTURAL LESSOR HAS THE BURDEN OF PROOF TO SHOW THE EXISTENCE OF A LAWFUL CAUSE FOR THE EJECTMENT OF AN AGRICULTURAL LESSEE.—** Similarly, in her appeal by *certiorari* before this Court, Felisa did not expound specifically on her issues with the decisions of the agencies below with respect to Soledad. Petitioner, however, questions the CA's affirmation of the DARAB Decision dated January 27, 2004. We reiterate that the petitioner, as agricultural lessor, has the burden of proof to show the existence of a lawful cause for the ejectment of an agricultural lessee. xxx [T]he evidence presented by Felisa with respect to Soledad is uncorroborated and unsubstantial. Hence, we rule that Felisa has not discharged her burden of establishing her claim of sublease.

**8. REMEDIAL LAW; APPEALS; FAILURE TO STATE IN THE PETITION THE FULL NAME OF THE APPEALING PARTY SHALL BE SUFFICIENT GROUND FOR THE DISMISSAL OF THE APPEAL.—** With respect to the first case against Marcelina, we resolve to dismiss the appeal of Felisa. Section 5 of Rule 45 provides that the failure of the petitioner to comply, among others, with the contents of the petition for review on *certiorari* shall be sufficient ground for the dismissal thereof. Section 4 of the same rule mandates, among others, that the petition should state the full name of the appealing party as the petitioner. In this case, Felisa indicated in the caption as well as in the parties portion of the petition that she is the landowner. Even in the verification and certification of non-forum shopping, Felisa attested that she is the petitioner in the instant case. However, it appears in the PARAD records that the owners of the subject 14,000-square meter agricultural land are Rosa R. Pajarito (Pajarito), Elvira A. Madolora (Madolora) and Anastacia F. Lagado (Lagado). Felisa is only the representative of the said landowners with respect to the first case against Marcelina. Thus, for failure of Felisa to indicate the appealing party with respect to the said case, the appeal must perforce be dismissed. However, such failure does not

affect the appeal on the other three cases as Felisa is the owner/co-owner of the landholdings subject of said three cases.

**9. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL TENANCY; CLAIM OF NON-PAYMENT OF LEASEHOLD RENTAL NOT ESTABLISHED IN CASE AT BAR.—** In her Complaint dated October 6, 1997, Felisa, in representation of landowners Pajarito, Madolora and Lagado, alleged that Pedro failed to pay the lease rental for the 14,000-square meter land for agricultural years 1995, 1996 and 1997. Subsequently, Pedro died and his widow, Marcelina took over the tenancy and cultivation of the said land. On the other hand, Marcelina sufficiently rebutted the allegation of non-payment by presenting evidence to show that the landowners' share was received by therein complainants' administrator. We hence agree with the PARAD that therein complainants were unable to produce substantial proof to support their allegation of non-payment.

**10. ID.; ID.; CLAIM OF NON-PAYMENT OF THE LEASEHOLD RENTALS FOR THE THIRD CROPPING, NOT ESTABLISHED IN CASE AT BAR.—** [T]he petitioner, as agricultural lessor, has the burden of proof to show the existence of a lawful cause for the ejectment of an agricultural lessee. In the instant case, we have carefully studied the evidence presented by the petitioner and found the same wanting on the matter of third cropping over the subject land. Other than the bare allegations in her complaint before the PARAD, Felisa did not present any evidence to establish her claim that the subject agricultural land can regularly support a third cropping. Neither did she present evidence to establish that their leasehold agreement includes a provision on third cropping. Hence, her allegation of non-payment of the leasehold rentals for the third cropping likewise finds no support in evidence.

**11. ID.; ID.; CLAIM OF NON-PAYMENT OF LEASEHOLD SHARES NOT PROVEN WITH THE NECESSARY QUANTUM OF PROOF.—** In addition, we find that the evidence presented by Felisa is inconsistent on major points. In her Complaint dated October 3, 1997, Felisa alleged that Marcelina is not delivering the shares of the land with respect to the third cropping. However, the said statement is contradicted in the Estimada Investigation Report where it was indicated that Marcelina is not giving ***any*** rentals/shares to Felisa. The

contention of non-payment of the leasehold shares of the landowner has been effectively rebutted by the evidence presented by Marcelina. Through Marcelina's evidence, we have established that she had regularly complied with the leasehold contract xxx. In addition, we have held earlier that the additional pieces of evidence Felisa attached and referred to in her Supplemental Motion for Reconsideration with Manifestation cannot be admitted as reception of new evidence is not within the office of a Motion for Reconsideration. On the basis of the evidence presented, we cannot find sufficient evidence to support Felisa's claims. Hence, we agree with the factual findings of the CA and the agrarian tribunals that Felisa failed to discharge the burden of proving her claim with the necessary quantum of proof.

**12. REMEDIAL LAW; JUDGMENTS; THE DECISION RENDERED BY THE COURT MUST CLEARLY AND DISTINCTLY EXPRESS THE FACTS AND THE LAW ON WHICH IT IS BASED; RULE COMPLIED WITH BY THE COURT OF APPEALS.—** Article VIII, Section 14 of the Constitution states that "no decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based." Petitioner argues that the CA "practically closed its eyes" in affirming the Board's Decision. We do not agree. The Decision of the CA detailed the evidence presented by the parties. Thereafter, it weighed the respective pieces of evidence submitted by the petitioner and the respondent and chose the one that to its mind, deserved credence. Said Decision contained findings of facts as well as an application of case law. In any event, there was an earlier statement of the facts and the law involved in the decisions rendered by the PARAD dated April 8, 1998, April 13, 1998 and April 14, 1998. In these decisions, the facts and the law on which they were based were clearly and distinctly stated. Furthermore, in this case, the Court has exhaustively gone through the records and made its own findings of facts, rather than further delay the disposition of the case by remanding the records for further proceedings.

**13. CIVIL LAW; ESTOPPEL; DOCTRINE APPLICABLE TO CASE AT BAR.—** With regard to the issue of consolidation, we find in the records that although petitioner filed separate notices of appeal for the four cases, she but filed one

consolidated Appeal Memorandum dated October 7, 1998 to the DARAB, putting into the caption all the appealed cases. She persisted in consolidating the said cases in her Motion for Reconsideration of the DARAB Decision, Supplemental Motion for Reconsideration with Manifestation dated March 24, 2004, Petition for Review dated December 6, 2004 to the CA, Motion for Reconsideration (*ad cautelam*) dated September 13 2005, and the Petition for Review on *Certiorari* dated January 20, 2006 to this Court. In all of these pleadings where petitioner consolidated the said four cases, petitioner sought the jurisdiction of this Court and the agencies below for relief. Gainsaid on equitable ground of *estoppel*, she cannot now come to this Court assailing the consolidation of said cases, which was brought about by her own acts.

**APPEARANCES OF COUNSEL**

*Lorelei R. Querido-Cabatu* for petitioner.
*DAR Legal Assistance Division* for respondents.

**D E C I S I O N**

**DEL CASTILLO, *J.*:**

The concept of social function of private property which today is presented as one of the possible justifications for agrarian and urban land reform has its roots in the cosmogenic and philosophical concept which maintains that man must answer to the Creator for the use of the resources entrusted to him. It is an old concept and is ultimately related to the genesis of society itself. Hence, the *use, enjoyment, occupation* or *disposition of private property is not absolute.* It is predicated on the social functions of property. It is restricted in a sense so as to bring about maximum benefits to all and not to a few chosen individuals.[1]

This petition concerns four cases, involving herein petitioner Felisa R. Ferrer, jointly heard by the Provincial Agrarian Reform Adjudicator (PARAD), appealed to the Department of Agrarian

[1] German, Milagros A., *Agrarian Law in the New Society* 7 (1980).

Reform Adjudication Board (DARAB) and subsequently further appealed to the Court of Appeals (CA), to wit:

1. DARAB Case No. 7862 "*Felisa R. Ferrer v. Domingo Carganillo and Sergio Carganillo*" for Ejectment and Damages;
2. DARAB Case No. 7863 "*Felisa R. Ferrer v. Soledad Agustin*" for Ejectment and Damages;
3. DARAB Case No. 7864 "*Rosa Pajarito, Elvira Madolora and Anastacia Lagado represented by Felisa R. Ferrer v. Marcelina Solis*" for Ejectment and Damages;
4. DARAB Case No. 7865 "*Irene Aguinaldo and Felisa R. Ferrer v. Marcelina Solis*" for Ejectment and Damages.

For clarity, each case will be tackled independently as each involved different set of facts.

***Factual Antecedents***

***a) DARAB Case No. 7862***

In her Complaint,[2] petitioner Felisa R. Ferrer (Felisa) alleged that she is the owner of a 6,000-square meters lot under Tax Declaration No. 42-06462, situated at Brgy. Legaspi, Tayug, Pangasinan and being tenanted by respondent Domingo Carganillo (Domingo). Without her knowledge and consent, Domingo subleased the subject landholding to his brother, herein respondent Sergio Carganillo (Sergio) for ₱15,000.00. Felisa only knew of this fact when she visited the place and found Sergio in actual possession and cultivation of the landholding in question.

In his Answer,[3] Domingo denied that he mortgaged his possessory rights to Sergio and asserted that he is still in actual, continuous and peaceful possession of subject property.

Meanwhile, upon a verbal complaint lodged by Felisa with the Municipal Agrarian Reform Office (MARO) of Tayug, Pangasinan, MARO Legal Officer Dionisio G. Estimada (Estimada) conducted an investigation on the matter.

[2] DARAB records, pp. 3-1.

[3] *Id.* at 31.

In his December 19, 1997 Investigation Report,[4] Estimada stated that based on the testimony he had gathered from other people, the cultivation and possession of the subject landholding was subleased by Domingo to Sergio as the former was applying for work abroad.[5] In fact, Domingo admitted the existence of the sublease.[6] Thus, based on the foregoing, Estimada recommended that Sergio and Domingo be ejected from the subject landholding.[7]

The Affidavit of Angela N. Clarion (Clarion) was also submitted to corroborate the Investigation Report.[8] Clarion averred that Domingo mortgaged his tenancy rights over the subject agricultural land to Sergio, and that the latter is presently cultivating the said land by virtue of such mortgage.[9]

***Ruling of the PARAD***

In an Order[10] dated January 20, 1998, the PARAD required the parties to submit their respective position papers within 20 days from said date. Felisa filed her position paper for all the four cases, attaching thereto the Investigation Report of Estimada, as well as the corroborating affidavits of Clarion and Gelacio Gano (Gano). Sergio, on the other hand, admitted that he helps his older brother, Domingo, in cultivating the landholding[11] but he denied subleasing the same from Domingo.[12]

In addition, respondents presented the affidavits of (1) Mariano Orina (Mariano), tenant of the adjacent agricultural land, who attested that Domingo is the one who supervises the

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[4] *Id.* at 46.

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.* at 44.

[9] *Id.*

[10] *Id.* at 32.

[11] *Id.* at 52.

[12] *Id.*

activities in his tenanted land;[13] (2) *Barangay* Agrarian Reform Council (BARC) Chairman Valentin Costales (Costales), who stated that he does not know of any violation that Domingo has committed against the landowner;[14] and (3) *Barangay Kagawad* Arsenio R. Frago (Frago), who maintained that Domingo has not violated any provision of the Land Reform Code.[15]

On April 8, 1998, PARAD Rodolfo A. Caddarao (Caddarao) issued a Decision[16] holding that:

> In a situation such as this, the complainant has the burden of proof to show by convincing evidence the truth of her allegations. In the case at bar the complainant failed to prove by clear and convincing evidence that there is subleasing or mortgage of the property by the respondent tenant. Hence, the herein action must necessarily fail.
>
> WHEREFORE, premises considered, the complaint in the instant case is hereby DISMISSED for lack of evidence and merit.
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> SO ORDERED.

Aggrieved, Felisa appealed to the DARAB.

***Ruling of the DARAB***

In her appeal memorandum[17] dated October 7, 1998, Felisa asserted that the PARAD erred in failing to give credence to the Investigation Report of the MARO legal officer. She likewise presented for the first time an original copy of the *Katulagan*[18]

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[13] *Id.* at 51.

[14] *Id.* at 50.

[15] *Id.* at 49.

[16] *Id.* at 61-54.

[17] *Id.* at 65-63.

[18] *Id.* at 62.

It reads:

| *Ilocano (original)* | *English Translation* |
|---|---|
| Katulagan | Agreement |
| Siak ni Domingo Caganillo agnaed ditoy Brgy. Sitio Cabuaan, Tayug, Pangasinan. Nahustuan ti edad, gapu ti | I, Domingo Carganillo, residing at Brgy. Sitio Cabuaan, Tayug, Pangasinan, of legal age, due to necessity, have |

(Agreement) to prove that Domingo obtained a loan in the amount of ₱15,000.00 from Sergio. Felisa argued that she has established, by more than substantial evidence, that Domingo has indeed conveyed his leasehold rights to Sergio for said amount.

On January 27, 2004, the DARAB rendered its Decision[19] affirming the findings of the PARAD that Felisa failed to substantiate her allegation of subleasing.

Felisa thence elevated the matter to the CA through a Petition for Review[20] dated December 6, 2004.

***Ruling of the Court of Appeals***

On August 22, 2005, the CA rendered a Decision[21] affirming the DARAB Decision. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the petition is hereby DISMISSED. The assailed Decision dated January 27, 2004

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panagkasapulak nakabuludak ti kuarta nga aggatad ti ₱10,000.00 + 4,000.00 + 1,000.00 kada Mr. & Mrs. Sergio Carganillo, agnaed ti Brgy. Legaspi, Tayug, Pangasinan, ket bilang pammaneknek daytoy a bulod to, ipirmak ti nagan ko agraman dagiti saksi iti daytoy met lang a petsa April 20, 1995. Agserbi daytoy nga pammatalged iti daytoy nga katulagan mi.

(Sgd.) Domingo Carganillo
(Sgd.) Sergio Caganillo
by: Mary Ann Carganillo
(wife)
(Sgd.) witnesses

borrowed money to the amount of ₱10,000.00 + 4,000.00 + 1,000.00 from Mr. & Mrs. Sergio Carganillo, residing at Brgy. Legaspi, Tayug, Pangasinan, and as evidence of this loan, I have signed below together with the witnesses today the 20th of April 1995. This constitutes as proof of our agreement.

(Sgd.) Domingo Carganillo
(Sgd.) Sergio Caganillo
by: Mary Ann Carganillo
(wife)
(Sgd.) witnesses

[19] *Id.* at 85-79; penned by Assistant Secretary Augusto P. Quijano, with Undersecretary Rolando G. Mangulabnan, Assistant Secretaries Lorenzo R. Reyes, Edgar A. Igano and Rustico T. Belen, concurring.

[20] CA *rollo*, pp. 8-21.

[21] *Id.* at 107-113; penned by Associate Justice Juan Q. Enriquez, Jr. and concurred in by Associate Justices Portia Alino-Hormachuelos and Vicente Q. Roxas.

and the Resolution dated October 18, 2004 are hereby AFFIRMED.[22]

**Our Ruling**
***a) DARAB Case No. 7862***

Petitioner argues that the CA erred in not finding that Domingo subleased or mortgaged his landholding rights to Sergio which warrants their ejectment from the subject landholding. Petitioner asserts that: (1) the law is explicit that the tenant and his immediate family must work directly on the land; (2) Sergio cannot pass as Domingo's immediate family; (3) as evidenced by the *Katulagan*, Sergio has been cultivating the land for more than two years prior to the filing of the complaint; and (4) when Domingo subleased the land to Sergio, he is considered as having abandoned the land as a tenant.[23] She further stresses that respondents' admission, coupled with the finding of the DARAB that Sergio is tilling the land, proved subtenancy. Consequently, she prays that the lease tenancy relationship between the contending parties be declared terminated.

Domingo, on the other hand, denies that he subleased or mortgaged his tenancy rights to anyone. He claims that he complied with all his obligations under the leasehold agreement over the subject agricultural land, and thus prays for the dismissal of the case.

The petition is impressed with merit.

***The DARAB erred in disregarding the Katulagan (Agreement) as evidence.***

The DARAB held that the *Katulagan* is inadmissible in evidence because it was not formally offered before the PARAD, citing our ruling in *People v. Mongado*.[24] On appeal, however, the CA considered the *Katulagan*, but found the same to be a mere

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[22] *Id.* at 113.

[23] *Id.* at 9-11.

[24] 138 Phil. 699 (1969).

promissory note tending to prove indebtedness and not as an evidence of mortgage.

We cannot subscribe with the reasoning of the DARAB. The Rules of Court, particularly the Revised Rules on Evidence, are specifically applicable to judicial proceedings, to wit:

Section 1. *Evidence defined*. – Evidence is the means, sanctioned by these rules, of ascertaining *in a judicial proceeding* the truth respecting a matter of fact.

Sec. 2. *Scope*. – The rules of evidence shall be the same in all courts and in all trials and hearings *except as otherwise provided by law or these rules*.[25] (Emphasis supplied)

In *quasi judicial* proceedings, the said rules shall not apply except "by analogy or in a suppletory character and whenever practicable and convenient."[26] In the instant case, the then prevailing DARAB Rules of Procedures[27] provide that:

Section 2. *Construction*. These Rules shall be liberally construed to carry out the objectives of agrarian reform and to promote just, expeditious and inexpensive adjudication and settlement of agrarian cases, disputes or controversies.

x x x x x x x x x

Section 3. *Technical Rules Not Applicable*. The Board and its Regional and Provincial Adjudicators shall not be bound by technical rules of procedure and evidence as prescribed in the Rules of Court, but shall proceed to hear and decide all agrarian cases, disputes or controversies in a most expeditious manner, employing all reasonable means to ascertain the facts of every case in accordance with justice and equity.

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[25] RULES OF COURT, Rule 128.

[26] RULES OF COURT, Rule 1, Section 4 provides:

SEC. 4. *In what cases not applicable.* – These Rules shall not apply to election cases, land registration cases, 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.

[27] Adopted on May 30, 1994 by the DARAB. Subsequently repealed on January 17, 2003 and on September 1, 2009.

a) If and when a case comes up for adjudication wherein there is no applicable provision under these rules, the procedural law and jurisprudence generally applicable to agrarian disputes shall be applied;

b) The Adjudication Board (Board), and its Regional Agrarian Reform Adjudicators (RARADs) and Provincial Agrarian Reform Adjudicators (PARADs) hereinafter referred to as Adjudicators, shall have the authority to adopt any appropriate measure or procedure in any given situation or matter not covered by these Rules. All such special measures or procedures and the situations to which they have been applied must be reported to the Board; and

c) The provisions of the Rules of Court shall not apply even in a suppletory character unless adopted herein or by resolution of the Board. However, due process of the law shall be observed and followed in all instances. (Emphasis supplied)

The DARAB Rules of Procedures explicitly provides that the Agrarian Reform Adjudicators are not bound by technical rules of procedure and evidence in the Rules of Court nor shall the latter apply even in a suppletory manner. Thus, we find that the DARAB erred in holding the *Katulagan* as inadmissible since it was not formally offered and admitted.[28] Moreover, reliance on our ruling in *People v. Mongado, i.e.,* that "[t]he court shall consider no evidence which has not been formally offered," is misplaced. We simply cannot find any legal basis for the DARAB to cite our ruling in a *criminal* case;[29] the fundamental rule found in Rule 132 of the Rules of Court does not find any application in this agrarian case.

***Petitioner has sufficiently proven by clear and convincing evidence the fact of subleasing.***

The PARAD summed up the evidence presented by both parties as follows:

[28] RULES OF COURT, Rule 132, Sec. 34 provides:

Sec. 34. *Offer of Evidence*. – The court shall consider no evidence which has not been formally offered. The purpose for which evidence is offered must be specified.

[29] *Supra* note 24 at 706.

In the instant case, the evidence for the complainant are as follows:

1. Exhibit 1 – Photocopy of an Investigation Report dated December 19, 1997 submitted by Legal Officer I Dionisio Estimada to the Legal Services Division of DAR wherein he stated in his findings that "Verily, the tenants, particularly Domingo Carganillo, who actually and finally accepted that he subleased the land to another is clear and blatant violation against the landowner and co-owner for that matter." Hence, he recommended that Domingo Carganillo and Sergio Carganillo be ejected from the landholding.

2. Exhibit 2 – Affidavit dated January 21, 1998 of one Angela [Clarion] wherein she stated that she knew for a fact that Domingo Carganillo mortgaged his tenancy rights in 1995 to his brother Sergio Carganillo.

On the part of the respondent Domingo Carganillo, his evidence are:

1. Exhibit 1 – The affidavit of one Sergio Carganillo, the other respondent and brother of respondent Domingo Carganillo denying that the land was mortgaged by his brother to him and stated that he usually help his brother to do some works in the landholding.

2. Exhibit 2 – Affidavit dated February 3, 1998 of one Mariano Orina stating that being a tenant in the adjoining landholding, he knows that Domingo Carganillo is always present doing or supervising the activities in his field.

3. Exhibit 3 – Sworn statement of Valentin Costales, the incumbent Barangay Agrarian Reform Council Chairman of the place where the property is located attesting that Domingo and Sergio Carganillo never violated any agrarian laws.

4. Exhbit 4 – Sworn statement issued by one of the incumbent Barangay Kagawads having jurisdiction of the land in suit, stating also to the fact that respondents never violated any agrarian laws.

The PARAD assessed the evidence submitted and held that Felisa failed to discharge the burden of proof of establishing her allegations, to wit:

After a careful assessment of the facts and evidence presented, the Board is of the view and so holds that there is no evidence showing that respondent Domingo Carganillo subleased the land to his brother

Sergio Carganillo. The investigation report dated December 19, 1997 of Legal Officer I Dionisio Estimada (Exhibit 1 of complaint) is not conclusive. His conclusion that Domingo Carganillo accepted to him that he subleased the property could not be accepted by this Board as fact. There is no evidence showing that Domingo Carganillo accepted said matter to him. The Board cannot be compelled to accept the report as true since, in the first place it had not ordered such investigation.

On appeal, the DARAB concurred with the findings of the PARAD stating that:

One of the contentions invoked by the complainant-appellant is that the landholding in question was subleased by herein respondent-appellee to his co-respondent Sergio Carganillo, who is in actual possession and cultivation thereof. This contention, however, cannot be given due consideration. The Honorable Adjudicator a quo correctly ruled that there was no subleasing in this case.

At this juncture, it is better to define what a sub-lessee means. In the case of *Santiago vs. Rodrigo, et al.*, CA-G.R. No. 33651-R, June 3, 1965, "sub-tenant or sub-lessee" has been defined as "a person who rents all, or a portion of the leased premises, from the lessor for a term less than the original one, leaving a reversionary interest in the first lessee." Sub-leasing therefore, creates a new estate dependent upon, out of, and distinct from, the original leasehold. However, this is not true in the case at bar. Granting that Sergio Carganillo is working on the land tenanted by respondent-appellee, such is not in the nature of being a sub-lessee, but is merely helping his brother as an immediate member of the family to cultivate the land. The employment of respondent-appellee's brother to cultivate the landholding in question is not in any way prejudicial to the interest of the landowner. Also, it was ruled that the employment by the lessee of the members of his immediate farm household does not come within the prohibition (*De Guzman v. Santos*, 6 SCRA 796, November 30, 1962).

Since the issue of sub-leasing was not properly proved by substantial evidence, the same cannot be given favorable consideration.

On further appeal, the CA held thus:

Clearly, petitioner's assertion that respondent Domingo subleased the subject landholding to respondent Sergio cannot be given weight.

She failed to prove with sufficient evidence neither the fact of subleasing the subject landholding nor the mortgaging of the possessory rights thereof to respondent Sergio. The document belatedly presented by petitioner and denominated as "Katulagan," is merely a promissory note which is a proof of indebtedness and not as evidence to prove mortgage.

We disagree with the findings of fact of the CA and the agencies below. The confluence of evidence shows that Felisa has clearly and convincingly established her allegation that Domingo subleased his landholding to Sergio, to wit:

a) The investigation conducted by MARO Legal Officer Estimada shows that Domingo admitted that the cultivation and possession of the subject landholding was subleased to Sergio as he was then applying for work abroad.[30]

b) In her complaint, Felisa stressed that in one of her visits to the subject landholding prior to the filing of the said complaint, she discovered that Sergio, the sublessee, was in actual possession and cultivation of the landholding in question.[31] Petitioner further contended that Domingo subleased the said agricultural leasehold to Sergio for the amount of ₱15,000.00.[32]

c) The *Katulagan* or Agreement establishes that indeed Domingo was indebted to Sergio in the amount of ₱15,000.00.

d) The affidavit of Clarion, a resident of the municipality where the subject landholding lies, further corroborates the said facts when she narrated the series of events leading up to Sergio's possession of said agricultural land:

x x x x x x x x x

That I know for a fact that the above-described parcel of land was under cultivation by one RICARDO PADILLO of Brgy. Amistad, Tayug, Pangasinan, formerly, but when the same went abroad, he transferred his tenancy right to DOMINGO CARGANILLO, who in

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[30] *Rollo*, p. 65.

[31] *Id.* at 29.

[32] *Id.* at 129.

the year 1995 mortgaged his tenancy rights to SERGIO CARGANILLO, his own brother;

That at present, the said parcel of land is under the cultivation of said SERGIO CARGANILLO;

x x x x x x x x x

Domingo did not even affirm or deny in his answer that Estimada conducted an investigation and during such investigation, he admitted that he subleased subject landholding. It is totally against our human nature to just remain reticent and say nothing in the face of false accusations. The natural instinct of man impels him to resist an unfounded imputation. Hence, silence in such cases is almost always construed as implied admission of the truth thereof.

Likewise, the attestations of BARC Chairman Costales and *Barangay Kagawad* Frago that Domingo never violated his agreement with Felisa or any provision of the Land Reform Code, are conclusions of law bereft of any factual basis. Time and again, we have held that general statements, which are mere conclusions of law and not factual proof, are unavailing and do not suffice.

***In view of the sublease, Domingo and Sergio should be dispossessed of the subject agricultural landholding.***

Republic Act (RA) No. 3844 or the Agricultural Land Reform Code[33] is the governing statute in actions involving leasehold of agricultural land. The pertinent provisions thereof state as follows:

Sec. 36. *Possession of Landholding; Exceptions*. — Notwithstanding any agreement as to the period or future surrender of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding **except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:**

x x x x x x x x x

[33] Approved August 8, 1963.

(7) the **lessee employed a sub-lessee on his landholding** in violation of the terms of paragraph 2 of Section twenty seven.[34] (Emphasis supplied)

Sec. 37. *Burden of Proof*. — The burden of proof to show the existence of a lawful cause for the ejectment of an agricultural lessee shall rest upon the agricultural lessor.

The prohibition against subleasing an agricultural lease has already been in our statute books even prior to the enactment of RA 3844. RA 1199, of The Agricultural Tenancy Act enacted in 1954, similarly provides that:

SECTION 24. Prohibitions to Tenant: —

x x x x x x x x x

(2) **It shall be unlawful for a share-tenant to employ a sub-tenant to furnish labor or any phase of the work required of him** under this Act, except in cases of illness or any temporary incapacity on his part, in which eventuality the tenant or any member of his immediate farm household is under obligation to report such illness or incapacity to the landholder. Payment to the sub-tenant, in whatever form, for services rendered on the land under this circumstance, shall be for the account of the tenant. (Emphasis supplied)

However, Section 4[35] of RA 3844 declared all share tenancy to be contrary to public policy and, in its stead, provided for

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[34] SECTION 27. *Prohibitions to Agricultural Lessee*. — It shall be unlawful for the agricultural lessee:

x x x x x x x x x

(2) To employ a sub-lessee on his landholding: Provided, however, That in case of illness or temporary incapacity he may employ laborers whose services on his landholding shall be on his account.

[35] SECTION 4. *Abolition of Agricultural Share Tenancy*. — **Agricultural share tenancy, as herein defined, is hereby declared to be contrary to public policy and shall be abolished**: Provided, That existing share tenancy contracts may continue in force and effect in any region or locality, to be governed in the meantime by the pertinent provisions of Republic Act Numbered Eleven hundred and ninety-nine, as amended, until the end of the agricultural year when the National Land Reform Council proclaims that all the government

the compulsory conversion of the sharing system into leasehold system where the tenant continues in possession of the land for cultivation.

In this case, Domingo subleased his agricultural landholding to Sergio. It is prohibited, except in the case of illness or temporary incapacity where he may employ laborers. Domingo does not claim illness or temporary incapacity in his Answer. Therefore, we hereby declare the dispossession of Domingo and Sergio from the subject agricultural land of the leaseholder.

***b) DARAB Case No. 7863***

Felisa is the owner of a parcel of land with an approximate area of 4,667 square meters registered under Transfer Certificate of Title No. T-51201.[36] She alleged that the duly instituted lessee of the agricultural land is the late Isabelo Ramirez (Isabelo).[37] During Isabelo's lifetime, he subleased said landholding to Soledad

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machineries and agencies in that region or locality relating to leasehold envisioned in this Code are operating, unless such contracts provide for a shorter period or the tenant sooner exercises his option to elect the leasehold system: Provided, further, That in order not to jeopardize international commitments, lands devoted to crops covered by marketing allotments shall be made the subject of a separate proclamation that adequate provisions, such as the organization of cooperatives, marketing agreements, or other similar workable arrangements, have been made to insure efficient management on all matters requiring synchronization of the agricultural with the processing phases of such crops: Provided, furthermore, That **where the agricultural share tenancy contract has ceased to be operative by virtue of this Code, or where such a tenancy contract has been entered into in violation of the provisions of this Code and is, therefore, null and void, and the tenant continues in possession of the land for cultivation, there shall be presumed to exist a leasehold relationship** under the provisions of this Code, without prejudice to the right of the landowner and the former tenant to enter into any other lawful contract in relation to the land formerly under tenancy contract, as long as in the interim the security of tenure of the former tenant under Republic Act Numbered Eleven hundred and ninety-nine, as amended, and as provided in this Code, is not impaired: Provided, finally, That if a lawful leasehold tenancy contract was entered into prior to the effectivity of this Code, the rights and obligations arising therefrom shall continue to subsist until modified by the parties in accordance with the provisions of this Code. (Emphasis supplied)

[36] PARAD records, pp. 2-1.

[37] *Id*.

Agustin (Soledad), without Felisa's knowledge and consent.[38] She argued that the said act of her now deceased tenant is a ground for ejectment of Soledad, who is a mere sublessee.[39]

***Ruling of the PARAD***

After service of summons, Soledad filed her Answer dated January 20, 1998 affirming that Isabelo was the duly instituted tenant of the subject landholding.[40] Upon his death, his possessory rights passed on to his surviving spouse, who was not named in the Answer.[41] Soledad likewise alleged that said surviving spouse continues to cultivate the subject landholding.[42]

In compliance with the PARAD's Order dated January 20, 1998[43] requiring the parties to submit their respective position papers, Felisa filed a position paper for all four cases,[44] attaching thereto a copy of the Investigation Report of Estimada[45] and corroborating affidavit of Gano.[46]

The Investigation Report of the MARO Legal Officer Estimada stated that the lawful tenant was the late Isabelo and not Soledad. Meanwhile, Gano declared in his affidavit that he knew that Isabelo mortgaged his tenancy rights and possession to Soledad. He further averred that Soledad is presently cultivating said landholding, having acquired her tenancy rights from Isabelo through the alleged mortgage.

On the other hand, Soledad submitted the following affidavits: (1) her own affidavit wherein she denied that she is Felisa's

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[38] *Id*.

[39] *Id*.

[40] *Id*. at 6.

[41] *Id*.

[42] *Id*.

[43] *Id.* at 16.

[44] DARAB records, pp. 48-47.

[45] *Id* at 46-44.

[46] *Id* at 43.

tenant and contended that the true tenant is her sister-in-law Marina O. Ramirez (Marina), the widow of her brother, the deceased Isabelo; (2) Marina, who affirmed that she is the true tenant of Felisa as evidenced by the renewal of their leasehold contract dated May 30, 1997 and corroborated Soledad's statement that the latter does not possess any landholding owned or administered by Felisa; (3) BARC Chairman Costales, who declared that as per their records, Soledad is not the registered tenant of the petitioner nor has Soledad managed the activities of the said landholding; (4) Timoteo Orina, owner of the adjoining agricultural land, who attested that Soledad never became a tenant, tiller or manager of subject landholding; and (5) Silverio C. Bugayong, incumbent *Barangay Kagawad* of Brgy. Amistad, who stated that Marina continued tilling the subject land after the death of her husband.[47] In addition, Soledad submitted the leasehold contract dated May 30, 1997 (*Tulag ti Panagabang ti Talon*), which showed that the leasehold formerly held by the deceased Isabelo is now with his widow, Marina.

On April 13, 1998, PARAD Caddarao, dismissed the complaint for lack of merit.[48]

Aggrieved, petitioner filed a Notice of Appeal dated April 30, 1998 with the PARAD signifying her intention to elevate the latter's April 13, 1998 Decision.[49]

***Ruling of the DARAB***

On January 7, 2004, the DARAB promulgated a Decision dismissing the appeal for lack of merit.[50]

***Ruling of the Court of Appeals***

In her Memorandum, petitioner asserted that the DARAB failed to resolve the issue of non-payment of lease raised in the

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[47] PARAD records, pp. 14-8.

[48] *Id.* at 17-15.

[49] *Id.* at 18.

[50] DARAB records, p. 80.

companion cases.[51] The respondents did not file their memorandum.

On August 22, 2005, the CA rendered a Decision affirming the DARAB Decision.

**Our Ruling**

***b) DARAB Case No. 7863***

Felisa submits that the CA gravely erred in affirming the DARAB Decision dated January 7, 2004 by assuming that the case against Soledad was already subsumed in the said Decision and in not ordering or remanding the case to the DARAB for disposition or decision. Hence, Felisa now prays that we take a second "hard look" at the assailed CA Decision and Resolution in order to avoid a miscarriage of justice.

***The new evidence presented by the petitioner in the Supplemental Motion for Reconsideration with Manifestation to the DARAB cannot be admitted.***

On March 24, 2004, Felisa filed a Supplemental Motion for Reconsideration with Manifestation with the DARAB, allegedly as an expanded discussion on what she averred in her Motion for Reconsideration.[52]

We note though that aside from amplifying her arguments, petitioner likewise attached and referred to new pieces of evidence in the form of: (1) affidavit of Rudy O. Tubiera dated September 14, 2001;[53] (2) affidavit of Liberato Cabigas;[54] (3) affidavit of Alberto A. Millan dated July 26, 2002[55] and (4) survey plan.[56]

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[51] CA *rollo*, p. 104.

[52] DARAB records, pp. 184-154.

[53] Annex "G".

[54] Annex "H".

[55] Annex "I".

[56] Annex "J".

Section 12, Rule VIII of the 1994 DARAB New Rules of Procedures provide that "only one motion for reconsideration shall be allowed a party which shall be based on the **ground** that: **(a) the findings of facts in the said decision, order or resolution are not supported by substantial evidence, or (b) the conclusions stated therein are against the law and jurisprudence.**" As expressed by the Rule, the office of the Motion for Reconsideration is not for the reception of new evidence. Hence, when Felisa submitted new pieces of evidence in her Supplemental Motion for Reconsideration, she went beyond the stated purpose of the Motion for Reconsideration. In which case, we rule that the new evidence presented by Felisa in the Supplemental Motion for Reconsideration with Manifestation to the DARAB cannot be admitted.

***Petitioner has not established her claim of sublease.***

We exhaustively went over the Petition for Review and Felisa's Memorandum submitted to the CA and found the same bereft of any issue, whether of fact or law, involving the case against Soledad. In her petition before the CA, Felisa presented the following arguments: (1) The DARAB erred in holding that there exists no valid ground to warrant the ejectment of Domingo and Sergio; and (2) The DARAB erred in considering only the issue of subleasing without giving credence to the issue of non-payment of lease rentals as ground for ejectment. Nowhere in the discussion portion of either pleadings can the name Soledad be found. Moreover, the issue presented in the case against Soledad is alleged subleasing and not non-payment of lease rentals. If there is no issue presented, then there is no controversy to resolve.

Similarly, in her appeal by *certiorari* before this Court, Felisa did not expound specifically on her issues with the decisions of the agencies below with respect to Soledad. Petitioner, however, questions the CA's affirmation of the DARAB Decision dated January 27, 2004.

We reiterate that the petitioner, as agricultural lessor, has the burden of proof to show the existence of a lawful

cause for the ejectment of an agricultural lessee.[57] In support of her allegations, Felisa presented the Investigation Report of MARO Legal Officer Estimada and an affidavit of a resident of the *barangay* where both the original leaseholder Isabelo and the alleged sublessee, Soledad, reside. The full text of the Investigation Report with respect to his factual findings on the case against Soledad is as follows:

> In the dispute against Soledad Agustin, the lawful tenant was Isabelo Ramirez and not Soledad Agustin. In the conference/mediation that was conducted it was discovered that the cultivator and possessor of the land is actually Isabelo Ramirez. This is also being covered by an Agricultural leasehold Contract.

The findings of fact as expressed above are not relevant and material to the question of sublease which the petitioner alleges.

On the other hand, the affidavit of Gano reads as follows:

x x x x x x x x x

> That I know for a fact that the above-described parcel of land was being cultivated formerly by the late, Isabelo Ramirez, a resident of Brgy. Amistad, Tayug, Pangasinan, Philippines;
>
> That I also have the knowledge that prior to the death of said Isabelo Ramirez, the same mortgaged his tenancy rights and possession to Soledad Agustin and in fact, said Soledad Agustin is at present cultivating and in possession of the above-described landholding;
>
> That to the best of my knowledge, the transfer of tenancy rights and possession from Isabelo Ramirez to Soledad Agustin by way of mortgage was made without the knowledge and consent of the owners thereof;
>
> That I know of the above facts because being a resident of the same *barangay* with the former tenant and the present tenant of the said landholding, it is of common knowledge in our community that Soledad Agustin is presently cultivating the same landholding and that she acquired such tenancy rights from its former tenant by way of mortgage;

x x x x x x x x x

[57] REPUBLIC ACT NO. 3844, Section 37.

In contrast to the Carganillo case above, the evidence presented by Felisa with respect to Soledad is uncorroborated and unsubstantial. Hence, we rule that Felisa has not discharged her burden of establishing her claim of sublease.

***c) DARAB Case No. 7864 and d) DARAB Case No. 7865***

In DARAB Case No. 7864, the first case against respondent Marcelina Solis (Marcelina), Felisa represented that the tenant of the landholding, Pedro Solis (Pedro), died in June 1997 and was survived by his wife, Marcelina.[58] She further alleged that Marcelina took over the cultivation of the 14,000-square meter landholding without her knowledge and consent.[59] In addition, during the lifetime of Pedro, the latter failed to pay lease rentals for three consecutive years from 1995 to 1997.[60] Hence, the case for ejectment against Marcelina.[61]

With respect to the second case (DARAB Case No. 7865), Irene Aguinaldo and Felisa co-owned a 6,830.5-square meter landholding tenanted by Marcelina.[62] Felisa averred that Marcelina has not fully paid the rental for the use of the land on the third cropping season.[63] Hence, the second case for ejectment against Marcelina.[64]

***Ruling of the PARAD***

In her Answer, Marcelina specifically denied Felisa's allegation of arrears in lease rentals from 1995 to 1997.[65] With respect to the second complaint, she admitted that while it is true that there were times that the subject landholding were planted with

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[58] *Rollo*, p. 130.

[59] *Id.*

[60] *Id.*

[61] *Id.*

[62] *Id.* at 131.

[63] *Id.*

[64] *Id.*

[65] PARAD records, p. 9.

*palay* on third cropping, this is not regular.[66] Moreover, she averred that if ever the said landholding were planted with *palay* on third cropping and yields produce, the landowner is given her due share.[67]

After submission of their respective position papers, the PARAD promulgated a Decision dated April 14, 1998 dismissing both cases for lack of merit and evidence.[68]

***Rulings of the DARAB and the Court of Appeals***

The DARAB dismissed the appeal for lack of merit and affirmed the Decision of the PARAD *in toto*.[69] On Petition for Review under Rule 43 to the CA, the appellate court affirmed the ruling of the DARAB with respect to the issue of non-payment of lease rentals. On which basis, the CA dismissed the petition.

**Our Ruling**

***c) DARAB Case No. 7864 and d) DARAB Case No. 7865***

***DARAB Case No. 7864 should be dismissed for failure of Felisa to properly indicate the appealing party.***

With respect to the first case against Marcelina, we resolve to dismiss the appeal of Felisa. Section 5 of Rule 45 provides that the failure of the petitioner to comply, among others, with the contents of the petition for review on *certiorari* shall be sufficient ground for the dismissal thereof. Section 4 of the same rule mandates, among others, that the petition should state the full name of the appealing party as the petitioner. In this case, Felisa indicated in the caption as well as in the parties portion of the petition that she is the landowner. Even in the verification and certification of non-forum shopping, Felisa attested that she is the petitioner in the instant case. However, it appears in the PARAD records that the owners of the subject

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[66] *Id.*

[67] *Id.*

[68] *Id.* at 38-34.

[69] *Rollo*, p. 33.

14,000-square meter agricultural land are Rosa R. Pajarito (Pajarito), Elvira A. Madolora (Madolora) and Anastacia F. Lagado (Lagado).[70] Felisa is only the representative of the said landowners with respect to the first case against Marcelina.[71] Thus, for failure of Felisa to indicate the appealing party with respect to the said case, the appeal must perforce be dismissed. However, such failure does not affect the appeal on the other three cases as Felisa is the owner/co-owner of the landholdings subject of said three cases.

***Procedural lapse aside, DARAB Case No. 7864 should still be dismissed for failure of Felisa to establish her principals' claim.***

In her Complaint dated October 6, 1997, Felisa, in representation of landowners Pajarito, Madolora and Lagado, alleged that Pedro failed to pay the lease rental for the 14,000-square meter land for agricultural years 1995, 1996 and 1997.[72] Subsequently, Pedro died and his widow, Marcelina took over the tenancy and cultivation of the said land.[73] On the other hand, Marcelina sufficiently rebutted the allegation of non-payment by presenting evidence to show that the landowners' share was received by therein complainants' administrator, to wit:

Exhibit "1" – Receipt dated March 30, 1995 issued by Irene M. Aguinaldo evidencing receipt of their share of the produce of the subject land;

Exhibit "4" – Receipt dated October 21, 1995 issued by Irene M. Aguinaldo evidencing receipt of their share of the produce;

Exhibit "5" – Receipt dated March 23, 1996 issued by Irene M. Aguinaldo evidencing receipt of their share of the produce;

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[70] PARAD records, p. 4.

[71] *Id*.

[72] *Id*. at 3.

[73] *Id*.

Exhibit "7" – Receipt dated November 17, 1996 issued by Irene M. Aguinaldo evidencing receipt of their share of the produce;

Exhibit "8" – Receipt dated April 10, 1997 issued by Irene M. Aguinaldo evidencing receipt of their share of the produce;

We hence agree with the PARAD that therein complainants were unable to produce substantial proof to support their allegation of non-payment.

***DARAB Case No. 7865 should likewise be dismissed for failure of Felisa to establish her claim.***

With respect to the second case against Marcelina, Felisa alleged that the landholding in question is principally devoted to the planting of *palay* three times a year.[74] However, Marcelina did not deliver her share in the third cropping.[75]

In her Answer, Marcelina admitted that she is the tenant of the subject parcel of land co-owned by Felisa and Irene Aguinaldo.[76] Marcelina, however, averred that while it was true that there were times that the landholding was planted with *palay* on third cropping, this was not regular.[77] She further asserted that she would give to the landowners their due shares if ever there was third cropping.[78]

In an Order dated January 20, 1998, the PARAD directed the parties to submit their position papers, affidavits of witnesses and other evidence to support their respective claims.[79]

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[74] *Id.* at 2.

[75] *Id.*

[76] *Id.* at 11.

[77] *Id.*

[78] *Id.*

[79] *Id.* at 12.

Felisa submitted her position paper[80] for the four cases subject of this Decision, together with the Investigation Report of Estimada[81] and the affidavit of Camilo G. Taganas.[82] The Investigation Report declared that the former tenant who was the husband of Marcelina did not pay any rental to Felisa[83] because he recognized only the other co-owners of the land, who among others are the sisters of Felisa.[84] In addition, in the affidavit of Camilo G. Taganas, the authorized administrator of the subject parcel of land, he declared that Marcelina did not deliver the share of the landowners on the subject landholding.[85]

On the other hand, Marcelina filed her individual compliance, supported by the following affidavits and the purposes for which they were offered:

Exhibit "1" – Notice of threshing and reaping dated March 14, 1995 addressed to Mrs. Irene Aguinaldo, administrator and landowner of the property in question.

Exhibit "2" – Receipt dated March 30, 1995 issued by Mrs. Irene Aguinaldo acknowledging that respondent has duly complied with her obligations for this season.

Exhibit "3" – Notice of reaping and threshing dated Nov. 6, 1995 to the landowner.

Exhibit "4" – Receipt issued to respondent by Mrs. Irene Aguinaldo dated Nov. 10, 1995 acknowledging the fact that shares due to them was duly given and delivered.

Exhibit "5" – Receipt dated March 19, 1996 duly issued by Mrs. Irene Aguinaldo, the landowner/administrator of the subject property.

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[80] DARAB records, pp. 57-48.

[81] *Id.* at 46-45.

[82] *Id.* at 42.

[83] PARAD records, pp. 34-32.

[84] *Id.*

[85] *Id.* at 42.

Exhibit "6" – Notice of reaping and threshing dated March 5, 1996 to prove that respondent has been religiously fulfilling her obligations.

Exhibit "7" – Notice sent to Mrs. Aguinaldo dated Sept. 2, 1996 informing him that since they unreasonably refused to receive the shares due them, it was sold and the proceeds thereof was deposited in the bank.

Exhibit "8" – Notice of reaping and threshing dated Nov. 7, 1996 proving that respondent has been faithfully complying with her obligations.

Exhibit "9" – Acknowledgment and/or receipt duly issued by the landowner/administrator, Mrs. Irene Aguinaldo dated November 17, 1996 to prove that the obligations of the respondent for this date has been faithfully complied with.

Exhibit "10" – Receipt dated April 4, 1997 issued and signed by the landowner/administrator, Mrs. Irene Aguinaldo, acknowledging the delivery of the legal shares due them;

Exhibit "11" – Notice of threshing and reaping dated March 26, 1997 showing that obligations to do so was [sic]complied with.

Exhibit "12" – Notice of reaping and threshing dated Oct. 14, 1997 to prove that landowner of the landholding in question was duly notified.

Exhibit "13" – Certification from the office of the BARC and issued by the BARC Chairman himself attesting to the fact that shares due to landowners for Oct., 1997 was sold and deposited because of the unjustified refusal to receive them.

Exhibit "14" – Receipt bearing the amount which represents the legal shares of the landowners and deposited in the bank.

Exhibit "15" – The name of the bank "ROSBANK" from which the proceeds of the sold shares due to the landowner was deposited and it was deposited

by Pedro Solis and/or Marcelina Solis in the name of Irene Aguinaldo.

Exhibit "16" – The passbook with account no. T-01689-5, containing the amount deposited due to the landowners for those years stated therein.

Exhibit "17" – Leasehold contract or Tulag ti Panagabang ti Talon, executed by and between Irene Aguinaldo and Pedro Solis, landowner and tenant, respectively. The purpose is to prove that tenancy relationships exists and the same passes to respondent Marclina Solis, the surviving spouse of Pedro Solis upon his death.

Exhibit "18" – Investigation report conducted by the office of the BARC. The purpose of which is to show that the then tenant and now succeeded by his wife Marcelina Solis, has been duly complying with their obligations as bonafide tenant thereof.

Exhibit "19" – A sworn statement made by one Herminigildo P. Vinluan, a resident and landowner of the lot adjacent or adjoining to the subject property, attesting to the fact that the then tenant and now succeeded by herein respondent never failed to comply with their obligations.

Exhibit "20" – A sworn statement made by one Arsenio B. Orina, incumbent Brgy. Kgd. of the barangay where the property is located attesting that respondent is indeed the bonafide tenant of Mrs. Irene Aguinaldo.

Exhibit "21" – Affidavit of Valentine O. Costales, the incumbent BARC Chairman of Brgy. Amistad, Tayug, Pangasinan, proving and attesting the fact that Pedro Solis and now succeeded by his wife Marcelina Solis is the bonafide tenant of the subject landholding and that they are complying faithfully and religiously with their obligations as such.

Exhibit "22" – The sworn statement of Marcelina Solis, the respondent and successor of the former tenant, swearing to the Hon. Board and to the public, that she never failed or neglected any of the obligations imposed by law.

As held earlier, the petitioner, as agricultural lessor, has the burden of proof to show the existence of a lawful cause for the ejectment of an agricultural lessee. In the instant case, we have carefully studied the evidence presented by the petitioner and found the same wanting on the matter of third cropping over the subject land. Other than the bare allegations in her complaint before the PARAD, Felisa did not present any evidence to establish her claim that the subject agricultural land can regularly support a third cropping. Neither did she present evidence to establish that their leasehold agreement includes a provision on third cropping. Hence, her allegation of non-payment of the leasehold rentals for the third cropping likewise finds no support in evidence.

In addition, we find that the evidence presented by Felisa is inconsistent on major points. In her Complaint dated October 3, 1997, Felisa alleged that Marcelina is not delivering the shares of the land with respect to the third cropping.[86] However, the said statement is contradicted in the Estimada Investigation Report where it was indicated that Marcelina is not giving ***any*** rentals/ shares to Felisa.

The contention of non-payment of the leasehold shares of the landowner has been effectively rebutted by the evidence presented by Marcelina. Through Marcelina's evidence, we have established that she had regularly complied with the leasehold contract, as supported by:

1. Notice of Reaping dated March 14, 1995
   Receipt of Rental dated March 30, 1995 for 2nd crop 94-95
2. Notice of Reaping dated Nov. 6, 1995
   Receipt of Rental dated November 10, 1995 for 1st crop 95

[86] *Id.* at 2.

3. Notice of Reaping dated March 5, 1996
   Receipt of Rental dated March 19, 1996 for 2nd crop 95-96
4. Notice of Reaping dated November 7, 1996
   Receipt of Rental dated November 17, 1996 for 1st crop 96
5. Notice of Reaping dated March 26, 1997
   Receipt of Rental dated April 5, 1997 for 2nd crop 96-97
6. Notice of Reaping dated October 14, 1997
   Rental for 1st crop 1997 deposited in bank in land co-owner Irene Aguinaldo's name, as per BARC Certification dated October 27, 1997.

In addition, we have held earlier that the additional pieces of evidence Felisa attached and referred to in her Supplemental Motion for Reconsideration with Manifestation cannot be admitted as reception of new evidence is not within the office of a Motion for Reconsideration.

On the basis of the evidence presented, we cannot find sufficient evidence to support Felisa's claims. Hence, we agree with the factual findings of the CA and the agrarian tribunals that Felisa failed to discharge the burden of proving her claim with the necessary quantum of proof.

With respect to all four cases, petitioner further alleges that (1) the Decision of the DARAB dated January 27, 2004 and of the CA dated August 22, 2005 only disposed of the first case; and (2) the DARAB failed to issue a consolidation order informing the parties of the consolidation of the four appealed cases considering that these four cases have different parties and causes of action.[87]

Article VIII, Section 14 of the Constitution states that "no decision shall be rendered by any court without expressing clearly and distinctly the facts and the law on which it is based."Petitioner argues that the CA "practically closed its eyes" in affirming the Board's Decision.[88]

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[87] *Rollo*, p. 14.

[88] *Id.* at 13.

We do not agree. The Decision of the CA detailed the evidence presented by the parties. Thereafter, it weighed the respective pieces of evidence submitted by the petitioner and the respondent and chose the one that to its mind, deserved credence. Said Decision contained findings of facts as well as an application of case law. The Decision states, thus:

With respect to the issue of non-payment of lease rentals, We affirm the ruling of the DARAB as follows:

> With respect to Case No. 01-1567, we find [that] the allegations of complainant that respondent's husband, Pedro Solis, deliberately failed to pay lease rentals for the crop years 1995, 1996 and 1997 bereft of any evidence. The complainants were unable to produce any proof to prove their accusations.
>
> On the other hand, respondent has shown (be) substantial evidence that she or her husband have complied with the duties of lawful tenant. The evidence submitted by respondents (Exhibits "1" to "10") duly show that the representatives of the complainants, Mrs. Irene R. Aguinaldo, received the landowner's share for agricultural year 1995 to 1997. This is shown specifically by Exhibits "1", "4", "5", "7" and "8". Moreover, the complainants were informed of the date of reaping and threshing as shown by other evidence.
>
> As to case No. 01-1568, the Board again fails to find any evidence showing that respondent Marcelina Solis deliberately failed to deliver the produce for the third cropping. The bare allegations of the complainant are insufficient to prove that the said tenants have been remiss [sic] in her duties.
>
> Respondent Marcelina Solis, on the other hand, has substantially proven by her evidence her compliance with her obligation as a tenant. She has informed the complainants through their administrator, Mrs. Irene Aguinaldo, the date of threshing and reaping (Exhibits "1", "3", "6", "8", "11" and "12"). She also submitted evidence to show that the landowner's share is received by complainant's administrator (Exhibit "2", "4", "5", "9" and "10"). Other evidence submitted by respondent is Exh. "7", wherein she informed Mrs. Aguinaldo that she deposited the proceeds of the landowner's share with the bank because she (Mrs. Aguinaldo)

refused to received (sic) it *(Decision dated April 14, 1998, pp. 4-5, Rollo pp. 61-62).*

In appeals of agrarian cases, this Court cannot make its own factual findings and substitute the same for that of the DARAB, as the only function of this Court is to determine whether the DARAB's findings of fact are supported by substantial evidence *(Reyes vs. Reyes, 388 SCRA 471).* Substantial Evidence is that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion *(Resngit-Marquez vs. Llamas, Jr., 385 SCRA 6).*[89]

In any event, there was an earlier statement of the facts and the law involved in the decisions rendered by the PARAD dated April 8, 1998, April 13, 1998 and April 14, 1998. In these decisions, the facts and the law on which they were based were clearly and distinctly stated. Furthermore, in this case, the Court has exhaustively gone through the records and made its own findings of facts, rather than further delay the disposition of the case by remanding the records for further proceedings.

With regard to the issue of consolidation, we find in the records that although petitioner filed separate notices of appeal for the four cases, she but filed one consolidated Appeal Memorandum dated October 7, 1998 to the DARAB, putting into the caption all the appealed cases.[90] She persisted in consolidating the said cases in her Motion for Reconsideration of the DARAB Decision, Supplemental Motion for Reconsideration with Manifestation dated March 24, 2004,[91] Petition for Review dated December 6, 2004 to the CA,[92] Motion for Reconsideration (*ad cautelam*) dated September 13 2005[93] and the Petition for Review on *Certiorari* dated January 20, 2006 to this Court.[94] In all of these pleadings where petitioner

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[89] *Id.* at 24-25.

[90] DARAB records, pp. 65-63.

[91] *Id.* at 183-174.

[92] CA *rollo*, pp. 8-21.

[93] *Id.* at 116-126.

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

consolidated the said four cases, petitioner sought the jurisdiction of this Court and the agencies below for relief. Gainsaid on equitable ground of *estoppel*, she cannot now come to this Court assailing the consolidation of said cases, which was brought about by her own acts.

**WHEREFORE,** we partially *GRANT* the petition.

1. In *DARAB Case No. 7862*, we hereby *AUTHORIZE THE DISPOSSESSION* of respondents Domingo and Sergio Carganillo from the subject landholding.

2. In *DARAB Case No. 7863*, we *AFFIRM* the dismissal of the complaint against respondent *Soledad Agustin* for failure of the petition to establish her claim.

3. In *DARAB Case No. 7864*, we *AFFIRM* the dismissal of the complaint against respondent *Marcelina Solis* for failure of the petitioner to establish her claim and to properly indicate the appealing party in violation of Section 4 in relation to Section 5 Rule 45 of the Rules of Court.

4. In *DARAB Case No. 7865*, we *AFFIRM* the dismissal of the complaint against respondent *Marcelina Solis* for failure of the petitioner to establish her claim.

**SO ORDERED.**

*Carpio (Chairperson), Brion, Abad,* and *Perez, JJ.,* concur.

**EN BANC**

[G.R. No. 180050. May 12, 2010]

**RODOLFO G. NAVARRO, VICTOR F. BERNAL, and RENE O. MEDINA,** *petitioners, vs.* **EXECUTIVE SECRETARY EDUARDO ERMITA, representing the President of the Philippines; SENATE OF THE PHILIPPINES, represented by the SENATE PRESIDENT; HOUSE OF REPRESENTATIVES, represented by the HOUSE SPEAKER; GOVERNOR ROBERT ACE S. BARBERS, representing the Mother Province of Surigao del Norte; GOVERNOR GERALDINE ECLEO VILLAROMAN, representing the new Province of Dinagat Islands,** *respondents.*

**SYLLABUS**

**1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; CREATION OF THE PROVINCE; POPULATION REQUIREMENT NOT COMPLIED WITH IN THE CREATION OF DINAGAT ISLANDS; SPECIAL CENSUS OF POPULATION MUST BE CERTIFIED BY THE NATIONAL STATISTICS OFFICE.—** When the Dinagat Islands was proclaimed a new province on December 3, 2006, it had an *official* population of only **106,951** based on the 2000 Census of Population conducted by the National Statistics Office (NSO), which population is short of the statutory requirement of 250,000 inhabitants. Although the Provincial Government of Surigao del Norte conducted a special census of population in Dinagat Islands in 2003, which yielded a population count of 371,000, the result was not certified by the NSO as required by the Local Government Code. Moreover, respondents failed to prove that with the population count of 371,000, the population of the original unit (mother Province of Surigao del Norte) would not be reduced to less than the minimum requirement prescribed by law at the time of the creation of the new province. Less than a year after the proclamation of the new province, the NSO conducted the **2007** Census of Population. The NSO certified that as of August 1, 2007, Dinagat Islands had a total population of only **120,813**, which was still below the minimum requirement

of 250,000 inhabitants. Based on the foregoing, R.A. No. 9355 failed to comply with the population requirement of 250,000 inhabitants as certified by the NSO.

**2. ID.; ID.; ID.; ID.; LAND AREA REQUIREMENT NOT COMPLIED WITH IN THE CREATION OF THE DINAGAT ISLANDS; PARAGRAPH 2 OF ARTICLE 9 OF THE IMPLEMENTING RULES AND REGULATIONS DECLARED NULL AND VOID; IN CASE OF DISCREPANCY BETWEEN THE BASIC LAW AND THE RULES AND REGULATIONS IMPLEMENTING THE SAID LAW, THE BASIC LAW PREVAILS.—** Moreover, the land area of the province failed to comply with the statutory requirement of 2,000 square kilometers. R.A. No. 9355 specifically states that the Province of Dinagat Islands contains an approximate land area of 802.12 square kilometers. This was not disputed by the respondent Governor of the Province of Dinagat Islands in her Comment. She and the other respondents instead asserted that the province, which is composed of more than one island, is exempted from the land area requirement based on the provision in the Rules and Regulations Implementing the Local Government Code of 1991 (IRR), specifically paragraph 2 of Article 9 which states that "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands." The certificate of compliance issued by the Lands Management Bureau was also based on the exemption under paragraph 2, Article 9 of the IRR. However, the Court held that paragraph 2 of Article 9 of the IRR is null and void, because the exemption is not found in Section 461 of the Local Government Code. There is no dispute that in case of discrepancy between the basic law and the rules and regulations implementing the said law, the basic law prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law.

**3. ID.; ID.; ID.; ID.; LAND AREA REQUIREMENTS CONSTRUED.—** It must be emphasized that Section 7 [Chapter 2 of the local Government Code (entitled General Powers and attributes of local Government Units)], which provides for the general rule in the creation of a local government unit, states in paragraph (c) thereof that the land area must be contiguous **and** sufficient to provide for such basic services and facilities to meet the requirements of its populace. Therefore, there are two requirements for land area: (1) the land area must be contiguous;

and (2) the land area must be sufficient to provide for such basic services and facilities to meet the requirements of its populace. A sufficient land area in the creation of a province is at least 2,000 square kilometers, as provided by Section 461 of the Local Government Code. Thus, Section 461 of the Local Government Code, providing the requisites for the creation of a province, specifically states the requirement of "**a contiguous territory of at least two thousand (2,000) square kilometers.**" Hence, contrary to the arguments of both movants, the requirement of a contiguous territory and the requirement of a land area of at least 2,000 square kilometers are distinct and separate requirements for land area under paragraph (a) (i) of Section 461 and Section 7 (c) of the Local Government Code.

**4. ID.; ID.; ID.; ID.; EXEMPTION PROVIDED IN PARAGRAPH (B) OF SECTION 461 OF THE LOCAL GOVERNMENT CODE PERTAINS ONLY TO THE REQUIREMENT OF TERRITORIAL CONTIGUITY, NOT TO THE LAND AREA REQUIREMENT.—** However, paragraph (b) of Section 461 provides two instances of exemption from the requirement of territorial contiguity, thus: (b) **The territory need not be contiguous if it comprises two (2) or more islands, or is separated by a chartered city or cities which do not contribute to the income of the province**. Contrary to the contention of the movants, the exemption above pertains only to the requirement of territorial contiguity. It clearly states that the requirement of territorial contiguity may be dispensed with in the case of a province comprising two or more islands, or is separated by a chartered city or cities which do not contribute to the income of the province. **Nowhere in paragraph (b) is it expressly stated or may it be implied that when a province is composed of two or more islands, or when the territory of a province is separated by a chartered city or cities, such province need not comply with the land area requirement of at least 2,000 square kilometers or the requirement in paragraph (a) (i) of Section 461of the Local Government Code.**

**5. STATUTORY CONSTRUCTION; STATUTES; RULE WHEN THE LAW IS FREE FROM AMBIGUITY.—** Where the law is free from ambiguity, the court may not introduce exceptions or conditions where none is provided from considerations of convenience, public welfare, or for any laudable purpose; neither may it engraft into the law qualifications not contemplated, nor

construe its provisions by taking into account questions of expediency, good faith, practical utility and other similar reasons so as to relax non-compliance therewith. Where the law speaks in clear and categorical language, there is no room for interpretation, but only for application.

**6. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; CREATION OF THE PROVINCE; ANY DEROGATION OF OR DEVIATION FROM THE CRITERIA PRESCRIBED IN THE LOCAL GOVERNMENT CODE FOR THE CREATION OF A PROVINCE IS VIOLATIVE OF THE CONSTITUTION.—** As the law-making branch of the government, indeed, it was the Legislature that imposed the criteria for the creation of a province as contained in Section 461 of the Local Government Code. No law has yet been passed amending Section 461 of the Local Government Code, so only the criteria stated therein are the bases for the creation of a province. The Constitution clearly mandates that the criteria in the Local Government Code must be followed in the creation of a province; hence, any derogation of or deviation from the criteria prescribed in the Local Government Code violates Section 10, Article X of the Constitution.

**7. ID.; ID.; ID.; ID.; REPUBLIC ACT NO. 9355 CREATING THE PROVINCE OF DINAGAT ISLANDS DECLARED UNCONSTITUTIONAL FOR NON-COMPLIANCE WITH EITHER THE POPULATION OR TERRITORIAL REQUIREMENT FOR THE CREATION OF A PROVINCE.—** Contrary to the contention of the movants, the evidence on record proved that R.A. No. 9355 failed to comply with either the population or territorial requirement prescribed in Section 461 of the Local Government Code for the creation of the Province of Dinagat Islands; hence, the Court declared R.A. No. 9355 unconstitutional. In *Fariñas v. The Executive Secretary*, the Court held: Every statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law. It is equally well-established, however, that the courts, as guardians of the Constitution, have the inherent authority to determine whether a statute enacted by the legislature transcends the limit imposed by the fundamental law. And where the acts of the

other branches of government run afoul of the Constitution, it is the judiciary's solemn and sacred duty to nullify the same.

**8. ID.; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; WHERE THE ACTS OF OTHER BRANCHES OF THE GOVERNMENT GO BEYOND THE LIMIT IMPOSED BY THE CONSTITUTION, IT IS THE SACRED DUTY OF THE JUDICIARY TO NULLIFY THE SAME.—** [R.]A. No. 9355 was declared unconstitutional because there was utter failure to comply with either the population or territorial requirement for the creation of a province under Section 461 of the Local Government Code. The Court, while respecting the doctrine of separation of powers, cannot renege on its duty to determine whether the other branches of the government have kept themselves within the limits of the Constitution, and determine whether illegality attached to the creation of the province in question. To abandon this duty only because the Province of Dinagat Islands has began its existence is to consent to the passage of a law that is violative of the provisions of the Constitution and the Local Government Code, rendering the law and the province created null and void. The Court cannot tolerate such nullity to be in existence. Where the acts of other branches of the government go beyond the limit imposed by the Constitution, it is the sacred duty of the judiciary to nullify the same.

**PEREZ, *J., dissenting opinion:***

**1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; CREATION OF THE PROVINCE; INCOME AND TERRITORIAL REQUIREMENTS COMPLIED WITH IN THE CREATION OF THE PROVINCE OF DINAGAT ISLANDS; THE CONTIGUITY AND LAND AREA REQUIREMENTS CANNOT BE CONSIDERED SEPARATE AND DISTINCT FROM EACH OTHER.—** The creation of local government units is governed by Section 10, Article X of the Constitution which provides that, "(n)o province, city, municipality, or *barangay* may be created, divided, merged, abolished or its boundary substantially altered except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected." Correlatively, Section 461 of the Local Government Code

prescribes the criteria for the creation of a province xxx. Considered the most important factor insofar as the creation of a new province is concerned, the income requirement under the Local Government Code has been more than four-fold complied with, as may be gleaned from the Bureau of Local Government Finance Certification that, based on the 1991 constant prices, the average annual income of the Province of Dinagat Islands is ₱82,696,433.23. Despite its aggregate land area of 802.12 square kilometers only, the new province has also measured up to the territorial requirement since, being comprised of two or more islands, it is exempted from the contiguous 2,000 square-kilometer land mass prescribed under Section 461 (a)[i]. Although the exemption in paragraph (b) appears to extend only to the requirement of contiguity, I am convinced by Mr. Justice Antonio Eduardo B. Nachura's opinion that, from the tenor of the same provision, the contiguity and land area requirements cannot be considered separate and distinct from each other.

**2. ID.; ID.; ID.; ID.; ARTICLE 9 OF THE IMPLEMENTING RULES AND REGULATIONS DESERVES GREAT WEIGHT AND RESPECT.—** Compliance with the land area requirement by the Province of Dinagat Islands is cast in even relief when gauged from the clear and unambiguous language of the IRR which was formulated in accordance with Section 533 of the Local Government Code, by the Oversight Committee chaired by the Executive Secretary and composed of representatives from the Senate, the House of Representatives, the Cabinet and the leagues of local government units. Partaking the nature of executive construction xxx [Article 9 of the IRR] deserves great weight and respect. xxx

**3. ID.; ID.; ID.; ID.; ARTICLE 9 OF THE IMPLEMENTING RULES AND REGULATIONS IS NOT IN CONFLICT WITH THE CRITERIA FOR THE CREATION OF PROVINCES UNDER SECTION 461 OF THE LOCAL GOVERNMENT CODE.—** When viewed in the light of the legislative intent underlying Section 461 of the Local Government Code, xxx Article 9 of the IRR is not in conflict with the criteria for the creation of provinces ensconced in said provision of the basic law. Unlike Section 197 of *Batas Pambansa Blg*. 337, its counterpart provision in the predecessor of the present Local Government Code, Section 461 does not give equal premium to the income,

land area and population requirements for the creation of new provinces. This is readily evident from the fact that, after prescribing the ₱20,000,000.00 income requirement, Section 461 simply mandates compliance with either the requirement of a contiguous territory of 2,000 square kilometers ***or*** a population of not less than 250,000.

**4. ID.; ID.; ID.; ID.; FOR AS LONG AS THERE IS COMPLIANCE WITH THE INCOME REQUIREMENT, THE LAND AREA AND POPULATION REQUIREMENTS MAY BE OVERRIDDEN BY THE ESTABLISHED ECONOMIC VIABILITY OF THE PROPOSED PROVINCE.—** In exempting provinces composed of one or more islands from both the contiguity and land area requirements, Article 9 of the IRR cannot be considered inconsistent with the criteria under Section 461 of the Local Government Code. Far from being absolute regarding application of the requirement of "a contiguous territory of at least 2,000 square kilometers as certified by the Land Management Bureau," Section 461 allows for said exemption by providing, under paragraph (b) thereof, that "(t)he territory need not be contiguous if (the new province) comprises two or more islands or is separated by a chartered city or cities which do not contribute to the income of the province." For as long as there is compliance with the income requirement, the legislative intent is, after all, to the effect that the land area and population requirements may be overridden by the established economic viability of the proposed province.

**5. ID.; ID.; ID.; ID.; REQUISITES FOR THE CREATION OF NEW PROVINCES UNDER SECTION 461 OF THE LOCAL GOVERNMENT CODE OF 1991 AND SECTION 197 OF BP BLG. 337, DISTINGUISHED.—** Section 197 of *Batas Pambansa Blg.* 337, unlike Section 461 of the Local Government Code of 1991, gave equal premium to the income, land area and population requirements for the creation of new provinces. Even prescinding from the current decrease in population and land area requirement as well as the increase in the income requirement, it cannot, therefore, be validly argued that the requisites for the creation of a province under both laws are similar. Given the lesser importance accorded the land area and population under Section 461 of the present Local Government Code, I find that the propriety of applying the restrictive interpretation of the land area requirement in *Tan v.*

*COMELEC* to the creation of the Province of Dinagat Islands is not as cut and dried as the *ponencia* considered it to be. More so, when it is borne in mind that, unlike the one conducted for the proposed province of Negros Del Norte, the plebiscite conducted for said new province unquestionably complied with the Constitutional requirement of inclusion of "the political units directly affected."

**6. ID.; ID.; ID.; ID.; REPUBLIC ACT NO. 9355 CONSIDERED VALID.—** In ordaining the enactment of a local government code, Section 3, Article X of the Constitution envisioned one "which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization." Paying attention to this principle is Section 2(a) of the Local Government Code of 1991. xxx It was undoubtedly in the service of the foregoing principles and policies that the house bill creating the Province of Dinagat Islands was passed by Congress and enacted into law by the President. As an organic law, Republic Act No. 9355 also garnered the majority of the votes cast in the plebiscite conducted not only in the municipalities constituting the newly created province but also the parent province of Surigao Del Norte. During the May 14, 2007 synchronized National and Local Elections, the constituents of the Province of Dinagat Islands have, in fact, already elected their provincial officers who are about to complete their first term of office. The foregoing considerations were unduly brushed aside by the *ponencia* in one fell swoop when it invalidated Republic Act No. 9355 and the exception embodied in Article 9 of the IRR with a strict and narrow interpretation of Section 461 of the Local Government Code.

**7. STATUTORY CONSTRUCTION; STATUTES; COURTS WILL NOT FOLLOW THE LETTER OF THE STATUTE WHEN TO DO SO WOULD DEPART FROM THE TRUE INTENT OF THE LEGISLATIVE OR WOULD OTHERWISE YIELD CONCLUSIONS INCONSISTENT WITH THE GENERAL PURPOSE OF THE ACT.—** In the aforesaid December 21, 2009 Decision in the *League of Cities* case, the Court sagely ruled that "(t)he legislative intent is not at all times accurately reflected in the manner in which the resulting law is couched. Thus, applying a *verba legis* or strictly literal interpretation of a statute may render it meaningless and lead to inconvenience,

> an absurd situation or injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be to the rule that the spirit of the law controls its letter." Indeed, the forum for examining the wisdom of the law, and enacting remedial measures, is not this Court but the Legislature. Consequently, courts will not follow the letter of the statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the general purpose of the act.

**APPEARANCES OF COUNSEL**

*Victor F. Bernal* for petitioners.

*Edmundo L. Zerda* for respondent Gov. Robert Ace S. Barbers.

*Leonardo B. Palicte III* for respondent Jose De Venecia, Jr.

**R E S O L U T I O N**

**PERALTA, *J.*:**

Before us are two Motions for Reconsideration of the Decision dated February 10, 2010 - one filed by the Office of the Solicitor General (OSG) in behalf of public respondents, and the other filed by respondent Governor Geraldine Ecleo Villaroman, representing the Province of Dinagat Islands. The dispositive portion of the Decision reads:

> WHEREFORE, the petition is **GRANTED**. Republic Act No. 9355, otherwise known as *An Act Creating the Province of Dinagat Islands*, is hereby declared unconstitutional. The proclamation of the Province of Dinagat Islands and the election of the officials thereof are declared **NULL** and **VOID**. The provision in Article 9 (2) of the Rules and Regulations Implementing the Local Government Code of 1991 stating, "The land area requirement shall not apply where the proposed province is composed of one (1) or more islands," is declared **NULL** and **VOID**.

The arguments of the movants are similar. The grounds for reconsideration of Governor Villaroman can be subsumed

under the grounds for reconsideration of the OSG, which are as follows:

I.

The Province of Dinagat Islands was created in accordance with the provisions of the 1987 Constitution and the Local Government Code of 1991. Article 9 of the Implementing Rules and Regulations is merely interpretative of Section 461 of the Local Government Code.

II.

The power to create a local government unit is vested with the Legislature. The acts of the Legislature and Executive in enacting into law RA 9355 should be respected as petitioners failed to overcome the presumption of validity or constitutionality.

III.

Recent and prevailing jurisprudence considers the operative fact doctrine as a reason for upholding the validity and constitutionality of laws involving the creation of a new local government unit as in the instant case.

As regards the first ground, the movants reiterate the same arguments in their respective Comments that aside from the undisputed compliance with the income requirement, Republic Act (R.A.) No. 9355, creating the Province of Dinagat Islands, has also complied with the population and land area requirements.

The arguments are unmeritorious and have already been passed upon by the Court in its Decision, ruling that R.A. No. 9355 is unconstitutional, since it failed to comply with either the territorial or population requirement contained in Section 461 of R.A. No. 7160, otherwise known as the *Local Government Code of 1991*.

When the Dinagat Islands was proclaimed a new province on December 3, 2006, it had an *official* population of only **106,951** based on the 2000 Census of Population conducted by the National Statistics Office (NSO), which population is short of the statutory requirement of 250,000 inhabitants.

Although the Provincial Government of Surigao del Norte conducted a special census of population in Dinagat Islands in

2003, which yielded a population count of 371,000, the result was not certified by the NSO as required by the Local Government Code.[1] Moreover, respondents failed to prove that with the population count of 371,000, the population of the original unit (mother Province of Surigao del Norte) would not be reduced to less than the minimum requirement prescribed by law at the time of the creation of the new province.[2]

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[1] SEC. 7. *Creation and conversion*. – As a general rule, the creation of a local government unit or its conversion from one level to another shall be based on verifiable indicators of viability and projected capacity to provide services, to wit:

(a) Income. – It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;

(b) Population. – It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

(c) Land area. – It must be contiguous, unless it comprises two (2) or more islands, or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions and sufficient to provide for such basic services and facilities to meet the requirements of its populace.

**Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR**).

SEC. 461. *Requisites for Creation*. - (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices and either of the following requisites:

(i) a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau; or

(ii) **a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:**

***Provided*, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.** (Emphasis supplied.)

[2] *Id.*

Less than a year after the proclamation of the new province, the NSO conducted the **2007** Census of Population. The NSO certified that as of August 1, 2007, Dinagat Islands had a total population of only **120,813**,[3] which was still below the minimum requirement of 250,000 inhabitants.

Based on the foregoing, R.A. No. 9355 failed to comply with the population requirement of 250,000 inhabitants as certified by the NSO.

Moreover, the land area of the province failed to comply with the statutory requirement of 2,000 square kilometers. R.A. No. 9355 specifically states that the Province of Dinagat Islands contains an approximate land area of 802.12 square kilometers. This was not disputed by the respondent Governor of the Province of Dinagat Islands in her Comment. She and the other respondents instead asserted that the province, which is composed of more than one island, is exempted from the land area requirement based on the provision in the Rules and Regulations Implementing the Local Government Code of 1991 (IRR), specifically paragraph 2 of Article 9 which states that "[t]he land area requirement shall not apply where the proposed province is composed of one (1) or more islands." The certificate of compliance issued by the Lands Management Bureau was also based on the exemption under paragraph 2, Article 9 of the IRR.

However, the Court held that paragraph 2 of Article 9 of the IRR is null and void, because the exemption is not found in Section 461 of the Local Government Code.[4] There is no

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[3] Annex "AA", *rollo*, p. 498. (Emphasis supplied.)

[4] For comparison, Sec. 461 of the Local Government Code of 1991 and Art. 9 of the Rules and Regulations Implementing the Local Government Code of 1991 are reproduced:

**The Local Government Code**

SEC. 461. *Requisites for Creation*. " (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices **and either of the following requisites**:

dispute that in case of discrepancy between the basic law and the rules and regulations implementing the said law, the basic law prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law.[5]

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**(i) a contiguous territory of at least two thousand (2,000) square kilometers, as certified by the Lands Management Bureau;** or

(ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office: *Provided*, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) **The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.**

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income.

**Rules and Regulations Implementing the Local Government Code of 1991**

ART. 9. *Provinces*. — (a) Requisites for creation. — A province shall not be created unless the following requisites on income and either population or land area are present:

(1) Income — An average annual income of not less than Twenty Million Pesos (₱20,000,000.00) for the immediately preceding two (2) consecutive years based on 1991 constant prices, as certified by the DOF. The average annual income shall include the income accruing to the general fund, exclusive of special funds, special accounts, transfers, and non-recurring income; and

(2) Population or land area — Population which shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified by the National Statistics Office; or **land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by the LMB. The territory need not be contiguous if it comprises two (2) or more islands, or is separated by a chartered city or cities which do not contribute to the income of the province**. ***The land area requirement shall not apply where the proposed province is composed of one (1) or more islands.*** The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds. (Emphasis supplied.)

[5] *Hijo Plantation, Inc. v. Central Bank*, G.R. No. L-34526, August 9, 1988, 164 SCRA 192, 199.

The movants now argue that the correct interpretation of Section 461 of the Local Government Code is the one stated in the Dissenting Opinion of Associate Justice Antonio Eduardo B. Nachura.

In his Dissenting Opinion, Justice Nachura agrees that R.A. No. 9355 failed to comply with the population requirement. However, he contends that the Province of Dinagat Islands did not fail to comply with the territorial requirement because it is composed of a group of islands; hence, it is exempt from compliance not only with the territorial contiguity requirement, but also with the 2,000-square-kilometer land area criterion in Section 461 of the Local Government Code, which is reproduced for easy reference:

> SEC. 461. *Requisites for Creation*. — (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices and either of the following requisites:
>
> (i) a **contiguous territory of at least two thousand (2,000) square kilometers**, as certified by the Lands Management Bureau; or
>
> (ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:
>
> *Provided*, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.
>
> (b) **The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province**.
>
> (c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income.[6]

Justice Nachura contends that the stipulation in paragraph (b) qualifies not merely the word "contiguous" in paragraph

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[6] Emphasis supplied.

(a) (i) in the same provision, but rather the entirety of paragraph (a) (i) that reads:

(i) a **contiguous territory of at least two thousand (2,000) square kilometers**, as certified by the Lands Management Bureau[.][7]

He argues that the whole paragraph on contiguity and land area in paragraph (a) (i) above is the one being referred to in the exemption from the territorial requirement in paragraph (b). Thus, he contends that if the province to be created is composed of islands, like the one in this case, then, its territory need not be contiguous and need not have an area of at least 2,000 square kilometers. He asserts that this is because as the law is worded, contiguity and land area are not two distinct and separate requirements, but they qualify each other. An exemption from one of the two component requirements in paragraph (a) (i) allegedly necessitates an exemption from the other component requirement, because the non-attendance of one results in the absence of a reason for the other component requirement to effect a qualification.

Similarly, the OSG contends that when paragraph (b) of Section 461 of the Local Government Code provides that the "territory need not be contiguous if it comprises two (2) or more islands," it necessarily dispenses the 2,000-sq.-km. land area requirement, lest such exemption would not make sense. The OSG argues that in stating that a "territory need not be contiguous if it comprises two (2) or more islands," the law could not have meant to define the obvious. The land mass of two or more islands will never be contiguous as it is covered by bodies of water. It is then but logical that the territory of a proposed province that is composed of one or more islands need not be contiguous or be at least 2,000 sq. kms.

The Court is not persuaded.

Section 7, Chapter 2 (entitled *General Powers and Attributes of Local Government Units*) of the Local Government Code provides:

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[7] Emphasis supplied.

SEC. 7. *Creation and Conversion*. — As a general rule, the creation of a local government unit or its conversion from one level to another level **shall be based on verifiable indicators of viability and projected capacity to provide services, to wit**:

(a) **Income**. — It must be sufficient, based on acceptable standards, to provide for all essential government facilities and services and special functions commensurate with the size of its population, as expected of the local government unit concerned;

(b) **Population**. — It shall be determined as the total number of inhabitants within the territorial jurisdiction of the local government unit concerned; and

(c) **Land area**. — **It must be contiguous**, unless it comprises two (2) or more islands, or is separated by a local government unit independent of the others; properly identified by metes and bounds with technical descriptions; **and sufficient to provide for such basic services and facilities to meet the requirements of its populace**.

Compliance with the foregoing indicators shall be attested to by the Department of Finance (DOF), the National Statistics Office (NSO), and the Lands Management Bureau (LMB) of the Department of Environment and Natural Resources (DENR).[8]

It must be emphasized that Section 7 above, which provides for the general rule in the creation of a local government unit, states in paragraph (c) thereof that the land area must be contiguous **and** sufficient to provide for such basic services and facilities to meet the requirements of its populace.

Therefore, there are two requirements for land area: (1) the land area must be contiguous; and (2) the land area must be sufficient to provide for such basic services and facilities to meet the requirements of its populace. A sufficient land area in the creation of a province is at least 2,000 square kilometers, as provided by Section 461 of the Local Government Code.

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[8] Emphasis supplied.

Thus, Section 461 of the Local Government Code, providing the requisites for the creation of a province, specifically states the requirement of "**a contiguous territory of at least two thousand (2,000) square kilometers.**"

Hence, contrary to the arguments of both movants, the requirement of a contiguous territory and the requirement of a land area of at least 2,000 square kilometers are distinct and separate requirements for land area under paragraph (a) (i) of Section 461 and Section 7 (c) of the Local Government Code.

However, paragraph (b) of Section 461 provides two instances of exemption from the requirement of territorial contiguity, thus:

(b) **The territory need not be contiguous if it comprises two (2) or more islands, or is separated by a chartered city or cities which do not contribute to the income of the province**.[9]

Contrary to the contention of the movants, the exemption above pertains only to the requirement of territorial contiguity. It clearly states that the requirement of territorial contiguity may be dispensed with in the case of a province comprising two or more islands, or is separated by a chartered city or cities which do not contribute to the income of the province.

**Nowhere in paragraph (b) is it expressly stated or may it be implied that when a province is composed of two or more islands, or when the territory of a province is separated by a chartered city or cities, such province need not comply with the land area requirement of at least 2,000 square kilometers or the requirement in paragraph (a) (i) of Section 461 of the Local Government Code.**

Where the law is free from ambiguity, the court may not introduce exceptions or conditions where none is provided from considerations of convenience, public welfare, or for any laudable

[9] Emphasis supplied.

purpose;[10] neither may it engraft into the law qualifications not contemplated,[11] nor construe its provisions by taking into account questions of expediency, good faith, practical utility and other similar reasons so as to relax non-compliance therewith.[12] Where the law speaks in clear and categorical language, there is no room for interpretation, but only for application.[13]

Moreover, the OSG contends that since the power to create a local government unit is vested with the Legislature, the acts of the Legislature and the Executive branch in enacting into law R.A. No. 9355 should be respected as petitioners failed to overcome the presumption of validity or constitutionality.

The contention lacks merit.

Section 10, Article X of the Constitution states:

SEC. 10. **No province**, city, municipality, or *barangay* **may be created**, divided, merged, abolished, or its boundary substantially altered, **except in accordance with the criteria established in the local government code** and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected."[14]

As the law-making branch of the government, indeed, it was the Legislature that imposed the criteria for the creation of a province as contained in Section 461 of the Local Government Code. No law has yet been passed amending Section 461 of the Local Government Code, so only the criteria stated therein are the bases for the creation of a province. The Constitution clearly mandates that the criteria in the Local Government Code must be followed in the creation of a province; hence, any

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[10] *University of the Philippines Board of Regents v. Auditor General*, G.R. No. L-19617, October 31, 1969, 30 SCRA 5, 17.

[11] *Ramos v. Court of Appeals*, G.R. No. 53766, October 30, 1981, 108 SCRA 728.

[12] *Republic v. Go Ban Lee*, 111 Phil. 805 (1961).

[13] *Cebu Portland Cement Company v. Municipality of Naga, Cebu,* G.R. Nos. L-24116-17, August 22, 1968, 24 SCRA 708, 712; Ruben E. Agpalo, *Statutory Construction* (1986), p. 47.

[14] Emphasis supplied.

derogation of or deviation from the criteria prescribed in the Local Government Code violates Section 10, Article X of the Constitution.

Contrary to the contention of the movants, the evidence on record proved that R.A. No. 9355 failed to comply with either the population or territorial requirement prescribed in Section 461 of the Local Government Code for the creation of the Province of Dinagat Islands; hence, the Court declared R.A. No. 9355 unconstitutional.

In *Fariñas v. The Executive Secretary*,[15] the Court held:

> Every statute is presumed valid. The presumption is that the legislature intended to enact a valid, sensible and just law and one which operates no further than may be necessary to effectuate the specific purpose of the law.
>
> It is equally well-established, however, that the courts, as guardians of the Constitution, have the inherent authority to determine whether a statute enacted by the legislature transcends the limit imposed by the fundamental law. And where the acts of the other branches of government run afoul of the Constitution, it is the judiciary's solemn and sacred duty to nullify the same.

Citing *League of Cities of the Philippines v. Commission on Elections*,[16] the movants further contend that under the operative fact doctrine, the constitutionality of R.A No. 9355, creating the Province of Dinagat Islands, should be upheld.

The Court is not persuaded.

In *League of Cities of the Philippines v. Commission on Elections,* the Court held that the 16 cityhood laws, whose validity were questioned therein, were constitutional mainly because it found that the said cityhood laws merely carried out the intent of R.A. No. 9009, now Section 450 of the Local Government Code, to exempt therein respondents local government units (LGUs) from the ₱100 million income

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[15] 463 Phil. 179, 197 (2003).

[16] G.R. Nos. 176951, 177499 & 178056, December 21, 2009.

requirement, since the said LGUs had pending cityhood bills long before the enactment of R.A. No. 9009. Each one of the 16 cityhood laws contained a provision exempting the municipality covered from the ₱100 million income requirement.

In this case, R.A. No. 9355 was declared unconstitutional because there was utter failure to comply with either the population or territorial requirement for the creation of a province under Section 461 of the Local Government Code.

The Court, while respecting the doctrine of separation of powers, cannot renege on its duty to determine whether the other branches of the government have kept themselves within the limits of the Constitution, and determine whether illegality attached to the creation of the province in question. To abandon this duty only because the Province of Dinagat Islands has began its existence is to consent to the passage of a law that is violative of the provisions of the Constitution and the Local Government Code, rendering the law and the province created null and void. The Court cannot tolerate such nullity to be in existence. Where the acts of other branches of the government go beyond the limit imposed by the Constitution, it is the sacred duty of the judiciary to nullify the same.[17]

*Tan v. Comelec*[18] held:

x x x [T]he fact that such plebiscite had been held and a new province proclaimed and its officials appointed, the case before Us cannot truly be viewed as already moot and academic. Continuation of the existence of this newly proclaimed province, which petitioners strongly profess to have been illegally born, deserves to be inquired into by this Tribunal so that, if indeed, illegality attaches to its creation, the commission of that error should not provide the very excuse for perpetuation of such wrong. For this court to yield to the respondents' urging that, as there has been *fait accompli* then this Court should passively accept and accede to the prevailing situation, is an unacceptable suggestion. Dismissal of the instant petition, as respondents so propose, is a proposition fraught with mischief.

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[17] *Fariñas v. The Executive Secretary*, *supra* note 15.

[18] 226 Phil. 624, 637-638 (1986).

Respondents' submission will create a dangerous precedent. Should this Court decline now to perform its duty of interpreting and indicating what the law is and should be, this might tempt again those who strut about in the corridors of power to recklessly and with ulterior motives, create, merge, divide and/or alter the boundaries of political subdivisions, either brazenly or stealthily, confident that this Court will abstain from entertaining future challenges to their acts if they manage to bring about a *fait accompli*.

**WHEREFORE,** in view of the foregoing, the Motions for Reconsideration of the Decision dated February 10, 2010 are hereby *DENIED* for lack of merit.

**SO ORDERED.**

*Puno, C.J., Carpio, Carpio Morales, Brion, Del Castillo, Villarama, Jr.,* and *Mendoza, JJ.,* concur.

*Corona, Velasco, Jr., Nachura, Leonardo-de Castro, Bersamin,* and *Abad, JJ.,* join the dissent of *J.* Perez.

*Perez, J.,* see dissenting opinion.

## DISSENTING OPINION

**PEREZ, *J.*:**

Every statute has in its favor the presumption of constitutionality. This presumption is rooted in the doctrine of separation of powers which enjoins upon the three coordinate departments of the Government a becoming courtesy for each other's acts. The theory is that every law, being the joint act of the Legislature and the Executive, has passed careful scrutiny to ensure that it is in accord with the fundamental law. This Court, however, may declare a law, or portions thereof, unconstitutional, where a petitioner has shown a clear and unequivocal breach of the Constitution, not merely a doubtful or argumentative one. In other words, the grounds for nullity must be beyond reasonable doubt, for to doubt is to sustain.

The spirit of the foregoing pronouncements enunciated in ***Cawaling, Jr. v. Executive Secretary***[1] animates this dissent

[1] G.R. No. 146342, October 26, 2001.

to the denial of the motion for reconsideration of the February 10, 2010 *En Banc* Decision handed down in the case at bench, declaring as unconstitutional Republic Act No. 9355 as well as the provision in Article 9(b) of the Rules and Regulations Implementing the Local Government Code of 1991 which states that, "The land area requirement shall not apply where the proposed province is composed of one (1) or more islands."

The factual and procedural antecedents are not in dispute.

A group of islands composed of the municipalities of Basilisa, Cagdianao, Dinagat, Libjo, Loreto, San Jose and Tubajon with an aggregate land area of 802.12 square kilometers, the Dinagat Islands form part of the province of Surigao Del Norte alongside the Mainland, Surigao City, Siargao Island and Bucas Grande. In support of the house bill for the creation of the Dinagat Islands as a separate province, it appears that a special census conducted by the province of Surigao Del Norte and the National Statistics Office (NSO) District Census Coordinator in July 2003 yielded a population count of 371,576 inhabitants. With the certification from the Bureau of Local Government Finance that the proposed province had an average annual income of ₱82,696,433.23, the house bill for the creation of the Province of Dinagat Islands was passed by the Senate and House of Representatives on August 14, 2006 and August 28, 2006, respectively.

On October 2, 2006, President Gloria Macapagal-Arroyo approved and enacted said house bill into law as Republic Act No. 9355, entitled, "An Act Creating the Province of Dinagat Islands." The plebiscite conducted by the Commission on Elections (COMELEC) on December 3, 2006 in the local government units directly affected by the creation of the new province yielded 69,943 affirmative votes and 63,502 negative votes. Subsequent to the proclamation of said vote by the Plebiscite Provincial Board of Canvassers on December 3, 2006, the President appointed a new set of provincial officials who took their oath of office on January 26, 2007. In the May 14, 2007 synchronized National and Local Elections, the constituents of the new province

elected a new set of provincial officers who eventually assumed office on July 1, 2007.

Petitioners initially assailed the constitutionality of Republic Act No. 9355 in the petition for *certiorari* and prohibition docketed before the Court as G.R. No. 175158. Undaunted by the dismissal of said petition on technical grounds and the denial of their motion for reconsideration thereof, petitioners filed the petition for *certiorari* to which the case at bench traces its provenance. Reiterating the arguments in their previous petition, petitioners maintained that the law failed to comply with either the land area and population requirements prescribed under the Local Government Code of 1991. In addition to the invalidation of the law as unconstitutional, petitioners prayed for the nullification of the appointment and election of the provincial officers of Dinagat Islands as well as the return of its municipalities and districts to the province of Surigao Del Norte.

On February 10, 2010, a decision was rendered declaring Republic Act No. 9355 unconstitutional for failure to comply with the land area and population requirements under the Local Government Code, and giving short shrift to respondents' reliance on Article 9(b) of the Rules and Regulations Implementing the Local Government Code of 1991 (IRR) to the effect that the requirement of a contiguous territory of at least 2,000 square kilometers does not apply when the proposed province is composed of one or more islands. The decision invoked the case of *Tan v. COMELEC*[2] which declared that the term "territory" only refers to the mass of land area and excludes the waters over which the local government unit exercises control. Likewise brushing aside the result of the special census for lack of certification from the NSO, the decision also ruled that the population requirement was not complied with, based on the NSO 2000 Census of Population which pegged the official population of Dinagat Islands at 106,951.

After a circumspect consideration of the arguments for and against the validity of the creation of the Province of Dinagat

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[2] 142 SCRA 727.

Islands, I am convinced, with all due respect, that a reconsideration of the decision is in order.

The creation of local government units is governed by Section 10, Article X of the Constitution which provides that, "(n)o province, city, municipality, or *barangay* may be created, divided, merged, abolished or its boundary substantially altered except in accordance with the criteria established in the local government code and subject to approval by a majority of the votes cast in a plebiscite in the political units directly affected." Correlatively, Section 461 of the Local Government Code prescribes the criteria for the creation of a province in the following wise:

SEC. 461. *Requisites for Creation.* – (a) A province may be created if it has an average annual income, as certified by the Department of Finance, of not less than Twenty million pesos (₱20,000,000.00) based on 1991 constant prices and either of the following requisites:

(i) a contiguous territory of at least two thousand (2,000) square kilometers as certified by the Lands Management Bureau; or

(ii) a population of not less than two hundred fifty thousand (250,000) inhabitants as certified by the National Statistics Office:

*Provided*, That, the creation thereof shall not reduce the land area, population, and income of the original unit or units at the time of said creation to less than the minimum requirements prescribed herein.

(b) The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province.

(c) The average annual income shall include the income accruing to the general fund, exclusive of special funds, trust funds, transfers, and non-recurring income.

Considered the most important factor insofar as the creation of a new province is concerned, the income requirement under the Local Government Code has been more than four-fold complied with, as may be gleaned from the Bureau of Local Government Finance Certification that, based on the 1991 constant prices, the average annual income of the Province of

Dinagat Islands is ₱82,696,433.23. Despite its aggregate land area of 802.12 square kilometers only, the new province has also measured up to the territorial requirement since, being comprised of two or more islands, it is exempted from the contiguous 2,000 square-kilometer land mass prescribed under Section 461 (a)[i]. Although the exemption in paragraph (b) appears to extend only to the requirement of contiguity, I am convinced by Mr. Justice Antonio Eduardo B. Nachura's opinion that, from the tenor of the same provision, the contiguity and land area requirements cannot be considered separate and distinct from each other. As eloquently stated in his dissent:

> By rough analogy, the two components are like dicephalic conjoined twins – two heads are attached to a single body. If one head is separated from the other, then the twins die. In the same manner, the law, by providing in paragraph (b) of Section 461 that the territory need not be contiguous if the same is comprised of islands, must be interpreted as intended to exempt such territory from the land area component of 2,000 sq. km. Because the two component requirements are inseparable, the elimination of contiguity from the territorial criterion has the effect of a co-existent eradication of the land area component. The territory of the province of Dinagat Islands, therefore, comprising the major islands of Dinagat and Hibuson, and approximately 47 islets, need not be contiguous and need not have an area of at least 2,000 sq. km following Section 461 of the LGC.
>
> It will result in superfluity, if not absurdity, if paragraph (b) of the provision is interpreted as referring only to the component requirement of contiguity and not to both component requirements of contiguity and land area. This is because contiguity does not always mean contact by land. Thus, insofar as islands are concerned, they are deemed contiguous although separated by wide spans of navigable deep waters, with the exception of the high seas, because all lands separated by water touch one another, in a sense, beneath the water. The provision, then, as worded, only means that the exemption in paragraph (b) refers to both the components of territory, that is, contiguity and land area, and not merely the first, standing alone. For, indeed, why will the law still exempt the islands from the requirement of contiguity when they are already legally contiguous?

Compliance with the land area requirement by the Province of Dinagat Islands is cast in even relief when gauged from the

clear and unambiguous language of the IRR which was formulated in accordance with Section 533 of the Local Government Code, by the Oversight Committee chaired by the Executive Secretary and composed of representatives from the Senate,[3] the House of Representatives,[4] the Cabinet[5] and the leagues of local government units.[6] Partaking the nature of executive construction and, for said reason, deserving of great weight and respect,[7] Article 9 of the IRR distinctly provides as follows:

ART. 9. *Provinces.* – (a) *Requisites for creation.* — A province shall not be created unless the following requisites on income and either population or land area are present:

(1) Income — An average annual income of not less than Twenty Million Pesos (₱20,000,000.00) for the immediately preceding two (2) consecutive years based on 1991 constant prices, as certified by DOF. The average annual income shall include the income accruing to the general fund, exclusive of special funds, special accounts, transfers, and nonrecurring income; and

(2) Population or land area — Population which shall not be less than two hundred fifty thousand (250,000) inhabitants, as certified by NSO; or land area which must be contiguous with an area of at least two thousand (2,000) square kilometers, as certified by LMB. The territory need not be contiguous if it comprises two (2) or more islands or is separated by a chartered city or cities which do not contribute to the income of the province. The land area requirement shall not apply where the proposed province is composed

[3] Three Senators appointed by the Senate President, to include the Chairman of the Committee on Local Government.

[4] The Congressmen appointed by the Speaker, to include the Chairman of the Committee on Local Government.

[5] Secretary of Interior and Local Government, Secretary of Finance, Secretary of Budget and Management.

[6] One representative each from the League of Provinces, League of Cities, League of Municipalities and *Liga ng mga Barangay*.

[7] *Galarosa v. Valencia*, 227 SCRA 728.

> of one (1) or more islands. The territorial jurisdiction of a province sought to be created shall be properly identified by metes and bounds.
>
> The creation of a new province shall not reduce the land area, population, and income of the original LGU or LGUs at the time of said creation to less than the prescribed minimum requirements. All expenses incidental to the creation shall be borne by the petitioners.

Alongside declaring Republic Act No. 9355 as unconstitutional for non-compliance with the land area requirement, however, the ***ponencia*** also declared the underscored portion of the foregoing IRR provision null and void for going beyond the criteria prescribed by Section 461 of the Local Government. Citing the Court's November 18, 2008 ruling in *League of Cities of the Philippines v. COMELEC*,[8] it held that "(t)he Constitution requires that the criteria for the creation of a province, including any exemption from such criteria, must all be written in the Local Government Code." In case of discrepancy between the basic law and the rules and regulations implementing the same, the *ponencia* went on to state that, "the basic law prevails, because the rules and regulations cannot go beyond the terms and provisions of the basic law."

The *League of Cities* case concerned the constitutionality of sixteen cityhood laws, each converting the municipalities covered into a city, for non-compliance with Republic Act. No. 9009 which amended Section 450 of the Local Government Code by increasing the income requirement from ₱20,000,000.00 to ₱100,000,000.00 for a municipality to be converted into a component city. Initially declared unconstitutional in the aforesaid November 18, 2008 Decision, the constitutionality of the subject cityhood laws were eventually upheld in the December 21, 2009 Decision subsequently rendered in the case on the ground, among others, that the Local Government Code, despite its being the ideal repository for the same, need not be the only vessel of all the criteria for the creation of local government units. Taking into consideration the circumstances under which Republic Act

[8] 571 SCRA 263.

No. 9009 and said cityhood laws were enacted, the Court ruled as follows:

Legislative intent is part and parcel of the law, the controlling factor in interpreting a statute. In construing a statute, the proper course is to start out and follow the true intent of the Legislature and to adopt the sense that best harmonizes with the context and promotes in the fullest manner the policy and objects of the legislature. In fact, any interpretation that runs counter to the legislative intent is unacceptable and invalid. *Torres v. Limjap* could not have been more precise:

> 'The intent of a Statute is the Law. — If a statute is valid, it is to have effect according to the purpose and intent of the lawmaker. The intent is x x x the essence of the law and the primary rule of construction is to ascertain and give effect to that intent. The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the statute. Courts will not follow the letter of a statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the act. Intent is the spirit which gives life to a legislative enactment. In construing statutes the proper course is to start out and follow the true intent of the legislature.'

When viewed in the light of the legislative intent underlying Section 461 of the Local Government Code, I respectfully submit that Article 9 of the IRR is not in conflict with the criteria for the creation of provinces ensconced in said provision of the basic law. Unlike Section 197[9] of *Batas Pambansa Blg.* 337,

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[9] Sec. 197. Requisites for Creation. — A province may be created if it has a territory of at least three thousand five hundred square kilometers, a population of at least five hundred thousand pesos, an average estimated annual income, as certified by the Ministry of Finance, of not less than ten million pesos for the last three consecutive years, and its creation shall not reduce the population and income of the mother province or provinces at the time of said creation to less than the minimum requirements under this section. The territory need not be contiguous if it comprises two or more islands.

The average estimated annual income shall include the income allotted for both the general and infrastructure funds, exclusive of trust funds, transfers and nonrecurring income.

its counterpart provision in the predecessor of the present Local Government Code, Section 461 does not give equal premium to the income, land area and population requirements for the creation of new provinces. This is readily evident from the fact that, after prescribing the ₱20,000,000.00 income requirement, Section 461 simply mandates compliance with either the requirement of a contiguous territory of 2,000 square kilometers ***or*** a population of not less than 250,000. Already quoted in Justice Nachura's dissent to the *ponencia*, the following transcript of the congressional deliberations on the house bill from which the present Local Government Code originated is particularly enlightening regarding the legislative intent for said new requirements, *viz*.:

HON. ALFELOR: Income is mandatory. We can even have this doubled because we thought…

CHAIRMAN CUENCO: In other words, the primordial considerations here is the economic viability of the new local government unit, the new province?

x x x x x x x x x

HON. LAGUADA: The reason why we are willing to increase the income, double than the House version, because we also believe that economic viability is really a minimum. Land area and population are functions really of the viability of the area, because where you have an income level which would be the trigger point for economic development, population will naturally increase because there will be an immigration. However, if you disallow the particular area from being converted into a province because of population problems in the beginning, it will never be able to reach the point where it could become a province simply because it will never have the economic take off for it to trigger off that economic development.

Now, we are saying that maybe Fourteen Million Pesos is a floor area where it could pay for overhead, and provide a minimum of basic services to the population. Over and above that, the provincial officials should be able to trigger off economic development which will attract new investments from the private sector. This is now the concern of their local officials. But if we are going to tie the hands of the proponents, simply by telling them, 'Sorry, you are now

at 150 thousand or 200,000 thousand,' you will never be able to become a province because nobody wants to go to that place. Why? Because you never have any reason for economic viability.

x x x x x x x x x

CHAIRMAN PIMENTEL: Okay, what about land area?

HON. LUMAUIG: 1,500 square kilometers.

HON. ANGARA: *Walang problema yon*, that's not very critical, '*yong* land area because…

CHAIRMAN PIMENTEL: Okay, ya, our, the Senate version is 3.5, 3,500 square meters, ah, square kilometers.

HON. LAGUADA: Ne, Ne. A province is constituted for the purpose of administrative efficiency and delivery of basic services.

CHAIRMAN PIMENTEL: Right.

HON. LAGUADA: Actually, when you come down to it, when government was instituted, there is only one central government and then everybody falls under that. But it was later on subdivided into provinces for purposes of administrative efficiency.

CHAIRMAN PIMENTEL: Okay.

HON. LAGUADA: Now, what we're seeing now is that the administrative efficiency is no longer there because the land areas that we are giving to our governors is so wide that no one man could possibly administer all of the complex machineries that are needed.

Secondly, when you say 'delivery of basic services,' as pointed out by Cong. Alfelor, there are sections of the province which have never been visited by public officials precisely because they don't have the time nor the energy anymore because it is so wide. Now, by compressing the land area and by reducing the population requirement, we are, in effect, trying to follow the basic policy of why we are creating provinces, which is to deliver basic services and to make it more efficient in administration.

CHAIRMAN PIMENTEL: Yeah, that's correct, but on the assumption that the province is able to do it without being a burden to the national government. That's the assumption.

HON. LAGUADA: That's why we're going into the minimum income level. As we said, if we go on a minimum income level, then we say, 'this is the trigger point at which this administration can take place.'

In exempting provinces composed of one or more islands from both the contiguity and land area requirements, Article 9 of the IRR cannot be considered inconsistent with the criteria under Section 461 of the Local Government Code. Far from being absolute regarding application of the requirement of "a contiguous territory of at least 2,000 square kilometers as certified by the Land Management Bureau," Section 461 allows for said exemption by providing, under paragraph (b) thereof, that "(t)he territory need not be contiguous if (the new province) comprises two or more islands or is separated by a chartered city or cities which do not contribute to the income of the province." For as long as there is compliance with the income requirement, the legislative intent is, after all, to the effect that the land area and population requirements may be overridden by the established economic viability of the proposed province.

In the aforesaid December 21, 2009 Decision in the *League of Cities* case, the Court sagely ruled that "(t)he legislative intent is not at all times accurately reflected in the manner in which the resulting law is couched. Thus, applying a *verba legis* or strictly literal interpretation of a statute may render it meaningless and lead to inconvenience, an absurd situation or injustice. To obviate this aberration, and bearing in mind the principle that the intent or the spirit of the law is the law itself, resort should be to the rule that the spirit of the law controls its letter." Indeed, the forum for examining the wisdom of the law, and enacting remedial measures, is not this Court but the Legislature.[10] Consequently, courts will not follow the letter of the statute when to do so would depart from the true intent of the legislature or would otherwise yield conclusions inconsistent with the general purpose of the act.[11]

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[10] *Peñera v. COMELEC,* G.R. No. 181613, November 25, 2009.

[11] *Mariano v. COMELEC*, G.R. Nos. 118577 and 118627, March 7, 1995.

Without taking into consideration the aforesaid legislative intent, the *ponencia* clearly resorted to a strict *verba legis* interpretation in invalidating the portion of Article 9 of the IRR which states that, "The land area requirement shall not apply where the proposed province is composed of one (1) or more islands." In determining that the Province of Dinagat Islands failed to comply with the land area requirement, it also relied heavily on the Court's pronouncements in *Tan v. COMELEC*[12] where the principal issue was, however, the invalidity of the creation of the province of Negros Del Norte on account of the fact that the plebiscite therefor conducted did not include the parent province of Negros Oriental. Although the collateral issue of compliance with the land area requirement was resolved pursuant to Section 197 of *Batas Pambansa Blg.* 337 and not Section 461 of the present Local Government Code, the *ponencia* further ruled that the requirements under both laws are similar and that there is no reason for a change in the definitions, usage or meaning of the terms "territory" and "contiguous" in said laws.

As hereinbefore observed, however, Section 197 of *Batas Pambansa Blg.* 337, unlike Section 461 of the Local Government Code of 1991, gave equal premium to the income, land area and population requirements for the creation of new provinces. Even prescinding from the current decrease in population and land area requirement as well as the increase in the income requirement, it cannot, therefore, be validly argued that the requisites for the creation of a province under both laws are similar. Given the lesser importance accorded the land area and population under Section 461 of the present Local Government Code, I find that the propriety of applying the restrictive interpretation of the land area requirement in *Tan v. COMELEC* to the creation of the Province of Dinagat Islands is not as cut and dried as the *ponencia* considered it to be. More so, when it is borne in mind that, unlike the one conducted for the proposed province of Negros Del Norte, the plebiscite conducted for said new province unquestionably complied with

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[12] *Supra*.

the Constitutional requirement of inclusion of "the political units directly affected."

In ordaining the enactment of a local government code, Section 3, Article X of the Constitution envisioned one "which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization." Paying attention to this principle, Section 2(a) of the Local Government Code of 1991 provides as follows:

> Sec. 2 Declaration of Policy – (a) It is hereby declared the policy of the State that the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities and make them more effective partners in the attainment of national goals. Towards this end, the State shall provide for a more responsive and accountable local government structure instituted through a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources. The process of decentralization shall proceed from the National Government to the local government units.

To my mind, it was undoubtedly in the service of the foregoing principles and policies that the house bill creating the Province of Dinagat Islands was passed by Congress and enacted into law by the President. As an organic law, Republic Act No. 9355 also garnered the majority of the votes cast in the plebiscite conducted not only in the municipalities constituting the newly created province but also the parent province of Surigao Del Norte. During the May 14, 2007 synchronized National and Local Elections, the constituents of the Province of Dinagat Islands have, in fact, already elected their provincial officers who are about to complete their first term of office. The foregoing considerations were unduly brushed aside by the *ponencia* in one fell swoop when it invalidated Republic Act No. 9355 and the exception embodied in Article 9 of the IRR with a strict and narrow interpretation of Section 461 of the Local Government Code.

**THIRD DIVISION**

[G.R. No. 178202. May 14, 2010]

**PEOPLE OF THE PHILIPPINES,** *plaintiff-appellee, vs.* **NORMAN SITCO and RAYMUNDO BAGTAS (deceased),** *accused-appellants.*

**SYLLABUS**

**1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TO BE BELIEVED, TESTIMONIAL EVIDENCE SHOULD COME ONLY FROM THE MOUTH OF A CREDIBLE WITNESS.—** Sitco's assault on the credibility of Buan is well-taken. As it were, Buan's involvement as a police officer in illegal drug activities makes him a polluted source and renders his testimony against Sitco and Bagtas suspect, at best. It is like a pot calling a kettle black. To be believed, testimonial evidence should come only from the mouth of a credible witness. Given his service record, Buan can hardly qualify as a witness worthy, under the limited confines of this case, of full faith and credit. And lest it be overlooked, Buan is a rogue cop, having, per his own admission, been arrested for indulging in a pot session, eventually charged and dismissed from the police service. It would appear, thus, that Buan's had been a user. His arrest for joining a pot session only confirms this undesirable habit.

**2. ID.; ID.; PROOF BEYOND REASONABLE DOUBT; WHEN CONFRONTED WITH CIRCUMSTANCES THAT WOULD SUPPORT A REASONABLE DOUBT IN FAVOR OF THE ACCUSED, THE ACQUITTAL OR THE LEAST LIABILITY IS IN ORDER.—** The Court, to be sure, has taken stock of the well-settled rule that prosecutions involving illegal drugs depend largely on the credibility of police buy-bust operators, and that the trial court's finding on the police-witness' credibility deserves respect. Juxtaposed with this rule, however, is the postulate that when confronted with circumstances that would support a reasonable doubt in favor of the accused, then acquittal or the least liability is in order. Buan's involvement in drugs and his alleged attempt to extort money from appellant Sitco in exchange for his freedom has put his credibility under a heavy cloud. The imperative of proof beyond reasonable doubt

has a vital role in our criminal justice system, the accused, during a criminal prosecution, having a stake interest of immense importance, both because of the possibility that he may lose his freedom if convicted and because of the certainty that his conviction will leave a permanent stain on his reputation and name.

**3. CRIMINAL LAW; REPUBLIC ACT 9165; CHAIN OF CUSTODY RULE; PURPOSE OF THE PROCEDURAL REQUIREMENT; IDENTIFICATION OF THE PROHIBITED DRUGS SEIZED MUST BE ESTABLISHED WITH MORAL CERTAINTY.—** In prosecutions involving narcotics and other illegal substances, the substance itself constitutes part of the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Of chief concern in drug cases then is the requirement that the prosecution prove that what was seized by police officers is the same item presented in court. This identification, as we have held in the past, must be established with moral certainty and is a function of the rule on chain of custody. The chain of custody requirement is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.

**4. ID.; ID.; ID.; MISSING LINKS IN THE CHAIN OF CUSTODY OF EVIDENCE RAISE DOUBT AS TO THE IDENTITY OF THE SEIZED DRUG AND THEIR EVIDENTIARY VALUE.—** From the narration and an examination of the records, a number of disturbing questions arise as to the identification and handling of the prohibited drugs seized. It is unclear at the outset whether Buan himself made the inventory of the seized items. There is no detail as to who brought the specimens to the forensic laboratory and who received it prior to the examination by the forensic chemist. It is also uncertain who took custody of the specimens before they were presented as evidence in court. There are, thus, glaring gaps or missing links in the chain of custody of evidence, raising doubt as to the identity of the seized items and necessarily their evidentiary value. This broken chain of custody is especially significant given that what are involved are fungible items that may be easily altered or tampered with. It cannot be over-emphasized that pertinent provisions of RA 9165 require that the seized illegal items shall, after their

inventory, be photographed in the presence of the drug dealer, representatives of media, the Department of Justice, or any elected public official who participated in the operation. The records do not yield an indication that this particular requirement has been complied with. The Court reiterates that, on account of the built-in danger of abuse that it carries, a buy-bust operation is governed by specific procedures on the seizure and custody of drugs, separately from the general law procedures geared to ensure that the rights of persons under criminal investigation and of the accused facing a criminal charge are safeguarded. To reiterate, the chain of custody requirement is necessary in order to remove doubts as to the identity of the evidence, by monitoring and tracking custody of the seized drugs from the accused, until they reach the court. We find that the procedure and statutory safeguards prescribed for compliance by drug enforcement agencies have not been followed in this case. A failure to comply with the aforequoted Sec. 21(1) of RA 9165 implies a concomitant failure on the part of the prosecution to establish the identity of the seized illegal items as part of the *corpus delicti*.

**5. ID.; ID.; ID.; NON-COMPLIANCE THEREWITH NOT FATAL PROVIDED THE PROSECUTION RECOGNIZES AND EXPLAINS THE LAPSES IN THE PRESCRIBED PROCEDURES.—** Although the non-presentation of some of the witnesses who can attest to an unbroken chain of custody of evidence may, in some instances, be excused, there should be a justifying factor for the prosecution to dispense with their testimonies. In *People v. Denoman*, the Court discussed the saving mechanism provided by Sec. 21(a), Article II of the Implementing Rules and Regulations of RA 9165. *Denoman* explains that the aforementioned provision contains a saving mechanism to ensure that not every case of non-compliance will permanently prejudice the prosecution's case. The saving mechanism applies when the prosecution recognizes and explains the lapse or lapses in the prescribed procedures. In this case, the prosecution did not even acknowledge and discuss the reasons for the missing links in the chain.

**6. ID.; ID.; ID.; THE FAILURE TO OFFER THE TESTIMONY OF KEY WITNESSES TO ESTABLISH A SUFFICIENTLY COMPLETE CHAIN OF CUSTODY OF THE PROHIBITED DRUGS SEIZED AND THE IRREGULARITY IN THE**

**HANDLING OF THE EVIDENCE, FATALLY CONFLICTS WITH EVERY PROPOSITION RELATIVE TO THE CULPABILITY OF THE ACCUSED.—** To reiterate, in prosecutions involving dangerous drugs, the substance itself constitutes the key part of the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt. Taken with the uncorroborated testimony of Buan, the broken chain of custody over the *marijuana* and *shabu* in the instant case creates reasonable doubt on accused-appellant's guilt. In a string of cases, we declared that the failure of the prosecution to offer the testimony of key witnesses to establish a sufficiently complete chain of custody of a specimen of *shabu*, and the irregularity which characterized the handling of the evidence before it was finally offered in court, fatally conflicts with every proposition relative to the culpability of the accused.

**7. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; PRESUMPTION THAT OFFICIAL DUTIES HAVE BEEN REGULARLY PERFORMED CANNOT APPLY WHERE THE PROSECUTION FAILED TO ABIDE BY THE RULES ON THE CHAIN OF CUSTODY.—** Given the prosecution's failure to abide by the rules on the chain of custody, the evidentiary presumption that official duties have been regularly performed cannot apply to this case. This presumption, it must be emphasized, is not conclusive. Not only is it rebutted by contrary proof, as here, but it is also inferior to the constitutional presumption of innocence. On this score, we have held that while an accused's defense engenders suspicion that he probably perpetrated the crime charged, it is not sufficient for a conviction that the evidence establishes a strong suspicion or probability of guilt. It is the burden of the prosecution to overcome the presumption of innocence by presenting the quantum of evidence required. This quantum of evidence has not been met in the instant case.

**APPEARANCES OF COUNSEL**

*The Solicitor General* for plaintiff-appellee.
*Public Attorney's Office* for accused-appellants.

## D E C I S I O N

**VELASCO, JR., *J.*:**

This is an appeal from the October 19, 2006 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00038 entitled *People of the Philippines v. Norman Sitco y De Jesus and Raymundo Bagtas y Caparas*, which affirmed the Decision of the Regional Trial Court (RTC), Branch 72 in Malabon, in Criminal Case Nos. 19456-MN to 19459-MN for violation of Sections 15 and 16 of Republic Act No. (RA) 6425 or *The Dangerous Drugs Act of 1972*. The affirmed RTC decision adjudged accused-appellants Raymundo Bagtas and Norman Sitco guilty in Crim. Case No. 19456-MN for drug pushing and sentenced them to *reclusion perpetua*. For illegal possession of drugs, Bagtas was sentenced to two months and one day of *arresto mayor*, as minimum, to one year and one day of *prision correccional*, as maximum, in Crim. Case No. 19458-MN, and *reclusion perpetua* in Crim. Case No. 19459-MN. While the RTC convicted Sitco in Crim. Case No. 19457-MN, the CA would later overturn his conviction in this case.

### The Facts

In Crim. Case No. 19456-MN, Sitco and Bagtas were charged with drug pushing in an information reading:

> That on or about the 11th day of May 1998, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being private persons and without authority of law, conspiring[,] confederating and mutually helping with one another, did then and there willfully, unlawfully and feloniously sell and deliver, in consideration of the sum of ₱2,000.00+, most of which were boodle or fake money to a poseur buyer[,] two (2) heat-sealed transparent plastic bags containing white crystalline substance with net weight of 108.40 grams and 105.84 grams respectively, which substance when subjected to chemistry examination gave positive result for Methamphetamine Hydrochloride, otherwise known as "*Shabu*," a regulated [drug].[1]

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[1] CA *rollo*, p. 27.

The other informations for illegal possession of drugs that were separately filed against either Sitco or Bagtas read as follows:

**Crim. Case No. 19457-MN against Sitco (illegal possession)**

That on or about the 11th day of May 1998, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being [a] private person and without authority of law, did then and there willfully, unlawfully and feloniously have in [his] possession, custody and control One (1) heat-sealed transparent plastic bag, containing white crystalline substance with net weight of 20.29 grams, which substance when subjected to chemistry examination gave positive result for Methamphetamine Hydrochloride otherwise known as "*Shabu*," a regulated drug.[2]

**Crim. Case No. 19458-MN against Bagtas (illegal possession)**

That on or about the 11th day of May 1998, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being [a] private person and without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control One (1) heat-sealed transparent plastic bag, containing white crystalline substance with net weight of 1.31 grams, which substance when subjected to chemistry examination gave positive result for Methamphetamine Hydrochloride otherwise known as "*Shabu*," a regulated drug.

**Crim. Case No. 19459-MN against Bagtas (illegal possession)**

That on or about the 11th day of May 1998, in Navotas, Metro Manila, and within the jurisdiction of this Honorable Court, the above-named accused, being [a] private person and without authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control One (1) brick of suspected marijuana with net weight of 887.01 grams, which is a regulated drug.[3]

During the arraignment, both accused-appellants entered a "not guilty" plea to all the charges. A joint trial then ensued.

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[2] *Id.* at 28.

[3] *Id.* at 29.

**Version of the Prosecution**

From the testimony of the prosecution witness, Police Officer 3 (PO3) Alex Buan, the following version is gathered:

Acting on a tip from an informant, Senior Inspector Gatlet of the Navotas Police Station ordered the conduct of a buy-bust operation against accused-appellants, who were allegedly selling illegal drugs on Espina St. in Navotas, Metro Manila. The team consisted of Buan, as poseur-buyer, a confidential informant, and several police operatives as back-up. Marked money, consisting of four (4) PhP 500 bills for a total of PhP 2,000 and boodles or fake money amounting to PhP 196,000, was prepared.

On May 11, 1998 at 11:15 in the evening, the team proceeded to a house in the target place where Bagtas answered the knocking of the door. Thereupon, the confidential informant introduced him to Buan who, then and there, expressed his desire to buy *shabu*. Bagtas replied that he did not have enough supply of *shabu*, but manifested that *marijuana* was available. Buan, however, insisted on buying only *shabu*.[4]

Bagtas informed Buan that someone would be delivering more *shabu*. After waiting for a few minutes, a man, who turned out to be Sitco, arrived. After the usual introductions, Sitco told Buan to follow him to his motorcycle. He asked for the payment and took out a bag with two plastic bags of *shabu* inside. Buan examined the contents, then identified himself as a police officer, and arrested Sitco. The back-up officers joined the scene and frisked Sitco and Bagtas. Sitco was found to have in his possession a loaded caliber .38 *paltik* revolver, the buy-bust money, and more *shabu*. Bagtas had in his possession marijuana and *shabu*.[5]

The seized items were sent to Forensic Chemist Grace N. Eustaquio for laboratory examination and were found positive for *shabu* and *marijuana* per Physical Science No. D-411-98.

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[4] *Id.* at 30.

[5] *Id.* at 31.

During trial, Buan identified accused-appellants, the four (4) PhP 500-bill marked money used, the *shabu* confiscated from both accused-appellants, and the *marijuana* seized from Bagtas. Buan explained during his testimony that the boodle money placed in-between the genuine marked money the buy-bust team used was unavailable as it had been confiscated by a policeman named "Barlin" when he himself (Buan) was arrested for violating Sec. 27 of the Dangerous Drugs Act.[6]

**Version of the Defense**

The evidence for the defense consists of the testimonies of Sitco and Bagtas.

Bagtas branded as fabricated the accusations against him and Sitco. According to him, on the day of the alleged buy-bust operation, he was busy cleaning his motorcycle when, all of a sudden, policemen, led by Buan, entered his house. Buan came armed with an armalite rifle and a .45 caliber pistol, but did not show any document to justifying the police officers' entry into his (Bagtas') home. The intruders pointed guns at Bagtas, his common-law wife, his nephew, a certain Boy Macapagal, a certain Malou, a helper in his store, a girl applying for work as a househelper, and Sitco, who was visiting Buan at the time. They were ordered to lie face down as Bagtas' house was being searched. He was told that he was a suspect in the killing of a Navotas policeman named Ira. After the search was done, no illegal drugs were found. Yet the police officers took his camera, tape recorder, and the cash from his store's sales. The pieces of jewelry they were wearing, including his ring and necklace, were also confiscated. Afterwards, all of them were handcuffed and asked to board the police officers' vehicles. Two motorcycles belonging to Sitco and Bagtas were also seized.[7]

At the police headquarters, Buan and the other police officers demanded payment for the release of Bagtas' group. After some haggling, the group relented and paid some amount for

[6] *Id.*

[7] *Id.* at 32.

their freedom. Sitco and Bagtas, however, were detained. Instead, they were handcuffed to a steel post after being blindfolded by the police.[8] Bagtas overheard the police officers dividing the jewelry among them. He was then beaten along with Sitco to extort money for their release. The police officers eventually told them to pay a reduced amount, which they still could not afford to give. Complaints were thus filed against them, with the police officers manufacturing the evidence used by the prosecution. Bagtas ended his testimony with a declaration that he was filing complaints against the police officers once he was released from detention.[9]

Sitco corroborated Bagtas' testimony, adding that Buan had already been dismissed from the service.[10] He testified that the police officers frisked him and confiscated his wallet, watch, ring, and motorbike. He was told that they were suspects in the killing of a Navotas policeman. At the headquarters, he claimed being tortured. Eventually, he fell asleep. When he woke up, he saw Buan with two others sniffing *shabu*. He declined Buan's invitation to join the session. The police officer likewise instructed him to produce PhP 100,000 for his release. Sitco informed Buan that he could not afford the amount. The next day, May 12, Buan took some *shabu* from the cabinet and told Sitco that the charge against him would push through if he did not pay. Sitco was also warned about the difficulty of posting bail once charged. Since he could not raise the money, the police officers brought him to the prosecutor's office for inquest where manufactured evidence allegedly taken from him and Bagtas were shown to the fiscal.[11] On cross-examination, he admitted to having been previously arrested for possession of *shabu* and violation of Presidential Decree No. 1866.[12]

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[8] *Id.* at 32-33.

[9] *Id.* at 33.

[10] *Id.*

[11] TSN, July 22, 1999, pp. 5-14.

[12] *Id.* at 17.

**Ruling of the Trial Court**

The RTC gave full credence to the testimony of Buan and, mainly on that basis, convicted Bagtas and Sitco of the crimes charged.

The dispositive portion of the RTC Decision[13] reads:

> WHEREFORE, premises considered, judgment is hereby rendered finding the two accused, namely Norman Sitco *y* de Jesus and Raymundo Bagtas *y* Caparas guilty beyond reasonable doubt of the offenses charged against them in these cases. In the absence of any mitigating or aggravating circumstances and applying the provisions of the Indeterminate Sentence Law (where applicable), the two accused are hereby sentenced as follows:
>
> 1) In *Crim. Case No. 19456-MN:* for drug pushing under Section 15, Article III, RA 6425, as amended by RA 7659, involving more than 200 grams of *shabu*, for each of them to suffer imprisonment of *reclusion perpetua* and for each of them to pay a fine in the amount of Php500,000.00;
>
> 2) In *Crim. Case No. 19457-MN* against Sitco only for illegal possession of 20.29 grams of *shabu* under Section 16, Article III, RA 6425, as amended by RA 7659, to a prison term ranging from SIX (6) MONTHS of *arresto mayor* as minimum, to SIX (6) years of *prision correccional*, as maximum;
>
> 3) In *Crim. Case No. 19458-MN* against Bagtas only for illegal possession of 1.31 grams of *shabu* under Section 16, Article III, RA 6425, as amended by RA 7659, to a prison term ranging from TWO (2) MONTHS and ONE (1) DAY of *arresto mayor*, as minimum, to ONE (1) YEAR and ONE (1) DAY of *prision correccional*, as maximum;
>
> 4) In *Crim. Case No. 19459-MN* against Bagtas only for illegal possession of 887.01 grams of marijuana under Section 8, Article II, RA 6425, as amended by RA 7659, said accused is sentenced to suffer the prison term of *reclusion perpetua* and to pay a fine of ₱500,000.00.

Since the death penalty was imposed, the case came to this Court on automatic review. In accordance with *People v.*

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[13] CA *rollo*, pp. 35-36. Penned by Judge Benjamin M. Aquino, Jr.

*Mateo*,[14] however, we ordered the transfer of the case to the CA for intermediate review.

Pending CA review of the case, or on May 5, 2006, Bagtas died at the National Bilibid Prison Hospital.

**Ruling of the Appellate Court**

Before the CA, Sitco argued against the credibility of Buan as witness, the latter having been involved in drug-related activities and was in fact dismissed from the service in March 1999. He also claimed that the alleged drug sale involving him was improbable as no one would sell drugs to a stranger.

On October 19, 2006, the CA acquitted Sitco of illegal possession of drugs but affirmed his conviction of the other offenses charged. It reasoned that Buan's testimony was focused only on the two (2) plastic bags of *shabu* which were the object of the buy-bust; no attempt was made to make a distinction between the said bags and the additional bag of *shabu* supposedly recovered from Sitco when he was frisked. The quantum of proof necessary to sustain a conviction for illegal possession of *shabu* was, thus, not met. However, as to the other charges, the CA ruled that the factual findings of the trial court on Buan's credibility must be respected and upheld.

The *fallo* of the CA's Decision[15] reads:

> WHEREFORE, premises considered, the assailed Joint Decision dated August 26, 1999 of the RTC of Malabon, Metro Manila, Branch 72 in Criminal Case Nos. 19456-MN to 19459 is hereby **AFFIRMED** with modification **ACQUITTING** accused-appellant Norman Sitco *y* De Jesus in **Criminal Case No. 19457-MN** for violation of Sec. 16, Art. II of RA 6425, as amended by RA 7659, on the basis of reasonable doubt. The rest of the Joint Decision stand[s].
>
> SO ORDERED.

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[14] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[15] Penned by Associate Justice Estela M. Perlas-Bernabe and concurred in by Associate Justices Renato C. Dacudao and Rosmari D. Carandang.

On November 14, 2006, Sitco filed his Notice of Appeal of the appellate court's Decision.

On September 24, 2007, this Court required the parties to submit supplemental briefs if they so desired. The People, represented by the Office of the Solicitor General, manifested that it was submitting the case for decision based on the records previously submitted. In his Supplemental Brief, Sitco submits that PO3 Buan is not a credible witness given his arrest on drug charges and dismissal from the service.

**The Issue**

WHETHER THE COURT OF APPEALS ERRED IN AFFIRMING ACCUSED-APPELLANT'S CONVICTION ON THE BASIS OF AN UNRELIABLE WITNESS.

**The Ruling of the Court**

We find sufficient compelling reasons to acquit the surviving accused-appellant Sitco.

**Credibility of Buan as Witness**

We start with the credibility of the lone prosecution witness, Buan, whose testimony Sitco has assailed at every turn. Sitco insists and with reason that Buan cannot competently make a plausible account of something of which he himself was equally culpable.

Sitco's assault on the credibility of Buan is well-taken. As it were, Buan's involvement as a police officer in illegal drug activities makes him a polluted source and renders his testimony against Sitco and Bagtas suspect, at best. It is like a pot calling a kettle black.

To be believed, testimonial evidence should come only from the mouth of a credible witness.[16] Given his service record, Buan can hardly qualify as a witness worthy, under the limited confines of this case, of full faith and credit. And lest it be

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[16] *People v. Padrones*, G.R. No. 150234, September 30, 2005, 471 SCRA 447.

overlooked, Buan is a rogue cop, having, per his own admission, been arrested for indulging in a pot session, eventually charged and dismissed from the police service.[17] It would appear, thus, that Buan's had been a user. His arrest for joining a pot session only confirms this undesirable habit.

The Court, to be sure, has taken stock of the well-settled rule that prosecutions involving illegal drugs depend largely on the credibility of police buy-bust operators, and that the trial court's finding on the police-witness' credibility deserves respect. Juxtaposed with this rule, however, is the postulate that when confronted with circumstances that would support a reasonable doubt in favor of the accused, then acquittal or the least liability is in order. Buan's involvement in drugs and his alleged attempt to extort money from appellant Sitco in exchange for his freedom has put his credibility under a heavy cloud.

The imperative of proof beyond reasonable doubt has a vital role in our criminal justice system, the accused, during a criminal prosecution, having a stake interest of immense importance, both because of the possibility that he may lose his freedom if convicted and because of the certainty that his conviction will leave a permanent stain on his reputation and name.[18] As articulated in *Rabanal v. People*:

> Law and jurisprudence demand proof beyond reasonable doubt before any person may be deprived of his life, liberty, or even property. Enshrined in the Bill of Rights is the right of the petitioner to be presumed innocent until the contrary is proved, and to overcome the presumption, nothing but proof beyond reasonable doubt must be established by the prosecution. **The constitutional presumption of innocence requires courts to take "a more than casual consideration" of every circumstances or doubt proving the innocence of petitioner**.[19] (Emphasis added.)

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[17] CA *rollo*, pp. 33, 35.

[18] *People v. Morales*, G.R. No. 172873, March 19, 2010.

[19] G.R. No. 160858, February 28, 2006, 483 SCRA 601, 617; citations omitted.

**Chain of Custody**

But over and above the credibility of the prosecution's lone witness as ground for acquittal looms the matter of the custodial chain, a term which has gained traction in the prosecution of drug-related cases.

In prosecutions involving narcotics and other illegal substances, the substance itself constitutes part of the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[20] Of chief concern in drug cases then is the requirement that the prosecution prove that what was seized by police officers is the same item presented in court. This identification, as we have held in the past, must be established with moral certainty[21] and is a function of the rule on chain of custody. The chain of custody requirement is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.[22]

The procedure to be followed in adhering to the chain of custody requirements is found in Sec. 21 of RA 9165:

**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:

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[20] *People v. Suan*, G.R. No. 184546, February 22, 2010; citing *Corino v. People*, G.R. No. 178757, March 13, 2009; *People v. Simbahon*, 449 Phil. 74, 83 (2003).

[21] *People v. Cervantes*, G.R. No. 181494, March 17, 2009, 581 SCRA 762.

[22] *People v. Garcia*, G.R. No. 173480, February 25, 2009, 580 SCRA 259, 274.

(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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination.

The trial court summarized the chain of custody over the evidence as follows:

x x x [Sitco] asked for the money and then took from a covered part of the motorcycle a plastic bag inside [of] which were two plastic bags with *shabu* which Sitco gave to Buan. Buan examined the same and upon being satisfied that it was really *shabu*, identified himself as a policeman and arrested Sitco. Buan's companions then approached and Sitco and Bagtas were frisked. Found from Sitco was a caliber .38 "paltik" revolver with six bullets, the buy-bust money and additional *shabu*. The marijuana earlier shown to Buan by Bagtas was also recovered along with the additional *shabu* found in the motorcycle of Bagtas which was parked nearby.

The buy-bust *shabu*, the marijuana and the confiscated additional *shabu* from Sitco and Bagtas were sent to a Forensic Chemist for laboratory examination (Exhibit A) and were found to be positive for being *shabu* and marijuana, respectively, by examining PNP Forensic Chemist Grace N. Eustaquio under an initial laboratory report (Exhibit B) and a final report (Physical Science No. D-411-98) marked as Exhibit C.[23]

From this narration and an examination of the records, a number of disturbing questions arise as to the identification and handling of the prohibited drugs seized. It is unclear at the

[23] CA *rollo*, p. 31.

outset whether Buan himself made the inventory of the seized items. There is no detail as to who brought the specimens to the forensic laboratory and who received it prior to the examination by the forensic chemist. It is also uncertain who took custody of the specimens before they were presented as evidence in court. There are, thus, glaring gaps or missing links in the chain of custody of evidence, raising doubt as to the identity of the seized items and necessarily their evidentiary value. This broken chain of custody is especially significant given that what are involved are fungible items that may be easily altered or tampered with.[24]

It cannot be over-emphasized that pertinent provisions of RA 9165 require that the seized illegal items shall, after their inventory, be photographed in the presence of the drug dealer, representatives of media, the Department of Justice, or any elected public official who participated in the operation. The records do not yield an indication that this particular requirement has been complied with.

The Court reiterates that, on account of the built-in danger of abuse that it carries, a buy-bust operation is governed by specific procedures on the seizure and custody of drugs, separately from the general law procedures geared to ensure that the rights of persons under criminal investigation and of the accused facing a criminal charge are safeguarded.[25] To reiterate, the chain of custody requirement is necessary in order to remove doubts as to the identity of the evidence, by monitoring and tracking custody of the seized drugs from the accused, until they reach the court. We find that the procedure and statutory safeguards prescribed for compliance by drug enforcement agencies have not been followed in this case. A failure to comply with the aforequoted Sec. 21(1) of RA 9165 implies a concomitant failure on the part of the prosecution to establish the identity of the seized illegal items as part of the *corpus delicti*.[26]

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[24] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619.

[25] *People v. Gutierrez*, G.R. No. 179213, September 3, 2009, 598 SCRA 92, 104.

[26] *People v. Orteza*, G.R. No. 173051, July 31, 2007, 518 SCRA 750.

Although the non-presentation of some of the witnesses who can attest to an unbroken chain of custody of evidence may, in some instances, be excused, there should be a justifying factor for the prosecution to dispense with their testimonies.[27] In *People v. Denoman*,[28] the Court discussed the saving mechanism provided by Sec. 21(a), Article II of the Implementing Rules and Regulations of RA 9165.[29] *Denoman* explains that the aforementioned provision contains a saving mechanism to ensure that not every case of non-compliance will permanently prejudice the prosecution's case. The saving mechanism applies when the prosecution recognizes and explains the lapse or lapses in the prescribed procedures.[30] In this case, the prosecution did not even acknowledge and discuss the reasons for the missing links in the chain.

To reiterate, in prosecutions involving dangerous drugs, the substance itself constitutes the key part of the *corpus delicti* of the offense and the fact of its existence is vital to sustain a judgment of conviction beyond reasonable doubt.[31] Taken with the uncorroborated testimony of Buan, the broken chain

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[27] *People v. Barba*, G.R. No. 182420, July 23, 2009, 593 SCRA 711, 719; citing *People v. Cervantes*, G.R. No. 181494, March 17, 2009, 581 SCRA 762.

[28] G.R. No. 171732, August 14, 2009, 596 SCRA 257.

[29] RA 9165, IRR, Art. II, Sec. 21(a):

The apprehending office/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, 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.

[30] *People v. Denoman*, *supra* note 28, at 270.

[31] *Catuiran v. People*, G.R. No. 175647, May 8, 2009, 587 SCRA 567.

of custody over the *marijuana* and *shabu* in the instant case creates reasonable doubt on accused-appellant's guilt.

In a string of cases,[32] we declared that the failure of the prosecution to offer the testimony of key witnesses to establish a sufficiently complete chain of custody of a specimen of *shabu*, and the irregularity which characterized the handling of the evidence before it was finally offered in court, fatally conflicts with every proposition relative to the culpability of the accused.

As in *People v. Partoza*,[33] this case suffers from the failure of the prosecution witness to provide the details establishing an unbroken chain of custody. In *Partoza*, the police officer testifying did not relate to whom the custody of the drugs was turned over. The evidence of the prosecution likewise did not disclose the identity of the person who had the custody and safekeeping of the drugs after its examination and pending presentation in court.

Given the prosecution's failure to abide by the rules on the chain of custody, the evidentiary presumption that official duties have been regularly performed cannot apply to this case. This presumption, it must be emphasized, is not conclusive. Not only is it rebutted by contrary proof, as here, but it is also inferior to the constitutional presumption of innocence.[34] On this score, we have held that while an accused's defense engenders suspicion that he probably perpetrated the crime charged, it is not sufficient for a conviction that the evidence establishes a strong suspicion or probability of guilt. It is the burden of the prosecution to overcome the presumption of innocence by presenting the quantum of evidence required.[35] This quantum of evidence has not been met in the instant case.

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[32] *Id.*; citing *Carino v. People*, G.R. No. 178757, March 13, 2009; *People v. Garcia*, G.R. No. 173480, February 25, 2009; *People v. Obmiranis*, G.R. No. 181492, December 16, 2008, 574 SCRA 140; *Mallillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619.

[33] G.R. No. 182418, May 8, 2009, 587 SCRA 809.

[34] *People v. Coreche*, G.R. No. 182528, August 14, 2009, 596 SCRA 350, 364-365.

[35] *People v. Ong*, G.R. No. 175940, February 6, 2008, 544 SCRA 123.

**WHEREFORE,** the assailed CA Decision in CA-G.R. CR-H.C. No. 00038 is *REVERSED* and *SET ASIDE.* Accused-appellant Norman Sitco *y* De Jesus is *ACQUITTED* on reasonable doubt and is ordered 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 (5) days from receipt.

**SO ORDERED.**

*Corona (Chairperson), Peralta, Bersamin,*[*] and *Mendoza, JJ.,* concur.

[*] Additional member per February 22, 2010 raffle.

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