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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 166108. June 16, 2010]

SPOUSES TEOFILO CARPIO and TEODORA CARPIO, *petitioners, vs.* **ANA SEBASTIAN, VICENTA PALAO, SANTOS ESTRELLA, and VICENTA ESTRELLA, represented by her guardian *ad litem* VICENTE PALAO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP); DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD; JURISDICTION OVER CASES RESULTING FROM THE IMPLEMENTATION OF CARP; SUSTAINED. — Although the opposing parties in this case are not the landlord against his tenants, or *vice-versa*, the case still falls within the jurisdiction of the DARAB pursuant to this Court's ruling in *Department of Agrarian Reform v. Abdulwahid,* where the Court pronounced, thus: The Department of Agrarian Reform Adjudication Board (DARAB) is vested with primary and exclusive jurisdiction to determine and adjudicate agrarian reform matters, including all matters involving the implementation of the agrarian reform program. Thus, **when a case is merely an incident involving the implementation of the Comprehensive Agrarian Reform Program (CARP), then jurisdiction remains with the DARAB, and not with the regular courts**. x x x

[J]urisdiction should be determined by considering not only the status or relationship of the parties but also the nature of the issues or questions that is the subject of the controversy. Thus, **if the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of the DARAB, such dispute must be addressed and resolved by the DARAB.**

2. REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI;* LIMITED SCOPE OF JUDICIAL REVIEW; EXPLAINED. — Settled jurisprudence dictates that, subject to a few exceptions, only questions of law may be brought before the Court *via* a petition for review on *certiorari*. Thus, in *Diokno v. Cacdac*, the Court held, thus: x x x It bears stressing that in a petition for review on *certiorari*, the scope of this Court's judicial review of decisions of the Court of Appeals is generally confined only to errors of law, and questions of fact are not entertained. We elucidated on our fidelity to this rule, and we said: Thus, **only questions of law may be brought by the parties and passed upon by this Court in the exercise of its power to review. Also, judicial review by this Court does not extend to a reevaluation of the sufficiency of the evidence** upon which the proper x x x tribunal has based its determination. It is aphoristic that **a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court** because as earlier stated, this Court is not a trier of facts; it reviews only questions of law. The **Supreme Court is not duty-bound to analyze and weigh again the evidence considered in the proceedings below**. x x x

3. ID.; APPEALS; FACTUAL FINDINGS OF AN ADMINISTRATIVE AGENCY; WHEN ACCORDED RESPECT AND EVEN FINALITY. — It has been held in *Reyes v. National Labor Relations Commission*, that: x x x findings of facts of quasi-judicial bodies x x x affirmed by the Court of Appeals in due course, are conclusive on this Court, which is not a trier of facts. x x x **Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals**. Such findings deserve full respect and,

without justifiable reason, ought not to be altered, modified or reversed. A close perusal of the records will show that there is no cogent reason for this Court to deviate from the settled rule that factual findings of an administrative agency, when affirmed by the Court of Appeals, are accorded not only respect but **finality**.

APPEARANCES OF COUNSEL

Punzalan & Punongbayan Law Office for petitioners.
Oliviano D. Regalado for respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA), dated March 31, 2004, dismissing petitioners' petition for review, and the CA Resolution[2] dated November 12, 2004, denying petitioners' motion for reconsideration, be reversed and set aside.

The undisputed facts, as accurately narrated by the CA, are as follows:

On April 24, 1992, Virginia P. Estrella, the mother of the herein petitioners and respondents, died leaving behind parcels of agricultural lands covered by Emancipation Patents, to wit:

a. Emancipation Patent No. 445226;
b. Emancipation Patent No. 445227;
c. Emancipation Patent No. 445228;

---

[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Eloy R. Bello, Jr. and Magdangal M. de Leon, concurring; *rollo*, pp. 74-83.

[2] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Lucas P. Bersamin (now a member of this Court) and Magdangal M. de Leon, concurring; *id.* at 88-89.

d. Emancipation Patent No. 445229; and
e. Emancipation Patent No. 445230.

Thereafter, the respondents sought for the partition of the abovecited real properties. However, the petitioners, Spouses Teodora Carpio and Teofilo Carpio, refused to agree with the partition of the estate, alleging that they are the exclusive owners of the parcel of land covered by Emancipation Patent No. 445229, having purchased the same from landowner Luis T. Bautista in 1991. Moreover, the petitioners also claim tenancy right to the exclusion of the respondents over the land covered by the said emancipation patent.

Efforts toward amicable settlement having proved futile, the respondents, on February 14, 1995, instituted an action for Annulment of Sale of Land covered by Emancipation Patent No. 445229, with Prayer for Declaration of Rights of Tenancy with the Department of Agrarian Reform Adjudication Board (DARAB), Region III, Malolos, Bulacan.

Consequently, on June 28, 1996, the Provincial Adjudicator, claiming lack of jurisdiction, dismissed the aforementioned complaint for annulment of sale filed by the respondents.

Aggrieved, the respondents interposed an appeal from the said decision of the DAR Provincial Adjudication Board to the DARAB stationed in Quezon City.

On December 28, 2000, the DARAB rendered the assailed decision reversing and setting aside the decision of the DAR Provincial Adjudication Board, the dispositive portion of which provides as follows:

> WHEREFORE, premises considered, the appealed decisions are hereby **REVERSED** and **SET ASIDE** and a new decision is rendered as follows:
>
> 1. Declaring that the Board *a quo* has jurisdiction over the issues raised in these twin cases;
>
> 2. Declaring the Deed of Absolute Sale and the Deed of Conveyance executed by former landowner Luis Bautista in favor of the herein Respondents-Appellees involving the landholding covered by the Emancipation Patents issued to Virginia P. Estrella as null and void;

3. Directing the partition of the subject landholdings with the assistance of the Municipal Agrarian Reform Officer (MARO) concerned, the same to be in accordance with then Ministry Memorandum Circular No. 19, Series of 1978 and/or other circulars relevant thereto implementing Presidential Decree No. 27 on the subject Rules and Regulations in case of Death of a Tenant-Beneficiary; and

4. Directing that in case of disagreement, the matter must be decided by the DAR Regional Office, it being purely administrative function under the Office of the DAR Secretary.

SO ORDERED.

From this decision, a motion for reconsideration was filed, but the same was denied. x x x

Petitioners then elevated the case to the CA via a petition for review under Rule 43 of the Rules of Court. On March 31, 2004, the CA rendered its Decision affirming the aforequoted DARAB Decision. Petitioners' motion for reconsideration of the CA Decision was denied in a Resolution dated November 12, 2004.

Hence, this petition for review on *certiorari* where petitioners raise the following issues:

1. Whether or not the Court of Appeals erred in holding that the dispute between the parties is within the jurisdiction of the DARAB.

2. Whether or not the Court of Appeals committed clear and palpable errors in not finding that petitioners have been tenants over the subject landholding; and that the sale of the subject lot to them is valid, thereby deviating from and disregarding established Supreme Court decisions enjoining Courts not to overlook or misinterpret important facts and circumstances supported by clear and convincing evidence on record and which are of great weight and value to change the results of the case and arrive at a just, fair and objective decision.[3]

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[3] *Rollo*, pp. 24-25.

The Court finds the petition unmeritorious.

Jurisdiction over the present case lies with the DARAB. Section 1, Rule II of the DARAB New Rules of Procedures states, thus:

> Section 1. *Primary and Exclusive Original and Appellate Jurisdiction*. — The Board shall have primary and exclusive jurisdiction, both original and appellate, to determine and adjudicate all agrarian disputes involving the implementation of the Comprehensive Agrarian Reform Program (CARP) under Republic Act No. 6657, Executive Order Nos. 228, and 129-A, Republic Act No. 3844 as amended by Republic Act No. 6389, Presidential Decree No. 27 and other agrarian laws and their implementing rules and regulations. Specifically, such jurisdiction shall include but not be limited to cases involving the following:
>
> x x x x x x x x x
>
> c) The **annulment or cancellation of lease contracts or deeds of sale** or their amendments involving lands under the administration and disposition of the DAR or LBP;
>
> x x x x x x x x x
>
> e) Those **involving the sale**, alienation, mortgage, foreclosure, pre-emption and redemption **of agricultural lands under the coverage of the CARP** or other agrarian laws;
>
> f) Those **involving the** issuance, correction and **cancellation of** x x x **Emancipation Patents** (EPs) which are registered with the Land Registration Authority; x x x

The present case clearly involves the annulment of the sale of agricultural land under the coverage of the CARP, the sale of which is being contested by respondents who allegedly have tenancy rights over said land. Although the opposing parties in this case are not the landlord against his tenants, or *vice-versa*, the case still falls within the jurisdiction of the DARAB pursuant to this Court's ruling in *Department of Agrarian Reform v. Abdulwahid*,[4] where the Court pronounced, thus:

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[4] G.R. No. 163285, February 27, 2008, 547 SCRA 30.

The Department of Agrarian Reform Adjudication Board (DARAB) is vested with primary and exclusive jurisdiction to determine and adjudicate agrarian reform matters, including all matters involving the implementation of the agrarian reform program. Thus, **when a case is merely an incident involving the implementation of the Comprehensive Agrarian Reform Program (CARP), then jurisdiction remains with the DARAB, and not with the regular courts**.

x x x x x x x x x

x x x **[J]urisdiction should be determined by considering not only the status or relationship of the parties but also the nature of the issues or questions that is the subject of the controversy**. Thus, **if the issues between the parties are intertwined with the resolution of an issue within the exclusive jurisdiction of the DARAB, such dispute must be addressed and resolved by the DARAB.**[5]

Note the allegations in the complaint, to wit:

x x x x x x x x x

4. That plaintiffs sought for partition of the properties above-cited however, defendants Sps. Teodora Carpio and Teofilo Carpio [herein petitioners] refused to agree with [the] partition of the estate giving reasons thereof that they are the exclusive owners of the parcels of land covered by Emancipation Patent No. 445229 (Annex "A"), having purchased the same from landowner Luis Bautista in the year 1991;

5. That defendant also claims tenancy right to the exclusion of the herein plaintiffs over the land covered by EP No. 445229 despite the fact that it was their mother who was the real tenant of the lands subject matter of this case;

6. That the sale entered into by defendants Spouses Teodora Carpio and Teofilo Carpio with the landowner Luis Bautista is null and void because the land was already titled to [the] deceased mother of both plaintiffs and defendants at the time of sale and that the owner thereof has been already divested ownership of the land by operation of law;

7. That defendants cannot claim exclusive right of tenancy over the land subject matter of this action to the exclusion of the other heirs because the right to till the lands belong to all heirs;

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[5] *Id.* at 32, 34. (Emphasis supplied.)

x x x x x x x x x[6]

It is quite evident from the allegations above that the final resolution of this case depends on a ruling on the validity of the sale of agricultural land covered by the CARP from the landlord to herein petitioners — an issue which is within the jurisdiction and expertise of the DARAB. The case is merely an incident involving the implementation of the Comprehensive Agrarian Reform Program (CARP), as it is founded on the question of who is the actual tenant and eventual beneficiary of the subject land. Hence, jurisdiction should remain with the DARAB and not the regular courts.

The second issue raised by petitioners — *i.e.*, whether the CA erred in not pronouncing petitioners as tenants of the disputed land who are entitled to be beneficiaries thereof, making the sale of the land to them valid — cannot likewise be resolved in their favor. Such issue involves a question of fact and settled jurisprudence dictates that, subject to a few exceptions, only questions of law may be brought before the Court *via* a petition for review on *certiorari*. Thus, in *Diokno v. Cacdac*,[7] the Court held, thus:

x x x It bears stressing that in a petition for review on *certiorari*, the scope of this Court's judicial review of decisions of the Court of Appeals is generally confined only to errors of law, and questions of fact are not entertained. We elucidated on our fidelity to this rule, and we said:

> Thus, **only questions of law may be brought by the parties and passed upon by this Court in the exercise of its power to review. Also, judicial review by this Court does not extend to a reevaluation of the sufficiency of the evidence** upon which the proper x x x tribunal has based its determination.

It is aphoristic that **a re-examination of factual findings cannot be done through a petition for review on *certiorari* under Rule 45 of the Rules of Court** because as earlier stated, this Court is not a trier of facts; it reviews only questions of law. The **Supreme Court**

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[6] *Rollo*, pp. 36-37.

[7] G.R. No. 168475, July 4, 2007, 526 SCRA 440.

is not duty-bound to analyze and weigh again the evidence considered in the proceedings below. x x x [8]

There is nothing in the petition or in the records to justify bringing the present case outside the scope of the aforementioned general rule. The DARAB made the following findings, to wit:

x x x Accordingly, when said Decree took effect on October 21, 1972, the DAR field office conducted their respective official duties and responsibilities such as, but not limited to, the classification and identification of the landholding, identification of tenant-farmers and landowners and determination of their tenancy relationship; parcellary mapping; determination of the total production of Certificate of Land Transfer in cases outside the purview of Presidential Decree No. 816 x x x. Obviously, therefore, said DAR field personnel concerned had undergone the process in the determination of the tenancy relationship between the late Virginia P. Estrella with that of landowner Luis Bautista. Otherwise, the DAR Regional Office could not have issued the corresponding Emancipation Patents in the name of Virginia P. Estrella if the latter was found out (sic) not to be a bona fide tenant in accordance with DAR Memorandum dated September 15, 1976 on the subject: Revised and Detailed Operation Procedures on the Issuance of Emancipation Patents. In fact, the receipt of lease rentals dated March 30, 1978, March 31, 1979 and March 24, 1980 were issued by the landowner in the name of Virginia P. Estrella (p. 102, *Rollo*). In other words, these evidences (sic) show that Virginia P. Estrella was really the duly recognized tenant by landowner Luis Bautista. The real status, therefore, of [herein petitioners] were as immediate members of the farm household of Virginia P. Estrella x x x. Moreover, this Board takes note that the Deed of Absolute Sale dated December 22, 1991 did not indicate any previous agreement to the effect that there was an agreement to sell by installment. Rather, it was a plain document of a direct sale effected only in 1991, while the Emancipation Patents issued to tenant-beneficiary Virginia P. Estrella were dated December 14, 1989. x x x[9]

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[8] *Id*. at 460-461. (Emphasis supplied.)

[9] DARAB Decision, *rollo*, pp. 60-61.

Evidence on hand amply supports the foregoing findings of the DARAB which had been affirmed by the CA. It has been held in *Reyes v. National Labor Relations Commission*,[10] that:

> x x x findings of facts of quasi-judicial bodies x x x affirmed by the Court of Appeals in due course, are conclusive on this Court, which is not a trier of facts.
>
> x x x x x x x x x
>
> x x x **Findings of fact of administrative agencies and quasi-judicial bodies, which have acquired expertise because their jurisdiction is confined to specific matters, are generally accorded not only respect, but finality when affirmed by the Court of Appeals**. Such findings deserve full respect and, without justifiable reason, ought not to be altered, modified or reversed.[11]

A close perusal of the records will show that there is no cogent reason for this Court to deviate from the settled rule that factual findings of an administrative agency, when affirmed by the Court of Appeals, are accorded not only respect but **finality**.

IN VIEW OF THE FOREGOING, the instant petition is *DENIED.* The Decision and Resolution of the Court of Appeals, dated March 31, 2004 and November 12, 2004, respectively, in CA-G.R. SP No. 74722, are *AFFIRMED.*

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Perez,*[*] *JJ.*, concur.

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[10] G.R. No. 160233, August 8, 2007, 529 SCRA 487.

[11] *Id.* at 494, 499. (Emphasis supplied.)

[*] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 842 dated June 3, 2010.

SECOND DIVISION

[G.R. No. 166819. June 16, 2010]

SPOUSES OSCAR ARCENAS[1] **and DOLORES ARCENAS,** *petitioners, vs.* **QUEEN CITY DEVELOPMENT BANK and COURT OF APPEALS (Nineteenth Division),** *respondents.*

SYLLABUS

REMEDIAL LAW; ANNULMENT OF JUDGMENT; WHEN AVAILABLE; NOT PRESENT IN CASE AT BAR. — Sections 1 and 2 of Rule 47 of the Rules of Court impose the conditions for the availment of the remedy of annulment of judgment. x x x Section 1, Rule 47 provides that it does not allow a direct recourse to a petition for annulment of judgment if other appropriate remedies are available, such as a petition for new trial, appeal or a petition for relief. x x x Section 2, Rule 47 clearly states that extrinsic fraud shall not be a valid ground for annulment of order if it was availed of, or could have been availed of, in a motion for new trial or petition for relief. Thus, extrinsic fraud is effectively barred if it could have been raised as a ground in an available remedial measure. x x x There was indeed a failure to show, to our satisfaction, that petitioner could not have availed of the ordinary and appropriate remedies under the Rules. Thus, she cannot resort to the remedy under Rule 47 of the Rules; otherwise, she would benefit from her inaction or negligence.

APPEARANCES OF COUNSEL

Zamora Bautista & Partners for petitioners.
Treñas and Rubias Law Office for respondents.

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[1] He died on July 19, 2004 per Certificate of Death attached; *rollo*, p. 46.

D E C I S I O N

PERALTA, *J.*:

Before us is a petition for review on *certiorari* assailing the Resolution[2] dated May 18, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 83357, which dismissed petitioner's petition for annulment of order, as well as its Resolution[3] dated January 20, 2005, which denied petitioner's motion for reconsideration.

The factual antecedents are as follows:

On January 23, 2002, the spouses Dolores and Oscar Arcenas filed with the Regional Trial Court (RTC) of Roxas City, an Action for Declaratory Relief against respondent Queen City Development Bank, docketed as Civil Case No. V-006-01-2002, and was raffled off to Branch 15. The Spouses Arcenas prayed for the declaration of their rights as lessors under the contract of lease.

Respondent bank filed an Answer with Affirmative Defenses and Counterclaim contending, among others, that the action for declaratory relief was not proper, since the contract of lease had already been violated. Respondent bank counterclaimed for the rescission of the contract of lease, actual damages for its relocation and attorney's fees.

In an Order dated May 23, 2002, the RTC dismissed the action for declaratory relief and set the hearing on respondent bank's counterclaim for damages. The Spouses Arcenas' motion for reconsideration was denied on June 23, 2002. Respondent bank later presented its evidence on its counterclaim.

On July 25, 2002, the Spouses Arcenas filed with RTC of Roxas City, another case against respondent bank, this time

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[2] Penned by Justice Associate Ramon M. Bato, Jr., with Associate Justices Monina Arevalo-Zenarosa and Estela M. Perlas-Bernabe, concurring; *rollo*, pp. 44-45.

[3] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Arsenio J. Magpale and Mariflor Punzalan Castillo, concurring; *rollo*, p. 42.

for breach of the same contract of lease, docketed as Civil Case No. V-072-07-2002 (the case subject of this petition), and was raffled off to the same branch where Civil Case No. 006-01-2002 was pending. The Spouses Arcenas filed in Civil Case No. V-006-01-2002 a motion for consolidation of the two civil cases which the RTC denied.

Respondent bank then filed in Civil Case No. V-072-07-2002 its Answer with Affirmative Defenses and Counterclaim. The RTC then set the case for pre-trial on April 30, 2003.

The Spouses Arcenas subsequently filed their Pre-Trial Brief[4] with the proposed amicable settlement which provided that respondent bank would continue to pay the agreed rentals until the time the parties could find a substitute lessee. During the scheduled pre-trial conference, respondent bank's counsel manifested its interest in the proposal but wanted to know the exact amount for settlement; thus, the pre-trial was reset.[5]

On August 18, 2003, the Spouses Arcenas filed, in Civil Case No.V-006-01-2002, a written Proposed Settlement in the amount of ₱1,297,514.00. Respondent bank was asked to comment on the proposed settlement.[6]

During the September 9, 2003 pre-trial conference in Civil Case No. V-072-07-2002, respondent bank's counsel manifested that the parties were in the process of settling the case amicably. In an Order[7] dated September 9, 2003, the RTC ordered the resetting of the pre-trial conference to November 11, 2003, without prejudice to the filing of the compromise agreement that the parties may finally execute before the scheduled pre-trial conference.

Subsequently, respondent bank submitted its Formal Counter-Proposal for Settlement[8] in Civil Case No. V-006-01-2002 as follows:

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4 *Id.* at 64-67.

5 Order dated June 4, 2003; *id*. at 68.

6 Order dated August 26, 2003; *id*. at 73.

7 *Rollo*, p. 74.

8 *Id.* at 75-76.

x x x x x x x x x

The defendant and the plaintiffs will simultaneously and mutually dismiss all of their claims and counterclaims in BOTH Civil Case No. V-006-01-2002 AND Civil Case No. V-072-07-2002, all of which cases are pending before this same Honorable Court.

In the hearing of Civil Case No. 006-01-2002 on October 8, 2003, the RTC ordered the resetting of the case to December 4, 2003, in view of the manifestation of both counsels that settlement was still possible.[9] However, during the October 17, 2003 hearing of the same case, the RTC noted that, from the contents of both proposals for settlement, there was no meeting of the minds between the parties; thus, the RTC ordered the parties to prepare one compromise agreement duly signed and submitted for the court's approval, which shall be made as basis for the judgment in both civil cases. The parties were given up to December 4, 2003 to submit the compromise agreement.[10]

On November 11, 2003 – the date set for the continuation of the pre-trial conference in Civil Case No. V-072-07-2002 — only respondent bank's counsel was present. On November 10, 2003, the counsel for the Spouses Arcenas filed a Motion for Postponement of the pre-trial conference because of conflict of schedule. Respondent bank's counsel objected to such postponement, as he was not furnished a copy of the motion and the filing of such motion violated the three-day notice rule on motions; thus, he moved that the Spouses Arcenas be declared non-suited. On the same day, November 11, 2003, the RTC issued an Order[11] declaring the Spouses Arcenas non-suited and set the presentation of respondent bank's evidence on its counterclaim on January 8, 2004. The Order was received by the secretary of the Spouses' counsel on November 17, 2003.

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[9] *Id*. at 77.

[10] *Id*. at 78.

[11] *Id*. at 79.

On the January 8, 2004 scheduled hearing, despite due notice, the Spouses Arcenas and their counsel failed to appear; thus, respondent bank presented evidence on its counterclaim, rested its case and submitted the same for decision. On the same day, the RTC issued an Order[12] submitting the case for decision. The Order was received by the Spouses Arcenas on January 14, 2004.

On January 14, 2004, the Spouses Arcenas filed a Manifestation with Motion[13] alleging that their failure to file a motion to reconsider the Order dated November 11, 2003, declaring them non-suited, and their failure to attend the January 8, 2004 hearing on respondent bank's counterclaim was due to their mistaken belief that respondent bank was earnestly seeking a settlement on both civil cases; that honest mistake and excusable negligence were grounds for lifting an order of non-suit; thus, they prayed that the Orders dated November 11, 2003 and January 8, 2004 be reconsidered and Civil Case No. V- 072-07-2002 be reset for further pre-trial conference. Respondent bank filed an Opposition to such Manifestation and Motion.

In an Order[14]dated March 9, 2004, the RTC denied the Manifestation and Motion to reconsider the order of non-suit and allowed respondent bank to present evidence on its counterclaim on March 25, 2004. The RTC found (1) that assuming there was an agreement between the counsels regarding a compromise affecting the civil cases, such an out of court agreement was not an excuse for the counsel of the Spouses Arcenas not to move for the lifting of the order of default; (2) that counsel should not presume that his motion for postponement would be granted, specially since the scheduled proceeding was a pre-trial conference which was mandatory; (3) that a motion should abide by the three-day notice rule; and (4) that the January 8, 2004 Order submitting the case for decision had long become

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[12] *Id*. at 81.

[13] *Id*. at 82-87.

[14] *Id*. at 94-95.

final and the Manifestation and Motion was filed beyond the reglementary period for filing a motion for reconsideration.

On March 29, 2004, the Spouses Arcenas, as petitioners, filed with the CA a Petition for annulment of order under Rule 47 seeking to annul the November 11, 2003 Order of non-suit issued by the RTC of Roxas City, Branch 15 in Civil Case No. V-072-07-2002 on the ground of extrinsic fraud.

On May 18, 2004, the CA dismissed the petition on the ground that petitioners, the Spouses Arcenas, failed to avail of the appropriate remedies without sufficient justification before resorting to the petition for annulment of order. The CA ruled that assuming that petitioners were able to substantiate their allegations of fraud, they could have filed a petition for relief under Rule 38 of the Rules of Court and prayed that the assailed Order be set aside, but they did not. Thus, they cannot benefit from their inaction.

In a Resolution dated January 20, 2005, the CA denied the Motion for Reconsideration filed by the Spouses Arcenas.

In the meantime, on August 18, 2004, the RTC rendered a Decision on the merits in Civil Case Nos. V-006-01-2002 and V-072-07-2002, wherein the contract of lease subject of the two cases was declared rescinded, and the Spouses Arcenas were ordered to pay respondent bank actual damages, attorney's fees and litigation expenses. On September 8, 2004, the Spouses Arcenas filed their Notice of Appeal.[15]

On July 19, 2004, Oscar Arcenas died. Thus, only petitioner Dolores filed the instant petition for review. Petitioner raises the following arguments, to wit:

> Whether or not the Honorable Court of Appeals erred in dismissing the petition for annulment of order filed by therein petitioners, Spouses Oscar Arcenas and Dolores Arcenas, on the ground that they failed to take other appropriate remedies in assailing the questioned final order, since their inaction was not due to fault or negligence imputable to them.

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[15] *Id.* at 125.

Whether or not the Honorable Court of Appeals erred in failing to appreciate the clear existence of extrinsic fraud committed by the adverse party through its counsel, Atty. Manuel Miraflores.

Whether or not petitioners are guilty of forum shopping considering the difference in the nature of the remedies between the rule on appeal under Rule 41 and annulment of orders under Rule 47.[16]

We find no merit in the petition.

Sections 1 and 2 of Rule 47 of the Rules of Court impose the conditions for the availment of the remedy of annulment of judgment, *viz*.:

Section 1. *Coverage*. — This Rule shall govern the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.

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

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

Section 1, Rule 47 provides that it does not allow a direct recourse to a petition for annulment of judgment if other appropriate remedies are available, such as a petition for new trial, appeal or a petition for relief.[17] If petitioner fails to avail of these remedies without sufficient justification, she cannot resort to the action for annulment of judgment under Rule 47, for otherwise, she would benefit from her inaction or negligence.[18]

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[16] *Id*. at 176.

[17] *Fraginal v. Heirs of Toribia Belmonte Parañal,* G.R. No. 150207, February 23, 2007, 516 SCRA 530, 539.

[18] *Lazaro v. Rural Bank of Francisco Balagtas (Bulacan), Inc.,* G.R. No.139895, August 15, 2003, 409 SCRA 186, 191.

We found no reversible error committed by the CA in dismissing the petition for annulment of judgment.

The Spouses Arcenas were declared non-suited for failure to appear at the pre-trial conference of Civil Case No. 072-07-2002 on November 11, 2003, and respondent bank was allowed to present evidence on its counterclaim on January 8, 2004. Such Order was received by the secretary of petitioner's counsel on November 17, 2003. Petitioner did not move to set aside the RTC's order of non-suit. While petitioner's counsel claimed that he only learned of such Order of non-suit on December 4, 2003, yet no motion to lift the order of non-suit was filed. Notably, from December 4, 2003 to the scheduled hearing on January 8, 2004, petitioner did not take any remedial action to lift the order of non-suit when she had the opportunity to do so. In fact, petitioner and her counsel did not also appear on the scheduled January 8, 2004 hearing wherein respondent bank presented evidence on its counterclaim and submitted the case for decision.

It was only on January 14, 2004 when petitioner and her husband filed a pleading captioned as Manifestation and Motion, wherein they prayed for the reconsideration of the Orders dated November 11, 2003 and January 8, 2004 and for further pre-trial conference. The RTC denied such Manifestation and Motion in its Order dated March 9, 2004, as the same was filed beyond the reglementary period, and such Order was received by petitioner on March 12, 2004. Petitioner then filed with the CA a Petition for annulment of order of non-suit under Rule 47 of the Rules of Court on the ground of extrinsic fraud. The CA denied the petition as petitioner failed to avail of the appropriate remedies provided by the Rules to which we agree.

Petitioner argues that when respondent bank's counsel moved for the issuance of the Order of non-suit against her and her husband during the November 11, 2003 hearing, extrinsic fraud was committed on them since respondent bank's counsel concealed from the RTC that there was a gentleman's agreement for the settlement of the subject civil cases.

We are not persuaded.

It bears stressing that when petitioner's counsel filed the Manifestation and Motion asking for reconsideration of the Order declaring the Spouses Arcenas non-suited, the reason stated was honest mistake or excusable negligence. To show such mistake, he explained that since there was a pending negotiation for settlement in Civil Case Nos. V-006-01-2002 and V-072-07-2002, which were both pending in the same court, and the parties had to come up with a settlement for the hearing of Civil Case No. V-006-01-2002 scheduled on December 4, 2004, petitioner's counsel then asked for the postponement of the scheduled November 11, 2003 hearing set for the pre-trial conference of Civil Case No. V-072-07-2002 one day before the said date, because of conflict of schedule and since he had in mind the December 4, 2003 deadline to submit the settlement. Notably, petitioner's counsel admitted that the date set for the submission of settlement in Civil Case No. V-072-07-2002 was indeed November 11, 2003; and that his failure to attend the hearings and to file a motion for reconsideration of the declaration of petitioner as non-suited was because of his mistaken belief that respondent bank was earnestly seeking a settlement. There was nothing in the Manifestation and Motion which alluded the commission of extrinsic fraud to respondent bank's counsel.

Moreover, since petitioner claimed that there was extrinsic fraud committed by respondent bank's counsel, she could have filed a petition for relief under Rule 38 within the period provided for by the Rules of Court, but she did not. Section 2, Rule 47 clearly states that extrinsic fraud shall not be a valid ground for annulment of order if it was availed of, or could have been availed of, in a motion for new trial or petition for relief. Thus, extrinsic fraud is effectively barred if it could have been raised as a ground in an available remedial measure.

Petitioner tries to justify her failure to avail of the appropriate remedies on a promise of settlement. However, such promise was not an excuse for petitioner's counsel not to lift the order of non-suit and to file a petition for relief.

Petitioner's claim that she was present when respondent bank's counsel moved for the issuance of the order of non-suit against her was not proven by any evidence.

There was indeed a failure to show, to our satisfaction, that petitioner could not have availed of the ordinary and appropriate remedies under the Rules. Thus, she cannot resort to the remedy under Rule 47 of the Rules; otherwise, she would benefit from her inaction or negligence.

Finally, we find no merit in respondent bank's claim that petitioner committed forum shopping. The issue brought before us is whether the CA correctly dismissed petitioner's petition for annulment of the Order dated November 11, 2003 declaring her non-suited for failure to appear at the pre-trial conference of Civil Case No. V-072-07-2002. On the other hand, petitioner's Notice of Appeal in Civil Case Nos. V-006-01-2002 and V-072-07-2002 pertained to the decision of the RTC rendered on the merits.

WHEREFORE, the petition is *DENIED*. The Resolutions dated May 18, 2004 and January 20, 2005 of the Court of Appeals in CA-G.R. SP No. 83357 are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Perez,*[*] *JJ.*, concur.

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[*] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 842 dated June 3, 2010.

SECOND DIVISION

[G.R. Nos. 167583-84. June 16, 2010]

ARTISTICA CERAMICA, INC., CERALINDA, INC., CYBER CERAMICS, INC. and MILLENNIUM, INC., *petitioners, vs.* **CIUDAD DEL CARMEN HOMEOWNER'S ASSOCIATION, INC. and BUKLURAN PUROK II RESIDENTS ASSOCIATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; DISTINGUISHED FROM REMEDY AVAILABLE UNDER RULE 45. — In *Mercado v. Court of Appeals*, this Court had again stressed the difference of the remedies provided for under Rule 45 and Rule 65 of the Rules of Court, to wit: x x x [T]he proper remedy of the party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45, which is not identical with a petition for review under Rule 65. Under Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. **On the other hand, a special civil action under Rule 65 is an independent action based on the specific ground therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that to be taken under Rule 45. x x x**

2. ID.; ID.; ID.; WHERE AN APPEAL IS AVAILABLE *CERTIORARI* WILL NOT PROSPER EVEN IF THE GROUND THEREFOR IS GRAVE ABUSE OF DISCRETION; RATIONALE. — 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 therefore is grave abuse of discretion. Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright. Pertinent, therefore, to a resolution of the case at bar

is a determination of whether or not an appeal or any plain, speedy and adequate remedy was still available to petitioners, the absence of which would warrant petitioners' decision to seek refuge under Rule 65 of the Rules of Court. x x x When a court, tribunal, or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for *certiorari*. If every error committed by the trial court or quasi-judicial agency were to be the proper subject of a special civil action for *certiorari*, then trial would never end and the dockets of appellate courts would be clogged beyond measure. For this reason, where the issue or question involved affects the wisdom or legal soundness of the decision, not the jurisdiction of the court to render said decision, the same is beyond the province of a special civil action for *certiorari*.

3. ID.; ID.; ID.; LIBERAL APPLICATION IS NOT AVAILABLE TO A PETITION WHICH OFFERS NO EXPLANATION FOR THE NON-OBSERVANCE OF THE RULES; JUSTIFIED. — In *Jan-Dec Construction Corporation vs. Court of Appeals*, this Court explained why a liberal application of the rules cannot be made to a petition which offers no explanation for the non-observance of the rules, to wit: While there are instances where the extraordinary remedy of *certiorari* may be resorted to despite the availability of an appeal, the long line of decisions denying the special civil action for *certiorari*, either before appeal was availed of or in instances where the appeal period had lapsed, far outnumbers the instances where *certiorari* was given due course. The few significant exceptions are: (a) when public welfare and the advancement of public policy dictate; (b) when the broader interests of justice so require; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority. In the present case, petitioner has not provided any cogent explanation that would absolve it of the consequences of its failure to abide by the Rules. *Apropos* on this point are the Court's observations in *Duremdes v. Duremdes*: Although it has been said time and again that litigation is not a game of technicalities, that every case must

be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved, this does not mean that procedural rules may altogether be disregarded. **Rules of procedure must be faithfully followed except only when, for persuasive reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules**. Similarly, in *Republic v. Court of Appeals*, this Court did not apply a liberal construction of the rules for failure of petitioner to offer an explanation as to why the petition was filed beyond the reglementary period provided for under Rule 45, to wit: Admittedly, this Court, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, has the discretion to treat a petition for *certiorari* as having been filed under Rule 45, especially if filed within the reglementary period for filing a petition for review. In this case, however, we find no reason to justify a liberal application of the rules. **The petition was filed well beyond the reglementary period for filing a petition for review without any reason therefor**.

4. ID.; ID.; ID.; RULE ON REGLEMENTARY PERIODS OF APPEAL MAY BE RELAXED ONLY UPON SHOWING OF AN EXTRAORDINARY OR EXCEPTIONAL CIRCUMSTANCE TO WARRANT SUCH LIBERALITY. — While this Court has in the past allowed the relaxing of the rules on the reglementary periods of appeal, it must be stressed that there must be a showing of an extraordinary or exceptional circumstance to warrant such liberality. *Bank of America, NT & SA v. Gerochi, Jr.* so instructs: True, in few highly exceptional instances, we have allowed the relaxing of the rules on the application of the reglementary periods of appeal. We cite a few typical examples: In *Ramos vs. Bagasao*, 96 SCRA 395, we excused the delay of four days in the filing of a notice of appeal because the questioned decision of the trial court was served upon appellant Ramos at a time when *her counsel of record was already dead*. Her new counsel could only file the appeal four days after the prescribed reglementary period was over. In *Republic vs. Court of Appeals*, 83 SCRA 453, we allowed the perfection of an appeal by the Republic despite the delay of

six days to prevent a gross miscarriage of justice since the Republic stood to lose hundreds of hectares of land *already titled in its name* and had since then been devoted for educational purposes. In *Olacao v. National Labor Relations Commission,* 177 SCRA 38, 41, we accepted a tardy appeal considering that the subject matter in issue had theretofore been *judicially settled, with finality, in another case*. The dismissal of the appeal would have had the effect of the appellant being ordered twice to make the same reparation to the appellee. The case at bench, given its own settings, cannot come close to those extraordinary circumstances that have indeed justified a deviation from an otherwise stringent rule. Let it not be overlooked that the timeliness of an appeal is a *jurisdictional caveat* that not even this Court can trifle with. Withal, this Court must stress that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules. Indeed, in no uncertain terms, this Court has held that the said Rules may be relaxed only in "exceptionally meritorious cases." Petitioners have failed to show that this case is one of the exceptions.

APPEARANCES OF COUNSEL

Cruz & Navarro-Cruz and *Picazo Buyco Tan Fider & Santos* for petitioners.

Belo Gozon Elma Parel Asuncion and Lucila Law Offices for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for *certiorari*,[1] under Rule 65 of the Rules of Court, seeking to set aside the January 4, 2005 Decision[2] and March 18, 2005 Resolution[3] of the Court of Appeals (CA), in CA-G.R. SP No. 70473 and CA-G.R. SP No. 71470.

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

[2] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Roberto A. Barrios and Vicente S.E. Veloso, concurring; *id.* at 59-79.

[3] *Id.* at 81-83.

The facts of the case are as follows:

Petitioners Artistica Ceramica, Inc., Ceralinda, Inc., Cyber Ceramics, Inc., and Millennium, Inc., are corporations located in Pasig City and engaged in the manufacture of ceramics. Petitioners' manufacturing plants are located near the area occupied by respondents Ciudad Del Carmen Homeowner's Association, Inc., and Bukluran Purok II Residents Association.

Sometime in 1997, respondents sent letter complaints[4] to various government agencies complaining of petitioners' activities. The complaints stemmed from the alleged noise, air and water pollution emanating from the ceramic-manufacturing activities of petitioners. In addition, respondents also complained that the activities of petitioners were both safety and fire hazards to their communities. As a result of the complaints filed, Closure Orders and Cease-and-Desist Orders[5] were issued against the operations of petitioners.

In order to amicably settle the differences between them, petitioners and respondents entered into two agreements. The first agreement was the June 29, 1997 Drainage Memorandum of Agreement[6] (Drainage MOA) and the second was the November 14, 1997 Memorandum of Agreement[7] (MOA). Embodied in the Drainage MOA was the commitment of petitioners to construct an effective drainage system in Bukluran Purok II. The MOA, on the other hand, was an agreement by respondents to cause the dismissal of all the complaints filed by them against petitioners in exchange for certain undertakings during the lifetime of the MOA. Among the undertakings agreed to by petitioners are the following: 1) the cessation of their manufacturing activities on or before May 7, 2000; 2) the putting

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[4] Filed before the Laguna Lake Development Authority, Department of Environment and Natural Resources, National Water Resources Board, and Metropolitan Manila Authority.

[5] CA *rollo* (CA-G.R. SP No. 71470), pp. 211-222.

[6] *Id.* at 287-289.

[7] *Id.* at 223-231.

up of an Environmental Guarantee Fund in accordance with the guidelines prescribed by the Department of Energy and Natural Resources; 3) the furnishing of a performance bond; and 4) and the creation of an Arbitration and Monitoring Committee.

On July 17, 2000, respondents filed with the Arbitration Committee a Complaint[8] alleging the failure of petitioners to comply with the terms of the agreement. On April 2, 2002, the Arbitration Committee rendered a Decision,[9] the dispositive portion of which reads:

WHEREFORE, PREMISES CONSIDERED, THE ARBITRATION COMMITTEE hereby promulgates the following findings and rulings:

On the matter of the allowances for the representatives of the Residents Associations, pending the resolution of the instant case, the Mariwasa Subsidiaries have paid the aforesaid allowances.

On the contribution of the Mariwasa Subsidiaries in the amount of ₱300,000.00 for the construction of the chapel/multi-purpose hall as referred in Annex "B" of the MOA, Mariwasa Subsidiaries is directed to give to Ciudad del Carmen Homeowners Association of the Residents Associations the amount of ₱300,000.00 as the participation of the Mariwasa Subsidiaries in the construction of the aforesaid chapel/multi-purpose hall.

Re: the problem of the drainage system, the construction of the drainage system for Bukluran Purok II mentioned in the June 29, 1997 MOA was undertaken. But the Arbitration Committee finds that in spite of the construction of the drainage system, there continues to be flooding in Bukluran Purok Dos.

On the issue of relocation, the MOA categorically states:

> f. (The Mariwasa Subsidiaries shall) [p]ermanently cease the manufacturing operation in the Premises of at least one of its corporation [sic] by 7 November 1999, and permanently cease the manufacturing operations of all remaining corporations in the Premises on or before 07 May 2000; Henceforth, no

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[8] *Id.* at 232-240.

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

manufacturing activity shall be made or undertaken in the Premises either by itself or by any other person/entity, except with the consent of the SECOND PARTY, nor shall the FIRST PARTY attempt to avoid its obligation hereunder resulting in the operation of its manufacturing plants in the Premises; *FORCE MAJEURE* is NOT AVAILABLE to the FIRST PARTY as an excuse for not ceasing to operate;

g. (The Mariwasa Subsidiaries shall) [m]ake representation with the DENR, the LLDA, and the Pasig City Government, the MMDA, and such other relevant government agency or office, informing these agencies of their undertaking to cease manufacturing operations in the Premises by 07 May 2000, such that permits, licenses and clearances issued to and in favor of the FIRST PARTY shall only be effective until 07 May 2000 and other permits, licenses and clearances applied for by the FIRST PARTY shall be effective only until 07 May 2000.

The Mariwasa Subsidiaries are directed to strictly comply with the above-quoted undertakings. Further on this matter, the parties are directed to immediately discuss and agree on the date of the relocation of all of the manufacturing facilities of Mariwasa Subsidiaries out of Bo. Rosario, Pasig City, but in no case should such date be beyond six (6) months from finality of this Decision, and in the event that Mariwasa Subsidiaries shall fail to relocate their manufacturing facilities within the date agreed or fixed herein, as the case maybe, a fine of ₱10,000.00 for each day of delay is hereby imposed upon the Mariwasa Subsidiaries.

In connection with the Performance Bond of ₱25,000,000.00 referred to in the MOA in "2 PERFORMANCE BOND AND PENALTY PROVISIONS," on the basis of the evidence introduced in the hearings, the Arbitration Committee finds that the Mariwasa Subsidiaries have not fully complied with all of their undertakings as enumerated in the MOA and in its Annexes "A" and "B". Thus, the Mariwasa Subsidiaries did not submit the regular quarterly reports mentioned in undertaking Letter "a". Undertaking Letter "d" was not fully implemented, including even the matter of funding the Arbitration Committee where the allowances for representatives of the Residents Associations were only paid during the hearings of the instant case.

The Environmental Guarantee Fund mentioned in undertaking Letter "h" was never established.

In connection with the participation of the Mariwasa Subsidiaries in the community and social development projects specified in Annex "B" of the MOA, the Arbitration Committee finds that the drainage system that was constructed in Bukluran Purok Dos has not solved the problem of flooding in the area. Then, the Mariwasa Subsidiaries should remit to Ciudad del Carmen Homeowners Association of the Residents Associations the amount of ₱300,000.00 that was promised by the Mariwasa Subsidiaries for the construction of a chapel/multi-purpose hall.

As for damages, on the basis of the evidence presented in the hearings, the Mariwasa Subsidiaries are hereby directed, jointly and severally, to pay to the Residents Associations the amount of ₱1,000,000.00 as temperate or moderate damages. In addition, the Mariwasa Subsidiaries are directed to pay ₱100,000.00 as damages to Bukluran Dos Residents Association for the former's failure to bring about the effective drainage system that was sought to be constructed in the June 29, 1997 MOA. The Mariwasa Subsidiaries are also directed to pay the amount of ₱100,000.00 as part of damages in the form of attorney's fees.

SO ORDERED.[10]

Respondents filed a motion for reconsideration, specifically asserting that the Arbitration Committee erred in failing to rule on or to declare the automatic forfeiture of the performance bond in their favor. On May 27, 2002, the Arbitration Committee issued a Resolution[11] denying respondents' motion.

Petitioners and respondents separately filed a petition for review[12] before the CA. Petitioners sought to question the award of damages by the Arbitration Committee to respondents. Respondents, for their part, sought to question the non-forfeiture of the performance bond in their favor despite the finding of the Arbitration Committee that petitioners had not fully complied with all their undertakings under the MOA.

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[10] *Id.* at 25-28.

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

[12] Petitioners' petition was docketed as CA-G.R. SP No. 70473, whereas respondents' petition was docketed as CA-G.R. SP No. 71470.

On September 16, 2002, petitioners filed a Motion to Consolidate the Two Petitions for Review, which was subsequently granted by the CA.

On January 4, 2005, the CA rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, the first petition docketed as CA-G.R. SP No. 70473 is AFFIRMED with MODIFICATION. Accordingly, the order directing the petitioners to give the respondents the amount of PhP300,000.00 is DELETED.
>
> The second petition docketed as CA-G.R. SP No. 71470 is GRANTED. Accordingly, the Arbitration Committee is hereby directed to order the automatic forfeiture of the performance bond in the amount of PhP25,000,000.00 in favor of respondents.
>
> SO ORDERED.[13]

Aggrieved, petitioners filed a Motion for Reconsideration, which was, however, denied by the CA in a Resolution[14] dated March 18, 2005.

Hence, herein petition, with petitioners arguing that the CA acted with grave abuse of discretion when it:

> DECLARED THAT THE PETITIONERS FAILED IN THEIR UNDERTAKING TO PROVIDE DRAINAGE IN ACCORDANCE WITH THE REQUIREMENTS OF THE MOA.
>
> DECLARED THAT THE PETITIONERS ARE SOLELY CULPABLE FOR THE LACK OF AN ENVIRONMENTAL COMPLIANCE CERTIFICATE (ECC).
>
> AWARDED TEMPERATE DAMAGES DESPITE LACK OF BASIS THEREFOR.
>
> ORDERED THE AUTOMATIC FORFEITURE OF THE PERFORMANCE BOND DESPITE CONTRARY PROVISIONS IN THE MOA.[15]

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[13] *Rollo*, p. 78.

[14] *Id.* at 81-83.

[15] *Id.* at 13.

The petition is not meritorious.

Prefatorily, the Court notes that petitioners filed a special civil action for *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure. As a rule, the remedy from a judgment or final order of the CA is appeal *via* petition for review under Rule 45 of the Rules of Court.

In *Mercado v. Court of Appeals*,[16] this Court had again stressed the difference of the remedies provided for under Rule 45 and Rule 65 of the Rules of Court, to wit:

> x x x [T]he proper remedy of the party aggrieved by a decision of the Court of Appeals is a petition for review under Rule 45, which is not identical with a petition for review under Rule 65. Under Rule 45, decisions, final orders or resolutions of the Court of Appeals in any case, *i.e.*, regardless of the nature of the action or proceedings involved, may be appealed to us by filing a petition for review, which would be but a continuation of the appellate process over the original case. **On the other hand, a special civil action under Rule 65 is an independent action based on the specific ground therein provided and, as a general rule, cannot be availed of as a substitute for the lost remedy of an ordinary appeal, including that to be taken under Rule 45**. x x x[17]

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 therefore is grave abuse of discretion.[18] Accordingly, when a party adopts an improper remedy, his petition may be dismissed outright.[19] Pertinent, therefore, to a resolution of the case at bar is a determination of whether or not an appeal or any plain, speedy and adequate remedy was still available to petitioners, the absence of which would warrant petitioners' decision to seek refuge under Rule 65 of the Rules of Court.

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[16] 484 Phil. 438 (2004).

[17] *Id.* at 469. (Emphasis and underscoring supplied).

[18] *VMC Rural Electric Service Cooperative, Inc. v. Court of Appeals*, G.R. No. 153144, October 16, 2006, 504 SCRA 336, 352.

[19] *Mercado v. Court of Appeals, supra* note 16.

A perusal of the records will show that petitioners filed a Motion for Reconsideration to the January 4, 2005 CA Decision, which was, however, denied by the CA *via* a Resolution dated March 18, 2005. As manifested by petitioners, they received a copy of the March 18, 2005 CA Resolution on March 28, 2005. Thus, from March 28, 2005, petitioners had 15 days,[20] or until April 12, 2005, to appeal the CA Resolution under Rule 45. Clearly, petitioners had an available appeal under Rule 45 which, under the circumstances, was the plain, speedy and adequate remedy. However, petitioners instead chose to file a special civil action for *certiorari*, under Rule 65, on April 18, 2005, which was 6 days after the reglementary period under Rule 45 had expired.

The fact that the petitioners used the Rule 65 modality as a substitute for a lost appeal is made plainly manifest by: a) its filing the said petition 6 days after the expiration of the 15-day reglementary period for filing a Rule 45 appeal; and b) its petition which makes specious allegations of "grave abuse of discretion," but asserts that the CA erred (1) when it declared that the petitioners failed in their undertakings to provide drainage in accordance with the requirements of the MOA; (2) when it declared that petitioners are solely culpable for the lack of an environmental compliance certificate, when it awarded temperate damages; and (3) when it ordered the automatic forfeiture of the performance bond. These are mere errors of judgment which would have been the proper subjects of a petition for review under Rule 45.

While petitioners would insist that the CA committed grave abuse of discretion, this Court is of the opinion, however, that the assailed Decision and Resolution of the CA, granting the forfeiture of the performance bond among others, amount to nothing more than errors of judgment, correctible by appeal. When a court, tribunal, or officer has jurisdiction over the person and the subject matter of the dispute, the decision on all other

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[20] Section 2 of Rule 45 states: The petition shall be filed within fifteen (15) days from notice of the judgment, or final order or resolution appealed from x x x.

questions arising in the case is an exercise of that jurisdiction. Consequently, all errors committed in the exercise of said jurisdiction are merely errors of judgment. Under prevailing procedural rules and jurisprudence, errors of judgment are not proper subjects of a special civil action for *certiorari*.[21] If every error committed by the trial court or quasi-judicial agency were to be the proper subject of a special civil action for *certiorari*, then trial would never end and the dockets of appellate courts would be clogged beyond measure. For this reason, where the issue or question involved affects the wisdom or legal soundness of the decision, not the jurisdiction of the court to render said decision, the same is beyond the province of a special civil action for *certiorari*.[22] Since petitioners filed the instant special civil action for *certiorari*, instead of appeal via a petition for review, the petition should be dismissed.

Petitioners ask for leniency from this Court, asking for a liberal application of the rules.[23] However, it is quite apparent that petitioners offer no explanation as to why they did not appeal under Rule 45. Petitioners' Petition, Reply[24] and Memorandum[25] are all silent on this point, probably hoping that the same would go unnoticed by respondents and by this Court. The attempt to skirt away from the fact that the 15-day period to file an appeal under Rule 45 had already lapsed is made even more apparent when even after the same was raised in issue by respondents in their Comment[26] and memorandum,

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[21] *Sebastian v. Morales*, 445 Phil. 595, 608 (2003).

[22] *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 787 (2003).

[23] *Rollo*, p. 1318.

[24] *Id.* at 1115-1158.

[25] *Id.* at 1305- 1361.

[26] *Rollo*, pp. 855-923. "Clearly, in questioning the findings of fact of the Court of Appeals (CA) and in arguing that the same is not supported by evidence, Petitioners are raising errors of judgment. The proper mode therefore is via a petition for review under Rule 45. This should have been filed fifteen (15) days from receipt of the Resolution of the CA denying their Motion for Reconsideration pursuant to Section 2, Rule 45 of the Rules of Court. As

petitioners did not squarely address the same, nor offer any explanation for such omission. In *Jan-Dec Construction Corporation vs. Court of Appeals*,[27] this Court explained why a liberal application of the rules cannot be made to a petition which offers no explanation for the non-observance of the rules, to wit:

While there are instances where the extraordinary remedy of *certiorari* may be resorted to despite the availability of an appeal, the long line of decisions denying the special civil action for *certiorari*, either before appeal was availed of or in instances where the appeal period had lapsed, far outnumbers the instances where *certiorari* was given due course. The few significant exceptions are: (a) when public welfare and the advancement of public policy dictate; (b) when the broader interests of justice so require; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority.

In the present case, petitioner has not provided any cogent explanation that would absolve it of the consequences of its failure to abide by the Rules. *Apropos* on this point are the Court's observations in *Duremdes v. Duremdes*:

Although it has been said time and again that litigation is not a game of technicalities, that every case must be prosecuted in accordance with the prescribed procedure so that issues may be properly presented and justly resolved, this does not mean that procedural rules may altogether be disregarded. **Rules of procedure must be faithfully followed except only when, for persuasive reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure**

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admitted by the Petitioners in their Petition for Review, they received a copy of the CA Resolution dated March 18, 2005 denying their Motion for Reconsideration on March 28, 2005. Hence, they had until April 12, 2005 within which to file a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court. However, records show that the present petition was filed on April 18, 2005. Thus, the remedy of appeal was already lost." (*Id.* at 882).

[27] G.R. No. 146818, February 6, 2006, 481 SCRA 556.

to comply with the prescribed procedure. Concomitant to a liberal application of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules. (Emphasis supplied.)[28]

Similarly, in *Republic v. Court of Appeals*,[29] this Court did not apply a liberal construction of the rules for failure of petitioner to offer an explanation as to why the petition was filed beyond the reglementary period provided for under Rule 45, to wit:

> Admittedly, this Court, in accordance with the liberal spirit pervading the Rules of Court and in the interest of justice, has the discretion to treat a petition for *certiorari* as having been filed under Rule 45, especially if filed within the reglementary period for filing a petition for review.[5] In this case, however, we find no reason to justify a liberal application of the rules. **The petition was filed well beyond the reglementary period for filing a petition for review without any reason therefor**.[30]

While this Court has in the past allowed the relaxing of the rules on the reglementary periods of appeal, it must be stressed that there must be a showing of an extraordinary or exceptional circumstance to warrant such liberality. *Bank of America, NT & SA v. Gerochi, Jr.*[31] so instructs:

> True, in few highly exceptional instances, we have allowed the relaxing of the rules on the application of the reglementary periods of appeal. We cite a few typical examples: In *Ramos vs. Bagasao*, 96 SCRA 395, we excused the delay of four days in the filing of a notice of appeal because the questioned decision of the trial court was served upon appellant Ramos at a time when *her counsel of record was already dead*. Her new counsel could only file the appeal four days after the prescribed reglementary period was over. In *Republic vs. Court of Appeals*, 83 SCRA 453, we allowed the perfection of an appeal by the Republic despite the delay of six days

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[28] *Id.* at 564-565.

[29] 379 Phil. 92 (2000).

[30] *Id.* at 98. (Emphasis and underscoring supplied.)

[31] G.R. No. 73210, February 10, 1994, 230 SCRA 9.

to prevent a gross miscarriage of justice since the Republic stood to lose hundreds of hectares of land *already titled in its name* and had since then been devoted for educational purposes. In *Olacao v. National Labor Relations Commission,* 177 SCRA 38, 41, we accepted a tardy appeal considering that the subject matter in issue had theretofore been *judicially settled, with finality, in another case*. The dismissal of the appeal would have had the effect of the appellant being ordered twice to make the same reparation to the appellee.

The case at bench, given its own settings, cannot come close to those extraordinary circumstances that have indeed justified a deviation from an otherwise stringent rule. Let it not be overlooked that the timeliness of an appeal is a *jurisdictional caveat* that not even this Court can trifle with.[32]

Withal, this Court must stress that the bare invocation of "the interest of substantial justice" is not a magic wand that will automatically compel this Court to suspend procedural rules.[33] Indeed, in no uncertain terms, this Court has held that the said Rules may be relaxed only in "exceptionally meritorious cases."[34] Petitioners have failed to show that this case is one of the exceptions.

WHEREFORE, premises considered, the petition is *DISMISSED*. The January 4, 2005 Decision and March 18, 2005 Resolution of the Court of Appeals, in CA-G.R. SP No. 70473 and CA-G.R. SP No. 71470, are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Perez,*[*] *JJ.*, concur.

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[32] *Id.* at 15-16.

[33] *Lazaro v. Court of Appeals*, 386 Phil. 412, 417 (2000).

[34] *Videogram Regulatory Board v. Court of Appeals*, 332 Phil. 820, 832 (1996).

[*] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 842 dated June 3, 2010.

SECOND DIVISION

[G.R. No. 169523. June 16, 2010]

LIMA LAND, INC., LEANDRO JAVIER, SYLVIA DUQUE, and PREMY ANN BELOY, *petitioners, vs.* **MARLYN CUEVAS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE ONLY ERRORS OF LAW ARE REVIEWED BY THE SUPREME COURT; EXCEPTION. — It is a settled rule that only errors of law are generally reviewed by this Court in petitions for review on *certiorari* of CA decisions. However, there are well-recognized exceptions to this rule, as in this case, when the factual findings of the NLRC as affirmed by the CA contradict those of the Labor Arbiter. In cases like this, it is this Court's task, in the exercise of its equity jurisdiction, to re-evaluate and review the factual issues by looking into the records of the case and re-examining the questioned findings.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; REQUISITES FOR A VALID DISMISSAL. — The requisites for a valid dismissal are: (a) the employee must be afforded due process, *i.e.*, he must be given an opportunity to be heard and defend himself; and (b) the dismissal must be for a valid cause, as provided in Article 282 of the Labor Code, or for any of the authorized causes under Articles 283 and 284 of the same Code.

3. ID.; ID.; ID.; ID.; ESSENCE OF DUE PROCESS, EXPLAINED. — Well-settled is the rule that the essence of due process is simply an opportunity to be heard or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of. Moreover, in dismissing an employee, the employer has the burden of proving that the former worker has been served two notices: (1) one to apprise him of the particular acts or omissions for which his dismissal is sought, and (2) the other to inform him of his employer's decision to dismiss him. The first notice must state that dismissal is sought

for the act or omission charged against the employee, otherwise, the notice cannot be considered sufficient compliance with the rules.

4. **ID.; ID.; ID.; ID.; ID.; THE FIRST WRITTEN NOTICE TO BE SERVED ON THE EMPLOYEES SHOULD INCLUDE THE "REASONABLE OPPORTUNITY" TO SUBMIT WRITTEN EXPLANATION; CONSTRUED. —** The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period. "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense. This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint. Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed narration of the facts and circumstances that will serve as basis for the charge against the employees. A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, were violated and/or which among the grounds under Article 282 is being charged against the employees.

5. **ID.; ID.; ID.; THE BURDEN OF PROOF RESTS UPON THE EMPLOYER TO SHOW THAT THE DISMISSAL OF THE EMPLOYEE IS FOR JUST CAUSE AND FAILURE TO DO SO WOULD MEAN THAT THE DISMISSAL IS NOT JUSTIFIED; RATIONALE. —** It must be noted that in termination cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for just cause and failure to do so would mean that the dismissal is not justified. This is in consonance with the guarantee of security of tenure in the Constitution and elaborated in the Labor Code. A dismissed employee is not required to prove his innocence of the charges leveled against him by his employer. The determination of the existence and sufficiency of a just cause must be exercised with fairness and in good faith and after

observing due process. As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected. This includes managerial personnel entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property. The betrayal of this trust is the essence of the offense for which an employee is penalized.

6. ID.; ID.; ID.; MANAGERIAL EMPLOYEES DISTINGUISHED FROM RANK AND FILE PERSONNEL. — This Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned. Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere uncorroborated assertions and accusations by the employer will not be sufficient. But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal. Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position.

7. ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE; CLARIFIED; NOT PRESENT IN CASE AT BAR. — The loss of trust and confidence must be based not on ordinary breach by the employee of the trust reposed in him by the employer, but, in the language of Article 282 (c) of the Labor Code, on willful breach. A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy

of the employer. It should be genuine and not simulated; nor should it appear as a mere afterthought to justify earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified. There must, therefore, be an actual breach of duty committed by the employee which must be established by substantial evidence. Moreover, the burden of proof required in labor cases must be amply discharged. x x x Loss of trust and confidence stems from a breach of trust founded on a dishonest, deceitful or fraudulent act. In the case at bar, respondent did not commit any act which was dishonest or deceitful. She did not use her authority as the Finance and Administration Manager to misappropriate company property nor did she abuse the trust reposed in her by petitioners with respect to her responsibility to implement company rules. The most that can be attributed to respondent is that she was remiss in the performance of her duties. This, though, does not constitute dishonest or deceitful conduct which would justify the conclusion of loss of trust and confidence. There was no demonstration of moral perverseness that would justify the claimed loss of trust and confidence attendant to respondent's job. As such, she does not deserve the penalty of dismissal from employment, especially in the absence of any showing that she has committed prior infractions in her six years of service to petitioner company before her dismissal. There has been no showing nor allegation that respondent had been previously found guilty of any misconduct or had violated established company rules that would warrant the charge of gross negligence and failure to exercise extraordinary diligence as basis for the petitioner company's loss of trust and confidence in her.

APPEARANCES OF COUNSEL

Laguesma Magsalin Consulta & Gastardo Law Office for petitioners.

M.A. Aguinaldo & Associates for respondent.

D E C I S I O N

PERALTA, *J.*:

This resolves the instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court praying for the reversal of the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 83808 dated January 26, 2005 and August 31, 2005, respectively. The challenged Decision of the CA affirmed the Resolutions[3] of the National Labor Relations Commission (NLRC) dated December 30, 2003 and February 27, 2004 in NLRC CA No. 035384-03, while the assailed Resolution denied petitioners' Motion for Reconsideration.

The factual and procedural antecedents, as narrated by the CA, are as follows:

> Petitioner Lima Land, Inc. (Lima) is a company engaged in the real estate business and a member of the Alcantara Group of Companies (Alcantara Group). Petitioners Leandro D. Javier [Javier] and Premy Ann G. Beloy [Beloy] are Lima's Executive Vice-President and Operating Officer, and Assistant Corporate Secretary, respectively. Petitioner Sylvia M. Duque [Duque] is the Vice-President-Director of the Human Resources Department of the Alcantara Group. Private respondent Marlyn G. Cuevas [Cuevas] was the Finance and Administration Manager of Lima.
>
> In 1996, Lima entered into several lease agreements known as "*arriendo* contracts" with different persons whereby [the former transferred to the latter] its right to harvest [coconuts as well as other fruits planted on the lands it owned] in consideration of certain monetary equivalent. The collection of the proceeds were under the direct supervision of Jonas Senia [Senia], Operation and Estate Manager at the Lima Land Estate, Batangas City. He was assisted by Flor San Gabriel [San Gabriel], Site Assistant and Imelda Melo

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[1] Penned by Associate Justice Noel G. Tijam, with Associate Justices Jose L. Sabio, Jr. and Edgardo P. Cruz, concurring, *rollo*, pp. 632-639.

[2] *Rollo*, p. 665.

[3] *Id.* at 404-417; 437-438.

[Melo], Liaison Assistant. The *arriendo* collections were, thereafter, remitted to the Head Office in Makati and booked as company income.

In February 2000, irregularities in [the] *arriendo* collections were discovered. Petitioners formed an investigating panel to conduct a thorough investigation on the status of the collections. Several employees were interviewed including Private Respondent. Investigation showed that the *arriendo* collections were last remitted to the Head Office on September 1, 1999 without the succeeding collections remitted, despite proof of receipt of payments made to San Gabriel and Melo. San Gabriel and Melo also entered into other contracts on behalf of the Company which were not reported to the Head Office.

Private Respondent issued a Memorandum directing Senia to report any information regarding the collections and disbursement of the *arriendo* funds after September 1, 1999. Senia reported that the total collection which he failed to remit was ₱101,200.00. However, in April 2000, the Accounting Department determined that the actual unremitted amount was ₱142,100.00.

The initial findings of the investigating panel revealed fraudulent activities and irregularities committed by the Private Respondent relative to the Company funds. Consequently, Private Respondent was served with a notice to explain and was placed under preventive suspension on May 22, 2002. She was, thereafter, ordered to turn over all documents and keys in her possession to Mrs. Venus Quieta.

On May 23, 2002, Private Respondent received another notice charging her with the following: 1) failure to exercise reasonable diligence to inquire about the status of the unremitted *arriendo* collections; 2) approving a patently false request for reimbursement of representation expenses; and 3) failure to institute sufficient accounting standards.

During the initial hearing scheduled on May 24, 2002, Private Respondent failed to appear. Petitioners gave her until May 30, 2002 to submit her written reply. Private Respondent requested that the hearing be conducted on June 5, 2002, but she again failed to attend. Private Respondent submitted her written reply on June 4, 2002. Although Petitioners gave her until June 14, 2002 to submit additional evidence, Private Respondent did not submit any.

On June 21, 2002, Petitioners dismissed Private Respondent on the ground of loss of trust and confidence effective May 22, 2002,

the date of her preventive suspension. The notice of termination was received by the Private Respondent on the same date.

On July 3, 2002, Private Respondent filed a Complaint with the Labor Arbiter for illegal suspension, illegal dismissal, and non-payment of salaries, holiday pay, service incentive leave pay and 13th month pay against the Petitioners. She also prayed for her reinstatement, payment of backwages, damages, attorney's fees and other monetary claims.

x x x x x x x x x

On March 27, 2003, the Labor Arbiter rendered a Decision dismissing the Complaint for lack of merit. The dispositive portion of the decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered dismissing the complaint for lack of merit. However, as above discussed, respondents are hereby directed to pay the complainant the amount of ₱18,664.58, representing pro-rata 13th month pay from January to May 2002.
>
> Other claims are dismissed for lack of merit.
>
> SO ORDERED.

x x x x x x x x x

On April 15, 2003, Private Respondent filed an appeal [with] the National Labor Relations Commission (NLRC) x x x

x x x x x x x x x

On December 30, 2003, the Public Respondent [NLRC] issued a Resolution setting aside the decision of the Labor Arbiter, the dispositive portion of the Resolution states:

> WHEREFORE, in view thereof, the assailed decision dated March 27, 2003 is hereby SET ASIDE; and declare the suspension and dismissal of the Complainant-appellant illegal. Therefore, Respondent-appellee is hereby ordered to:
>
> a) Reinstate complainant-appellant to her former position without loss of seniority or diminution of benefits with full backwages from the time of her suspension up to the time of finality of the decision. If reinstatement is not anymore possible,

payment of separation pay equivalent to 1 month salary per year of service;

b) Pay Complainant-appellant her unused leave credits;

c) Pay Complainant-appellant her 13th month pay and holiday pay plus legal interest, plus other benefits such as but not limited to the award of the company car to the Complainant-appellant, as gasoline allowance (150 liters per month), rice subsidy of 1 sack per month, and health card manager package;

d) Pay 10% of the total amount to be collected as attorney's fees.

SO ORDERED.

x x x x x x x x x

On February 27, 2004, Petitioners filed a Motion for Reconsideration on the said Resolution of the Public Respondent, but the motion was denied x x x.[4]

Petitioners then filed a special civil action for *certiorari* with the CA contending that the NLRC committed grave abuse of discretion amounting to lack of jurisdiction in declaring respondent's dismissal illegal. Petitioners averred that the dismissal was justified on the ground that respondent, as the Finance and Administration Manager, had supervision over all matters, including the *arriendo* collections; that it took respondent three years from the last remittance of the said collection before she made an inquiry as to the status of the collections, thus, making her remiss in her duties.

On January 26, 2005, the CA rendered its presently assailed Decision.

Hence, the instant petition with the following assignment of errors:

THE COURT OF APPEALS SERIOUSLY ERRED IN DISMISSING THE PETITION FOR *CERTIORARI* CONSIDERING THAT:

I. ITS FINDING THAT RESPONDENT WAS NOT RESPONSIBLE FOR MONITORING THE *ARRIENDO*

[4] *Id.* at 633-640.

COLLECTIONS AND, THEREFORE, CANNOT BE DISMISSED ON THE GROUND OF LOSS OF TRUST AND CONFIDENCE IS CONTRARY TO LAW AND PREVAILING JURISPRUDENCE;

II. ITS FINDING THAT THE PENALTY OF DISMISSAL FROM THE SERVICE IMPOSED ON RESPONDENT WAS TOO HARSH IS CONTRARY TO LAW AND PREVAILING JURISPRUDENCE; AND

III. ITS FINDING THAT RESPONDENT WAS DENIED DUE PROCESS OF LAW UNDER THE LABOR CODE IS CONTRARY TO LAW AND PREVAILING JURISPRUDENCE.[5]

The petition is without merit.

It is a settled rule that only errors of law are generally reviewed by this Court in petitions for review on *certiorari* of CA decisions.[6] However, there are well-recognized exceptions to this rule, as in this case, when the factual findings of the NLRC as affirmed by the CA contradict those of the Labor Arbiter.[7] In cases like this, it is this Court's task, in the exercise of its equity jurisdiction, to re-evaluate and review the factual issues by looking into the records of the case and re-examining the questioned findings.[8]

The basic issue in the present case is whether petitioners validly dismissed respondent from her employment.

The requisites for a valid dismissal are: (a) the employee must be afforded due process, *i.e.*, he must be given an opportunity to be heard and defend himself; and (b) the dismissal must be for a valid cause, as provided in Article 282[9] f the Labor

[5] *Id.* at 16-17.

[6] *Mitsubishi Motors Philippines Corporation v. Chrysler Philippines Labor Union*, G.R. No. 148738, June 29, 2004, 433 SCRA 206, 217.

[7] *Lopez v. Bodega City*, G.R. No. 155731, September 3, 2007, 532 SCRA 56, 64.

[8] *Id.*

[9] Art. 282. *Termination by employer*. – An employer may terminate an employment for any of the following causes:

Code, or for any of the authorized causes under Articles 283[10] and 284[11] of the same Code.[12]

In the instant case, the Court agrees with petitioners' contention that respondent was afforded due process prior to her dismissal.

Well-settled is the rule that the essence of due process is simply an opportunity to be heard or, as applied to administrative

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(a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;

(b) Gross and habitual neglect by the employee of his duties;

(c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;

(d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representative; and

(e) Other causes analogous to the foregoing.

[10] Art. 283. *Closure of establishment and reduction of personnel.* – The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor saving-devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[11] Art. 284. *Disease as ground for termination.* – An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

[12] *Estacio v. Pampanga I Electric Cooperative, Inc.*, G.R. No. 183196, August 19, 2009, 596 SCRA 542, 563-564.

proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[13]

Moreover, in dismissing an employee, the employer has the burden of proving that the former worker has been served two notices: (1) one to apprise him of the particular acts or omissions for which his dismissal is sought, and (2) the other to inform him of his employer's decision to dismiss him.[14] The first notice must state that dismissal is sought for the act or omission charged against the employee, otherwise, the notice cannot be considered sufficient compliance with the rules.[15]

The first written notice to be served on the employees should contain the specific causes or grounds for termination against them, and a directive that the employees are given the opportunity to submit their written explanation within a reasonable period.[16] "Reasonable opportunity" under the Omnibus Rules means every kind of assistance that management must accord to the employees to enable them to prepare adequately for their defense.[17] This should be construed as a period of at least five (5) calendar days from receipt of the notice to give the employees an opportunity to study the accusation against them, consult a union official or lawyer, gather data and evidence, and decide on the defenses they will raise against the complaint.[18] Moreover, in order to enable the employees to intelligently prepare their explanation and defenses, the notice should contain a detailed

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[13] *Telecommunications Distributors Specialist, Inc. v. Gabriel*, G.R. No. 174981, May 25, 2009, 588 SCRA 165, 176.

[14] *Ace Promotion and Marketing Corporation v. Ursabia*, G.R. No. 171703, September 22, 2006, 502 SCRA 645, 655.

[15] *Id.*

[16] *Inguillo v. First Philippine Scales, Inc.*, G.R. No. 165407, June 5, 2009, 588 SCRA 471, 491.

[17] *King of Kings Transport, Inc. v. Mamac*, G.R. No. 166208, June 29, 2007, 526 SCRA 116, 125.

[18] *Id.*

narration of the facts and circumstances that will serve as basis for the charge against the employees.[19] A general description of the charge will not suffice. Lastly, the notice should specifically mention which company rules, if any, were violated and/or which among the grounds under Article 282 is being charged against the employees.[20]

In the case before the Court, the requirements of procedural due process were complied with by petitioners when they sent a notice dated May 23, 2002 informing respondent of the specific charges leveled against her and giving her the opportunity to be heard and to present evidence in her defense, with the aid of counsel if she so chooses, in a hearing which was supposed to be held on May 24, 2002. Respondent failed to appear on the scheduled date but was given the chance to submit a written reply until May 30, 2002. Upon request of respondent, the scheduled hearing was again moved to June 5, 2002. Respondent was finally able to submit her written reply on June 4, 2002. Subsequently, in a letter dated June 21, 2002, respondent was informed of her dismissal from employment.

The foregoing notwithstanding, the Court notes that the CA and the NLRC did not err in ruling that petitioners failed to comply with the other requisite of valid dismissal as there was no sufficient evidence to prove that petitioners are justified in terminating respondent's employment on the basis of loss of trust and confidence.

It must be noted that in termination cases, the burden of proof rests upon the employer to show that the dismissal of the employee is for just cause and failure to do so would mean that the dismissal is not justified.[21] This is in consonance with the guarantee of security of tenure in the Constitution and elaborated

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[19] *Id.*

[20] *R.B. Michael Press v. Galit*, G.R. No. 153510, February 13, 2008, 545 SCRA 23, 36.

[21] *Philippine Transmarine Carriers, Inc. v. Carilla*, G.R. No. 157975, June 26, 2007, 525 SCRA 586, 594.

in the Labor Code.[22] A dismissed employee is not required to prove his innocence of the charges leveled against him by his employer.[23] The determination of the existence and sufficiency of a just cause must be exercised with fairness and in good faith and after observing due process.[24]

As firmly entrenched in our jurisprudence, loss of trust and confidence, as a just cause for termination of employment, is premised on the fact that an employee concerned holds a position where greater trust is placed by management and from whom greater fidelity to duty is correspondingly expected.[25] This includes managerial personnel entrusted with confidence on delicate matters, such as the custody, handling, or care and protection of the employer's property.[26] The betrayal of this trust is the essence of the offense for which an employee is penalized.[27]

It must be noted, however, that in a plethora of cases, this Court has distinguished the treatment of managerial employees from that of rank-and-file personnel, insofar as the application of the doctrine of loss of trust and confidence is concerned.[28] Thus, with respect to rank-and-file personnel, loss of trust and confidence, as ground for valid dismissal, requires proof of involvement in the alleged events in question, and that mere

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[22] *Skippers United Pacific, Inc. v. Maguad*, G.R. No. 166363, August 15, 2006, 498 SCRA 639, 658.

[23] *Id*.

[24] *Id*.

[25] *Caingat v. NLRC*, G.R. No. 154308, March 10, 2005, 453 SCRA 142, 151-152.

[26] *Id.* at 152.

[27] *Id*.

[28] *Triumph International (Phils.), Inc. v. Apostol*, G.R. No. 164423, June 16, 2009, 589 SCRA 185, 201-202; *Uniwide Sales Warehouse Club v. NLRC*, G.R. No. 154503, February 29, 2008, 547 SCRA 220, 240; *Philippine Long Distance Telephone Company v. Buna*, G.R. No. 143688, August 17, 2007, 530 SCRA 444, 454; *Cruz, Jr. v. CA*, G.R. No. 148544, July 12, 2006, 494 SCRA 643, 654; *Etcuban, Jr. v. Sulpicio Lines, Inc.*, G.R. No. 148410, January 17, 2005, 448 SCRA 516, 529.

uncorroborated assertions and accusations by the employer will not be sufficient.[29] But as regards a managerial employee, the mere existence of a basis for believing that such employee has breached the trust of his employer would suffice for his dismissal.[30] Hence, in the case of managerial employees, proof beyond reasonable doubt is not required, it being sufficient that there is some basis for such loss of confidence, such as when the employer has reasonable ground to believe that the employee concerned is responsible for the purported misconduct, and the nature of his participation therein renders him unworthy of the trust and confidence demanded of his position.[31]

On the other hand, loss of trust and confidence as a ground of dismissal has never been intended to afford an occasion for abuse because of its subjective nature.[32] It should not be used as a subterfuge for causes which are illegal, improper, and unjustified.[33] It must be genuine, not a mere afterthought intended to justify an earlier action taken in bad faith.[34] Let it not be forgotten that what is at stake is the means of livelihood, the name, and the reputation of the employee.[35] To countenance an arbitrary exercise of that prerogative is to negate the employee's constitutional right to security of tenure.[36]

Stated differently, the loss of trust and confidence must be based not on ordinary breach by the employee of the trust reposed in him by the employer, but, in the language of Article

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[29] *Triumph International (Phils.), Inc. v. Apostol, supra,* at 202.

[30] *Id.*

[31] *Id.*

[32] *Davao Contractors Development Cooperative (DACODECO) v. Pasawa*, G.R. No. 172174, July 9, 2009, 592 SCRA 334, 344-345.

[33] *Philippine National Construction Corporation v. Mandagan,* G.R. No. 160965, July 29, 2008, 559 SCRA 121, 135.

[34] *Id.*

[35] *Id.*

[36] *Id.*

282 (c) of the Labor Code, on willful breach.[37] A breach is willful if it is done intentionally, knowingly and purposely, without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[38] It must rest on substantial grounds and not on the employer's arbitrariness, whims, caprices or suspicion; otherwise, the employee would eternally remain at the mercy of the employer.[39] It should be genuine and not simulated; nor should it appear as a mere afterthought to justify earlier action taken in bad faith or a subterfuge for causes which are improper, illegal or unjustified.[40] There must, therefore, be an actual breach of duty committed by the employee which must be established by substantial evidence.[41] Moreover, the burden of proof required in labor cases must be amply discharged.[42]

Petitioners contend that respondent's unexplained omission and/or gross neglect to carry out her duties and to exercise the extraordinary diligence required of her position gave the other employees of petitioner company, whose duties and activities should have been properly monitored by her, the opportunity to commit fraud against the company. However, this supposed function of respondent – monitoring duties and activities of other employees – is not subsumed in what petitioners claim as respondent's duties which are (a) to manage, direct and control record-keeping and financial reportorial requirements; (b) to ensure the accuracy and integrity of all financial reports; (c) to be responsible for the funds management and financial planning activities of the company; and (d) to manage the disbursement of funds.

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[37] *Salas v. Aboitiz One, Inc*., G.R. No. 178236, June 27, 2008, 556 SCRA 374, 388.

[38] *Id*.

[39] *Id*.

[40] *Id*.

[41] *Id.* at 388-389.

[42] *Philippine National Construction Corporation v. Mandagan*, *supra* note 33, at 134.

Moreover, logic dictates that the monitoring of the duties and activities of the employees who are reporting at the Batangas site would fall on the person appointed to oversee the operations of the company in that area. In the present case, the Batangas site where the *arriendo* collections were made was managed by an estate manager in the person of one Jonas Senia. Petitioners did not refute respondent's claim that Senia was the one directly responsible for the management, operation and overall monitoring of the Batangas estate. In fact, petitioners admitted in their Position Paper[43] submitted to the Labor Arbiter that Senia was the one who exercised direct supervision over the contracting, collecting and remitting activities of the *arriendo*; that from 1999 until 2002 Senia and his team in the Batangas site continued to collect *arriendo* proceeds but never remitted these collections to the head office. Hence, it is Senia who should have been called to answer for any fraud committed at the Batangas site. Despite these admissions, petitioners charged respondent with gross negligence and made her principally and solely liable for the non-remittance of the *arriendo* collections. Indeed, there is no evidence to show that any of the employees of the petitioners' Batangas site, who were directly responsible for the supposed fraud committed against petitioner company, were made liable.

Respondent's duty insofar as the *arriendo* collections are concerned, is to see to it that these are timely remitted to the head office. In the present case, the Court agrees with petitioners that respondent was remiss in this particular duty.

Respondent's negligence or carelessness in handling the *arriendo* collections, however, are not justifiable grounds for petitioners' loss of trust and confidence in her, especially in the absence of any malicious intent or fraud on respondent's part. Loss of trust and confidence stems from a breach of trust founded on a dishonest, deceitful or fraudulent act.[44] In the case at bar, respondent did not commit any act which was

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[43] See *rollo*, p. 91.

[44] *M+W Zander Philippines, Inc. v. Enriquez*, G.R. No. 169173, June 5, 2009, 588 SCRA 590, 606.

dishonest or deceitful. She did not use her authority as the Finance and Administration Manager to misappropriate company property nor did she abuse the trust reposed in her by petitioners with respect to her responsibility to implement company rules. The most that can be attributed to respondent is that she was remiss in the performance of her duties. This, though, does not constitute dishonest or deceitful conduct which would justify the conclusion of loss of trust and confidence. There was no demonstration of moral perverseness that would justify the claimed loss of trust and confidence attendant to respondent's job. As such, she does not deserve the penalty of dismissal from employment, especially in the absence of any showing that she has committed prior infractions in her six years of service to petitioner company before her dismissal. There has been no showing nor allegation that respondent had been previously found guilty of any misconduct or had violated established company rules that would warrant the charge of gross negligence and failure to exercise extraordinary diligence as basis for the petitioner company's loss of trust and confidence in her.

It also bears to point out that respondent's dismissal inspires suspicion of ill motive on the part of petitioners considering that Senia, the Operations and Estate Manager in their Batangas estate, was cleared of any accountability and allowed to resign when he should be the first to be made liable, considering that he was the one who had direct and immediate control and supervision over the *arriendo* transactions and collections. Conversely, if there was indeed no basis to hold Senia liable, then the Court agrees with respondent that with more reason should she be exonerated of the charges of loss of trust and confidence arising from the alleged non-remittance of the *arriendo* collections. There is also no showing that petitioners took steps to hold accountable the other employees who, admittedly, were guilty of failing to remit their *arriendo* collections.

As to the alleged false request for reimbursement signed by respondent, the Court finds that petitioners failed to present substantial evidence to show that there was irregularity in respondent's approval of the questioned reimbursement for the

expenses incurred during the birthday celebration of one of the company's former officers.The Court agrees with the respondent that the request went through the normal process of disbursement and did not cut short the process of reimbursement.Such reimbursement was not made in respondent's name. Moreover, petitioners did not refute respondent's contention that, in two instances, petitioner company paid the bills during birthday celebrations of its officers. Hence, it cannot be concluded that respondent was deceitful or had intended to defraud petitioners in signing the subject request for reimbursement.

In the same manner, the Court finds as unsubstantiated petitioners' allegation regarding the supposed failure of respondent to institute sufficient accounting standards leading to irregularities committed in handling the company's Petty Cash Fund. The Court agrees with respondent that in the six years that she rendered service to petitioners, her attention was never called to any insufficient accounting standards that supposedly exist in the company. On the contrary, respondent was able to present evidence to show that certain procedures were followed with respect to cash and check disbursements and collections. In fact, the Executive Vice-President and Chief Operating Officer of petitioner company who preceded herein petitioner Javier and with whom respondent worked with for six years, executed an affidavit attesting to the competence, integrity and honesty of respondent as Manager and Finance Officer of petitioner company.[45]

As a final note, the Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate a managerial employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion. Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of the said prerogative, what is at stake is not only the employee's position, but his very livelihood, his very breadbasket.[46] Indeed, the consistent rule is that if

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[45] Annex "T" to Respondent's Position Paper, records, vol. I, p. 105.

[46] *Marival Trading, Inc. v. NLRC*, G.R. No. 169600, June 26, 2007, 525 SCRA 708, 730.

doubts exist between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter. The employer must affirmatively show rationally adequate evidence that the dismissal was for justifiable cause.[47] Thus, when the breach of trust or loss of confidence alleged is not borne by clearly established facts, as in this case, such dismissal on the cited grounds cannot be allowed.[48]

WHEREFORE, the instant petition is *DENIED*. The Decision of the Court of Appeals, dated January 26, 2005, and its Resolution dated August 31, 2005 in CA-G.R. SP No. 83808, are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Perez,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 170369. June 16, 2010]

KOREAN AIR CO., LTD. and SUK KYOO KIM, *petitioners, vs.* **ADELINA A.S. YUSON,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; ELEMENTS. — Articles 1315, 1318 and 1319 of the Civil Code, respectively, state: Art. 1315. Contracts are perfected by mere consent, and from that moment

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[47] *Fujitsu Computer Products Corporation of the Philippines v. Court of Appeals*, G.R. No. 158232, March 31, 2005, 454 SCRA 737, 771.

[48] *Id.* at 766.

[*] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza, per Special Order No. 842 dated June 3, 2010.

the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which, according to their nature, may be in keeping with good faith, usage and law. Art. 1318. There is no contract unless the following requisites concur: (1) Consent of the contracting parties; (2) Object certain which is the subject matter of the contract; (3) Cause of the obligation which is established. Art. 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. **The offer must be certain** and the acceptance absolute. x x x

2. ID.; ID.; ID.; CONSENT; THE OFFER MUST BE DEFINITE, COMPLETE AND INTENTIONAL. — An offer is a unilateral proposition made by one party to another for the celebration of a contract. For an offer to be certain, a contract must come into existence by the mere acceptance of the offeree without any further act on the offeror's part. The offer must be definite, complete and intentional. In *Spouses Paderes v. Court of Appeals*, the Court held that, "There is an 'offer' in the context of Article 1319 only if the contract can come into existence by the mere acceptance of the offeree, without any further act on the part of the offeror. Hence, the 'offer' must be definite, complete and intentional."

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETIREMENT; EXERCISE OF MANAGEMENT PREROGATIVE IS VALID AS LONG AS IT IS NOT DONE IN A MALICIOUS, HARSH, OPPRESSIVE, VINDICTIVE OR WANTON MANNER; PRESENT IN CASE AT BAR. — Approval of applications for the early retirement program is within Korean Air's management prerogatives. The exercise of management prerogative is valid as long as it is not done in a malicious, harsh, oppressive, vindictive, or wanton manner. In the present case, the Court sees no bad faith on Korean Air's part. The 21 August 2001 memorandum clearly states that Korean Air, **on its discretion**, was offering ERP to its employees. The memorandum also states that the reason for the ERP was to prevent further losses. Korean Air did not abuse its discretion when it excluded Yuson in the ERP. To allow Yuson to avail of the ERP would have been contrary to the purpose of the ERP.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioners.
Jay Layug for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court. The petition challenges the 28 June 2005 Decision[2] and 3 November 2005 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 86762. The Court of Appeals set aside the 30 July 2004 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC NCR CA No. 034928-03, affirming the 31 January 2003 Decision[5] of Labor Arbiter Ariel Cadiente Santos (Labor Arbiter Santos) in NLRC-NCR S Case No. 30-11-05543-01.

The Facts

In July 1975, Korean Air Co., Ltd. (Korean Air) hired Adelina A.S. Yuson (Yuson) as reservations agent. Korean Air promoted Yuson to assistant manager in 1993, and to passenger sales manager in 1999.

Korean Air had an International Passenger Manual (IPM) which contained, among others, travel benefit to its employees. However, Korean Air never implemented the travel benefit under

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[1] *Rollo*, pp. 3-50.

[2] *Id.* at 58-86. Penned by Associate Justice Jose L. Sabio, Jr., with Associate Justices Noel G. Tijam and Mariflor P. Punzalan Castillo, concurring.

[3] *Id.* at 88-89.

[4] *Id.* at 248-259. Penned by Commissioner Ernesto S. Dinopol, with Presiding Commissioner Roy V. Señeres and Commissioner Romeo L. Go, concurring.

[5] *Id.* at 91-103. Penned by Labor Arbiter Ariel Cadiente Santos.

the manual. Instead, Korean Air granted all its employees travel benefit as contained in the collective bargaining agreement (CBA). Yuson availed of the travel benefit under the CBA during her stay in the company.

In 2000, Korean Air suffered a net loss of over $367,000,000. Consequently, Korean Air reduced its budget for 2001 by 10 percent.

In April 2001, Yuson requested Korean Air that she be transferred from the passenger sales department to the cargo department. Yuson wanted to be exposed to the operations of the cargo department because she intended to pursue a cargo agency business after her retirement. On 4 June 2001, Korean Air temporarily transferred Yuson to the cargo department as "cargo dispatch." Yuson continued to receive the same compensation and exercise the same authority as passenger sales manager.

In order to cut costs, Korean Air offered its employees an early retirement program (ERP). In a memorandum[6] dated 21 August 2001, Korean Air stated that:

> The results of operation of Korean Air for the Year 2000, was [sic] bad. The Company suffered a net loss of over THREE HUNDRED SIXTY SEVEN MILLION DOLLARS, (USD367,000,000.00). For this reason, the budget for the Year 2001 was reduced by 10%. Accordingly, to prevent further losses, Head Office recently implemented an early retirement program not only for Head Office staffs but throughout all Korean Air branches abroad. Unfortunately, in Head Office alone, 500 positions will be affected. This program is being offered before finally conducting a retrenchment program.
>
> In compliance with Head Office instruction, MNLSM Management, on its discretion, is hereby offering the said early retirement program to its staff. Availing employees shall be given ONE AND A HALF MONTHS (1.50%) [sic] salary for every year of service and other benefits. This rate is 50% higher than the retrenchment pay prevailing in the CBA.

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[6] *Id.* at 135.

Please accept our deepest regrets.[7]

In a letter[8] dated 23 August 2001 and addressed to Korean Air's Philippine general manager Suk Kyoo Kim (Suk), Yuson accepted the offer for early retirement.

In a letter[9] dated 24 August 2001, Suk informed Yuson that she was excluded from the ERP because she was retiring on 8 January 2002. Suk stated that:

Please be informed that you are excluded from the "Early Retirement Program." The program is intended to staffs, upon discretion of management, who still have long years left with the Company before reaching retirement age. You are already due for retirement on January 8, 2002. This program is being implemented by the Company as a cost saving tool to prevent further losses.[10]

In a letter[11] dated 1 September 2001 and addressed to Suk, Yuson claimed that Korean Air was bound by the perfected contract and accused the company of harassment and discrimination. Yuson stated that:

Korean Air offered the "Early Retirement Program" through its memo under MNLSM#01-13 dated 21 August 2001. I accepted this offer under my letter dated 23 August 2001. With this Offer and Acceptance, a Contract has been legally perfected between Korean Air and myself.

x x x x x x x x x

Not too long ago, you tried to demote me from my position as Passenger Sales Manager to Cargo Dispatch, a clerical position. This was not only done internally but also communicated with other airlines. This has caused me undue embarrassment and humiliation.
x x x

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7 *Id.*

8 *Id.* at 136.

9 *Id.* at 137.

10 *Id.*

11 *Id.* at 138.

Your unilateral decision to exclude me from the "Early Retirement Program" which Head Office has stated as (and I quote) "... [sic] not only for Head Office staffs but THROUGHOUT ALL KOREAN AIR BRANCHES ABROAD" is another case of harassment and discrimination. It is very clear that the Program does not allow for discretion on the part of Korean Air — MNL Manager to harass or discriminate against any employee for any reason whatsoever, be it age, gender or nationality.

I therefore request that Korean Air perform its obligation arising out of a Contract legally perfected with the Offer of 21 August 2001 and Acceptance of 23 August 2001. I sincerely hope I will not have to engage the services of counsel to enforce performance of our Contract as this will subject me to further distress and mental anguish, plus a considerable amount of expenditure, which can be the basis for additional claim for damages.[12]

In a letter[13] dated 12 September 2001 and addressed to Yuson, Suk stated that:

1. The "Early Retirement Program" ("ERP") is a plan by the Head Office for the purpose of reducing the workforce of Korean Air (the "Company") due to substantial losses prior to undertaking a retrenchment program. Contrary to your assertion, my letter dated 21 August 2001 was not an absolute offer but rather an invitation to possible qualified employees to consider the ERP subject to the approval and acceptance by the Company, through the Head Office, in the exercise of its discretion. x x x

2. This explains the Company's position stated in my letter-response dated 24 August 2001 wherein the ERP is supposedly for employees who have still a number of years to serve the Company in order to prevent further losses. It is, therefore, clear why you are disqualified under the ERP since you are scheduled to retire on 08 January 2002. There is no closure of business contemplated herein but merely a reduction of personnel to prevent further losses to the Company.

3. x x x x x x x x x

[12] *Id*.

[13] *Id.* at 139-141.

4. It is unfortunate that you invoke the afore-said [sic] announcement knowing that as early as April 2001, your request for payment of one and one-half 1 and 1/2 months for every year of service retirement benefit was denied by our SSG, Mr. Lee. As unmistakably explained to you, you cannot avail of the ERP since you are due to retire on 08 January 2002. As a cost-saving measure, it would be contrary to this objective of the Company to include you simply because "you accept the offer for early retirement."

5. On the other hand, you have also been informed that since you have less than one (1) year from your retirement date, you have the option to retire before such date. x x x

6. Also, as in previous ERPs implemented by the Company, you very well know as Sales Manager that the Head Office does the acceptance and approval of any ERP application. In fact, in the case of your staff, I even consult your opinion before forwarding MNLSM's recommendation on the matter to the Head Office. x x x

7. x x x x x x x x x

8. For the record, your supposed transfer from Passenger Sales Department to the Cargo Department on June 4, 2001 was upon your own request in April 2001 since, as you mentioned to me, you intend to pursue a cargo agency business with your sister upon your retirement. x x x

9. Lest you forgot our discussion on the matter, you were never demoted from your position as Sales Manager, whether in terms of your compensation or scope of authority. As agreed upon, your transfer was temporary for you to learn the particulars involving cargo operations. In fact, I never appointed a new Sales Manager to replace you.

10. The term "Cargo Dispatch," again as known to you, is a phrase peculiar to the Company referring to the Cargo Department. I, for instance, while assigned as Regional Sales Manager of Manila, if temporarily assigned to Hongkong [sic] Cargo, would be referred to as "HKGRH Cargo Dispatch." This position, despite the title, is obviously not clerical or derogatory of my rank and authority.

11. Everybody in our Office can attest to the truth that you yourself requested the temporary transfer to cargo. I am

> saddened, therefore, to hear, especially from you, of your accusation that I have tried to demote and/or discriminate against you. For your information, before your transfer, I even instructed SSF, Mr. Kim, to extend his full support to you in your desire to learn cargo operations.[14]

In a memorandum[15] dated 20 September 2001, Korean Air informed its employees that application for the ERP ended on 15 September 2001 and that only the applications of eligible employees shall be forwarded to the head office for approval.

In a letter[16] dated 22 September 2001 and addressed to Suk, Yuson reiterated her claims that (1) Korean Air's offer for early retirement and her acceptance of the offer constituted a perfected contract; (2) Korean Air unjustly transferred her from passenger sales department to cargo department; and (3) the transfer caused her embarrassment.

In a letter[17] dated 10 October 2001 and addressed to Yuson, Suk stated that:

> 1. We believe that the Company's position regarding the Early Retirement Program ("ERP") has been fully explained to you in our letters dated 21 September 2001 and 24 August 2001, respectively.
>
> 2. You complained of "injustice," "undue embarrassment and humiliation," in relation to your transfer to Cargo. However, in our meeting on 04 October 2001, with SSG, Tito Cosico and Chito Cajucom, you informed us to "forget about the issue on discrimination concerning Cargo Dispatch, since you just included it when you were excluded from the ERP." Furthermore, you also stated "I like to be in Cargo, I love working in Cargo, I have no regrets."[18]

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[14] *Id*.

[15] *Id.* at 535.

[16] *Id.* at 142-144.

[17] *Id.* at 539.

[18] *Id*.

In a letter[19] dated 6 November 2001 and addressed to Suk, a certain Patricia A. Galang, representing Yuson, followed up and made a final demand for Yuson's benefit under the ERP. In another letter[20] dated 27 November 2001 and addressed to Suk, Yuson applied for travel benefit under the IPM. Chapter 14, Section 2.14.3.4 of the manual states:

> 2.14.3.4 Retired Officers or Employees
>
> Retired officers or employees may be granted free transportation on the following basis provided that the application therefore shall be submitted to the office which he/she belonged just before retirement for approval not later than maximum five years from the date of retirement:
>
> x x x x x x x x x
>
> b) Employees who terminated their employment after having served ten consecutive years or more and their immediate families be favored with their Points (if any) not later than three years from the date of retirement.
>
> c) Officers who completed their term of services or employees who reached full retirement status and their immediate families may be favored with their Points (if any) not later than five years from the date of retirement.[21]

On 28 November 2001, Yuson filed with the arbitration branch of the NLRC a complaint against Korean Air and Suk for payment of benefit under the ERP, moral damages, exemplary damages, and attorney's fees.

In a letter[22] dated 29 November 2001, Suk informed Yuson that the points system as contained in the IPM had never been practiced in the Philippines. Suk stated that:

> The points system of earning travel benefits you referred to under Chapter 14 of the International Passenger Manual (IPM) is not

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[19] *Id.* at 145.

[20] *Id.* at 146.

[21] *Id.* at 147.

[22] *Id.* at 542.

applicable in your case since the Company follows the system as agreed upon between MNLSM staffs and Management. You are aware that in our 26 years of operation in Manila, we never used point system in this regard. Doing so can result to a lesser travel benefit which is a violation of the said agreement.[23]

On 8 January 2002, her 60th birthday, Yuson availed of the optional retirement under Article 287[24] of the Labor Code, as amended.

On 12 March 2002, Yuson filed with the Makati Prosecution Office a criminal complaint against Korean Air officials Tae Sang Kim (Tae), Kwan Hee Lee (Lee), and Benedicto Cajucom

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[23] *Id.*

[24] Article 287 of the Labor Code states:

ART. 287. *Retirement*. — Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: Provided, however, That an employee's retirement benefits under any collective bargaining and other agreements shall not be less than those provided therein.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

Unless the parties provide for broader inclusions, the term 'one-half (1/2) month salary' shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Retail, service and agricultural establishments or operations employing not more than ten (10) employees or workers are exempted from the coverage of this provision.

Violation of this provision is hereby declared unlawful and subject to the penal provisions under Article 288 of this Code.

for violation of Article 287. A corresponding information was filed with Branch 146 of the Makati Regional Trial Court (RTC).

Yuson filed with the Bureau of Immigration a complaint for deportation against Korean Air officials Tae, Lee, Byung Jo Kim, Ja Chool Koo, Yoo Jin Kim, Cho Mahn Hung, Kim Seong Ung, Evi Sung Hwang, and Park Jin Suk. In a Resolution[25] dated 30 July 2002, the Bureau dismissed the complaint.

The Labor Arbiter's Ruling

In his 31 January 2003 Decision, Labor Arbiter Santos denied for lack of merit Yuson's claims for benefit under the ERP, for moral and exemplary damages, and for attorney's fees. The dispositive portion of the Decision stated:

> WHEREFORE, premises considered, complainant's claim under the Early Retirement Program and payment of moral and exemplary damages, and attorney's fees are hereby denied for lack of merit. Complainant is nevertheless deemed to have opted to retire on January 8, 2002 when she reached the age of sixty years pursuant to Article 287 of the Labor Code. However, in view of the previous offer of respondent company to pay complainant one (1) month for every year of service, respondent company is accordingly directed to pay complainant her retirement benefits as follows:
>
> Monthly salary x No. of Years in Service
> ₱59,000.00 x 26 years - ₱1,534,000.00
>
> SO ORDERED.[26]

Labor Arbiter Santos held that (1) the 21 August 2001 ERP memorandum included only rank-and-file, and excluded managerial, employees; (2) the memorandum reserved to Korean Air discretion in approving applications for the ERP; (3) approval of applications for the ERP was a valid exercise of Korean Air's management prerogative; (4) Yuson could not claim benefits under both Article 287 and Korean Air's ERP; (5) Yuson's claim for benefit under the ERP became moot when she availed of the optional retirement under Article 287; (6) Yuson was

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[25] *Rollo*, pp. 185-187. Penned by Commissioner Andrea D. Domingo.

[26] *Id*. at 103.

not entitled to travel benefit under the IPM because Korean Air never implemented such travel benefit; (7) Yuson was not demoted — she requested to be transferred to the cargo department and continued to receive the same compensation and exercise the same authority as passenger sales manager; (8) Yuson was not entitled to moral damages because there was no showing of evil motive on Korean Air's part; (9) Yuson was not entitled to exemplary damages because Korean Air did not act in a wanton, oppressive, or malevolent manner; and (10) Korean Air acted in good faith.

On 14 February 2003, Tae and Yuson entered into a compromise agreement[27] and amicably settled the criminal case. They stated that:

1. Without necessarily admitting that they violated any law, and in deference to the desire of the Honorable Judge that the parties amicably settle the RTC Case if only to buy peace and avoid a protracted criminal litigation, Messrs. Tae Sang Kim, Benedicto Cajucom and the Company have agreed to pay Adelina A.S. Yuson, and the latter acknowledges receipt from them the amount of ONE MILLION SIX HUNDRED SEVENTY ONE THOUSAND FIVE HUNDRED FORTY SIX PESOS AND NINETY TWO CENTAVOS (₱1,671,546.92), representing her retirement benefit pursuant to Article 287 of the Labor Code, as amended. This amount includes six percent (6%) legal interest from the date of her retirement on 8 January 2002 until 8 February 2003, less Ms. Yuson's salary loan balance in the amount of TWENTY FIVE THOUSAND PESOS (₱25,000.00). x x x This amount represents a complete settlement of all her claims in the RTC Case and such compensation and benefits to which she may be entitled under Article 287 of the Labor Code, as amended;

2. x x x x x x x x x

3. x x x x x x x x x

4. x x x x x x x x x

5. The parties hereby agree and understand that the withdrawal of the RTC Case is without prejudice to other claims, which Mrs. Yuson may have in the NLRC Case. The parties agree and understand

[27] *Id.* at 151-153.

that Ms. Yuson shall continue to pursue her claims in the NLRC Case, which shall remain pending until final decision by the NLRC and the appropriate courts. The parties agree that Ms. Yuson shall deduct the amount of ONE MILLION FIVE HUNDRED NINETY THREE THOUSAND ONE PESOS AND EIGHTY CENTAVOS (₱1,593,001.80), which she received under this Compromise Agreement, from the amount that will be awarded to her by the NLRC and the appropriate courts should the NLRC Case be decided in her favor.[28]

Yuson filed with the NLRC an appeal memorandum[29] dated 10 March 2003 challenging Labor Arbiter Santos' 31 January 2003 Decision. The NLRC referred the case to Labor Arbiter Cristeta D. Tamayo (Labor Arbiter Tamayo) for report and recommendation.

The NLRC's Ruling

In its 30 January 2004 Decision,[30] the NLRC adopted the report and recommendations of Labor Arbiter Tamayo to order Korean Air and Suk to pay Yuson her benefit under the ERP and to give her 10 Korean Air economy tickets.

Korean Air and Suk filed with the NLRC a motion[31] for reconsideration dated 6 May 2004. In its 30 July 2004 Resolution, the NLRC set aside its 30 January 2004 Decision and affirmed Labor Arbiter Santos' 31 January 2003 Decision. The NLRC held that (1) the 21 August 2001 memorandum reserved to Korean Air discretion in approving applications for the ERP; (2) approval of applications for the ERP was a valid exercise of Korean Air's management prerogative; (3) Yuson was retiring on 8 January 2002; (4) inclusion of Yuson in the ERP would have been contrary to the objective of the program as a cost-saving scheme; (5) Labor Arbiter Tamayo had no basis in granting Yuson 10 Korean Air economy tickets; (6) Yuson did not show that Korean Air ever implemented the travel benefit under the

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[28] *Id.* at 151-152.

[29] *Id.* at 105-127.

[30] *Id.* at 189-211.

[31] *Id.* at 213-228.

IPM; and (7) Korean Air and Suk adequately showed that the company had been giving one Korean Air ticket to retiring employees.

Yuson filed with the Court of Appeals a petition[32] for *certiorari* under Rule 65 of the Rules of Court.

The Court of Appeals' Ruling

In its 28 June 2005 Decision, the Court of Appeals set aside the NLRC's 30 July 2004 Resolution and affirmed the commission's 30 January 2004 Decision. The Court of Appeals held that (1) the 21 August 2001 memorandum included both rank-and-file and managerial employees; (2) Korean Air's offer for early retirement and Yuson's acceptance of the offer constituted a perfected contract under Article 1315 of the Civil Code; (3) Korean Air forced Yuson to retire on 8 January 2002; and (4) Korean Air's reason for excluding Yuson in the ERP was misplaced because the company would have incurred more costs by keeping Yuson in its employ until her compulsory retirement on 8 January 2007.

Hence, the present petition.

The Issues

Korean Air and Suk raise as issues that the Court of Appeals erred in (1) failing to consider that Yuson's claim for benefit under the ERP became moot when she availed of the optional retirement under Article 287 of the Labor Code, as amended; (2) ruling that Yuson may claim benefit under the ERP; and (3) awarding Yuson 10 Korean Air economy tickets.

The Court's Ruling

The petition is meritorious.

On 8 January 2002, Yuson availed of the optional retirement under Article 287 of the Labor Code, as amended. The third paragraph of Article 287 states that:

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[32] *Id.* at 260-288.

In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.

On 14 February 2003, Yuson accepted ₱1,671,546.92 as retirement benefit under Article 287. The compromise agreement between Tae and Yuson stated that:

> Without necessarily admitting that they violated any law, and in deference to the desire of the Honorable Judge that the parties amicably settle the RTC Case if only to buy peace and avoid a protracted criminal litigation, **Messrs. Tae Sang Kim, Benedicto Cajucom and the Company have agreed to pay Adelina A.S. Yuson, and the latter acknowledges receipt from them the amount of ONE MILLION SIX HUNDRED SEVENTY ONE THOUSAND FIVE HUNDRED FORTY SIX PESOS AND NINETY TWO CENTAVOS (₱1,671,546.92), representing her retirement benefit pursuant to Article 287 of the Labor Code, as amended**. This amount includes six percent (6%) legal interest from the date of her retirement on 8 January 2002 until 8 February 2003, less Ms. Yuson's salary loan balance in the amount of TWENTY FIVE THOUSAND PESOS (₱25,000.00). x x x This amount represents a complete settlement of all her claims in the RTC Case and such compensation and benefits to which she may be entitled under Article 287 of the Labor Code, as amended.[33] (Emphasis supplied)

Yuson's claim for benefit under the ERP became moot when she availed of the optional retirement under Article 287 and accepted the benefit. By her acceptance of the benefit, Yuson is deemed to have opted to retire under Article 287. In *Capili v. National Labor Relations Commission*,[34] the Court held that:

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[33] *Id.* at 151.

[34] G.R. No. 120802, 17 June 1997, 273 SCRA 576.

[A] supervening event worked against the petitioner. On 30 April 1994, after receiving the Labor Arbiter's decision but before filing his appeal from that decision, the petitioner received partial payment of his retirement pay and other accrued benefits from respondent UM. During the pendency of his appeal with the NLRC, specifically, on 6 October 1994, he received full payment of his retirement benefits. In his Counter-Manifestation he declared:

> COMPLAINANT-APPELLANT . . . most respectfully maintains that the *partial acceptance* of the retirement benefits does not render the instant case *moot and academic*. The complainant-appellant who had long and unjustly been denied of his retirement benefits since August 18, 1993 cannot be expected to remain idle.

By his acceptance of retirement benefits the petitioner is deemed to have opted to retire under the third paragraph of Article 287 of the Labor Code, as amended by R.A. No. 7641. Thereunder he could choose to retire upon reaching the age of 60 years, provided it is before reaching 65 years, which is the compulsory age of retirement.

Also worth noting is his statement that he "had long and unjustly been denied of his retirement benefits since August 18, 1993." Elsewise stated, he was entitled to retirement benefits as early as 18 August 1993 but was denied thereof without justifiable reason. This could only mean that he has already acceded to his retirement, effective on such date — when he reached the age of 60 years.[35] (Emphasis supplied)

The Court of Appeals held that Yuson may claim benefit under the ERP because "the offer was certain and the acceptance is absolute; hence, there is a valid contract pursuant to the last paragraph of Article 1315 of the New Civil Code."[36]

The Court disagrees. Articles 1315, 1318 and 1319 of the Civil Code, respectively, state:

> Art. 1315. Contracts are perfected by mere consent, and from that moment the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all the consequences which,

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[35] *Id.* at 589-590.

[36] *Rollo*, p. 83.

according to their nature, may be in keeping with good faith, usage and law.

Art. 1318. There is no contract unless the following requisites concur:

(1) Consent of the contracting parties;

(2) Object certain which is the subject matter of the contract;

(3) Cause of the obligation which is established.

Art. 1319. Consent is manifested by the meeting of the offer and the acceptance upon the thing and the cause which are to constitute the contract. **The offer must be certain** and the acceptance absolute. x x x (Emphasis supplied)

An offer is a unilateral proposition made by one party to another for the celebration of a contract. For an offer to be certain, a contract must come into existence by the mere acceptance of the offeree without any further act on the offeror's part. The offer must be definite, complete and intentional. In *Spouses Paderes v. Court of Appeals*,[37] the Court held that, "There is an 'offer' in the context of Article 1319 only if the contract can come into existence by the mere acceptance of the offeree, without any further act on the part of the offeror. Hence, the 'offer' must be definite, complete and intentional."[38]

In the present case, the offer is not certain: (1) the 21 August 2001 memorandum clearly states that, "MNLSM Management, **on its discretion**, is hereby offering the said early retirement program to its staff"; (2) applications for the ERP were forwarded to the head office for approval, and further acts on the offeror's part were necessary before the contract could come into existence; and (3) the 21 August 2001 memorandum clearly states Korean Air's intention, which was, "to prevent further losses." Korean Air could not have intended to ministerially approve all applications for the ERP.

The Court of Appeals held that Korean Air forced Yuson to retire on 8 January 2002. The Court of Appeals stated that,

[37] 502 Phil. 76 (2005).

[38] *Id.* at 93.

"By its letter of August 24, 2001, Private Respondent is forcing Petitioner to retire even if the choice of optional retirement belongs to the latter."[39]

The Court disagrees. The surrounding circumstances show that Korean Air did not force Yuson to retire on 8 January 2002. Yuson was actually retiring on 8 January 2002: (1) in **April 2001**, Yuson requested Korean Air that she be transferred to the cargo department because she intended to pursue a cargo agency business **after her retirement**; (2) in its 24 August and 12 September 2001 letters, Korean Air clearly stated that Yuson was retiring on 8 January 2002; (3) Yuson never corrected or denied Korean Air's statements regarding her retirement date; (4) **on 8 January 2002, Yuson retired** under Article 287 of the Labor Code, as amended; (5) in his 31 January 2003 Decision, Labor Arbiter Santos stated, "**As admitted by complainant, she was set to retire by January 2002**";[40] and (6) in its 30 July 2004 Resolution, the NLRC stated, "it was shown in the records of this case that [Yuson] was about to retire sometime in January 2002, which in fact happened."[41]

Approval of applications for the ERP is within Korean Air's management prerogatives. The exercise of management prerogative is valid as long as it is not done in a malicious, harsh, oppressive, vindictive, or wanton manner.[42] In the present case, the Court sees no bad faith on Korean Air's part. The 21 August 2001 memorandum clearly states that Korean Air, **on its discretion**, was offering ERP to its employees. The memorandum also states that the reason for the ERP was to prevent further losses. Korean Air did not abuse its discretion when it excluded Yuson in the ERP. To allow Yuson to avail of the ERP would have been contrary to the purpose of the ERP.

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[39] *Rollo*, p. 84.

[40] *Id.* at 98.

[41] *Id.* at 256.

[42] *Magdadaro v. Philippine National Bank*, G.R. No. 166198, 17 July 2009, 593 SCRA 195, 201.

The Court of Appeals awarded Yuson 10 Korean Air economy tickets. The Court disagrees. Aside from a photocopy of two pages of the IPM, the records fail to show the basis for the award of the tickets. Even the Court of Appeals totally failed to discuss the basis for the award. In his 31 January 2003 Decision, Labor Arbiter Santos held that Yuson was not entitled to the tickets. Labor Arbiter Santos stated that:

> Anent the issue on the applicability of the IPM, complainant alleged that the non-implementation thereof with respect to her was a discriminatory act on the part of the respondents. Such argument would have been meritorious if said policy was used in the Philippines by respondent company but was denied her. x x x
>
> Verily the use of different policies for employees' benefits in various countries is not necessarily discriminatory. Complainant's reliance on *Pakistan International Airlines vs. Ople* (190 SCRA 90) is unfortunately misplaced. In said case, the issue is the enforceability of the provisions in the employment contract which provided for the exclusive application of Pakistani laws in case of labor disputes and the venue for settlement of any dispute arising out of or in connection with the contract which should only be heard in the courts of Karachi, Pakistan. For this reason, the Supreme Court correctly ruled that said provision was inapplicable considering that employer-employee relationship is imbued with public interest, thus, Philippine laws were applicable.[43]

In its 30 July 2004 Resolution, the NLRC also held that Yuson was not entitled to the tickets. The NLRC stated that:

> [O]n the award of ten (10) Korean Air tickets, we likewise assiduously re-examined the record of this case and we must admit that we have overlooked the fact that in the recommendation made by Labor Arbiter Cristeta D. Tamayo, which as we stated earlier was adopted *en toto* by former Commissioner Vicente S.E. Veloso, except in her summation, there was nothing in her disquisition which shows that she ever discussed the basis of her award of ten Korean Air tickets in favor of complainant. "Decisions, however, concisely written, must distinctly and clearly set forth the facts and the law upon which they are based, a rule applicable as well to dispositions by quasi-judicial and

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[43] *Rollo*, pp. 99-100.

administrative bodies." (*Naguiat vs. NLRC*, 269 SCRA 664) In any event, while it may be argued that the "point system" of earning travel benefits is mentioned in Chapter 14, Section 2.14.3.4 of the International Passenger Manual of Korean Air, nevertheless, it is also very clear that complainant has not shown that this policy has been implemented in the Philippines or has ever been granted to local managers. In the absence of a single precedent where this privilege was extended by the respondent company, the effort of complainant to prove her entitlement to this benefit must also fall on barren ground. In contrast, respondents have adequately shown that, during complainant's tenure, respondent company has extended to her CBA benefits on free tickets, and even more. Certainly, complainant cannot enjoy the best of both worlds, so to speak.[44]

Korean Air had never implemented the IPM in the Philippines. Its, employees, including Yuson, received the travel benefit under the CBA. During her 26-year stay in Korean Air, Yuson already received more than 10 tickets.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 28 June 2005 Decision and 3 November 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 86762, and *AFFIRM* the 30 July 2004 Resolution of the National Labor Relations Commission in NLRC NCR CA No. 034928-03 which, in turn, affirmed the 31 January 2003 Decision of the Labor Arbiter in NLRC-NCR S Case No. 30-11-05543-01.

SO ORDERED.

Brion,[*] *Peralta, Abad,* and *Perez,*[**] *JJ.,* concur.

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[44] *Id.* at 257-258.

[*] Designated additional member per Raffle dated 2 January 2010.

[**] Designated additional member per Special Order No. 842.

THIRD DIVISION

[G.R. No. 172971. June 16, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SITTI DOMADO,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; ADMISSIBILITY OF EVIDENCE; OBJECTION CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL. — In *People v. Hernandez*, we held that objection to the admissibility of evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.

2. ID.; ID.; ID.; MERE LAPSES IN PROCEDURES NEED NOT INVALIDATE A SEIZURE IF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS CAN BE SHOWN TO HAVE BEEN PRESERVED. — Beyond the question of admissibility are the issues of the integrity and evidentiary value of the drugs seized. To ensure these qualities in the evidence seized, R.A. No. 9165 outlines the procedure to be followed in the custody and handling of seized dangerous drugs under its Section 21, paragraph 1, Article II. This is implemented by Section 21(a), Article II of the *Implementing Rules and Regulations* of R.A. No. 9165, which reads: (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, ***that non-compliance with these requirements under justifiable grounds, as long***

as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items. and stresses that the overriding concern in the rules on the chain of custody of seized and confiscated drugs is the maintenance of their integrity and evidentiary value. ***In other words, mere lapses in procedures need not invalidate a seizure if the integrity and evidentiary value of the seized items can be shown to have been preserved.***

3. ID.; ID.; ID.; PRESUMPTION OF REGULARITY IN THE HANDLING OF THE EXHIBITS BY THE PUBLIC OFFICERS AND THE PRESUMPTION THAT THEY PROPERLY DISCHARGED THEIR DUTIES, WHEN APPLICABLE. — We note in this regard that at no time during the trial did the defense question the integrity of the evidence, by questioning either the chain of custody or the evidence of bad faith or ill will on the part of the police and the prosecution in the handling of evidence, or by proof that the evidence had been tampered with. Under the circumstances, the presumption of regularity in the handling of the exhibits by the public officers concerned and the presumption that they properly discharged their duties should already apply. As the foregoing discussion shows, the integrity of the adduced evidence has never been tainted, so that it should retain its full evidentiary value.

4. ID.; ID.; ID.; WHEN PHOTOGRAPH OF SEIZED ITEM MAY BE DISPENSED WITH. — An obvious flaw in the prosecution's case was the failure of the apprehending team to photograph the seized items. Nevertheless, PSI Lizardo immediately conducted an inventory of the items at the police station *where the accused were then held in custody*. Even without considering the presence of the accused at the inventory, however, we find it undisputed that a *barangay kagawad* and two representatives from the media witnessed the inventory and signed the corresponding certificate of inventory. To our mind, the presence of an elected official and two media representatives sufficiently safeguarded the seized evidence from possible alteration, substitution or tampering. The presence of these third parties (as required by law) during the inventory, as well as the clear lack of any irregularity affecting the identity of the evidence, more than made up for the prosecution's failure to photograph the confiscated specimens.

In other words, we hold that there has been substantial compliance by the police authorities with the required procedure on the custody and control of the confiscated drugs even without the required photographs. The marking of the seized *shabu* at the police station rather than at the exact scene of the warrantless arrest of the accused and the seizure of evidence, to our mind, should be appreciated under the unique attendant circumstances of the case. x x x From the point of view of jurisprudence, we are not beating any new path by holding that the failure to undertake the required photography and immediate marking of seized items may be excused by the unique circumstances of a case. In *People v. Resurreccion*, we already stated that "marking upon immediate confiscation" does not exclude the possibility that marking can be at the police station or office of the apprehending team. In the cases of *People v. Rusiana*, *People v. Hernandez*, and *People v. Gum-Oyen*, the apprehending team marked the confiscated items at the police station and not at the place of seizure. Nevertheless, we sustained the conviction because the evidence showed that the integrity and evidentiary value of the items seized had been preserved. To reiterate what we have held in past cases, we are not always looking for the strict step-by-step adherence to the procedural requirements; what is important is to ensure the ***preservation of the integrity and the evidentiary value of the seized items***, as these would determine the guilt or innocence of the accused.

5. CRIMINAL LAW; ENTRAPMENT; WHEN PRESENT. — We note that the entrapment undisputably took place and the sachets of *shabu* were seized inside a vehicle where all the actors – the accused, the informant, and the police – were riding together. They were effectively on the road at that time and the records do not indicate that the van went to any other place after the arrest and seizure. Only PSI Lizardo also appeared to have handled the seized items while the van was on its way to the police station. Thus, there appeared no possibility for the "planting," switching, and tampering of evidence during the whole travel time from the place of seizure to the police station. In fact, the case of the defense did not even suggest these possibilities as its defense was one of avoidance, *i.e.*, the accused did not know that what the delivered envelope contained was *shabu*. All these indicators tell us that the main concern of the authorities at that time was simply to bring the accused in for investigation and appropriate proceedings.

Thus, they cannot be faulted if they opted, after the warrantless arrest, to prioritize the delivery of the accused to their station and to undertake the required marking and inventory of the seized items there. With the continued presence of all the accused in the vehicle while the seized items remained unmarked, and the immediate marking and inventory of these items upon reaching the police station, the law's feared planting, tampering, and switching of evidence were substantially negated. The fact that the accused were all at the police station when the marking and inventory took place immeasurably strengthens the validity of our conclusion.

6. ID.; ILLEGAL DELIVERY, DISPENSATION, DISTRIBUTION AND TRANSPORTATION OF DRUGS; IMPOSABLE PENALTY. — The illegal delivery, dispensation, distribution and transportation of drugs are punished under Section 5, Article II of R.A. No. 9165, which provides: Sec. 5. x x x 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. Pursuant to the enactment of RA No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine, instead of death, shall be imposed.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

BRION, *J.*:

We resolve in this appeal the challenge to the February 28, 2006 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 00432. The CA affirmed the July 28, 2004 decision[2] of the Regional Trial Court (*RTC*), Branch 31, Agoo, La Union, finding appellant Sitti Domado *y* Sarangani (*appellant*) guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (*RA*) No. 9165 (the Comprehensive Dangerous Drugs Act of 2002), imposing on her the penalty of life imprisonment.

ANTECEDENT FACTS

The prosecution charged the appellant and Jehan Sarangani *y* Calaw (*Jehan*) before the RTC with violation of Section 5, Article II of R.A. No. 9165 under an Information that states:

> That on or about the 31st day of December 2003, in the Municipality of Santo Tomas, Province of La Union, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding each other, did then and there willfully, unlawfully and knowingly deliver or transport twelve (12) grams of methamphetamine hydrochloride (*shabu*), more or less, without any lawful authority or permission to deliver or transport the same.
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> CONTRARY TO LAW.[3]

The appellant and Jehan pleaded not guilty to the charge.[4] The prosecution presented Police Senior Inspector Reynaldo

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[1] Penned by Associate Justice Japar B. Dimaampao, and concurred in by Associate Justice Martin S. Villarama, Jr. (now a Member of this Court) and Associate Justice Edgardo F. Sundiam; *rollo*, pp. 2-14.

[2] Penned by Executive Judge Clifton U. Ganay; CA *rollo*, pp. 7-24.

[3] *Id.* at 6.

[4] Records, pp. 35-36.

L. Lizardo (*PSI Lizardo*) and Police Inspector Valeriano P. Laya II (*PI Laya*) at the trial. The appellant and Jehan took the witness stand for the defense.

PSI Lizardo testified that at around 2:30 p.m. of December 31, 2003, a group from the Second Ranger Company based in Tagudin, Ilocos Sur came to his office at Camp Diego Silang, San Fernando, La Union, and referred to Augustus D'Vince Castro (*Augustus*) for the filing of a case; Augustus was arrested earlier that day at a checkpoint in Tagudin for violation of R.A. No. 9165.[5]

In the course of the investigation that followed, Augustus disclosed that he could order *shabu* from his source in Dagupan City. PSI Lizardo responded by asking him to contact his source. Augustus obliged and contacted his source by cell phone. He reported to PSI Lizardo that his source agreed to meet him at Damortis, Sto. Tomas, La Union, for the delivery of *shabu*. On the basis of this information, PSI Lizardo conducted a briefing and ordered his officers to undertake an entrapment operation.[6]

The entrapment team went to Damortis in two vehicles. PSI Lizardo and Augustus were on board a Besta van, while the back-up team (composed of the Second Ranger Company members) used a Toyota Revo. The team reached Damortis at 7:30 p.m. of December 31, 2003. PSI Lizardo and Augustus parked the van at a Petron station, while the back-up vehicle strategically parked nearby.[7] Augustus received word by cell phone from his source that they were already at Damortis. Augustus relayed this information to PSI Lizardo and that three (3) persons would deliver the *shabu*. At a little past 8:00 p.m., three women alighted from a mini-bus, and went to the parked van. Augustus waived at the three women and bidded them to board the van, which they did; the appellant sat in front, while

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[5] TSN, July 5, 2004, pp. 3-4.

[6] *Id.* at 4-5. See also Affidavit of Arrest, Exh. "C", Records, p. 3.

[7] TSN, July 5, 2004, pp. 5-7.

Jehan and Violeta Fernandez (*Violeta*) occupied the row immediately behind.[8]

Augustus asked the women if they brought the *shabu* he had ordered.[9] The appellant (who was seated in front beside Augustus) ordered one of the two women seated behind them to show the "items." One of the women (later identified as Jehan) responded by showing and handing over an envelope containing three plastic sachets to Augustus.[10] Augustus, in turn, gave these items to PSI Lizardo who was seated at the van's third row and who locked the van's door after confirming that the plastic sachets contained *shabu*.[11] PSI Lizardo then announced that he was a PDEA agent and that he was placing them under arrest for delivery of dangerous drugs, and apprised them of their constitutional rights. PSI Lizardo then directed their return, together with the back-up team, to Camp Diego Silang.[12] They arrived at the camp approximately 9:00 p.m.[13]

At the police station, PSI Lizardo conducted an investigation and prepared an affidavit of arrest (Exhibit "C"),[14] marked each plastic sachet with his initial "*RLL*," and made the corresponding marking sheet report.[15] He likewise conducted an inventory of the seized items and made a certificate of inventory signed by a *barangay kagawad* and by two media representatives (Exhibit "G").[16] PSI Lizardo also prepared a written request for laboratory examination (Exhibit "F")[17] and a request for the medical and

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8 *Id.* at 8-11.

9 *Id.* at 11.

10 *Id.* at 12; Records, p. 3.

11 TSN, July 5, 2004, pp. 12-13; TSN, July 8, 2004, p. 21.

12 TSN, July 5, 2004, pp. 14-15.

13 *Id.* at 16.

14 Records, p. 3.

15 TSN, July 5, 2004, pp. 16-17.

16 Records, p. 11.

17 *Id.* at 9.

physical examination of the three accused (Exhibit "E").[18] The seized items were turned over the next day to the PNP Crime Laboratory in Camp Florendo, San Fernando, La Union.[19] The request for laboratory examination and turn over were documented through Exhibit "F"[20] dated December 31, 2003, Control NR 001-04, signed by Reynaldo L. Lizardo, under a stamped proof of delivery dated "01 0050H 04" which he initialed, and received and initialed for the laboratory by PO1 Avelino.[21]

During all this time, the accused were all at the police station, under custody, as they had claimed, with the assistance of counsel, their right to a preliminary investigation and voluntarily waived their right under the provisions of Article 125 of the Revised Penal Code.[22] Their continued custody after their arrest was shown by Exhibit "H", dated January 1, 2004, addressed to the Provincial Prosecutor and signed by Reynaldo L. Lizardo which noted that "Suspects are under arrest."[23]

On cross-examination, PSI Lizardo stated that the plastic sachets were in an envelope when they were handed to Augustus.[24] He confirmed that it was Jehan who handed the *shabu* to Augustus,[25] and explained that Violeta had been excluded from the complaint on the recommendation of the regional state prosecutor.[26]

PI Laya, Forensic Chemist of the PNP Crime Laboratory in Camp Florendo, La Union, testified that on January 1, 2004,

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[18] *Id.* at 8.

[19] TSN, July 5, 2004, pp. 17-20; TSN, July 8, 2004, pp. 22-23.

[20] Records, p. 9.

[21] *Id.* See also TSN, July 5, 2004, p. 20; TSN, July 8, 2004, p. 8.

[22] Records, p. 1. The appellant, Jehan and Violeta were assisted by Atty. Roberto S. Ferrer.

[23] *Id.* at 2; TSN, July 5, 2004, p. 20.

[24] TSN, July 8, 2004, pp. 16-17.

[25] *Id.* at 19.

[26] *Ibid.*

he conducted a chemical and confirmatory test on the three heat-sealed plastic sachets submitted to him for examination. He found the seized items positive for *shabu*, and reflected his findings in Chemistry Report No. D-001-2004.[27] On cross-examination, PI Laya stated that PO1 Avelino received the items at the PNP Crime Laboratory; he did not know where these items came from.[28]

The defense presented a different picture of the events. The appellant's testimony was aptly summarized by the CA as follows:

> SITTI, nineteen (19) years old, admitted having brought an envelope to Augustus De Castro in their meeting place at Damortis, Dagupan City but denied knowing its contents. She testified that on 26 December 2003, she was at home playing at the billiard store owned by her sister when Augustus *alias* "Guts", her former husband's friend and whom she did not know very well, arrived to attend the fiesta of Dagupan. Augustus slept in their house for the first time and went home the following day, 27 December 2003, to Ilocos Sur [TSN, July 12, 2004, pp. 2-5]. She saw a scotch tape-sealed long brown mailing envelope left on the place where Augustus slept, and hid the same without informing him about it. On 31 December 2003, Augustus, who called her up through the cellular phone, requested her to bring to him the envelope which he left. They were to meet at Damortis, Dagupan City. She was in the company of her sister JEHAN and Violeta [TSN, July 12, 2004, pp. 6-7]. As they approached a van, she saw Augustus alight therefrom. Augustus opened the door and instructed them to board the same [TSN, July 12, 2004, pp. 8-9]. Later, Augustus asked for the envelope and immediately after Violeta handed the same to him, he raised it up. After which, a man came out from the back where her sister, JEHAN, was seated and shouted "Freeze, do not move. This is PDEA" [TSN, July 12, 2004, pp. 10-11].[29]

Jehan narrated that she was at her home in Fernandez Street, Dagupan City on the evening of December 31, 2003 when the

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[27] *Id.* at 3-7; Records, p. 10.

[28] TSN, July 8, 2004, p. 9.

[29] CA *rollo*, pp. 114-115.

appellant came and asked to be accompanied to Damortis to deliver an envelope.[30] Jehan and Violeta (her neighbor) accompanied the appellant to Damortis. They rode a mini-bus and immediately proceeded towards a parked van when they arrived.[31] They all boarded the van at Augustus' bidding; Augustus asked about the envelope as soon as they were inside the van. A conflict of claims exists on who had the envelope and who handed it to Augustus,[32] but it is not disputed that it was the appellant who gave the instruction to hand the envelope over to Augustus. Immediately after, PSI Lizardo appeared from the back of the van and arrested them.[33]

On cross-examination, Jehan maintained that it was Violeta who gave the envelope to Augustus. She likewise denied having executed a sworn statement where she allegedly stated that she handed the envelope to Augustus.[34]

The RTC, in its decision of July 28, 2004, convicted the appellant of "transporting *shabu* (12 grams)"[35] and sentenced her "to suffer the penalty of life imprisonment and to pay a fine in the amount of FIVE HUNDRED THOUSAND PESOS (₱500,000.00)."[36]

The appellant appealed to the CA,[37] which affirmed the RTC decision *in toto* in its decision of February 28, 2006.[38]

The CA found no reason to depart from the doctrine that the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of their probative

30 TSN, July 14, 2004, pp. 3-4.

31 *Id.* at 5-7.

32 *Id.* at 9-10.

33 *Id.* at 7-9.

34 *Id.* at 9-10.

35 CA *rollo*, p. 23.

36 *Id.* at 23-24.

37 Docketed as CA-G.R. CR-HC No. 00432.

38 *Rollo*, pp. 2-14.

weight, as well as the conclusions based on these findings, are accorded high respect, if not conclusive effect.

The CA ruled that the alleged failure of the apprehending officers to comply with the requirements under R.A. No. 9165 "is a matter strictly between the PDEA and the arresting officers and is totally irrelevant to the prosecution of the criminal case."[39] The CA reasoned out that the commission of the crime of illegal transport or delivery of a prohibited drug is considered consummated once proof of transport or delivery is established.

The CA further added that there appears no reason why the police officers should not be accorded the presumption of regularity in the performance of their duty.

In her brief on appeal, the appellant contends that the trial court gravely erred in convicting her of the crime charged despite the prosecution's failure to establish the identity of the prohibited drugs. The appellant alleges that PSI Lizardo did not place his initials immediately after seizure. Moreover, there is no showing that the police inventoried the seized items in the presence of the appellant and her counsel, a representative from the media and the Department of Justice, and any elected official. She further adds that it was not clear who received the seized items at the police station.[40]

For the State, the Office of the Solicitor General (*OSG*) counters with the argument that there was no showing of any irregularity in the handling of the seized items. The OSG argues that R.A. No. 9165 allows the inventory of the confiscated drugs to be conducted at the nearest police station. It further adds that the inventory of the seized items was witnessed by representatives from the *barangay* and the media.[41]

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

[40] CA *rollo*, pp. 42-52.

[41] *Id.* at 84-106.

THE COURT'S RULING

After due considerations, we agree with the conclusions and the penalty imposed by the appealed CA decisions, and resolve to *deny* the appeal for lack of merit.

The Prosecution's Case and the Objections

The appellant in the present case is charged with selling, trading, delivering, giving away, dispatching in transit, and transporting dangerous drugs under Section 5, Article II of R.A. No. 9165. This section punishes not only the sale but also **the mere act of delivering or distributing prohibited drugs**.[42] In prosecutions for illegal sale or delivery of drugs, what is material is proof that the transaction actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. In the present case, we confirm the lower court findings that the prosecution clearly showed that the delivery of the illicit drugs (*shabu*) actually took place; and that the authorities seized the *shabu* which thereafter passed through the proper investigatory/custodial chain until it was identified and submitted to the court as evidence.

We note that the appellant **does not deny** the delivery of an envelope to Augustus at a van in a Petron station in Damortis, but alleges that she was not aware of the contents of the envelope delivered. The prosecution, however, adduced ample evidence of the events that led to the entrapment and the actual transaction; of how arrest of the suspects and seizure of the *shabu* were made in an entrapment operation; and of the chain of custody, *i.e.*, how the *shabu* was seized, marked, delivered for examination, examined, and subsequently brought to court. **Significantly, the present appeal questions only the identity of the *shabu* offered as evidence in court.** The appellant alleges breaches in this chain of custody, specifically, the failure to mark the evidence upon arrest, the failure to identify who received the seized *shabu* at the police station, and the failure

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[42] See *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 442.

to inventory the *shabu* in the presence of the accused and her counsel.

We find the appellant's objections totally without merit.

A notable feature of this case is the careful handling the authorities undertook in ensuring that the rights of the accused were protected, from the moment of their warrantless arrest after they were caught *in flagrante delicto* in an entrapment operation, all the way up to the handling of the evidence at the trial level. This is evident from the exhibits that were all properly marked and *offered as evidence without any objection from the accused*.

We point out the defense's failure to contest the admissibility of the seized items as evidence during trial as this was the initial point in objecting to illegally seized evidence. At the trial, the seized *shabu* was duly marked, made the subject of examination and cross-examination, and eventually offered as evidence, yet at no instance did the appellant manifest or even hint that there were lapses in the safekeeping of seized items that affected their admissibility, integrity and evidentiary value. In *People v. Hernandez*,[43] we held that objection to the admissibility of evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection, he cannot raise the question for the first time on appeal.

Beyond the question of admissibility are the issues of the integrity and evidentiary value of the drugs seized. To ensure these qualities in the evidence seized, R.A. No. 9165 outlines the procedure to be followed in the custody and handling of seized dangerous drugs under its Section 21, paragraph 1, Article II. This is implemented by Section 21(a), Article II of the *Implementing Rules and Regulations* of R.A. No. 9165, which reads:

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[43] G.R. No. 184804, June 18, 2009.

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, ***that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.*** [Emphasis ours.]

and stresses that the overriding concern in the rules on the chain of custody of seized and confiscated drugs is the maintenance of their integrity and evidentiary value. ***In other words, mere lapses in procedures need not invalidate a seizure if the integrity and evidentiary value of the seized items can be shown to have been preserved.***[44]

In the present case, after PSI Lizardo confirmed that the three plastic sachets given by either Jehan or Violeta to Augustus contained *shabu*, he immediately locked the van's door; introduced himself as a member of the PDEA; arrested the appellant and her two companions; and then brought them (and the seized items) to the police station. At the police station, he marked each plastic sachet with his initials "*RLL*," and made the corresponding marking sheet report. He also conducted an inventory of the seized items; the corresponding certificate of inventory was signed by PSI Lizardo, *Barangay Kagawad* Luis Ordoña, Jr., and two representatives from the media. Afterwards,

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[44] See *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430; *People v. Mateo*, G.R. No. 179478, July 28, 2008, 560 SCRA 375; *People v. del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627; *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828.

he prepared a written request for laboratory examination, and a request for the medical and physical examination of the three accused. During all this time, the accused were all at the police station, under custody, as they had waived their right under the provisions of Article 125 of the Revised Penal Code. Thus, while not specifically mentioned in the testimonies, evidence shows that the accused were all at the very same place where the markings and inventory of the seized items took place.

The records further clearly bear out that confiscated items were forwarded to the PNP Crime Laboratory where they were received by PO1 Avelino. The turnover of the confiscated item was documented through the request for laboratory examination, Exhibit "F", dated December 31, 2003, with date of receipt by PO1 Avelino on "01 0050H 04," or on January 1, 2004 at 12:50 a.m. PSI Lizardo made the delivery, as shown by his initials on the portion of the Exhibit indicating receipt by the PNP Crime Laboratory.[45]

PO1 Avelino, in turn, gave these items to PI Laya for examination to determine the presence of dangerous drugs. PI Laya testified to this turnover.[46] After the qualitative examination was conducted on the submitted specimens, PI Laya concluded that Exhibits "A-1", "A-2", and "A-3" tested positive for the presence of methamphetamine hydrochloride. When the prosecution presented these marked specimens in court, PSI Lizardo positively identified them to be the ***same*** items he seized from the appellant and which he later marked at the police station, from where the seized items were turned over to the laboratory for examination based on a duly prepared request. We quote the pertinent portions of the records:

APP TADE:

Q: Earlier[,] you mentioned that you recovered three (3) plastic sachets from the possession of the persons that was subject of the Police operation and you likewise mentioned that you would be able to identify these items if again shown to you.

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[45] Records, p. 9; TSN, July 5, 2004, p. 20; TSN, July 8, 2004, p. 22.

[46] TSN, July 8, 2004, p. 8.

I'm now showing to you three (3) plastic sachets earlier marked for the Prosecution as EXHIBIT "A", will you go over the same and tell the Honorable Court what relation[,] if any[,] does [these] plastic sachets have with the ones that you recovered from the accused?

PSI LIZARDO:

A: **These three (3) plastic sachets were the ones which we recovered from the three suspects.**

x x x x x x x x x

Q: **And why do you say that these were the very same items that were handed to you?**

A: **I put markings on the three (3) plastic sachet[s].**

Q: **Will you please point to the Court that markings that you identifying mark [*sic*] on the items that you recovered?**

A: **The markings are my initials[,] RLL means Reynaldo L. Lizardo.**

Q: That is on one of the sachets, how about the other sachets?

A: **The same markings with the RLL means Reynaldo L. Lizardo.**[47]

PI Laya identified the three plastic sachets offered in evidence as the ***very same*** items he examined at the PNP Crime Laboratory, thus:

Q: When you received that request[,] what else was turned over to you?

A: Three (3) heat-sealed sachet containing white crystalline substance.

Q: Where are these three sachets that were handed to you for examination?

A: (Witness bringing out certain items.)

APP TADE:

Witness handing over to this representation PDEA marking plastic bag containing three plastic sachet with yellow piece of paper containing white crystalline substance.

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

Q: And upon receipt of these items and the request for laboratory examination as an officer, what did you do next?

A: I conducted my laboratory examination.

x x x x x x x x x

Q: And the three (3) tests that you conducted in this case[,] what was the result of your examination?

A: Positive for the presence of methamphetamine hydrochloride.

Q: And do you have any document to that effect?

A: Yes, sir.

x x x x x x x x x

Q: Who prepared this Laboratory Examination Report?

A: I prepared the report.

Q: Personally?

A: Yes, sir.

Q: You handed over to this representation three (3) plastic sachets containing white crystalline substances which you claim to be the same items that were examined by you, **why do you say that these are the same items that were examined by you?**

A: **I have my markings placed in the items.**

Q: Again, will you point to the Court the items which you identifying markings [*sic*] which you said **you placed in the three plastic sachets?**

A: **(Witness pointing to the yellow paper attached to the plastic as A2=D-001-04, A1=D-001-04 and the other plastic A3=D-001-04.)**[48]

Clearly apparent from all these is that the whole operation, all the way up to the submission of the seized *shabu* to the laboratory for testing, were overseen and under the immediate charge of PSI Lizardo who himself was brought to court to

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

testify. The prosecution thus duly established the crucial links in the chain of custody of the seized items from the time they were confiscated until they were brought for examination. The totality of the testimonial, documentary, and object evidence adequately supports not only the findings that a delivery of the illicit drugs took place but accounted for an unbroken chain of custody of the seized evidence as well.

We note in this regard that at no time during the trial did the defense question the integrity of the evidence, by questioning either the chain of custody or the evidence of bad faith or ill will on the part of the police and the prosecution in the handling of evidence, or by proof that the evidence had been tampered with. Under the circumstances, the presumption of regularity in the handling of the exhibits by the public officers concerned and the presumption that they properly discharged their duties should already apply.[49] As the foregoing discussion shows, the integrity of the adduced evidence has never been tainted, so that it should retain its full evidentiary value.

An obvious flaw in the prosecution's case was the failure of the apprehending team to photograph the seized items. Nevertheless, PSI Lizardo immediately conducted an inventory of the items at the police station *where the accused were then held in custody*. Even without considering the presence of the accused at the inventory, however, we find it undisputed that a *barangay kagawad* and two representatives from the media witnessed the inventory and signed the corresponding certificate of inventory. To our mind, the presence of an elected official and two media representatives sufficiently safeguarded the seized evidence from possible alteration, substitution or tampering. The presence of these third parties (as required by law) during the inventory, as well as the clear lack of any irregularity affecting the identity of the evidence, more than made up for the prosecution's failure to photograph the confiscated specimens. In other words, we hold that there has been substantial compliance by the police authorities with the required procedure on the

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[49] *People v. Miranda*, G.R. No. 174773, October 2, 2007, 534 SCRA 552, 568.

custody and control of the confiscated drugs even without the required photographs.

The marking of the seized *shabu* at the police station rather than at the exact scene of the warrantless arrest of the accused and the seizure of evidence, to our mind, should be appreciated under the unique attendant circumstances of the case.

We note that the entrapment undisputably took place and the sachets of *shabu* were seized inside a vehicle where all the actors – the accused, the informant, and the police – were riding together. They were effectively on the road at that time and the records do not indicate that the van went to any other place after the arrest and seizure. Only PSI Lizardo also appeared to have handled the seized items while the van was on its way to the police station. Thus, there appeared no possibility for the "planting," switching, and tampering of evidence during the whole travel time from the place of seizure to the police station. In fact, the case of the defense did not even suggest these possibilities as its defense was one of avoidance, *i.e.*, the accused did not know that what the delivered envelope contained was *shabu*.

All these indicators tell us that the main concern of the authorities at that time was simply to bring the accused in for investigation and appropriate proceedings. Thus, they cannot be faulted if they opted, after the warrantless arrest, to prioritize the delivery of the accused to their station and to undertake the required marking and inventory of the seized items there. With the continued presence of all the accused in the vehicle while the seized items remained unmarked, and the immediate marking and inventory of these items upon reaching the police station, the law's feared planting, tampering, and switching of evidence were substantially negated. The fact that the accused were all at the police station when the marking and inventory took place immeasurably strengthens the validity of our conclusion.

From the point of view of jurisprudence, we are not beating any new path by holding that the failure to undertake the required photography and immediate marking of seized items may be excused by the unique circumstances of a case. In *People v.*

Resurreccion,[50] we already stated that "marking upon immediate confiscation" does not exclude the possibility that marking can be at the police station or office of the apprehending team. In the cases of *People v. Rusiana*,[51] *People v. Hernandez*,[52] and *People v. Gum-Oyen*,[53] the apprehending team marked the confiscated items at the police station and not at the place of seizure. Nevertheless, we sustained the conviction because the evidence showed that the integrity and evidentiary value of the items seized had been preserved. To reiterate what we have held in past cases, we are not always looking for the strict step-by-step adherence to the procedural requirements; what is important is to ensure the ***preservation of the integrity and the evidentiary value of the seized items***, as these would determine the guilt or innocence of the accused. We succinctly explained this in *People v. Del Monte*[54] when we held:

> We would like to add that non-compliance with Section 21 of said law, particularly the making of the inventory and the photographing of the drugs confiscated and/or seized, will not render the drugs inadmissible in evidence. Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is *not excluded by the law or these rules*. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will [be] accorded it by the courts.
> x x x
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> We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight – evidentiary merit or probative value – to be given the evidence.

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[50] G.R. No. 186380, October 12, 2009.

[51] G.R. No. 186139, October 5, 2009.

[52] G.R. No. 184804, June 18, 2009.

[53] G.R. No. 182231, April 16, 2009, 585 SCRA 668.

[54] G.R. No. 179940, April 23, 2008, 552 SCRA 627.

The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.[55]

The Proper Penalties

The appellant was caught delivering a total of 12 grams of methamphetamine hydrochloride or *shabu*. The illegal delivery, dispensation, distribution and transportation of drugs are punished under Section 5, Article II of R.A. No. 9165, which provides:

> Sec. 5. x x x 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.

Pursuant to the enactment of RA No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine, instead of death, shall be imposed.

Accordingly, we find the penalty imposed to be within the range provided by law and was thus correctly imposed by the RTC and affirmed by the CA.

WHEREFORE, in light of all the foregoing, we hereby *AFFIRM* the February 28, 2006 Decision of the Court of Appeals in CA-G.R. CR-HC No. 00432. No cost.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Del Castillo,[*] and *Abad,*[**] *JJ.,* concur.

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[55] *Id.* at 637.

[*] Designated additional Member of the Third Division *vice* Associate Justice Jose Catral Mendoza, per Special Order No. 845, dated June 8, 2010.

[**] Designated additional Member of the Third Division, in view of the retirement of former Chief Justice Reynato S. Puno, per Special Order No. 843, dated May 17, 2010.

SECOND DIVISION

[G.R. No. 174632. June 16, 2010]

FELICIDAD T. MARTIN, MELISSA M. ISIDRO, GRACE M. DAVID, CAROLINE M. GARCIA, VICTORIA M. ROLDAN, and BENJAMIN T. MARTIN, JR., *petitioners, vs.* **DBS BANK PHILIPPINES, INC. (Formerly known as Bank of Southeast Asia) now merged with and into BPI FAMILY BANK,** *respondent.*

[G.R. No. 174804. June 16, 2010]

DBS BANK PHILIPPINES, INC. (Formerly known as Bank of Southeast Asia) now merged with and into BPI FAMILY BANK), *petitioner, vs.* **FELICIDAD T. MARTIN, MELISSA M. ISIDRO, GRACE M. DAVID, CAROLINE M. GARCIA, VICTORIA M. ROLDAN, and BENJAMIN T. MARTIN, JR.,** *respondents.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; UNLESS THE TERMS THEREOF ARE AGAINST THE LAW, MORALS, GOOD CUSTOMS, AND PUBLIC POLICY, SUCH IS THE LAW BETWEEN THE PARTIES AND ITS TERMS BIND THEM. — Unless the terms of a contract are against the law, morals, good customs, and public policy, such contract is law between the parties and its terms bind them. In *Felsan Realty & Development Corporation v. Commonwealth of Australia*, the Court regarded as valid and binding a provision in the lease contract that allowed the lessee to pre-terminate the same when fire damaged the leased building, rendering it uninhabitable or unsuitable for living.

2. ID.; ID.; VARIOUS STIPULATIONS MUST BE READ TOGETHER AND BE GIVEN EFFECT AS THEIR MEANINGS WARRANT. — The Court held in *Manila International Airport Authority v. Gingoyon*, the various stipulations in a contract must be read together and given effect as their meanings warrant. Here, paragraph X, which barred pre-termination of the lease

agreement, cannot be read in isolation. Paragraph VIII gave DBS and the Martins the right to rescind the agreement in the event the property becomes untenantable due to natural causes, including floods, unless proper repairs and rehabilitation are carried out.

APPEARANCES OF COUNSEL

Macam Raro Ulep & Partners for Felicidad T. Martin, *et al*.

Benedicto Versoza and Burkley Law Offices for DBS, now BPI Family Bank.

D E C I S I O N

ABAD, *J.*:

This case is about the right of rescission provided in the contract of lease in the event of failure of the lessor to make repairs that would enable the lessee to continue with the intended use of the leased property.

The Facts and the Case

On March 27, 1997 Felicidad T. Martin, Melissa M. Isidro, Grace M. David, Caroline M. Garcia, Victoria M. Roldan, and Benjamin T. Martin, Jr. (the Martins), as lessors, entered into a lease contract[1] with the DBS Bank Philippines, Inc. (DBS), formerly known as Bank of Southeast Asia and now merged with Bank of the Philippine Islands, as lessee, covering a commercial warehouse and lots that DBS was to use for office, warehouse, and parking yard for repossessed vehicles. The lease was for five years, from March 1, 1997 to March 1, 2002, at a monthly rent of ₱300,000.00 for the first year, ₱330,000.00 for the second year, ₱363,000.00 for the third year, ₱399,300.00 for the fourth year, and ₱439,230.00 for the final year, all net of withholding taxes.[2] DBS paid a deposit of ₱1,200,000.00 and advance rentals of ₱600,000.00.

[1] *Rollo* (G.R. 174632), pp. 60-66.

[2] *Id.* at 61.

On May 25 and August 13, 1997 heavy rains flooded the leased property and submerged into water the DBS offices there along with its 326 repossessed vehicles. As a result, on February 11, 1998 DBS wrote the Martins demanding that they take appropriate steps to make the leased premises suitable as a parking yard for its vehicles.[3] DBS suggested the improvement of the drainage system or the raising of the property's ground level. In response, the Martins filled the property's grounds with soil and rocks.

But DBS lamented that the property remained unsuitable for its use since the Martins did not level the grounds. Worse, portions of the perimeter fence collapsed because of the excessive amount of soil and rock that were haphazardly dumped on it. In June 1998, DBS vacated the property but continued paying the monthly rents. On September 11, 1998, however, it made a final demand on the Martins to restore the leased premises to tenantable condition on or before September 30, 1998, otherwise, it would rescind the lease contract.[4]

On September 24, 1998 the Martins contracted the services of Altitude Systems & Technologies Co. for the reconstruction of the perimeter fence on the property.[5] On October 13, 1998 DBS demanded the rescission of the lease contract and the return of its deposit.[6] At that point, DBS had already paid the monthly rents from March 1997 to September 1998. The Martins refused, however, to comply with DBS' demand.

On July 7, 1999 DBS filed a complaint against the Martins for rescission of the contract of lease with damages before the Regional Trial Court (RTC) of Makati City, Branch 141, in Civil Case 99-1266.[7] Claiming that the leased premises had become untenantable, DBS demanded rescission of the lease contract as well as the return of its deposit of ₱1,200,000.00.

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[3] Records, p. 15.

[4] *Id.* at 18.

[5] *Rollo* (G.R. 174632), pp. 190-193.

[6] Records, p. 19.

[7] *Id.* at 1-7.

On November 12, 2001 the Makati City RTC rendered a decision, dismissing the complaint against the Martins.[8] The trial court found that, although the floods submerged DBS' vehicles, the leased premises remained tenantable and undamaged. Moreover, the Martins had begun the repairs that DBS requested but were not given sufficient time to complete the same. It held that DBS unjustifiably abandoned the leased premises and breached the lease contract. Thus, the trial court ordered its deposit of ₱1,200,000.00 deducted from the unpaid rents due the Martins and ordered DBS to pay them the remaining ₱15,198,360.00 in unpaid rents.

On appeal to the Court of Appeals (CA) in CA-G.R. CV 76210, the latter court rendered judgment dated April 26, 2006,[9] reversing and setting aside the RTC decision. The CA found that floods rendered the leased premises untenantable and that the RTC should have ordered the rescission of the lease contract especially since the contract provided for such remedy. The CA ordered the Martins to apply the deposit of ₱1,200,000.00 to the rents due up to July 7, 1999 when DBS filed the complaint and exercised its option to rescind the lease. The CA ordered the Martins to return the remaining balance of the deposit to DBS.

DBS moved for partial reconsideration, claiming that it rescinded the lease contract on October 13, 1998 and not on July 7, 1999. The CA should not require DBS to pay rents from October 1998 to July 7, 1999. It should rather order the Martins to return its deposit in full. For their part, the Martins asked the CA to reconsider its decision, pointing out that they undertook the necessary repairs and restored the leased premises to tenantable condition. Thus, DBS no longer had the right to rescind the lease contract.

With the denial of their separate motions for reconsideration,[10] DBS and the Martins filed their respective petitions for review

[8] *Rollo* (G.R. 174632), pp. 53-57. Penned by Judge Manuel D. Victorio.

[9] *Rollo* (G.R. 174804), pp. 26-35. Penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Godardo A. Jacinto and Juan Q. Enriquez, Jr.

[10] *Id.* at 37-38.

before this Court in G.R. 174632 and 174804. The Court eventually consolidated the two cases.[11]

The Issues Presented

The issues presented in these cases are:

1. Whether or not the CA erred in holding that the Martins allowed the leased premises to remain untenantable after the floods, justifying DBS' rescission of the lease agreement between them; and

2. In the affirmative, whether or not the CA erred in holding that DBS is entitled to the rescission of the lease contract only from July 7, 1999 when it filed its action for rescission, entitling the Martins to collect rents until that time.

The Court's Rulings

One. Unless the terms of a contract are against the law, morals, good customs, and public policy, such contract is law between the parties and its terms bind them.[12] In *Felsan Realty & Development Corporation v. Commonwealth of Australia*,[13] the Court regarded as valid and binding a provision in the lease contract that allowed the lessee to pre-terminate the same when fire damaged the leased building, rendering it uninhabitable or unsuitable for living.

Here, paragraph VIII[14] of the lease contract between DBS and the Martins permitted rescission by either party should the leased property become untenantable because of natural causes. Thus:

In case of damage to the leased premises or any portion thereof by reason of fault or negligence attributable to the LESSEE, its agents, employees, customers, or guests, the LESSEE shall

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[11] *Id.* at 42.

[12] *Dela Torre v. Bicol University*, G.R. No. 148632, August 31, 2005, 468 SCRA 542, 551.

[13] G.R. No. 169656, October 11, 2007, 535 SCRA 618.

[14] *Rollo* (G.R. 174804), pp. 116-117.

be responsible for undertaking such repair or reconstruction. In case of damage due to fire, earthquake, lightning, typhoon, flood, or other natural causes, without fault or negligence attributable to the LESSEE, its agents, employees, customers or guests, the LESSOR shall be responsible for undertaking such repair or reconstruction. In the latter case, if the leased premises become untenantable, either party may demand for the rescission of this contract and in such case, the deposit referred to in paragraph III shall be returned to the LESSEE immediately. (Underscoring supplied.)

The Martins claim that DBS cannot invoke the above since they undertook the repair and reconstruction of the leased premises, incurring ₱1.6 million in expenses. The Martins point out that the option to rescind was available only if they failed to do the repair work and reconstruction.

But, under their agreement, the remedy of rescission would become unavailable to DBS only if the Martins, as lessors, made the required repair and reconstruction after the damages by natural cause occurred, which meant putting the premises after the floods in such condition as would enable DBS to resume its use of the same for the purposes contemplated in the agreement, namely, as office, warehouse, and parking space for DBS' repossessed vehicles.

Here, it is undisputed that the floods of May 25 and August 13, 1997 submerged the DBS offices and its 326 repossessed vehicles. The floods rendered the place unsuitable for its intended uses.[15] And, while the Martins did some repairs, they did not restore the place to meet DBS' needs. The photographs[16] taken of the place show that the Martins filled the grounds with soil and rocks to raise the elevation but did not level and compact the same so they could accommodate the repossessed vehicles. Moreover, the heaviness of the filling materials caused portions of the perimeter walls to collapse or lean dangerously.[17] Indeed, the Office of the City Engineer advised DBS that unless those

[15] Records, p. 80.

[16] *Id.* at 118-122.

[17] *Id.* at 112-118.

walls were immediately demolished or rehabilitated, they would endanger passersby.[18]

For their part, although the Martins insisted that they successfully repaired and restored the leased areas, they failed to produce photographs that would contradict those that DBS presented in court. For one thing, the evidence for DBS shows that the Martins simply dumped soil and rocks on the grounds, creating an uneven terrain that would not permit vehicular parking. True, the Martins contracted the services of Altitude Systems and Technologies Co. but the scope of work covered only the construction of a new perimeter fence, leaving out works that are essential to the leveling and compacting of the grounds.

Undeniably, the DBS suffered considerable damages when flood waters deluged its offices and 326 repossessed vehicles. Notably, DBS vacated the leased premises in June of 1998, without rescinding the lease agreement, evidently to allow for unhindered repair of the grounds. In fact, DBS continued to pay the monthly rents until September 1998, showing how DBS leaned back to enable the Martins to finish the repair and rehabilitation of the place.[19] The Martins provided basis for rescission by DBS when they failed to do so.

The Martins point out that paragraph X of the contract forbade the pre-termination of the lease. But, as the Court held in *Manila International Airport Authority v. Gingoyon*,[20] the various stipulations in a contract must be read together and given effect as their meanings warrant. Here, paragraph X, which barred pre-termination of the lease agreement, cannot be read in isolation. Paragraph VIII gave DBS and the Martins the right to rescind the agreement in the event the property becomes untenantable due to natural causes, including floods, unless proper repairs and rehabilitation are carried out.

Two. As for the effective date of rescission, the record shows that DBS made a final demand on the Martins on September

[18] *Id.* at 16.

[19] TSN, June 19, 2000, pp. 19-20; TSN, July 12, 2000, p. 7.

[20] G.R. No. 155879, December 2, 2005, 476 SCRA 570, 577-578.

11, 1998, giving the latter up to September 30, 1998 within which to fully restore the leased property to a tenantable condition, otherwise, it would rescind their lease contract.[21] Consequently, the Martins may be regarded in default with respect to their obligation to repair and rehabilitate the leased property by the end of September 1998 when they did not comply with the demand. Contrary to the ruling of the CA, it is not the filing of the action for rescission that marks the violation of the lease agreement but the failure of the Martins to repair and rehabilitate the property despite demand.

Finally, Paragraph III of the lease contract states that the deposit DBS made is to apply to any: a) unpaid telephone, electric, and water bills, and b) unpaid rents. As it happened, DBS left no unpaid utility bills. Also, since DBS paid the rents up to September 1998, it owed no unpaid rents when it exercised its right to rescind its lease contract with the Martins. The latter must, therefore, return the full deposit of ₱1,200,000.00 to DBS.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS with MODIFICATION* the April 26, 2006 decision of the Court of Appeals in CA-G.R. CV 76210 in that Felicidad T. Martin, Melissa M. Isidro, Grace M. David, Caroline M. Garcia, Victoria M. Roldan, and Benjamin T. Martin, Jr. are *ORDERED* to return the full deposit of ₱1,200,000.00 to DBS Bank Philippines, Inc. (formerly known as Bank of Southeast Asia, now merged with and into BPI Family Bank) with interest of 12% per annum to be computed from the finality of this decision until the amount is fully paid.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Perez,*[*] *JJ.,* concur.

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[21] *Supra* note 4.

[*] Designated as additional member in lieu of Associate Justice Jose C. Mendoza, per Special Order No. 842 dated June 3, 2010.

SECOND DIVISION

[G.R. No. 178523. June 16, 2010]

MAKATI SPORTS CLUB, INC., *petitioner, vs.* **CECILE H. CHENG, MC FOODS, INC., and RAMON SABARRE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; ONLY QUESTIONS OF LAW MAY BE RAISED. — Under Section 1 of Rule 45 of the Rules of Court, such a petition shall raise only questions of law which must be distinctly alleged in the appropriate pleading. In a case involving a question of law, the resolution of the issue must rest solely on what the law provides for a given set of facts drawn from the evidence presented. Stated differently, there should be nothing in dispute as to the state of facts; the issue to be resolved is merely the correctness of the conclusion drawn from the said facts. Once it is clear that the issue invites a review of the probative value of the evidence presented, the question posed is one of fact. If the query requires a reevaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, then the issue is necessarily factual.

2. COMMERCIAL LAW; CORPORATION CODE; CERTIFICATE OF STOCK, DEFINED. — A certificate of stock is the paper representative or tangible evidence of the stock itself and of the various interests therein. The certificate is not a stock in the corporation but is merely evidence of the holder's interest and status in the corporation, his ownership of the share represented thereby. It is not in law the equivalent of such ownership. It expresses the contract between the corporation and the stockholder, but is not essential to the existence of a share of stock or the nature of the relation of shareholder to the corporation.

3. REMEDIAL LAW; EVIDENCE; FRAUD IS A QUESTION OF FACT THAT MUST BE ALLEGED AND PROVED. — Fraud is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or

equitable duty, trust or confidence justly reposed, resulting in the damage to another or by which an undue and unconscionable advantage is taken of another. It is a question of fact that must be alleged and proved. It cannot be presumed and must be established by clear and convincing evidence, not by mere preponderance of evidence. The party alleging the existence of fraud has the burden of proof. On the basis of the above disquisitions, this Court finds that petitioner has failed to discharge this burden. No matter how strong the suspicion is on the part of petitioner, such suspicion does not translate into tangible evidence sufficient to nullify the assailed transactions involving the subject MSCI Class "A" share of stock.

APPEARANCES OF COUNSEL

Solis Medina Limpingco & Fajardo for petitioner.
Law Firm of R.V. Domingo for respondents.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated June 25, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 80631, affirming the decision[3] dated August 20, 2003 of the Regional Trial Court (RTC), Branch 138, Makati City in Civil Case No. 01-837.

The facts of the case, as narrated by the RTC and adopted by the CA, are as follows:

On October 20, 1994, plaintiff's Board of Directors adopted a resolution (Exhibit 7) authorizing the sale of 19 unissued shares at a floor price of ₱400,000 and ₱450,000 per share for Class A and B, respectively.

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[1] *Rollo*, pp. 10-53.

[2] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Edgardo P. Cruz and Lucenito N. Tagle, concurring; *id.* at 55-64.

[3] *Rollo*, pp. 127-130.

Defendant Cheng was a Treasurer and Director of plaintiff in 1985. On July 7, 1995, Hodreal expressed his interest to buy a share, for this purpose he sent the letter, Exhibit 13. In said letter, he requested that his name be included in the waiting list.

It appears that sometime in November 1995, McFoods expressed interest in acquiring a share of the plaintiff, and one was acquired with the payment to the plaintiff by McFoods of ₱1,800,000 through Urban Bank (Exhibit 3). On December 15, 1995, the Deed of Absolute Sale, Exhibit 1, was executed by the plaintiff and McFoods Stock Certificate No. A 2243 was issued to McFoods on January 5, 1996. On December 27, 1995, McFoods sent a letter to the plaintiff giving advise (sic) of its offer to resell the share.

It appears that while the sale between the plaintiff and McFoods was still under negotiations, there were negotiations between McFoods and Hodreal for the purchase by the latter of a share of the plaintiff. On November 24, 1995, Hodreal paid McFoods ₱1,400,000. Another payment of ₱1,400,000 was made by Hodreal to McFoods on December 27, 1995, to complete the purchase price of ₱2,800,000.

On February 7, 1996, plaintiff was advised of the sale by McFoods to Hodreal of the share evidenced by Certificate No. 2243 for ₱2.8 Million. Upon request, a new certificate was issued. In 1997, an investigation was conducted and the committee held that there is *prima facie* evidence to show that defendant Cheng profited from the transaction because of her knowledge.

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Plaintiff's evidence of fraud are – [a] letter of Hodreal dated July 7, 1995 where he expressed interest in buying one (1) share from the plaintiff with the request that he be included in the waiting list of buyers; [b] declaration of Lolita Hodreal in her Affidavit that in October 1995, she talked to Cheng who assured her that there was one (1) available share at the price of ₱2,800,000. The purchase to be validated by paying 50% immediately and the balance after thirty (30) days; [c] Marian Punzalan, Head, Membership Section of the plaintiff declared that she informed Cheng of the intention of Hodreal to purchase one (1) share and she gave to Cheng the contact telephone number of Hodreal; and [d] the authorization from Sabarre to claim the stock certificate.[4]

[4] *Id.* at 56-57; 128-129.

Thus, petitioner sought judgment that would order respondents to pay the sum of ₱1,000,000.00, representing the amount allegedly defrauded, together with interest and damages.

After trial on the merits, the RTC rendered its August 20, 2003 decision, dismissing the complaint, including all counterclaims.

Aggrieved, Makati Sports Club, Inc. (MSCI) appealed to the CA, arguing that the RTC erred in finding neither direct nor circumstantial evidence that Cecile H. Cheng (Cheng) had any fraudulent participation in the transaction between MSCI and Mc Foods, Inc. (Mc Foods), while it allegedly ignored MSCI's overwhelming evidence that Cheng and Mc Foods confabulated with one another at the expense of MSCI.

After the submission of the parties' respective briefs, the CA promulgated its assailed Decision, affirming the August 20, 2003 decision of the RTC. Hence, this petition anchored on the grounds that—

THE APPELLATE COURT ERRED IN UPHOLDING THE CONCLUSION OF THE TRIAL COURT THAT PETITIONER DID NOT PROFFER CLEAR AND CONVINCING EVIDENCE SHOWING THAT THE RESPONDENTS DEFRAUDED THE PETITIONER DESPITE OVERWHELMING EVIDENCE TO THE CONTRARY AS SHOWN BY THE FOLLOWING:

(A) RESPONDENTS CHENG AND SABARRE'S OWN ADMISSIONS, MARIAN PUNZALAN'S AFFIDAVIT, AND OTHER PERTINENT DOCUMENTARY EVIDENCE ALL UNEQUIVOCALLY PROVE THAT RESPONDENT CHENG HAD INTIMATE PARTICIPATION IN THE SALE OF MSCI'S UNISSUED CLASS "A" SHARE TO MC FOODS, INC. FOR THE CONSIDERATION OF ONE MILLION EIGHT HUNDRED THOUSAND PESOS (PHP1,800,000.00).

(B) RESPONDENT CHENG'S ADMISSIONS AND OTHER PERTINENT DOCUMENTARY EVIDENCE RELATED TO THE SALE OF MSCI'S UNISSUED CLASS "A" SHARE TO RESPONDENT MC FOODS, INC. AND THE RESALE OF THE SAME TO SPOUSES HODREAL PROVE THAT THE SALE OF THE SAID UNISSUED SHARE TO MC FOODS, INC. AT ONE

MILLION EIGHT HUNDRED THOUSAND PESOS (PHP1,800,000.00) WAS MADE WITH A VIEW TO RESELL THE SAME AT A PROFIT TO THE HODREAL SPOUSES AT THE AMOUNT OF TWO MILLION EIGHT HUNDRED PESOS (PHP2,800,000.00); THE "RESALE" OF THE SAID SHARE TO THE SPOUSES HODREAL OCCURRING EVEN BEFORE MC FOODS, INC. GAINED OWNERSHIP OVER THE SAID UNISSUED SHARE.

(C) THE UTTER LACK OF DOCUMENTARY EVIDENCE SHOWING THAT MC FOODS, INC. EVINCED A DESIRE TO PURCHASE PETITIONER'S UNISSUED SHARES CONCLUSIVELY PROVES THAT MC FOODS, INC. NEVER MADE ANY FORMAL OFFER TO BUY AN UNISSUED M[SC]I SHARE FROM PETITIONER'S BOARD OF DIRECTORS AND/OR MEMBERSHIP COMMITTEE, COURSING THE SAID TRANSACTION CLANDESTINELY THROUGH RESPONDENT CHENG.

(D) RESPONDENT CHENG'S OWN ADMISSIONS INDUBITABLY PROVE THAT SHE DELIBERATELY CONCEALED THE FACT THAT THERE WERE OTHER UNISSUED M[SC]I SHARES AVAILABLE FOR PURCHASE BY THE SPOUSES HODREAL, CHOOSING INSTEAD TO BROKER THE "RESALE" OF THE SHARE PURCHASED BY MC FOODS, INC. FROM MSCI TO THE SPOUSES HODREAL AT THE PRICE OF TWO MILLION EIGHT HUNDRED THOUSAND PESOS (PHP2,800,000.00) TO THE DETRIMENT OF THE PETITIONER.

(E) RESPONDENTS CHENG AND SABARRE'S ADMISSIONS, MSCI'S BY-LAWS AND DOCUMENTARY EVIDENCE RELATING TO THE TWO IRREGULAR SALES TRANSACTIONS ALL POINT TO THE CONCLUSION THAT MC FOODS, INC. IN RESELLING ITS MSCI SHARE TO SPOUSES HODREAL FAILED TO GIVE MSCI A CREDIBLE OPPORTUNITY TO REPURCHASE THE SAME IN ACCORDANCE WITH SECTION 30 (E) OF MSCI'S BY-LAWS.

(F) RESPONDENT CHENG'S OWN DOCUMENTARY EVIDENCE PROVES THAT RESPONDENTS FALSIFIED AN ENTRY IN MC FOODS, INC.'S "OFFER" TO SELL ITS SHARE TO MSCI IN AN EFFORT TO COAT THE RESELLING OF THE

SAID SHARE TO SPOUSES HODREAL WITH A SEMBLANCE OF REGULARITY[.]

(G) FINALLY, PERHAPS THE MOST OVERLOOKED MATTER BY THE TRIAL COURT AND THE APPELLATE COURT IS THE SINGULAR UNDENIABLE FACT THAT RESPONDENT CHENG DURING THE PERIOD IN WHICH THE ABOVE-MENTIONED TRANSACTIONS CAME INTO FRUITION WAS A MEMBER OF THE BOARD OF DIRECTORS AND THE TREASURER OF MSCI, THIS FACT ALONE TAINTS THE PARTICIPATION OF RESPONDENT CHENG IN THE SAID IRREGULAR TRANSACTIONS WITH BAD FAITH.[5]

The petition should be denied.

At the outset, we note that this recourse is a petition for review on *certiorari* under Rule 45 of the Rules of Court. Under Section 1 of the Rule, such a petition shall raise only questions of law which must be distinctly alleged in the appropriate pleading. In a case involving a question of law, the resolution of the issue must rest solely on what the law provides for a given set of facts drawn from the evidence presented. Stated differently, there should be nothing in dispute as to the state of facts; the issue to be resolved is merely the correctness of the conclusion drawn from the said facts. Once it is clear that the issue invites a review of the probative value of the evidence presented, the question posed is one of fact. If the query requires a reevaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, then the issue is necessarily factual.[6]

A perusal of the assignment of errors and the discussion set forth by MSCI would readily show that the petition seeks a review of all the evidence presented before the RTC and reviewed by the CA; therefore, the issue is factual. Accordingly, the petition should be dismissed outright, especially considering that

[5] *Id.* at 18-20.

[6] *Rivera v. United Laboratories, Inc.*, G.R. No. 155639, April 22, 2009, 586 SCRA 269; *Samaniego-Celada v. Abena*, G.R. No. 145545, June 30, 2008, 556 SCRA 569.

the very same factual circumstances in this petition have already been ruled upon by the CA.

However, MSCI seeks to evade this rule that the findings of fact made by the trial court, particularly when affirmed by the appellate court, are entitled to great weight and even finality, claiming that its case falls under two of the well-recognized exceptions, to wit: (1) that the judgment of the appellate court is premised on a misapprehension of facts or that it has failed to consider certain relevant facts which, if properly considered, will justify a different conclusion; and (2) that the findings of fact of the appellate court are ostensibly premised on the absence of evidence, but are contradicted by the evidence on record.[7]

MSCI insists that Cheng, in collaboration with Mc Foods, committed fraud in transacting the transfers involving Stock Certificate No. A 2243 (Certificate A 2243) on account of the following circumstances—(1) on November 24, 1995, Joseph L. Hodreal (Hodreal) paid the first installment of ₱1,400,000.00 for the purchase of a Class "A" share in favor of Mc Foods;[8] (2) on November 28, 1995, Mc Foods deposited to MSCI's account an Allied Banking Corporation manager's check for the purchase of the same share in the amount of ₱1,800,000.00,[9] *sans* an official receipt from MSCI;[10] (3) on December 15, 1995, MSCI and Mc Foods executed a Deed of Sale for the purchase of a Class "A" share;[11] (4) on December 27, 1995, Hodreal paid the last installment of ₱1,400,000.00 to Mc Foods;[12] (5) on December 27, 1995, Mc Foods sent a letter to MSCI, offering to sell its purchased share of stock in the amount of

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[7] *Fangonil-Herrera v. Fangonil*, G.R. No. 169356, August 28, 2007, 531 SCRA 486; *Allied Banking Corporation v. Court of Appeals*, 461 Phil. 517 (2003).

[8] Per Official Receipt No. 1601 issued by Mc Foods; *rollo*, p. 84.

[9] Per Deposit Slip dated November 28, 1995; *rollo*, p. 103.

[10] Per Stock Sale Transaction – Original Issues (as of June 1996) of MSCI; *rollo*, p. 144.

[11] *Rollo*, pp. 142-143.

[12] Per voucher of Mc Foods; *id.* at 87.

₱2,800,000.00;[13] (6) on January 5, 1996, Certificate A 2243 was issued to Mc Foods by MSCI;[14] and (7) on January 29, 1996, Mc Foods and Hodreal executed a Deed of Sale for the same share of stock.[15]

Based on the above incidents, MSCI asserts that Mc Foods never intended to become a legitimate holder of its purchased Class "A" share but did so only for the purpose of realizing a profit in the amount of ₱1,000,000.00 at the expense of the former. MSCI further claims that Cheng confabulated with Mc Foods by providing it with an insider's information as to the status of the shares of stock of MSCI and even, allegedly with unusual interest, facilitated the transfer of ownership of the subject share of stock from Mc Foods to Hodreal, instead of an original, unissued share of stock. According to MSCI, Cheng's fraudulent participation was clearly and overwhelmingly proven by the following circumstances: (1) sometime in October 1995, Lolita Hodreal, wife of Hodreal, talked to Cheng about the purchase of one Class "A" share of stock and the latter assured her that there was already an available share for ₱2,800,000.00;[16] (2) the second installment payment of ₱1,400,000.00 of spouses Hodreal to Mc Foods was received by Cheng on the latter's behalf;[17] (3) Marian N. Punzalan (Punzalan), head of MSCI's membership section, informed Cheng about Hodreal's intention to purchase a share of stock and Cheng asked her if there was a quoted price for it, and for Hodreal's contact number;[18] and (4) on January 29, 1996, Cheng claimed Certificate A 2243 on behalf of Mc Foods,[19] per letter

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[13] Received by MSCI on Dec. 28, 1995; *rollo*, p. 100.

[14] *Rollo*, p. 97.

[15] *Id.* at 95-96.

[16] Per Lolita Hodreal's Affidavit dated April 18, 1998; *id.* at 85.

[17] Per Cheng's letter dated December 27, 1995; *rollo*, p. 88.

[18] Per Marian N. Punzalan's Affidavit dated October 30, 2001; *rollo*, p. 90.

[19] Per Stock Transfer Data Sheet of MSCI; *rollo*, p. 102.

of authority dated January 26, 1996, executed by Mc Foods in favor of Cheng.[20]

The Court is not convinced.

It is noteworthy that, as early as July 7, 1995, Hodreal already expressed to the MSCI Membership Committee his intent to purchase one Class "A" share and even requested if he could be included in the waiting list of buyers. However, there is no evidence on record that the Membership Committee acted on this letter by replying to Hodreal if there still were original, unissued shares then or if he would indeed be included in the waiting list[21] of buyers. All that Punzalan did was to inform Cheng of Hodreal's intent and nothing more, even as Cheng asked for Hodreal's contact number. It may also be observed that, although established by Punzalan's affidavit that she informed Cheng about Hodreal's desire to purchase a Class "A" share and that Cheng asked for Hodreal's contact number, it is not clear when Punzalan relayed the information to Cheng or if Cheng indeed initiated contact with Hodreal to peddle Mc Foods' purchased share.

While Punzalan declared that, in December 1995, she received a Deed of Absolute Sale between MSCI and Mc Foods of a

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[20] *Rollo*, p. 101.

[21] Amended By-Laws of MSCI, Sec. 3.

SEC. 3. *Waiting List*. There shall be a Waiting List to be kept by the Membership committee which shall be a register of the names of persons desiring to be regular members due to non-availability of shares of stock to be issued in their names or to the corporation represented by such persons. Order of priority in the Waiting List shall be established based on the order of filing of the applications, provided, however, that the number of applications that can be included in the list shall not exceed one hundred (100) at any given time. Names of applicants shall be posted in the Club Bulletin Board for a period of thirty (30) days and if no objections are raised by any regular member shall be included in the Waiting List upon approval by the Membership Committee, and confirmation by the Board, provided, however, that the Board may delete the name of any applicant at any time at its discretion.

Applicants in the Waiting List shall be notified by the Membership Committee of the availability of shares of stock for sale as provided for under Section 33(b) herein.

Class "A" share for ₱1,800,000.00 signed by Atty. Rico Domingo and Cheng, in their respective capacities as then President and Treasurer of MSCI, and by Ramon Sabarre, as President of Mc Foods, what she merely did was to inquire from her immediate superior Becky Peñaranda what share to issue; and the latter, in turn, replied that it should be an original share. Thereafter, Punzalan prepared a letter, signed by then corporate secretary, Atty. Rafael Abiera, to be sent to MSCI's stock transfer agent for the issuance of the corresponding certificate of stock. Then, Certificate A 2243 was issued in favor of Mc Foods on January 5, 1996.

Also in point are the powers and duties of the MSCI's Membership Committee, *viz.*:

> SEC. 29. (a) The *Membership Committee* shall process applications for membership; ascertain that the requirements for stock ownership, including citizenship, are complied with; submit to the Board its recommended on applicants for inclusion in the Waiting List; take charge of auction sales of shares of stock; and exercise such other powers and perform such other functions as may be authorized by the Board.[22]

Charged with ascertaining the compliance of all the requirements for the purchase of MSCI's shares of stock, the Membership Committee failed to question the alleged irregularities attending Mc Foods' purchase of one Class "A" share at ₱1,800,000.00. If there was really any irregularity in the transaction, this inaction of the Management Committee belies MSCI's cry of foul play on Mc Foods' purchase of the subject share of stock. In fact, the purchase price of ₱1,800,000.00 cannot be said to be detrimental to MSCI, considering that it is the same price paid for a Class "A" share in the last sale of an original share to Land Bank of the Philippines on September 25, 1995, and in the sale by Marina Properties Corporation to Xanland Properties, Inc. on October 23, 1995.[23] These circumstances have not been denied by MSCI. What is more, the purchase price of

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[22] *Rollo*, p. 75.

[23] Per Cheng's Affidavit; *id.* at 139.

₱1,800,000.00 is ₱1,400,000.00 more than the floor price set by the MSCI Board of Directors for a Class "A" share in its resolution dated October 20, 1994.[24]

Further, considering that Mc Foods tendered its payment of ₱1,800,000.00 to MSCI on November 28, 1995, even assuming *arguendo* that it was driven solely by the intent to speculate on the price of the share of stock, it had all the right to negotiate and transact, at least on the anticipated and expected ownership of the share, with Hodreal.[25] In other words, there is nothing wrong with the fact that the first installment paid by Hodreal preceded the payment of Mc Foods for the same share of stock to MSCI because eventually Mc Foods became the owner of a Class "A" share covered by Certificate A 2243. Upon payment by Mc Foods of ₱1,800,000.00 to MSCI and the execution of the Deed of Absolute Sale on December 15, 1995, it then had the right to demand the delivery of the stock certificate in its name. The right of a transferee to have stocks transferred to its name is an inherent right flowing from its ownership of the stocks.[26]

It is MSCI's stance that Mc Foods violated Section 30(e) of MSCI's Amended By-Laws on its pre-emptive rights, which provides—

SEC. 30. x x x .

(e) *Sale of Shares of Stockholder*. Where the registered owner of share of stock desires to sell his share of stock, he shall first offer the same in writing to the Club at fair market value and the

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[24] Exhibit "7" as cited by both RTC and CA in their respective assailed Decisions.

[25] CIVIL CODE, Art. 1461.

Art. 1461. Things having a potential existence may be the object of the contract of sale.

The efficacy of the sale of a mere hope or expectancy is deemed subject to the condition that the thing will come into existence.

The sale of a vain hope or expectancy is void.

[26] M. DEFENSOR SANTIAGO, *Corporation Code Annotated* (2000), p. 168.

club shall have thirty (30) days from receipt of written offer within which to purchase such share, and only if the club has excess revenues over expenses (unrestricted retained earning) and with the approval of two-thirds (2/3) vote of the Board of Directors. If the Club fails to purchase the share, the stockholder may dispose of the same to other persons who are qualified to own and hold shares in the club. If the share is not purchased at the price quoted by the stockholder and he reduces said price, then the Club shall have the same pre-emptive right subject to the same conditions for the same period of thirty (30) days. Any transfer of share, except by hereditary succession, made in violation of these conditions shall be null and void and shall not be recorded in the books of the Club.

The share of stock so acquired shall be offered and sold by the Club to those in the Waiting List in the order that their names appear in such list, or in the absence of a Waiting List, to any applicant.[27]

We disagree.

Undeniably, on December 27, 1995, when Mc Foods offered for sale one Class "A" share of stock to MSCI for the price of ₱2,800,000.00 for the latter to exercise its pre-emptive right as required by Section 30(e) of MSCI's Amended By-Laws, it legally had the right to do so since it was already an owner of a Class "A" share by virtue of its payment on November 28, 1995, and the Deed of Absolute Share dated December 15, 1995, notwithstanding the fact that the stock certificate was issued only on January 5, 1996. A certificate of stock is the paper representative or tangible evidence of the stock itself and of the various interests therein. The certificate is not a stock in the corporation but is merely evidence of the holder's interest and status in the corporation, his ownership of the share represented thereby. It is not in law the equivalent of such ownership. It expresses the contract between the corporation and the stockholder, but is not essential to the existence of a share of stock or the nature of the relation of shareholder to the corporation.[28]

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[27] *Rollo*, p. 77.

[28] 13 Am. Jur. 2d, 769.

Therefore, Mc Foods properly complied with the requirement of Section 30(e) of the Amended By-Laws on MSCI's pre-emptive rights. Without doubt, MSCI failed to repurchase Mc Foods' Class "A" share within the thirty (30) day pre-emptive period as provided by the Amended By-Laws. It was only on January 29, 1996, or 32 days after December 28, 1995, when MSCI received Mc Foods' letter of offer to sell the share, that Mc Foods and Hodreal executed the Deed of Absolute Sale over the said share of stock. While Hodreal had the right to demand the immediate execution of the Deed of Absolute Sale after his full payment of Mc Foods' Class "A" share, he did not do so. Perhaps, he wanted to wait for Mc Foods to first comply with the pre-emptive requirement as set forth in the Amended By-Laws. Neither can MSCI argue that Mc Foods was not yet a registered owner of the share of stock when the latter offered it for resale, in order to void the transfer from Mc Foods to Hodreal. The corporation's obligation to register is ministerial upon the buyer's acquisition of ownership of the share of stock. The corporation, either by its board, its by-laws, or the act of its officers, cannot create restrictions in stock transfers.[29]

Moreover, MSCI's ardent position that Cheng was in cahoots with Mc Foods in depriving it of selling an original, unissued Class "A" share of stock for ₱2,800,000.00 is not supported by the evidence on record. The mere fact that she performed acts upon authority of Mc Foods, *i.e.*, receiving the payments of Hodreal in her office and claiming the stock certificate on behalf of Mc Foods, do not by themselves, individually or taken together, show badges of fraud, since Mc Foods did acts well within its rights and there is no proof that Cheng personally profited from the assailed transaction. Even the statement of MSCI that Cheng doctored the books to give a semblance of regularity to the transfers involving the share of stock covered by Certificate A 2243 remains merely a plain statement not buttressed by convincing proof.

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[29] *Supra* note 26.

Fraud is deemed to comprise anything calculated to deceive, including all acts, omissions, and concealment involving a breach of legal or equitable duty, trust or confidence justly reposed, resulting in the damage to another or by which an undue and unconscionable advantage is taken of another.[30] It is a question of fact that must be alleged and proved. It cannot be presumed and must be established by clear and convincing evidence, not by mere preponderance of evidence.[31] The party alleging the existence of fraud has the burden of proof.[32] On the basis of the above disquisitions, this Court finds that petitioner has failed to discharge this burden. No matter how strong the suspicion is on the part of petitioner, such suspicion does not translate into tangible evidence sufficient to nullify the assailed transactions involving the subject MSCI Class "A" share of stock.

WHEREFORE, the petition is *DENIED* for lack of merit. The Decision dated June 25, 2007 of the Court of Appeals in CA-G.R. CV No. 80631, affirming the decision dated August 20, 2003 of the Regional Trial Court, Branch 138, Makati City in Civil Case No. 01-837, is *AFFIRMED.* Costs against petitioner.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Perez,*[*] *JJ.*, concur.

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[30] *Chevron Philippines, Inc. v. Commissioner of the Bureau of Customs*, G.R. No. 178759, August 11, 2008, 561 SCRA 710.

[31] *Rementizo v. Heirs of Pelagia Vda. de Madarieta*, G.R. No. 170318, January 15, 2009, 576 SCRA 109; *BMG Records (Phils.), Inc. v. Aparecio,* G.R. No. 153290, September 5, 2007, 532 SCRA 300.

[32] *Memita v. Masongsong*, G.R. No. 150912, May 28, 2007, 523 SCRA 244; *Philippine Realty Holdings Corporation v. Firematic Philippines, Inc.*, G.R. No. 156251, April 27, 2007, 522 SCRA 493.

[*] Additional member in lieu of Associate Justice Jose C. Mendoza per Special Order No. 842 dated June 3, 2010.

SECOND DIVISION

[G.R. No. 178762. June 16, 2010]

LUZVIMINDA A. ANG, *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

POLITICAL LAW; CONSTITUTIONAL LAW; FREEDOM CONSTITUTION; ASSET PRIVATIZATION LAW (PRESIDENTIAL PROCLAMATION 50); SUCH PRIVATIZATION CANNOT DEPRIVE THE GOVERNMENT EMPLOYEES INVOLVED OF THEIR ACCRUED BENEFITS OR COMPENSATION; APPLICATION IN CASE AT BAR. — Although the transformation of the PNB from a government-owned corporation to a private one did not result in a break in its life as juridical person, the same idea of continuity cannot be said of its employees. Section 27 of Presidential Proclamation 50 provided for the automatic termination of employer-employee relationship upon privatization of a government-owned and controlled corporation. Further, such privatization cannot deprive the government employees involved of their accrued benefits or compensation. Thus: **Sec. 27. Automatic Termination of Employer-Employee Relations. — Upon the sale or other disposition of the ownership and/or controlling interest of the government in a corporation held by the Trust, or all or substantially all of the assets of such corporation, the employer-employee relations between the government and the officers and other personnel of such corporations shall terminate by operation of law. None of such officers or employees shall retain any vested right to future employment in the privatized or disposed corporation, and the new owners or controlling interest holders thereof shall have full and absolute discretion to retain or dismiss said officers and employees and to hire the replacement or replacements of any one or all of them as the pleasure and confidence of such owners or controlling interest holders may dictate. Nothing in this section shall, however, be construed to deprive said officers and employees of their vested**

entitlements in accrued benefits or the compensation and other benefits incident to their employment or attaching to termination under applicable employment contracts, collective bargaining agreements, and applicable legislation. Here, when PNB was privatized, Ang's employment with it as a government-owned corporation ceased. Indeed, the PNB already computed the retirement and other benefits to which she was entitled as a result of the cessation of her employment. Since she had no pending administrative case on the day she ceased to be a PNB employee and had been cleared of any accountability, all those benefits already accrued to her on the date of her termination. Of course, the PNB rehired her immediately but that is another story. In the eyes of the law, her record as employee of the government-owned PNB was untarnished at the time of her separation from it. In fact, the PNB already computed the benefits to which she was entitled and readied their payment. The GSIS rule that the PNB now relies on applied only to employees with pending administrative charge at the time of their retirement. Since Ang had none of that, the cited rule did not apply to her. The Court sees no reason why she should not receive the benefits which she earned or which accrued to her as of May 26, 1996. As for possible benefits accruing to Ang after May 26, 1996, the same should be deemed governed by the Labor Code since the PNB that rehired her on May 27, 1996 has become a private corporation. Under the Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Section 7, the employee's separation from work for a just cause does not entitle her to termination pay. Thus, the PNB may rightfully withhold Ang's termination pay that accrued beginning on May 27, 1996 because of her dismissal.

APPEARANCES OF COUNSEL

Sedigo & Associates for petitioner.
PNB Legal Department for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the dismissal of an employee for offenses committed during her employment in a government-owned corporation but which offenses were discovered after the privatized corporation rehired her to work for it.

The Facts and the Case

In her Position Paper,[1] petitioner Luzviminda A. Ang (Ang) claimed that respondent Philippine National Bank (PNB), then a government-owned corporation, hired her on December 4, 1967 as a probationary clerk. But she rose from the ranks, eventually becoming an Assistant Department Manager I, a position she held when the PNB was privatized on May 26, 1996 and when she, like her co-employees, was deemed automatically retired. The bank computed Ang's gratuity benefits, the monetary value of her leave credits, and the other benefits due her and cleared her of any accountability.

But the PNB re-employed Ang as Assistant Manager effective on May 27, 1996 and assigned her in its Tuguegarao, Cagayan Branch.[2] Less than four months later, however, or on September 3, 1996 the PNB administratively charged her with serious misconduct and willful breach of trust for taking part in a scam, called "kiting operation," where a depositor used a conduit bank account for depositing several unfunded checks drawn against the same depositor's other current accounts and from which conduit bank account he later withdrew those checks. The PNB alleged that Ang had allowed this illegal activity from January 2 to April 3, 1996 while she was the Assistant Department Manager I in its Tuguegarao Branch.[3]

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[1] Records, pp. 7-13.

[2] *Id*.

[3] Exhibit "2", *id*. at 69-77.

On September 16, 1996 the PNB heaped other charges against Ang of serious misconduct and gross violation of the bank's rules and regulations as follows:

— She issued six certificates of deposit between June 5, 1992 up to January 10, 1996 in amounts exceeding the true deposit balance of various depositors;

— She issued two bank commitments dated January 24, 1994 and for providing a credit line in favor of a government contractor without authority and in violation of SEL Cir. 2-166/91 of July 10, 1996; and

— She committed tardiness and "under time" from October to December 1995 and January to March 1996 in violation of Gen. Cir. 1-61/91 of February 1, 1991.[4]

In answer to the first charge, Ang claimed that it was not a "kiting operation," but an accommodation of a very valued client. She admitted that the checks were not funded and were converted into account receivables or accommodation loans that the client had settled, including interests, penalties, and other charges. Consequently, the PNB did not suffer any loss from those transactions; it even reaped enormous profits from them.[5]

On the second charge, Ang claimed that the issuance of the certificates had been tolerated to accommodate valued clients as a marketing strategy and prevent their move to other banks. These had been open transactions, said Ang, which were known to all the officers of the branch. Again, the PNB did not suffer any loss on account of the issuance of those certificates. The clients involved maintained their loyalty to the bank.[6]

On the third charge, Ang claimed that the PNB's loan commitments in those cases amounted to mere recommendations since she had no authority to approve loans. Furthermore, she could not have violated SEL Cir. 2-166/91 dated July 10, 1996 since this was not yet in effect when she issued those

[4] *Id.*

[5] *Id.* at 9.

[6] *Id.*

commitments on January 24, 1994. Besides, the circular merely prescribed the fees to be collected.[7]

On the last charge, Ang claimed that she was not covered by the circular governing office hours because she was a bank officer. Managerial employees, according to her, worked beyond the usual eight hours and even worked on Saturdays and Sundays. She added that, since the bank had already made deductions for tardiness on her pay check, she cannot anymore be administratively charged for it.[8]

Ang further pointed out that the causes for her termination took place when she was yet a government official. The PNB had since ceased to be government-owned. If she were to be charged for those causes, the jurisdiction over her case would lie with the Civil Service Commission. Even then, since she already retired from the government service, the employment that could be terminated no longer existed.[9]

Ang added that the causes for her termination had also become academic after the PNB cleared her of any accountability when she once retired from employment with it.

Pending administrative investigation, the PNB assigned Ang to its Aparri Branch on April 3, 1997.[10] Its Inspection and Investigation Unit recommended her dismissal on June 3, 1997 to the Board of Inquiry.[11] Ang alleged that the PNB dismissed her from work on July 25, 1997, withholding her fringe benefits, gratuity benefits, monetary value of her leave credits, rights and interests in the provident fund, and other benefits due her as of May 26, 1996.[12] She sought reconsideration, but the bank denied it.

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

[8] *Id.* at 10.

[9] *Id.* at 93.

[10] *Supra* note 8.

[11] Exhibit "2", *id*. at 69-77.

[12] *Id.* at 8.

On January 27, 1998 Ang filed a complaint against the PNB before the National Labor Relations Commission (NLRC), Regional Arbitration Branch II, Tuguegarao, Cagayan in NLRC RAB II CN 01-00022-98 for illegal dismissal, illegal deductions, non-payment of 13th month pay, allowances, separation pay, and retirement benefits with prayer for payment of moral and exemplary damages, attorney's fees, and litigation expenses.

Answering the complaint, the PNB claimed that it observed due process in terminating Ang, notifying her of the charges and giving her a chance to defend herself in a formal hearing but she waived this and opted to submit a position paper. The PNB Board of Inquiry informed her of its decision before implementing the same. Indeed, she even sought its reconsideration.[13] The PNB pointed out that since it separated petitioner Ang for a just cause, she was not entitled to termination pay. Further she ceased to be entitled to the benefits she claimed.[14]

The PNB also pointed out that although it cleared Ang of any accountability before her retirement as a civil servant, it premised such clearance from existing knowledge and records. The PNB had not yet discovered her frauds and omissions when it issued the clearance. Besides, what the PNB issued was not really a clearance but a certification that Ang had no pending administrative case. It issued that certification on August 12, 1996 and filed the first administrative charge against her on September 3, 1996.[15]

On March 30, 1999 the Labor Arbiter (LA) rendered a Decision,[16] finding the PNB's dismissal of Ang illegal for failure to show that the dismissal was for a valid cause and after notice and hearing. Specifically, the PNB failed to prove any basis for loss of trust. The LA ordered the reinstatement of petitioner Ang to her former position or its substantial equivalent, without loss of seniority rights and with full backwages and other benefits

[13] *Id.* at 129-130.

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

[15] *Id.*

[16] *Id.* at 174-189.

or their money value from the time of her actual dismissal on July 25, 1996 up to her reinstatement.

Further, the LA ordered the PNB to pay Ang ₱488,567.87 in gratuity pay plus 1 percent interest per month from the time it fell due until actual payment, ₱1 million as moral damages, and ₱500,000.00 as exemplary damages plus 10 percent of the total monetary award as attorney's fees. The LA made the monetary value of her fringe benefits and others, not included in the computed amount, subject to recomputation upon the finality of the NLRC decision. In case reinstatement was not feasible, Ang was to have the option to be paid separation pay of at least one month pay for every year of her 30 years of service in addition to her full backwages and gratuity benefits.

The PNB appealed the decision to the NLRC but the latter dismissed the appeal on January 30, 2004.[17] Upon motion for reconsideration, however, or on October 29, 2004 the NLRC reconsidered its finding of lack of due process, considering Ang's admission during direct examination that the PNB informed her of the charges against her and gave her a chance to present her side with the assistance of a counsel. The NLRC deleted the award of damages because of absence of bad faith on the part of the PNB officers but maintained the LA's finding that the PNB had not proved loss of trust as a ground for dismissal.

On petition for *certiorari* with the Court of Appeals (CA), the latter rendered a decision on January 30, 2007,[18] finding valid reason to uphold Ang's dismissal from the service for willful breach of the trust reposed in her by the PNB. As to the procedural aspect, the CA found that without doubt the PNB observed due process in dismissing Ang. She received two memoranda; first informing her of the charges against her, and second informing her of the decision to terminate her services. The CA reversed the NLRC Decision and dismissed Ang's complaint. She moved for reconsideration, but this was denied.

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[17] *Id.* at 269-292.

[18] CA *rollo*, pp. 291-310.

The Issues Presented

Petitioner presents the following issues:

1. Whether or not the CA erred in finding that the PNB dismissed Ang based on the evidence that she betrayed its trust in her as a bank officer;

2. Whether or not the CA erred in holding that the PNB accorded Ang due process when it dismissed her from the service; and

3. Whether or not the CA erred in holding that Ang was not entitled to the benefits that the PNB withheld from her.

The Court's Ruling

One. Ang claims that her dismissal by PNB, the private corporation, was illegal since she had committed no offense under its employ. The offense for which she was removed took place when the government still owned PNB and she was then a government employee. But while PNB began as a government corporation, it did not mean that its corporate being ceased and was subsequently reestablished when it was privatized. It remained the same corporate entity before, during, and after the change over with no break in its life as a corporation.

Consequently, the offenses that Ang committed against the bank before its privatization continued to be offenses against the bank after the privatization. But, since the PNB was already a private corporation when it looked into Ang's offenses, the provisions of the Labor Code governed its disciplinary action.

Ordinarily, the Court would not inquire into factual issues raised in a petition for review but, since the findings of the CA clashed with those of the LA and the NLRC, such inquiry would be justified in this case. As to the existence of just cause, it is clear to the Court that Ang did not deny the acts and omissions constituting the offense. The transcript of stenographic notes taken during her direct examination on April 22, 1998 before the NLRC Regional Arbitration Branch in Tuguegarao, Cagayan, shows that her defense consisted in her claim that she accommodated a client's unfunded checks and issued false bank

certificates with the knowledge and consent of the branch manager and comptroller.

But such uncorroborated defense is unsatisfactory, revealing a mind that was willing to disregard bank rules and regulations when other branch officers concurred. The PNB rightfully separated her from work for willful breach of the trust that it reposed in her under the Labor Code. Her defense that the PNB did not suffer any loss is of no moment. The focal point is that she betrayed the trust of the bank in her fidelity to its interest and rules.

Two. As to the issue of due process, a review of the transcript of stenographic notes taken during Ang's cross-examination on December 17, 1998 before the NLRC Regional Arbitration Branch in Tuguegarao, Cagayan, reveals that she admitted having received from the PNB a memorandum of September 15, 1996, containing the administrative charges against her and a memorandum of June 3, 1997 containing the decision to terminate her service.[19] She likewise admitted that the bank gave her a chance to present her side and to consult a lawyer.

Three. Ang claims that she is entitled to the monetary value of her leave credits, gratuity benefits, retirement pay, rights and interests in the provident fund, and other benefits due her as of May 26, 1996.

The PNB points out, however, that Ang did not seek reconsideration from the NLRC of its deletion of the LA's award of accrued compensation and other benefits to her. And, although she received an unfavorable decision from the CA, her motion for reconsideration did not raise the matter of accrued compensation and other benefits. Only before this Court did she raise them for the first time. But, contrary to the PNB's position, what the NLRC decision deleted was only the award of damages. It did not touch the benefits mentioned. Consequently, when the CA apparently deleted these as well, Ang has a right to elevate the issue before this Court.

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[19] Records, TSN, December 17, 1998, pp. 137-149.

Although the transformation of the PNB from a government-owned corporation to a private one did not result in a break in its life as juridical person, the same idea of continuity cannot be said of its employees. Section 27 of Presidential Proclamation 50 provided for the automatic termination of employer-employee relationship upon privatization of a government-owned and controlled corporation. Further, such privatization cannot deprive the government employees involved of their accrued benefits or compensation. Thus:

Sec. 27. Automatic Termination of Employer-Employee Relations. — Upon the sale or other disposition of the ownership and/or controlling interest of the government in a corporation held by the Trust, or all or substantially all of the assets of such corporation, the employer-employee relations between the government and the officers and other personnel of such corporations shall terminate by operation of law. None of such officers or employees shall retain any vested right to future employment in the privatized or disposed corporation, and the new owners or controlling interest holders thereof shall have full and absolute discretion to retain or dismiss said officers and employees and to hire the replacement or replacements of any one or all of them as the pleasure and confidence of such owners or controlling interest holders may dictate.

Nothing in this section shall, however, be construed to deprive said officers and employees of their vested entitlements in accrued benefits or the compensation and other benefits incident to their employment or attaching to termination under applicable employment contracts, collective bargaining agreements, and applicable legislation.

Here, when PNB was privatized, Ang's employment with it as a government-owned corporation ceased. Indeed, the PNB already computed the retirement and other benefits to which she was entitled as a result of the cessation of her employment. Since she had no pending administrative case on the day she ceased to be a PNB employee and had been cleared of any accountability,[20] all those benefits already accrued to her on the date of her termination.

[20] Exhibit "F", records, p. 16.

Of course, the PNB rehired her immediately but that is another story. In the eyes of the law, her record as employee of the government-owned PNB was untarnished at the time of her separation from it. In fact, the PNB already computed the benefits to which she was entitled and readied their payment. The GSIS rule that the PNB now relies on applied only to employees with pending administrative charge at the time of their retirement. Since Ang had none of that, the cited rule did not apply to her. The Court sees no reason why she should not receive the benefits which she earned or which accrued to her as of May 26, 1996.

As for possible benefits accruing to Ang after May 26, 1996, the same should be deemed governed by the Labor Code since the PNB that rehired her on May 27, 1996 has become a private corporation. Under the Omnibus Rules Implementing the Labor Code, Book VI, Rule I, Section 7, the employee's separation from work for a just cause does not entitle her to termination pay. Thus, the PNB may rightfully withhold Ang's termination pay that accrued beginning on May 27, 1996 because of her dismissal.

WHEREFORE, the Court *AFFIRMS* the Court of Appeals decision dated January 30, 2007 and its resolution dated July 6, 2007 in CA-G.R. SP 88449 in favor of respondent Philippine National Bank but with the *MODIFICATION* that it directs the latter to pay petitioner Luzviminda A. Ang the benefits due her from the bank as of the date of her retirement on May 26, 1996.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Perez,*[*] *JJ.*, concur.

[*] Designated as additional member in lieu of Associate Justice Jose C. Mendoza, per Special Order No. 842 dated June 3, 2010.

SECOND DIVISION

[G.R. No. 182507. June 16, 2010]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **THE INTESTATE ESTATE OF FRANCISCO DE GUZMAN, represented by HIS HEIRS: ROSALIA, ELEUTERIO, JOE, ERNESTO, HARRISON, ALL SURNAMED DE GUZMAN; and GINA DE GUZMAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DISMISSAL SHOULD BE UNDERSTOOD AS AN ADJUDICATION ON THE MERITS AND IS WITH PREJUDICE UNLESS THE COURT STATES OTHERWISE. — A ruling on a motion to dismiss, issued without trial on the merits or formal presentation of evidence, can still be a judgment on the merits. Section 3 of Rule 17 of the Rules of Court is explicit that a dismissal for failure to comply with an order of the court shall have the effect of an adjudication upon the merits. In other words, unless the court states that the dismissal is without prejudice, the dismissal should be understood as an adjudication on the merits and is with prejudice.

2. ID.; ID.; ID.; *RES JUDICATA* IS TO BE DISREGARDED IF ITS RIGID APPLICATION WOULD INVOLVE SACRIFICE OF JUSTICE TO TECHNICALITY; APPLICATION IN CASE AT BAR. — Proceedings on the case had already been delayed by petitioner, and it is only fair that the case be allowed to proceed and be resolved on the merits. Indeed, we have held that *res judicata* is to be disregarded if its rigid application would involve the sacrifice of justice to technicality, particularly in this case where there was actually no determination of the substantive issues in the first case and what is at stake is respondents' home.

APPEARANCES OF COUNSEL

Chief Legal Counsel (PNB) for petitioner.
Villamor A. Tolete for respondents.

D E C I S I O N

NACHURA, *J.*:

Litigants should not be allowed to file identical motions repeatedly, speculating on the possible change of opinion of the court or of its judges.[1] We emphasize this principle in the present case and warn the parties to desist from the practice of filing several motions to dismiss which allege the same ground.

This is a petition for review on *certiorari* of Court of Appeals (CA) Decision[2] dated October 22, 2007 and Resolution[3] dated April 14, 2008, which affirmed the denial of petitioner's motion to dismiss.

Respondent Gina de Guzman obtained a ₱300,000.00 loan from petitioner, Philippine National Bank, secured by a real estate mortgage over a parcel of land registered in her name. Gina acquired the property from her father, Francisco de Guzman, through a Deed of Absolute Sale dated August 28, 1978. Gina's sister, Rosalia de Guzman, the beneficiary of the family home standing on the said lot, gave her consent to the mortgage.

Later, Rosalia filed a Complaint for Declaration of Nullity of Document, Cancellation of Title, Reconveyance, Cancellation of Mortgage, and Damages[4] against Gina and petitioner, alleging that the purported sale of the property by Francisco to Gina was fraudulent. The Complaint was then amended to replace respondent Intestate Estate of Francisco de Guzman as plaintiff.[5]

On January 21, 1999, the Regional Trial Court (RTC) dismissed the case due to plaintiff's failure to comply with its order to pay the legal fees so that *alias* summons could be served, thus:

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[1] *Medran v. Court of Appeals*, 83 Phil. 164, 167-168 (1949).

[2] Penned by Associate Justice Monina Arevalo-Zenarosa, with Associate Justices Conrado M. Vasquez, Jr. (Ret.) and Edgardo F. Sundiam (deceased), concurring; *rollo*, pp. 11-25.

[3] *Id.* at 27-29.

[4] *Rollo*, pp. 86-91.

[5] *Id.* at 92-97.

A review of the records discloses that the plaintiffs failed to comply, despite due notice, with the order of this court dated November 17, 1998, as indicated in the registry return cards addressed to plaintiff Rosalia de Guzman-Poyaoan and her counsel as attached at the dorsal side of said order.

WHEREFORE, this court is constrained to dismiss this case on the ground that plaintiffs failed to comply with the aforementioned order to pay legal fees to the Clerk of Court within five (5) days from receipt of the order so that an *alias* summons can be served by the sheriff of this court to defendant Gina de Guzman at her new address in Metro Manila, in consonance with Section 3, Rule 17 of the 1997 Rules of Civil Procedure.

SO ORDERED.[6]

No appeal was taken from this order; hence, the dismissal became final and executory.

Thereafter, on April 11, 2000, respondent Intestate Estate filed another Complaint,[7] also for Declaration of Nullity of Documents, Cancellation of Title, Reconveyance, Cancellation of Mortgage, and Damages, against Gina and petitioner, with essentially the same allegations as the former Complaint.

On June 1, 2000, petitioner filed a Motion to Dismiss[8] on the ground of *res judicata*, alleging that the Complaint is barred by prior judgment. In an Order[9] dated October 2, 2000, the RTC denied the motion. The court ruled that, since there was no determination of the merits of the first case, the filing of the second Complaint was not barred by *res judicata*. It also held that courts should not be unduly strict in cases involving procedural lapses that do not really impair the proper administration of justice.

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[6] *Id.* at 98.

[7] *Id.* at 99-104.

[8] *Id.* at 105-106.

[9] Penned by Presiding Judge Bienvenido R. Estrada; *id.* at 107-108.

On October 25, 2000, petitioner filed a Second Motion to Dismiss[10] on the ground of forum–shopping. Petitioner argued that respondent Intestate Estate violated the rule against forum-shopping when it filed the Complaint despite knowing that a similar Complaint had been previously dismissed by the court.

The RTC, in an Order[11] dated March 13, 2001, denied the motion for lack of merit, and petitioner was directed to file its answer within five days. The court said that there was forum-shopping if a final judgment in one case would amount to *res judicata* in another case, and since it had already ruled in its previous order that the dismissal of the first complaint did not constitute *res judicata*, respondents were not guilty of forum-shopping.

Petitioner filed another Motion to Dismiss, raising the same ground, which was denied by the RTC in an Order dated May 31, 2001.[12]

Petitioner then filed an Omnibus Motion for Reconsideration[13] of the three RTC Orders, this time, raising the following grounds: (a) *res judicata*; (b) forum-shopping; (c) lack of jurisdiction over the person; and (d) complaint states no cause of action.

On January 15, 2002, the RTC denied the omnibus motion for lack of merit and gave petitioner five days within which to file its answer. The court held that the motion contained a mere rehash of the arguments raised in the three earlier Motions to Dismiss which had already been passed upon by the court in its three Orders and which contributed to the undue delay in the disposition of the case.[14]

Finally, petitioner filed an Answer[15] to the Complaint on February 19, 2002, again raising therein the issue of *res judicata*. Thereafter, the case was set for pre-trial.

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[10] *Rollo*, pp. 109-110.

[11] *Id.* at 111-112.

[12] *Id.* at 113.

[13] *Id.* at 113-118.

[14] Penned by Acting Presiding Judge Salvador P. Vedaña; *id.* at 119.

[15] *Rollo*, pp. 120-127.

Three years later, specifically on February 15, 2005, petitioner filed another Motion to Dismiss[16] with leave of court, alleging *res judicata* and forum-shopping.

On October 4, 2005, the RTC issued an Order[17] denying the Motion to Dismiss, declaring:

> WHEREFORE, in view of the foregoing, the Motion to Dismiss is hereby DENIED.
>
> No further Motion to Dismiss shall be entertained by this Court. Parties are directed to prosecute this case with dispatch.
>
> Set the cross-examination of plaintiff Rosalia de Guzman Poyaoan on November 18, 2005 at 8:30 o'clock in the morning.
>
> SO ORDERED.[18]

On November 6, 2006, the RTC denied petitioner's motion for reconsideration.

Petitioner filed a petition for *certiorari* with the CA, assailing these Orders. On October 22, 2007, the CA denied the petition, ruling in this wise:

> WHEREFORE, the instant petition is hereby DENIED. ACCORDINGLY, the assailed Orders of Branch 57, Regional Trial Court of San Carlos City, Pangasinan dated 4 October 2005 and 6 November 2006, respectively, are AFFIRMED.
>
> SO ORDERED.[19]

On April 14, 2008, the CA denied petitioner's motion for reconsideration.[20]

Petitioner then filed this petition for review on *certiorari,* raising the following issues:

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[16] *Id.* at 132-136.

[17] Penned by Presiding Judge Anthony Sison; *id.* at 137-138.

[18] *Id.* at 138.

[19] *Supra* note 2, at 24.

[20] *Supra* note 3, at 28.

The Court of Appeals erred in holding that an element of *res judicata, i.e.*, that the disposition of the case must be a judgment or order on the merits is absent in the case.

The Court of Appeals erred when it ruled that *res judicata* has not set in so as to bar the filing of the second case.

The Court of Appeals erred in holding that the respondent had not violated the rule against forum-shopping.[21]

The petition has no merit.

The Court finds insufferable petitioner's repeated filing of Motions to Dismiss raising the same ground. In the three previous Motions to Dismiss and in an omnibus motion for reconsideration, petitioner argued that the present case was barred by prior judgment and that there was forum-shopping. Correspondingly, the issues had been repetitively passed upon and resolved by the court *a quo*.

The motions were apparently filed for no other reason than to gain time and gamble on a possible change of opinion of the court or the judge sitting on the case. The Motions to Dismiss were filed in a span of five years, the first one having been filed on June 1, 2000 and the last — the subject motion — on February 15, 2005, three years after petitioner filed its answer. In fact, since the first Motion to Dismiss, three judges had already sat on the case and resolved the motions. By filing these motions, petitioner had disrupted the court's deliberation on the merits of the case. This strategy cannot be tolerated as it will entail inevitable delay in the disposition of the case.

Although the ground stated in the second Motion to Dismiss was forum-shopping and the subsequent motions included other grounds, nonetheless, all of these motions raised a similar argument—that since the dismissal in the first case is already final and executory and there is no reservation made by the court in its judgment that the dismissal is without prejudice, the filing of the second case is barred. Therefore, the subsequent motions, being reiterations of the first motion, technically partook

[21] *Rollo,* pp. 46-47.

of the nature of a motion for reconsideration of the interlocutory order denying the first Motion to Dismiss.

This is not the first time that the Court disallowed the repetitive filing of identical motions against an interlocutory order. In a parallel case, *San Juan, Jr. v. Cruz,*[22] the Court acknowledged that there is actually no rule prohibiting the filing of a *pro forma* motion against an interlocutory order as the prohibition applies only to a final resolution or order of the court. The Court held, nonetheless, that a second motion can be denied on the ground that it is merely a rehash or a mere reiteration of the grounds and arguments already passed upon and resolved by the court.

In *San Juan*, the Court was also confronted with the question of when the reglementary period for filing a petition for *certiorari* shall be reckoned. Petitioner therein filed second and third motions for reconsideration from the interlocutory order and when he filed the petition for *certiorari* with the CA, he counted the 60-day reglementary period from the notice of denial of his third motion for reconsideration. He argued that, since there is no rule prohibiting the filing of a second or third motion for reconsideration of an interlocutory order, the 60-day period should be counted from the notice of denial of the last motion for reconsideration. Having declared that the filing of a second motion for reconsideration that merely reiterates the arguments in the first motion is subject to denial, the Court held that the 60-day period for filing a petition for *certiorari* shall be reckoned from the trial court's denial of the first motion for reconsideration, otherwise, indefinite delays will ensue.

Applying the ruling in *San Juan*, the petition for *certiorari* was evidently filed out of time, as its filing was reckoned from the denial of the last motion. The subject Motion to Dismiss was filed in an attempt to resurrect the remedy of a petition for *certiorari*, which had been lost long before its filing.

In any case, we agree with the CA's conclusion that the trial court did not commit grave abuse of discretion in denying petitioner's Motion to Dismiss. However, we do not agree that

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[22] G.R. No. 167321, July 31, 2006, 497 SCRA 410.

the judgment of dismissal in the first case was not on the merits. A ruling on a motion to dismiss, issued without trial on the merits or formal presentation of evidence, can still be a judgment on the merits.[23] Section 3[24] of Rule 17 of the Rules of Court is explicit that a dismissal for failure to comply with an order of the court shall have the effect of an adjudication upon the merits. In other words, unless the court states that the dismissal is without prejudice, the dismissal should be understood as an adjudication on the merits and is with prejudice.[25]

Nonetheless, bearing in mind the circumstances obtaining in this case, we hold that *res judicata* should not be applied as it would not serve the interest of substantial justice. Proceedings on the case had already been delayed by petitioner, and it is only fair that the case be allowed to proceed and be resolved on the merits. Indeed, we have held that *res judicata* is to be disregarded if its rigid application would involve the sacrifice of justice to technicality,[26] particularly in this case where there was actually no determination of the substantive issues in the first case and what is at stake is respondents' home.

WHEREFORE, premises considered, the petition is *DENIED.* The Court of Appeals Decision dated October 22, 2007 and Resolution dated April 14, 2008 are *AFFIRMED.* Costs against petitioner. The trial court is *DIRECTED* to proceed with the trial of the case, and to resolve the same with dispatch.

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[23] *Cruz v. Court of Appeals,* G.R. No. 164797, February 13, 2006, 482 SCRA 379, 390.

[24] Section 3. *Dismissal due to fault of plaintiff.* – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[25] *Cruz v. Court of Appeals, supra* note 23, at 389-390.

[26] *Islamic Directorate of the Phils. v. Court of Appeals,* G.R. No. 117897, May 14, 1997, 272 SCRA 454.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Perez,*[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 183053. June 16, 2010]

IN THE MATTER OF THE INTESTATE ESTATE OF CRISTINA AGUINALDO-SUNTAY; EMILIO A.M. SUNTAY III, *petitioner, vs.* **ISABEL COJUANGCO-SUNTAY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE; ORDER OF PREFERENCE IN THE APPOINTMENT OF ADMINISTRATOR, NOT ABSOLUTE; SELECTION OF AN ADMINISTRATOR LIES IN THE SOUND DISCRETION OF THE TRIAL COURT.— Section 6, Rule 78 of the Rules of Court lists the order of preference in the appointment of an administrator of an estate: SEC. 6. *When and to whom letters of administration granted.*— If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted: (a) To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve; (b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin, neglects for thirty (30) days after the

[*] Additional member in lieu of Associate Justice Jose C. Mendoza per Special Order No. 842 dated June 3, 2010.

death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve; (c) if there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select. However, the order of preference is not absolute for it depends on the attendant facts and circumstances of each case. Jurisprudence has long held that the selection of an administrator lies in the sound discretion of the trial court. In the main, the attendant facts and circumstances of this case necessitate, at the least, a joint administration by both respondent and Emilio III of their grandmother's, Cristina's, estate.

2. ID.; ID.; ID.; ID.; JOINT ADMINISTRATION, PROPER. — In the case of *Uy v. Court of Appeals,* we upheld the appointment by the trial court of a co-administration between the decedent's son and the decedent's brother, who was likewise a creditor of the decedent's estate. In the same vein, we declared in *Delgado Vda. De la Rosa v. Heirs of Marciana Rustia Vda. de Damian* that: [i]n the appointment of an administrator, the principal consideration is the interest in the estate of the one to be appointed. The order of preference does not rule out the appointment of co-administrators, specially in cases where justice and equity demand that opposing parties or factions be represented in the management of the estates, a situation which obtains here. Similarly, the subject estate in this case calls to the succession other putative heirs, including another illegitimate grandchild of Cristina and Federico, Nenita Tañedo, but who was likewise adopted by Federico, and the two (2) siblings of respondent Isabel, Margarita and Emilio II. In all, considering the conflicting claims of the putative heirs, and the unliquidated conjugal partnership of Cristina and Federico which forms part of their respective estates, we are impelled to move in only one direction, *i.e.,* joint administration of the subject estate.

3. ID.; ID.; ID.; FINAL DECLARATION OF HEIRSHIP AND DISTRIBUTION OF PRESUMPTIVE SHARES OF HEIRS, CANNOT BE MADE IN CASE AT BAR; EXPLAINED. — xxx [I]t must be pointed out that judicial restraint impels us to refrain from making a final declaration of heirship and distributing the presumptive shares of the parties in the estates of Cristina and

Federico, considering that the question on who will administer the properties of the long deceased couple has yet to be settled. Our holding in *Capistrano v. Nadurata* on the same issue remains good law: [T]he declaration of heirs made by the lower court is premature, although the evidence sufficiently shows who are entitled to succeed the deceased. The estate had hardly been judicially opened, and the proceeding has not as yet reached the stage of distribution of the estate which must come after the inheritance is liquidated. Section 1, Rule 90 of the Rules of Court does not depart from the foregoing admonition: Sec. 1. *When order for distribution of residue is made*.— xxx. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases. No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.

APPEARANCES OF COUNSEL

Honorato Y. Aquino for petitioner.
Estelito P. Mendoza for respondent.

D E C I S I O N

NACHURA, *J.*:

Unlike Pope Alexander VI[1] who, faced with the impasse between Spain and Portugal, deftly and literally divided the exploration, or more appropriately, the riches of the New World by issuing the *Inter Caetera*,[2] we are confronted with the difficult,

[1] Formerly Cardinal Rodrigo Borgia, before ascending to the religious title of Pope and assuming the name Alexander VI.

[2] The Papal Bull which drew a longitudinal line (one hundred leagues west of the Azores and Cape Verde Islands) and bestowed all non-Christian lands west thereof to Spain, and east of the line to Portugal.

albeit, all too familiar tale of another family imbroglio over the estate of a decedent.[3]

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision of the Court of Appeals (CA) in CA-G.R. CV No. 74949,[4] reversing the decision of the Regional Trial Court (RTC), Branch 78, Malolos, Bulacan, in Special Proceeding Case No. 117-M-95.[5]

Before anything else, we disentangle the facts.

On June 4, 1990, the decedent, Cristina Aguinaldo-Suntay (Cristina), married to Dr. Federico Suntay (Federico), died intestate. In 1979, their only son, Emilio Aguinaldo Suntay (Emilio I), predeceased both Cristina and Federico. At the time of her death, Cristina was survived by her husband, Federico, and several grandchildren, including herein petitioner Emilio A.M. Suntay III (Emilio III) and respondent Isabel Cojuangco-Suntay.

During his lifetime, Emilio I was married to Isabel Cojuangco, and they begot three children, namely: herein respondent, Isabel, Margarita, and Emilio II, all surnamed Cojuangco-Suntay. Emilio I's marriage to Isabel Cojuangco was subsequently annulled. Thereafter, Emilio I had two children out of wedlock, Emilio III and Nenita Suntay Tañedo (Nenita), by two different women, Concepcion Mendoza and Isabel Santos, respectively.

Despite the illegitimate status of Emilio III, he was reared ever since he was a mere baby, nine months old, by the spouses Federico and Cristina and was an acknowledged natural child of

[3] In *The Family*, a book with a factual core on the Borgia family of 15th Century Rome, Mario Puzo recounts that the ostensibly fair and just papal ruling actually favored Spain and placed Portugal at a disadvantage because papal intervention and arbitration of the matter was made at the behest of King Ferdinand of Spain. More importantly, Pope Alexander VI was originally a Catalan who, at the start of his career as a cleric in Italy, conveniently changed his name from the Spanish "Borja" to the Italian "Borgia" to gain acceptance and credibility as an authentic Roman clergy.

[4] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Noel G. Tijam, concurring; *rollo*, pp. 20-32.

[5] Penned by Judge Gregorio S. Sampaga; *rollo*, pp. 35-60.

Emilio I. Nenita is an acknowledged natural child of Emilio I and was likewise brought up by the spouses Federico and Cristina.

As previously adverted to, the marriage between Emilio I and Isabel was annulled.[6] Consequently, respondent and her siblings Margarita and Emilio II, lived with their mother on Balete Drive, Quezon City, separately from their father and paternal grandparents.

Parenthetically, after the death of Emilio I, Federico filed a petition for visitation rights over his grandchildren: respondent Isabel, Margarita, and Emilio II. Although the Juvenile and Domestic Relations Court in Quezon City granted the petition and allowed Federico one hour of visitation monthly, initially reduced to thirty minutes, it was altogether stopped because of a manifestation filed by respondent Isabel, articulating her sentiments on the unwanted visits of her grandparents.

Significantly, Federico, after the death of his spouse, Cristina, or on September 27, 1993, adopted their illegitimate grandchildren, Emilio III and Nenita.[7]

On October 26, 1995, respondent filed a petition for the issuance of letters of administration in her favor, containing the following allegations:

> [A]t the time of [the decedent's] death, [she] was a resident of the Municipality of Hagonoy, Province of Bulacan; that the [decedent] left an estate of real and personal properties, with a probable gross value of ₱29,000,000.00; that the names, ages and residences of the surviving heirs of the [decedent] are: (1) Federico C. Suntay, 89 years old, surviving spouse and a resident of x x x; (2) Isabel Cojuangco-Suntay, 36 years old, legitimate granddaughter and a resident of x x x; (3) Margarita Cojuangco-Suntay, 39 years old, legitimate granddaughter and a resident of x x x; and (4) Emilio Cojuangco-Suntay, 35 years old, legitimate grandson and a resident of x x x; and that as far as [respondent] knew, the decedent left no debts or obligation at the time of her death.[8]

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[6] *Rollo*, p. 43.

[7] *Id.* at 137-138.

[8] *Id.* at 35.

Disavowing the allegations in the petition of his grandchild, respondent Isabel, Federico filed his opposition on December 21, 1995, alleging, among others, that:

> [B]eing the surviving spouse of Cristina, he is capable of administering her estate and he should be the one appointed as its administrator; that as part owner of the mass of conjugal properties left by Cristina, he must be accorded legal preference in the administration thereof; that Isabel and her family had been alienated from their grandparents for more than thirty (30) years; that the enumeration of heirs in the petition was incomplete as it did not mention the other children of his son[,] namely: Emilio III and Nenita S. Tañedo; that he is better situated to protect the integrity of the estate of Cristina as even before the death of his wife[,] he was already the one who managed their conjugal properties; that the probable value of the estate as stated in the petition was grossly overstated (sic); and that Isabel's allegation that some of the properties are in the hands of usurpers is untrue.[9]

Meanwhile, after a failed attempt by the parties to settle the proceedings amicably, Federico filed a Manifestation dated March 13, 1999, nominating his adopted son, Emilio III, as administrator of the decedent's estate on his behalf, in the event he would be adjudged as the one with a better right to the letters of administration.

Subsequently, the trial court granted Emilio III's Motion for Leave to Intervene considering his interest in the outcome of the case. Emilio III filed his Opposition-In-Intervention, which essentially echoed the allegations in his grandfather's opposition, alleging that Federico, or in his stead, Emilio III, was better equipped than respondent to administer and manage the estate of the decedent, Cristina. Additionally, Emilio III averred his own qualifications that: "[he] is presently engaged in aquaculture and banking; he was trained by the decedent to work in his early age by involving him in the activities of the Emilio Aguinaldo Foundation which was established in 1979 in memory of her grandmother's father; the significant work experiences outside the family group are included in his curriculum vitae; he was

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[9] *Id.* at 21-22.

employed by the oppositor [Federico] after his graduation in college with management degree at F.C.E. Corporations and Hagonoy Rural Bank; x x x."[10]

In the course of the proceedings, on November 13, 2000, Federico died.

After the testimonies of both parties' witnesses were heard and evidence on their respective allegations were adduced, the trial court rendered a decision on November 9, 2001, appointing herein petitioner, Emilio III, as administrator of decedent Cristina's intestate estate, to wit:

> WHEREFORE, the petition of Isabel Cojuangco[-]Suntay is DENIED and the Opposition[-]in[-]Intervention is GRANTED.
>
> Accordingly, the Intervenor, Emilio A.M. Suntay, III is hereby appointed administrator of the estate of the decedent Cristina Aguinaldo Suntay, who shall enter upon the execution of his trust upon the filing of a bond in the amount of ₱200,000.00, conditioned as follows:
>
> (1) To make and return within three (3) months, a true and complete inventory;
>
> (2) To administer the estate and to pay and discharge all debts, legatees, and charge on the same, or dividends thereon;
>
> (3) To render a true and just account within one (1) year, and at any other time when required by the court, and
>
> (4) To perform all orders of the Court.
>
> Once the said bond is approved by the court, let Letters of Administration be issued in his favor.
>
> SO ORDERED.[11]

Aggrieved, respondent filed an appeal before the CA, which reversed and set aside the decision of the RTC, revoked the Letters of Administration issued to Emilio III, and appointed respondent as administratrix of the intestate estate of the decedent, Cristina, to wit:

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[10] *Id.* at 58.

[11] *Id.* at 60.

WHEREFORE, in view of all the foregoing, the assailed decision dated November 9, 2001 of Branch 78, Regional Trial Court of Malolos, Bulacan in SPC No. 117-M-95 is **REVERSED and SET ASIDE** and the letters of administration issued by the said court to Emilio A.M. Suntay III, if any, are consequently revoked. Petitioner Isabel Cojuangco[-]Suntay is hereby appointed administratrix of the intestate estate of Cristina Aguinaldo Suntay. Let letters of administration be issued in her favor upon her filing of a bond in the amount of Two Hundred Thousand (₱200,000.00) Pesos.

No pronouncement as to costs.

SO ORDERED.[12]

The motion for reconsideration of Emilio III having been denied, he appeals by *certiorari* to this Court, raising the following issues:

A. IN THE APPOINTMENT OF AN ADMINISTRATOR OF THE ESTATE UNDER SECTION 6 OF RULE 78 OF THE RULES OF COURT, WHETHER ARTICLE 992 OF THE CIVIL CODE APPLIES; and

B. UNDER THE UNDISPUTED FACTS WHERE HEREIN PETITIONER WAS REARED BY THE DECEDENT AND HER SPOUSE SINCE INFANCY, WHETHER ARTICLE 992 OF THE NEW CIVIL CODE APPLIES SO AS TO BAR HIM FROM BEING APPOINTED ADMINISTRATOR OF THE DECEDENT'S ESTATE.[13]

In ruling against the petition of herein respondent, the RTC ratiocinated, thus:

Evidence objectively assessed and carefully evaluated, both testimonial and documentary, the court opines that it is to the best interest of the estate of the decedent and all claimants thereto, that the Intervenor, Emilio A.M. Suntay III, be appointed administrator of the estate in the above-entitled special proceedings.

Based on the evidence and demeanor of the parties in court, [respondent's immediate] family and that of the decedent are apparently estranged. The root cause of which, is not for this court

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[12] *Id.* at 31-32.

[13] Memorandum of petitioner; *id.* at 195.

to ascertain nor is this the right time and the proper forum to dwell upon. What matters most at this time is the welfare of the estate of the decedent in the light of such unfortunate and bitter estrangement.

The Court honestly believes that to appoint the petitioner would go against the wishes of the decedent who raised [Emilio III] from infancy in her home in Baguio City as her own child. Certainly, it would go against the wishes of the surviving spouse x x x who nominated [Emilio III] for appointment as administrator.

As between [respondent] and the oppositor [Federico], the latter is accorded preference as the surviving spouse under Sec 6(a), Rule 78, Rules of Court. On the basis of such preference, he vigorously opposed the appointment of the petitioner and instead nominated [Emilio III], his grandchild and adopted child. Such nomination, absent any valid and justifiable reason, should not be imperiously set aside and insouciantly ignored, even after the oppositor [Federico] has passed away, in order to give effect to the order of preference mandated by law. Moreover, from the viewpoint of the estate, the nomination of [Emilio III] appear[s] intrinsically meritorious. For the benefit of the estate and its claimants, creditors, as well as heirs, the administrator should be one who is prepared, academically and by experience, for the demands and responsibilities of the position. While [respondent], a practicing physician, is not unqualified, it is clear to the court that when it comes to management of real estate and the processing and payment of debts, [Emilio III], a businessman with an established track record as a manager has a decided edge and therefore, is in a position to better handle the preservation of the estate.[14]

In marked contrast, the CA zeroed in on Emilio III's status as an illegitimate child of Emilio I and, thus, barred from representing his deceased father in the estate of the latter's legitimate mother, the decedent. On the whole, the CA pronounced that Emilio III, who was merely nominated by Federico, and which nomination hinged upon the latter's appointment as administrator of the decedent's estate, cannot be appointed as the administrator of the decedent's estate for the following reasons:[15]

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[14] *Rollo*, pp. 59-60.

[15] *Id.* at 25-31.

1. The appointment of Emilio III was subject to a suspensive condition, *i.e.*, Federico's appointment as administrator of the estate, he being the surviving spouse of Cristina, the decedent. The death of Federico before his appointment as administrator of Cristina's estate rendered his nomination of Emilio III inoperative;

2. As between the legitimate offspring (respondent) and illegitimate offspring (Emilio III) of decedent's son, Emilio I, respondent is preferred, being the "next of kin" referred to by Section 6, Rule 78 of the Rules of Court, and entitled to share in the distribution of Cristina's estate as an heir;

3. Jurisprudence has consistently held that Article 992[16] of the Civil Code bars the illegitimate child from inheriting *ab intestato* from the legitimate children and relatives of his father or mother. Thus, Emilio III, who is barred from inheriting from his grandmother, cannot be preferred over respondent in the administration of the estate of their grandmother, the decedent; and

4. Contrary to the RTC's finding, respondent is as much competent as Emilio III to administer and manage the subject estate for she possesses none of the disqualifications specified in Section 1,[17] Rule 78 of the Rules of Court.

The pivotal issue in this case turns on who, as between Emilio III and respondent, is better qualified to act as administrator of the decedent's estate.

We cannot subscribe to the appellate court's ruling excluding Emilio III in the administration of the decedent's undivided

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[16] Art. 992. An illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.

[17] Sec.1. *Who are incompetent to serve as executors or administrators.* – No person is competent to serve as executor or administrator who:

(a) Is a minor;

(b) Is not a resident of the Philippines; and

(c) Is in the opinion of the court unfit to execute the duties of the trust by reason of drunkenness, improvidence, or want of understanding or integrity, or by reason of conviction of an offense involving moral turpitude.

estate. Mistakenly, the CA glosses over several undisputed facts and circumstances:

1. The underlying philosophy of our law on intestate succession is to give preference to the wishes and presumed will of the decedent, absent a valid and effective will;

2. The basis for Article 992 of the Civil Code, referred to as the iron curtain bar rule,[18] is quite the opposite scenario in the facts obtaining herein for the actual relationship between Federico and Cristina, on one hand, and Emilio III, on the other, was akin to the normal relationship of legitimate relatives;

3. Emilio III was reared from infancy by the decedent, Cristina, and her husband, Federico, who both acknowledged him as their grandchild;

4. Federico claimed half of the properties included in the estate of the decedent, Cristina, as forming part of their conjugal partnership of gains during the subsistence of their marriage;

5. Cristina's properties forming part of her estate are still commingled with that of her husband, Federico, because her share in the conjugal partnership, albeit terminated upon her death, remains undetermined and unliquidated; and

6. Emilio III is a legally adopted child of Federico, entitled to share in the distribution of the latter's estate as a direct heir, one degree from Federico, not simply representing his deceased illegitimate father, Emilio I.

From the foregoing, it is patently clear that the CA erred in excluding Emilio III from the administration of the decedent's estate. As Federico's adopted son, Emilio III's interest in the estate of Cristina is as much apparent to this Court as the interest therein of respondent, considering that the CA even declared that "under the law, [Federico], being the surviving spouse, would have the right of succession over a portion of the exclusive

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[18] Called as such because the law does not recognize the natural tie of blood and is based on the presumed intervening antagonism and incompatibility between the legitimate and illegitimate family of a deceased. See *Diaz v. Intermediate Appellate Court*, G.R. No. 66574, June 17, 1987, 150 SCRA 645.

property of the decedent, **aside from his share in the conjugal partnership**." Thus, we are puzzled why the CA resorted to a strained legal reasoning – Emilio III's nomination was subject to a suspensive condition and rendered inoperative by reason of Federico's death – wholly inapplicable to the case at bar.

Section 6, Rule 78 of the Rules of Court lists the order of preference in the appointment of an administrator of an estate:

SEC. 6. *When and to whom letters of administration granted.* – If no executor is named in the will, or the executor or executors are incompetent, refuse the trust, or fail to give bond, or a person dies intestate, administration shall be granted:

(a) To the surviving husband or wife, as the case may be, or next of kin, or both, in the discretion of the court, or to such person as such surviving husband or wife, or next of kin, requests to have appointed, if competent and willing to serve;

(b) If such surviving husband or wife, as the case may be, or next of kin, or the person selected by them, be incompetent or unwilling, or if the husband or widow, or next of kin, neglects for thirty (30) days after the death of the person to apply for administration or to request that administration be granted to some other person, it may be granted to one or more of the principal creditors, if competent and willing to serve;

(c) If there is no such creditor competent and willing to serve, it may be granted to such other person as the court may select.

However, the order of preference is not absolute for it depends on the attendant facts and circumstances of each case.[19] Jurisprudence has long held that the selection of an administrator lies in the sound discretion of the trial court.[20] In the main, the attendant facts and circumstances of this case necessitate, at the least, a joint administration by both respondent and Emilio III of their grandmother's, Cristina's, estate.

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[19] See *Uy v. Court of Appeals*, G.R. No. 167979, March 16, 2006, 484 SCRA 699; *Gabriel v. Court of Appeals*, G.R. No. 101512, August 7, 1992, 212 SCRA 413; *Capistrano v. Nadurata*, 46 Phil. 726 (1922).

[20] See *Uy v. Court of Appeals*, *supra*; *Gabriel v. Court of Appeals*, *supra*; *Capistrano v. Nadurata*, *supra*.

In the case of *Uy v. Court of Appeals*,[21] we upheld the appointment by the trial court of a co-administration between the decedent's son and the decedent's brother, who was likewise a creditor of the decedent's estate. In the same vein, we declared in *Delgado Vda. de De la Rosa v. Heirs of Marciana Rustia Vda. de Damian*[22] that:

> [i]n the appointment of an administrator, the principal consideration is the interest in the estate of the one to be appointed. The order of preference does not rule out the appointment of co-administrators, specially in cases where justice and equity demand that opposing parties or factions be represented in the management of the estates, a situation which obtains here.

Similarly, the subject estate in this case calls to the succession other putative heirs, including another illegitimate grandchild of Cristina and Federico, Nenita Tañedo, but who was likewise adopted by Federico, and the two (2) siblings of respondent Isabel, Margarita and Emilio II. In all, considering the conflicting claims of the putative heirs, and the unliquidated conjugal partnership of Cristina and Federico which forms part of their respective estates, we are impelled to move in only one direction, *i.e.*, joint administration of the subject estate.

One final note. Counsel for petitioner meticulously argues that Article 992 of the Civil Code, the successional bar between the legitimate and illegitimate relatives of a decedent, does not apply in this instance where facts indubitably demonstrate the contrary – Emilio III, an illegitimate grandchild of the decedent, was actually treated by the decedent and her husband as their own son, reared from infancy, educated and trained in their businesses, and eventually legally adopted by decedent's husband, the original oppositor to respondent's petition for letters of administration.

We are not unmindful of the critiques of civilists of a conflict and a lacuna in the law concerning the bone of contention that is Article 992 of the Civil Code, beginning with the eminent Justice J.B.L. Reyes:

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[21] *Supra* note 19.

[22] G.R. No. 155733, January 27, 2006, 480 SCRA 334, 360. (Citations omitted.)

In the Spanish Civil Code of 1889 the right of representation was admitted only within the legitimate family; so much so that Article 943 of that Code prescribed that an illegitimate child can not inherit *ab intestato* from the legitimate children and relatives of his father and mother. The Civil Code of the Philippines apparently adhered to this principle since it reproduced Article 943 of the Spanish Code in its own Art. 992, but with fine inconsistency, in subsequent articles (990, 995 and 998) our Code allows the hereditary portion of the illegitimate child to pass to his own descendants, whether legitimate or illegitimate. So that while Art. 992 prevents the illegitimate issue of a legitimate child from representing him in the intestate succession of the grandparent, the illegitimates of an illegitimate child can now do so. This difference being indefensible and unwarranted, in the future revision of the Civil Code we shall have to make a choice and decide either that the illegitimate issue enjoys in all cases the right of representation, in which case Art. 992 must be suppressed; or contrariwise maintain said article and modify Articles 995 and 998. The first solution would be more in accord with an enlightened attitude *vis-à-vis* illegitimate children.[23]

Manresa explains the basis for the rules on intestate succession:

The law [of intestacy] is founded… on the presumed will of the deceased… Love, it is said, first descends, then ascends, and, finally, spreads sideways. Thus, the law first calls the descendants, then the ascendants, and finally the collaterals, always preferring those closer in degree to those of remoter degrees, on the assumption that the deceased would have done so had he manifested his last will… Lastly, in default of anyone called to succession or bound to the decedent by ties of blood or affection, it is in accordance with his presumed will that his property be given to charitable or educational institutions, and thus contribute to the welfare of humanity.[24]

Indeed, the factual antecedents of this case accurately reflect the basis of intestate succession, *i.e.*, love first descends, for the decedent, Cristina, did not distinguish between her legitimate

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[23] *Reflections on the Reform of Hereditary Succession,* JOURNAL of the Integrated Bar of the Philippines, First Quarter (1976), Vol. 4, No. 1, pp. 40-41; cited in *Diaz v. Intermediate Appellate Court*, G.R. No. 66574, February 21, 1990, 182 SCRA 427, 434; and *Diaz v. Intermediate Appellate Court*, *supra* note 18, at 651.

[24] Cited in BALANE, *Jottings and Jurisprudence* (1998), p. 368.

and illegitimate grandchildren. Neither did her husband, Federico, who, in fact, legally raised the status of Emilio III from an illegitimate grandchild to that of a legitimate child. The peculiar circumstances of this case, painstakingly pointed out by counsel for petitioner, overthrow the legal presumption in Article 992 of the Civil Code that there exist animosity and antagonism between legitimate and illegitimate descendants of a deceased.

Nonetheless, it must be pointed out that judicial restraint impels us to refrain from making a final declaration of heirship and distributing the presumptive shares of the parties in the estates of Cristina and Federico, considering that the question on who will administer the properties of the long deceased couple has yet to be settled.

Our holding in *Capistrano v. Nadurata*[25] on the same issue remains good law:

> [T]he declaration of heirs made by the lower court is premature, although the evidence sufficiently shows who are entitled to succeed the deceased. The estate had hardly been judicially opened, and the proceeding has not as yet reached the stage of distribution of the estate which must come after the inheritance is liquidated.

Section 1, Rule 90 of the Rules of Court does not depart from the foregoing admonition:

> Sec. 1. *When order for distribution of residue is made.* – x x x. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.
>
> No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for, unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs.

WHEREFORE, the petition is *GRANTED*. The Decision of the Court of Appeals in CA-G.R. CV No. 74949 is *REVERSED*

[25] *Supra* note at 19, at 728.

and *SET ASIDE*. Letters of Administration over the estate of decedent Cristina Aguinaldo-Suntay shall issue to both petitioner Emilio A.M. Suntay III and respondent Isabel Cojuangco-Suntay upon payment by each of a bond to be set by the Regional Trial Court, Branch 78, Malolos, Bulacan, in Special Proceeding Case No. 117-M-95. The Regional Trial Court, Branch 78, Malolos, Bulacan is likewise directed to make a determination and to declare the heirs of decedent Cristina Aguinaldo-Suntay according to the actual factual milieu as proven by the parties, and all other persons with legal interest in the subject estate. It is further directed to settle the estate of decedent Cristina Aguinaldo-Suntay with dispatch. No costs.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Perez,*[*] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 185388. June 16, 2010]

PEOPLE OF THE PHILIPPINES, *appellee*, *vs.* **RODRIGO AWID *alias* "NONOY" and MADUM GANIH *alias* "COMMANDER MISTAH" and also known as "MIS,"** *accused.*

MADUM GANIH *alias* "COMMANDER MISTAH" and also known as "MIS," *appellant.*

SYLLABUS

1. CRIMINAL LAW; CRIMES AGAINST LIBERTY; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; ELEMENTS;

[*] Additional member in lieu of Associate Justice Jose C. Mendoza per Special Order No. 842 dated June 3, 2010.

PROVEN IN CASE AT BAR. — To prove the crime charged, the prosecution had to show (a) that the accused was a private person; (b) that he kidnapped or detained or in any manner deprived another of his or her liberty; (c) that the kidnapping or detention was illegal; and (d) that the victim was kidnapped or detained for ransom. All these have been proved in this case. The Court entertains no doubt that Ganih and the others with him kidnapped Mrs. Lee to trade freedom for a price. Ganih initially demanded ₱15 million for her but he reduced his demand when Mr. Lee could raise only ₱1.2 million. The kidnappers actually received this ransom as evidenced by the fact that they immediately released Mrs. Lee after the last negotiation.

2. REMEDIAL LAW; EVIDENCE; OUT-OF-COURT IDENTIFICATION, REGULAR; WHAT THE COURT CONDEMNS ARE PRIOR OR CONTEMPORANEOUS IMPROPER SUGGESTIONS THAT POINT OUT THE SUSPECT TO THE WITNESS AS THE PERPETRATOR TO BE IDENTIFIED. — xxx His other contention is that the police made Mrs. Lee identify him, not in a proper police line-up but in a mere show-up after giving her some improper suggestions. But the manner in which Mrs. Lee identified Ganih was substantially the same as in any proper police line-up except that this one took place outside the police station on account of Mrs. Lee's desire not to be seen while making the identification. The police did not show Ganih alone to Mrs. Lee, which would suggest that he was their suspect. They made three other men stand with Ganih in front of the police station while Mrs. Lee gazed on them behind the tinted windows of her vehicle. What the Court condemns are prior or contemporaneous improper suggestions that point out the suspect to the witness as the perpetrator to be identified. Besides, granting that the out-of-court identification was irregular, Mrs. Lee's court testimony clearly shows that she positively identified Ganih independently of the previous identification she made in front of the police station. Mrs. Lee could not have made a mistake in identifying him since she had ample opportunities to study the faces and peculiar body movements of her kidnappers in her almost four months of ordeal with them. Indeed, she was candid and direct in her recollection, narrating events as she saw them take place. Her testimony, including her identification of the appellant, was positive, straightforward, and categorical.

3. ID.; ID.; CREDIBILITY; IMPROPER MOTIVE, ABSENT IN CASE AT BAR. — xxx Ganih was unable to impute any improper motive to Mrs. Lee for telling her story as it was. It defies reason why she would falsely testify against him if her motive was other than to bring to justice those who kidnapped her.

4. ID.; ID.; ALIBI; TO PROSPER AS A DEFENSE, PHYSICAL IMPOSSIBILITY TO BE AT THE SCENE OF THE CRIME AT THE TIME OF ITS COMMISSION MUST BE PROVEN. — Ganih claims that he was at *Barangay* Kaliantana on January 10, 2000 and joined the birthday celebration of *Barangay* Captain Hassan Arani on May 6, 2000. But it is not enough that he claims being elsewhere when the crime was committed. He also must demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission. Here, the defense witness said that he saw Ganih on January 10, 11 and 12, 2000 and May 6, 2000 at *Barangay* Kaliantana. But the witness' memory was selective since he had no idea where Ganih was from January 13 to May 5, 2000. During the hearing, Ganih himself admitted that it took only four hours by bus to travel from Naga to Zamboanga City. It was easy for him to go to Zamboanga City and not be missed.

5. CRIMINAL LAW; CRIMES AGAINST LIBERTY; KIDNAPPING AND SERIOUS ILLEGAL DETENTION; PROVEN BEYOND REASONABLE DOUBT; PENALTY; BASIS. — In fine, the totality of the prosecution's evidence proves beyond reasonable doubt that Ganih and the others with him kidnapped Mrs. Lee for ransom. The crime was punishable by death at the time of its commission but, with the enactment of Republic Act 9346 that prohibits the imposition of such penalty, the CA was correct in lowering the penalty to *reclusion perpetua* without eligibility for parole under the Indeterminate Sentence Law.

6. CIVIL LAW; DAMAGES; AWARDS OF CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES, PROPER; ELUCIDATED. — As for damages, even if the death penalty cannot be imposed, the civil indemnity of ₱75,000.00 is proper since the qualifying circumstances that would have warranted the imposition of the death penalty attended the offense. In addition, under Article 2219 (5) of the New Civil Code, moral damages may be recovered in cases of illegal or arbitrary detention or arrest. This is predicated on Mrs. Lee's

having suffered serious anxiety and fright during her four months of detention. An award of ₱100,000.00 in moral damages is warranted. Further, the rule is that an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to exemplary damages within the meaning of Article 2230 of the New Civil Code. Since the offense in this case was attended by a demand for ransom, an award of ₱100,000.00 in exemplary damages by way of example or correction is in order.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

ABAD, *J.*:

This is a kidnapping for ransom case where the complainant identified one of the accused as he stood with three others in front of the police station while she sat in her tinted vehicle.

The Facts and the Case

On May 31, 2001 the city public prosecutor filed a second amended information[1] for kidnapping with ransom and serious illegal detention against the accused Madum Ganih *alias* "Commander Mistah" or "Mis," Rodrigo Awid *alias* "Nonoy," Ernesto Andagao *alias* "Nestor", and three others who were known only by the names of "Adjing," "Hasbi," and "Maing" before the Regional Trial Court (RTC) of Zamboanga City, Branch 16, in Criminal Case 16635.

Mrs. Juanita Bernal Lee, married to Joseph "Nonoy" Lee, with whom she had four daughters, testified that she and her husband were in the storage and foundry business.[2] They lived in a house surrounded by a 12-foot concrete fence, topped by

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[1] Records, pp. 1-2.

[2] TSN, June 30, 2000, p. 4.

three strands of barbwires strung on embedded steel bars. All in all, the fence rose to about 18 feet. It had just one steel gate of about 12 feet in height.[3]

On January 9, 2000 only Mrs. Lee was left in the house, accompanied by three housemaids, and the accused Ernesto Andagao, a gardener-houseboy. They all slept in an extension of the main house, which extension had three rooms. Mrs. Lee was in one with her 11 Japanese Spitz puppies. Next to hers was the room where Andagao slept, and then there was the room of the housemaids.[4]

Part of Mrs. Lee's night routine was to let her puppies out of her room about midnight so they could take a leak. At the early dawn of January 10, 2000, after opening the door of her room to let her puppies out, Mrs. Lee was surprised to see a stranger, a man, standing a few meters from her door. She immediately went back in and tried to shut her door close but the man succeeded in pushing the door open and pulling her out of the room just as another man appeared. Someone struck Mrs. Lee with a gun on both shoulders and kicked her on the ribs. When she fell down, she received a kick on her buttocks.

Mrs. Lee could not recognize the two men who assaulted her as they wore bonnets that covered their faces. They dragged her into the maids' quarters where they covered her mouth with masking tape and tied her hands behind her with telephone wires. One of the men tore a swathe of cloth from the bed sheets and used it to cover her mouth as well. They blindfolded her with a black cloth and covered her head with a black bag that reached down to her chest. They then took her to the garage barefooted. [5]

At the garage, the men forced Mrs. Lee to get into the backseat of her Nissan Sentra.[6] They traveled for about 20 to 30 minutes

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[3] *Id.* at 20-23.

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

[5] *Id.* at 10-15.

[6] *Id.* at 19-20.

at normal speed. When the car stopped, the men made Mrs. Lee go down after removing the black bag that covered her head. But she remained blindfolded. They then made her walk barefooted down a muddy ground. Because she walked too slowly, one of her abductors slung her on his shoulder and carried her to a pump boat where they removed the cloth and masking tape that covered her mouth. After a while, they also removed her blindfold and untied her hands.[7]

Though it remained dark, Mrs. Lee managed to note that two men rode with her on the pump boat while a white speedboat led them away from land. She did not know where they were heading but she noticed that they left Zamboanga City. [8]

After traveling for about three to four hours, the pump boat berthed on an island lined with coconut trees. Her abductors gave Mrs. Lee a hooded jacket to wear, then took her to a well for her to take a bath. From there, they took her to the bushes where two armed men guarded her.[9] At about 6:30 p.m., they took her to a two-storey house where they held her captive for almost four months. Mrs. Lee later learned that the house where they had taken her belonged to Suod Hussain and his wife Fatma.[10]

At about past 9:00 p.m. of January 10, 2000, Mrs. Lee met accused Madum Ganih who said to her, "*Ako si Kumander Mistah. Ako na ang hawak sa 'yo.*"[11] After keeping her in captivity for about 20 days, her captors took Mrs. Lee out to sea on a pump boat to talk to her husband through a cell phone.[12] When they let her call him a second time, Ganih ordered her to tell her husband to pay her kidnappers ₱15 million in exchange for her. Her husband told her to bargain for a

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[7] *Id.* at 25-28.

[8] *Id.* at 28-31.

[9] *Id.* at 30-32.

[10] TSN, June 6, 2001, pp. 32-33.

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

[12] TSN, June 30, 2000, p. 41.

lesser amount since all he had was ₱1 million. Ganih demanded a partial payment of ₱200,000.00 but Mrs. Lee's family could give only ₱50,000.00. Mrs. Lee's eldest daughter, Michelle,[13] testified that she gave the money to a certain Geater Libas but Ganih later complained that he got only ₱35,000.00.[14]

Calling her family a third time, the kidnappers reduced their demand to ₱4 million and threatened to cut off Mrs. Lee's head unless this was paid.[15] At their last call to her husband, Mr. Lee requested the kidnappers to release his wife for ₱1.2 million. Ganih did not respond immediately as he said he still had to confer with their leader, a certain "boy", whom Mrs. Lee could not recognize as he always covered his face whenever he came to visit.[16]

In the evening of May 5, 2000, Ganih told Mrs. Lee that they would release her the next day. At about 4:00 a.m. of May 6, 2000, her abductors brought Mrs. Lee to Arena Blanco in Zamboanga City where Ganih gave her ₱100.00 for fare and an M203 bullet as memento. She eventually got home.[17]

Sometime after, Police Chief Inspector Gucela and his men arrested a certain *alias* "Mis" at Sta. Barbara, Zamboanga City.[18] They asked Mrs. Lee to see if she can identify him at the police station. She came on board her Pajero with Gucela by her side but she refused to go out of her tinted vehicle because she did not want to be seen. She could, however, clearly see those outside of it. Subsequently, the police officers brought Ganih and three others to stand in front of the police office. Mrs. Lee recognized and identified Ganih as one of her kidnappers.[19]

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[13] TSN, September 15, 2000, p. 8.

[14] TSN, June 30, 2000, pp. 47-49.

[15] *Id.* at 49.

[16] *Id.* at 51.

[17] *Id.* at 52-54.

[18] TSN, June 8, 2001, p. 36.

[19] *Id.* at 37-39.

For his part, Ganih, denied the charge against him. He testified that he had been known as "Madz," not "Mis," and that he had never been known as "Kumander Mistah." He claimed that he was at home in *Barangay* Kaliantana, Naga, Zamboanga del Sur, the whole day of January 10, 2000. Further, he said he attended the birthday party of *Barangay* Chairman Hassan Arani at his house at 2:00 p.m. on May 6, 2000. He also claimed that the police did not make him stand in a proper police line-up for identification.[20]

On May 21, 2002 the RTC rendered judgment,[21] convicting Ganih of the crime charged and sentencing him to suffer the penalty of death. The RTC, however, acquitted Awid for insufficiency of evidence. The court also ordered Ganih to return the ransom money of ₱1,250,000.00 as well as the value of Mrs. Lee's diamond earrings and Rado wristwatch, which totaled ₱95,000.00.

Upon review, the Court of Appeals (CA) rendered a decision dated November 12, 2007,[22] affirming the conviction of Ganih but amending the penalty from death to *reclusion perpetua*. The CA also awarded Mrs. Lee ₱1,250,000.00 in actual damages, ₱25,000.00 in temperate damages, ₱50,000.00 in civil indemnity, ₱100,000.00 in moral damages, and ₱25,000.00 in exemplary damages.

The Issue

The issue in this case is whether or not accused Ganih, in conspiracy with others, kidnapped Mrs. Lee for a ransom.

The Court's Ruling

To prove the crime charged, the prosecution had to show (a) that the accused was a private person; (b) that he kidnapped

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[20] TSN, July 16, 2001, pp. 3-11.

[21] Records, pp. 183-241.

[22] *Rollo*, pp. 4-32, penned by Associate Justice Rodrigo F. Lim, Jr. and concurred in by Associate Justices Teresita Dy-Liacco Flores and Michael P. Elbinias.

or detained or in any manner deprived another of his or her liberty; (c) that the kidnapping or detention was illegal; and (d) that the victim was kidnapped or detained for ransom.[23] All these have been proved in this case.

The Court entertains no doubt that Ganih and the others with him kidnapped Mrs. Lee to trade her freedom for a price. Ganih initially demanded ₱15 million for her but he reduced his demand when Mr. Lee could raise only ₱1.2 million. The kidnappers actually received this ransom as evidenced by the fact that they immediately released Mrs. Lee after the last negotiation.

Significantly, Ganih offered nothing but his bare denial and unsubstantiated alibi to counter the overwhelming evidence that the prosecution adduced against him. His other contention is that the police made Mrs. Lee identify him, not in a proper police line-up but in a mere show-up after giving her some improper suggestions.

But the manner in which Mrs. Lee identified Ganih was substantially the same as in any proper police line-up except that this one took place outside the police station on account of

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[23] Art. 267. *Kidnapping and serious illegal detention.*– Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death.

1. If kidnapping or detention shall have lasted more than three days.

2. If it shall have been committed simulating public authority.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purposes of extorting ransom from the victim or any other person, even if none of the circumstances abovementioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. (As amended by Sec. 8, Republic Act 7659.) See *People v. Ejandra*, 473 Phil. 381, 402-403 (2004).

Mrs. Lee's desire not to be seen while making the identification. The police did not show Ganih alone to Mrs. Lee, which would suggest that he was their suspect. They made three other men stand with Ganih in front of the police station while Mrs. Lee gazed on them behind the tinted windows of her vehicle.[24]

What the Court condemns are prior or contemporaneous improper suggestions that point out the suspect to the witness as the perpetrator to be identified.[25] Besides, granting that the out-of-court identification was irregular, Mrs. Lee's court testimony clearly shows that she positively identified Ganih independently of the previous identification she made in front of the police station. Mrs. Lee could not have made a mistake in identifying him since she had ample opportunities to study the faces and peculiar body movements of her kidnappers in her almost four months of ordeal with them.[26] Indeed, she was candid and direct in her recollection, narrating events as she saw them take place. Her testimony, including her identification of the appellant, was positive, straightforward, and categorical.

Moreover, Ganih was unable to impute any improper motive to Mrs. Lee for telling her story as it was. It defies reason why she would falsely testify against him if her motive was other than to bring to justice those who kidnapped her.

Ganih claims that he was at *Barangay* Kaliantana on January 10, 2000 and joined the birthday celebration of *Barangay* Captain Hassan Arani on May 6, 2000. But it is not enough that he claims being elsewhere when the crime was committed. He also must demonstrate that it was physically impossible for him to have been at the scene of the crime at the time of its commission.[27]

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[24] TSN, June 8, 2001, p. 38.

[25] See *People v. Escote, Jr.*, 448 Phil. 749, 783 (2003).

[26] See *People v. Almanzor*, 433 Phil. 667, 682 (2002).

[27] *People v. Azugue*, 335 Phil. 1170, 1181 (1997).

Here, the defense witness said that he saw Ganih on January 10, 11 and 12, 2000 and May 6, 2000 at *Barangay* Kaliantana.[28] But the witness' memory was selective since he had no idea where Ganih was from January 13 to May 5, 2000. During the hearing, Ganih himself admitted that it took only four hours by bus to travel from Naga to Zamboanga City.[29] It was easy for him to go to Zamboanga City and not be missed.

In fine, the totality of the prosecution's evidence proves beyond reasonable doubt that Ganih and the others with him kidnapped Mrs. Lee for ransom. The crime was punishable by death at the time of its commission but, with the enactment of Republic Act 9346 that prohibits the imposition of such penalty, the CA was correct in lowering the penalty to *reclusion perpetua* without eligibility for parole under the Indeterminate Sentence Law.[30]

As for damages, even if the death penalty cannot be imposed, the civil indemnity of ₱75,000.00 is proper since the qualifying circumstances that would have warranted the imposition of the death penalty attended the offense.[31] In addition, under Article 2219 (5) of the New Civil Code, moral damages may be recovered in cases of illegal or arbitrary detention or arrest.[32] This is

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[28] TSN, June 19, 2001, pp. 5-6; TSN, August 17, 2001, pp. 7-9.

[29] TSN, July 16, 2001, pp. 8-9.

[30] SEC. 2. In lieu of the death penalty, the following shall be imposed:

(a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

Pursuant to the same law, appellant shall not be eligible for parole under Act 4103, otherwise known as the Indeterminate Sentence Law.

[31] See *Lajim v. People*, G.R. No. 179570, February 4, 2010, citing *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 719.

[32] CIVIL CODE, Article 2219. Moral damages may be recovered in the following analogous cases:

x x x x x x x x x

(5) Illegal or arbitrary detention or arrest; x x x.

predicated on Mrs. Lee's having suffered serious anxiety and fright during her four months of detention. An award of ₱100,000.00 in moral damages is warranted.[33]

Further, the rule is that an aggravating circumstance, whether ordinary or qualifying, entitles the offended party to exemplary damages within the meaning of Article 2230 of the New Civil Code. Since the offense in this case was attended by a demand for ransom, an award of ₱100,000.00 in exemplary damages by way of example or correction is in order.[34]

WHEREFORE, the Court *DENIES* the appeal and *AFFIRMS* the November 12, 2007 decision of the Court of Appeals in CA-G.R. CR-HC 00384-MIN, which found appellant Madum Ganih guilty beyond reasonable doubt of the crime of kidnapping for ransom and imposed on him the penalty of *reclusion perpetua* without eligibility for parole, with the *MODIFICATION* that he is ordered to pay complainant Mrs. Juanita Bernal Lee ₱1,250,000.00 in actual damages, ₱75,000.00 in civil indemnity, ₱100,000.00 in moral damages, and ₱100,000.00 in exemplary damages.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Perez,*[*] *JJ.*, concur.

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[33] *People v. Garalde*, G.R. No. 173055, April 13, 2007, 521 SCRA 327, 355.

[34] *People v. Martinez,* 469 Phil. 558, 579 (2004); *People v. Bisda*, 454 Phil. 194, 240 (2003); *People v. Pangilinan*, 443 Phil. 198, 245 (2003).

[*] Designated as additional member in lieu of Associate Justice Jose C. Mendoza, per Special Order No. 842 dated June 3, 2010.

SECOND DIVISION

[G.R. No. 188331. June 16, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RYAN LALONGISIP *y* DELOS ANGELES,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; ELEMENTS; NO UNLAWFUL AGGRESSION, NO SELF-DEFENSE, EITHER COMPLETE OR INCOMPLETE. — xxx We discard appellant's claim of self-defense. When self-defense is invoked by an accused charged with murder or homicide, he necessarily owns up to the killing but intends to evade criminal liability by proving that the killing was justified. Hence, it becomes incumbent upon the accused to prove by clear and convincing evidence the three (3) elements of self-defense, namely: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on the part of the person defending himself. Of these elements, the accused must initially, prove unlawful aggression, because without it, there can be no self-defense, either complete or incomplete. Even if we consider appellant's own version of the facts, we find that there was no unlawful aggression on the part of Romeo. Appellant himself testified that he did not have any prior argument with Romeo immediately before the stabbing incident; that they were freely conversing with each other; and that, other than allegedly holding a knife, Romeo did not commence any act constitutive of unlawful aggression or demonstrative of any imminent threat of attack.

2. ID.; CRIMES AGAINST PERSONS; MURDER; TREACHERY; EXPLAINED; PRESENT IN CASE AT BAR. — xxx There was treachery in the killing of Romeo. Article 248 of the Revised Penal Code (RPC) clearly provides: ART. 248. *Murder*.— Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the

following attendant circumstances: 1. **With treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity: xxx Treachery exists when an offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself, arising from the defense which the offended party might make. The events narrated by the prosecution eyewitnesses point to the fact that Romeo could not have been aware that he would be attacked by appellant. There was no opportunity for him to defend himself, since appellant, suddenly and without provocation, stabbed the victim at the back as they were about to partake of their lunch. The essence of treachery is the unexpected and sudden attack on the victim which renders the latter unable and unprepared to defend himself by reason of the suddenness and severity of the attack. This criterion applies whether the attack is frontal or from behind.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; WHEN THE TRIAL COURT'S FINDINGS HAVE BEEN AFFIRMED BY THE APPELLATE COURT, SAID FINDINGS ARE GENERALLY CONCLUSIVE AND BINDING UPON THE SUPREME COURT. — It is a doctrine well settled in our jurisprudence that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. It is worth stressing that the CA affirmed the RTC's findings, according credence and great weight to the testimonies of the prosecution's witnesses. In this regard, it is the rule that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court. We find no compelling reason to deviate from the uniform finding of both the RTC and the CA that indeed appellant is guilty beyond reasonable doubt of the crime of Murder.

4. CRIMINAL LAW; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; MITIGATING CIRCUMSTANCES; VOLUNTARY SURRENDER; PRESENT IN CASE AT BAR. — We also agree with the RTC that appellant voluntarily surrendered. The appellant's conduct was spontaneous when he gave himself up to the authorities, thus saving the State the trouble and the expenses necessarily incurred in his search and capture.

5. CIVIL LAW; DAMAGES; MODIFICATION THEREOF, PROPER. — xxx [I]n accordance with current jurisprudence, we modify the award of damages, and apply *People of the Philippines v. Richard O. Sarcia,* where we said: The principal consideration for the award of damages, under the ruling in *People v. Salome* and *People v. Quiachon* is the **penalty provided by law or imposable for the offense because of its heinousness, not** the public penalty **actually** imposed on the offender. Regarding the civil indemnity and moral damages, *People v. Salome* explained the basis for increasing the amount of said civil damages as follows: The Court, likewise, affirms the civil indemnity awarded by the Court of Appeals to Sally in accordance with the ruling in *People v. Sambrano* which states: "As to damages, we have held that **if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty,** the civil indemnity for the victim shall be **₱75,000.00** … Also, in rape cases, moral damages are awarded without the need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, the trial court's award of ₱50,000.00 as moral damages should also be increased to ₱75,000.00 pursuant to current jurisprudence on qualified rape." It should be noted that while the law prohibits the *imposition* of the death penalty, **the penalty provided for by law for a heinous offense is still death and the offense is still heinous.** Consequently, the civil indemnity for the victim is still **Php75,000.00**. xxx Thus, based on the foregoing disquisition, we increase the amount of damages awarded by the CA. The amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages shall be increased to ₱75,000.00 respectively. Likewise, exemplary damages should also be imposed at ₱30,000.00. Finally, in addition to the damages awarded, the appellant should also pay interest at the legal rate of 6% per annum from this date until full payment.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

NACHURA, *J.*:

Before this Court is an Appeal[1] assailing the Court of Appeals (CA) Decision[2] dated February 26, 2009, which affirmed with modification the decision[3] dated April 4, 2007 of the Regional Trial Court (RTC), Branch 63, Calabanga, Camarines Sur, finding appellant Ryan Lalongisip *y* delos Angeles (appellant) guilty beyond reasonable doubt of the crime of Murder for the killing of Romeo Copo (Romeo).

The Facts

Appellant was charged with the crime of Murder in an Information dated March 9, 2006 which reads:

> That on or about the 8th day of March, 2006 at around 12:30 P.M. in *Barangay* Manguiring, Municipality of Calabanga, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with intent to kill, with treachery while armed with a kitchen knife measuring (10 ½) inches long from the handle to the tip of its blade did then and there willfully, unlawfully and feloniously stab Romeo Copo, hitting the latter at the back portion of his body thereby causing his instantaneous death. The victim was not in position to repeal (sic) the suddenness of attack nor defend himself to the damage and prejudice of his heirs in such amount as may be determined by the Honorable Court.
>
> ACTS CONTRARY TO LAW.

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[1] *Rollo*, pp. 10-12.

[2] Particularly docketed as CA-G.R. CR H.C. No. 02802, penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Isaias P. Dicdican and Marlene Gonzales-Sison, concurring; *id.* at 2-9.

[3] CA *rollo*, pp. 49-57.

During the arraignment on March 21, 2006, appellant entered a plea of "not guilty." Thereafter, trial on the merits ensued. In the course of the trial, two varying versions arose.

Culled from the records, the two versions were summarized by the CA as follows:

> The facts, according to the prosecution, are as follows:
>
> On March 8, 2006, the accused-appellant, with the victim Romeo Copo, Victor de Villa, Cesar Andal Jr., Enog [B]ahay, Cesar Andal Sr., certain persons named Badong, Erning, Kuya Canor and some other men were having a drinking spree at the house of Conrado Andal Jr. at Zone 5, *Barangay* Manguiring, Calabanga, Camarines Sur. It was the first death anniversary of Conrado Andal Jr.'s father. They all occupied a table beside Conrado's house.
>
> Around 12:00 noon, the group was invited to lunch. Romeo Copo then stood up and while he turned his back at the table and moved himself towards the kitchen, the accused-appellant also stood up and suddenly stabbed Romeo at the back. The accused-appellant tried to stab Romeo again but was not able to do so because the handle of the knife used in stabbing was already broken. After he was stabbed, Romeo tried to run towards the kitchen but fell by the kitchen door.
>
> Conrado and his cousin brought Romeo to the hospital. Meanwhile, the accused-appellant went to *Barangay* Tanod Jose [Peneno] to ask the latter to accompany him as he would like to surrender to police authorities.
>
> SPO1 Carlito Capricho testified that he was the investigator on duty on March 8, 2008. Upon learning of the incident, their Desk Officer, SPO4 Conrado Cantorne, dispatched him and SPO2 Talle to make a follow up investigation and to conduct a hot pursuit of the suspect. During the crime scene investigation, Liza Andal turned over to him the kitchen knife used by the accused-appellant to stab Romeo. SPO1 Capricho then returned to their police station where he learned that the accused-appellant had already surrendered.
>
> Daniel Tan, the rural health physician of the Municipal Health Office of Calabanga, Camarines Sur testified that he conducted a post-mortem examination on the cadaver of the victim. He found a stab wound at the victim's back measuring 5cm. x 1cm., slanted

left vertically. It penetrated into the inferior portion of the heart, 10cm. lateral to midspine, level of thoracic vertebrae 3cm. left. He further opined that the wound caused the death of the victim.

The defense maintains a different version of the incident.

According to the accused-appellant, he was at the residence of his compadre Conrado Andal on March 8, 2006. He was there because he was asked to cook food for the first death anniversary of Conrado Andal's father. He finished cooking around 7:00 o'clock in the morning. Thereafter, they started a drinking spree together with other men, including the victim Romeo Copo.

Around noontime, while they were still having their drinking spree, the accused-appellant noticed a knife on the table which they used in cooking. Romeo Copo allegedly got hold of the said knife and the accused-appellant grabbed the same from Romeo because the latter's family was angry at him for reasons he does not know. He and Romeo grappled for the possession of the knife for about ten minutes. When he was able to grab the knife from Romeo, he was in front of Romeo and he accidentally hit the latter's back. This happened because Romeo allegedly turned his back when he was trying to transfer to another place. The accused-appellant swayed his hand because the knife was about to fall and that was the time that he accidentally hit the victim.

He denied the testimonies of Conrado Andal and Genorio Bacay that the stabbing was intentional on his part because according to the accused-appellant, what happened was an accident. The reason that the two testified against him was because they were afraid of the family of the victim considering that they are a family of troublemakers. In fact in 2001, the accused-appellant was stabbed by a member of the Copo family and in 2005, the accused-appellant's sibling was chased by one of the members of the Copo family.

The accused-appellant admitted that before March 8, 2006, he and Romeo Copo had a misunderstanding regarding a cockfight that they had. He likewise admitted that he had to take hold of a knife to defend himself because Romeo might stab him [considering] the existing previous disagreement between their families.

Immediately after the incident, the accused-appellant went to Barangay Tanod Jose Peneno and asked the latter to accompany him in surrendering to the police.[4]

The RTC's Ruling

On April 4, 2007, the RTC found appellant guilty beyond reasonable doubt of the crime of Murder and sentenced him to suffer the penalty of *reclusion perpetua* and to pay the heirs of Romeo the amount of ₱25,000.00 as temperate damages, ₱50,000.00 as civil liability, and to pay the cost. Appellant interposed an appeal,[5] assailing the RTC decision, before the CA.

The CA's Ruling

In its Decision dated February 26, 2009, the CA affirmed with modification the decision of the RTC, imposing upon appellant the penalty of *reclusion perpetua* and ordering him to pay the heirs of Romeo the amount of ₱50,000.00 as civil indemnity, and ₱50,000.00 as moral damages.

Aggrieved, appellant elevated the case to this Court. In their respective Manifestations filed before this Court, appellant, as represented by the Public Attorney's Office, and the Office of the Solicitor General (OSG) opted to adopt their respective Briefs filed before the CA as their Supplemental Briefs.

Appellant assigns the following errors:

I.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT WHEN HIS GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

II.

THE TRIAL COURT GRAVELY ERRED IN NOT APPRECIATING THE JUSTIFYING CIRCUMSTANCE OF SELF-DEFENSE IN FAVOR OF THE ACCUSED-APPELLANT.

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[4] *Supra* note 2, at 3-5. (Citations omitted.)

[5] CA *rollo*, p. 24.

III.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF MURDER INSTEAD OF HOMICIDE.[6]

The core issue in this appeal is whether appellant's guilt has been proven beyond reasonable doubt.

Appellant avers that he merely acted in self-defense because Romeo was the unlawful aggressor when the latter got hold of a knife that was used for cooking; that his life was imperilled; that the means he employed to repel said aggression were reasonably necessary; that the stabbing incident was merely accidental; and that he did not provoke Romeo. Appellant argues that no treachery attended the killing because the prosecution's evidence failed to show that there was a conscious effort on his part to adopt particular means, methods or forms of attack to ensure the commission of the crime without affording the victim any opportunity to defend himself. Thus, appellant claims that if he is to be held liable at all, his liability should be merely for homicide, not murder.[7]

On the other hand, the OSG asseverates that appellant, by claiming self-defense, had the burden of proving the existence of all the elements constituting said defense; that appellant failed to discharge this burden; that the killing was attended by treachery because Romeo had his back turned when appellant suddenly stabbed him; that even prosecution witnesses Conrado Andal, Jr. and Genorio Bacay were caught off guard by the suddenness of the unprovoked attack; and that the findings of the trial court are binding and conclusive on this Court.[8]

Our Ruling

We dismiss the appeal.

First. We discard appellant's claim of self-defense.

When self-defense is invoked by an accused charged with murder or homicide, he necessarily owns up to the killing but

[6] Brief for the Accused-Appellant; *id.* at 33-47, at 41-42.

[7] *Id.*

[8] Brief for the Appellee; *id.* at 73-91.

intends to evade criminal liability by proving that the killing was justified. Hence, it becomes incumbent upon the accused to prove by clear and convincing evidence the three (3) elements of self-defense, namely: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to prevent or repel the aggression; and (3) lack of sufficient provocation on the part of the person defending himself. Of these elements, the accused must, initially, prove unlawful aggression, because without it, there can be no self-defense, either complete or incomplete.[9]

Even if we consider appellant's own version of the facts, we find that there was no unlawful aggression on the part of Romeo. Appellant himself testified that he did not have any prior argument with Romeo immediately before the stabbing incident; that they were freely conversing with each other; and that, other than allegedly holding a knife, Romeo did not commence any act constitutive of unlawful aggression or demonstrative of any imminent threat of attack.

Appellant's tale that he grappled with Romeo for the possession of the knife for almost 10 minutes is incredible. There were many persons present. It is highly unbelievable that not one of the many men present intervened or tried to pacify them. Moreover, not one of those who were present came forward to corroborate appellant's version of the incident.

Second. There was treachery in the killing of Romeo.

Article 248 of the Revised Penal Code (RPC) clearly provides:

ART. 248. *Murder*. — Any person who, not falling within the provisions of Article 246, shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances:

1. **With treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

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[9] *People v. Regalario*, G.R. No. 174483, March 31, 2009, 582 SCRA 738, 750-751, citing *People v. More*, 378 Phil. 1153, 1158-1159 (1999).

2. In consideration of a price, reward, or promise;

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;

5. With evident premeditation;

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.[10]

Treachery exists when an offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself, arising from the defense which the offended party might make.[11] The events narrated by the prosecution eyewitnesses point to the fact that Romeo could not have been aware that he would be attacked by appellant. There was no opportunity for him to defend himself, since appellant, suddenly and without provocation, stabbed the victim at the back as they were about to partake of their lunch. The essence of treachery is the unexpected and sudden attack on the victim which renders the latter unable and unprepared to defend himself by reason of the suddenness and severity of the attack. This criterion applies whether the attack is frontal or from behind.[12]

Appellant's argument that prosecution witnesses Conrado Andal, Jr. and Genorio Bacay testified against him because they were afraid of Romeo's family deserves scant consideration. No evidence was presented to show that the eyewitnesses had

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[10] Emphasis supplied.

[11] *People v. Perez*, G.R. No. 179154, July 31, 2009, 594 SCRA 701, 716.

[12] *People v. Alfon*, G.R. No. 126028, March 14, 2003, 399 SCRA 64, 73-74.

any motive to prevaricate and falsely point to appellant as the perpetrator of such heinous crime.

It is a doctrine well settled in our jurisprudence that when the credibility of a witness is in issue, the findings of fact of the trial court, its calibration of the testimonies of the witnesses, and its assessment of the probative weight thereof, as well as its conclusions anchored on said findings, are accorded high respect, if not conclusive effect. This is because the trial court has the unique opportunity to observe the demeanor of witnesses and is in the best position to discern whether they are telling the truth. It is worth stressing that the CA affirmed the RTC's findings, according credence and great weight to the testimonies of the prosecution's witnesses. In this regard, it is the rule that when the trial court's findings have been affirmed by the appellate court, said findings are generally conclusive and binding upon this Court.[13] We find no compelling reason to deviate from the uniform finding of both the RTC and the CA that indeed appellant is guilty beyond reasonable doubt of the crime of Murder.

We also agree with the RTC that appellant voluntarily surrendered. The appellant's conduct was spontaneous when he gave himself up to the authorities, thus saving the State the trouble and the expenses necessarily incurred in his search and capture.[14]

However, in accordance with current jurisprudence, we modify the award of damages, and apply *People of the Philippines v. Richard O. Sarcia*,[15] where we said:

> The principal consideration for the award of damages, under the ruling in *People v. Salome* and *People v. Quiachon* is the **penalty provided by law or imposable for the offense because of its heinousness, not** the public penalty **actually** imposed on the offender.

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[13] *People v. Beltran, Jr.*, G.R. No. 168051, September 27, 2006, 503 SCRA 715, 730.

[14] *People v. Callet*, 431 Phil. 622, 636 (2002).

[15] G.R. No. 169641, September 10, 2009.

Regarding the civil indemnity and moral damages, *People v. Salome* explained the basis for increasing the amount of said civil damages as follows:

> The Court, likewise, affirms the civil indemnity awarded by the Court of Appeals to Sally in accordance with the ruling in *People v. Sambrano* which states:
>
> "As to damages, we have held that **if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty,** the civil indemnity for the victim shall be **₱75,000.00** . . . Also, in rape cases, moral damages are awarded without the need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, the trial court's award of ₱50,000.00 as moral damages should also be increased to ₱75,000.00 pursuant to current jurisprudence on qualified rape."
>
> It should be noted that while the new law prohibits the *imposition* of the death penalty, **the penalty provided for by law for a heinous offense is still death and the offense is still heinous.** Consequently, the civil indemnity for the victim is still **Php75,000.00.**
>
> *People v. Quiachon* also rationcinates (sic) as follows:
>
> With respect to the award of damages, the appellate court, following prevailing jurisprudence, correctly awarded the following amounts: ₱75,000.00 as civil indemnity **which is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty**; ₱75,000.00 as moral damages because the victim is assumed to have suffered moral injuries, hence, entitling her to an award of moral damages even without proof thereof, x x x.
>
> **Even if** the penalty of death is not to be imposed on the appellant because of the prohibition in R.A. No. 9346, **the civil indemnity of ₱75,000.00 is still proper** because, following the rationcination (sic) in *People v. Victor,* **the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.** The Court declared that the award of ₱75,000.00 shows "**not only a reaction to the apathetic societal**

perception of the penal law and the financial fluctuations over time but also the expression of the displeasure of the court of the incidence of heinous crimes against chastity."

The litmus test therefore, in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually imposed is reduced to *reclusion perpetua*.

Thus, based on the foregoing disquisition, we increase the amount of damages awarded by the CA. The amount of ₱50,000.00 as civil indemnity and ₱50,000.00 as moral damages shall be increased to ₱75,000.00 respectively. Likewise, exemplary damages should also be imposed at ₱30,000.00.[16] Finally, in addition to the damages awarded, the appellant should also pay interest at the legal rate of 6% per annum from this date until full payment.[17]

In sum, appellant failed to show that the CA committed any reversible error in its assailed Decision which would warrant the reversal of the same.

WHEREFORE, the Court of Appeals Decision dated February 26, 2009 in CA-G.R. CR H.C. No. 02802 finding appellant Ryan Lalongisip *y* delos Angeles guilty beyond reasonable doubt of Murder and sentencing him to suffer the penalty of *reclusion perpetua* is *AFFIRMED* with the *MODIFICATION* that appellant is ordered to pay the heirs of Romeo Copo ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. Costs against appellant.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Perez,*[*] *JJ.*, concur.

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[16] *People v. Achas*, G.R. No. 185712, August 4, 2009, 595 SCRA 341, 355.

[17] *People of the Philippines v. Manuel Bagos*, G.R. No. 177152, January 6, 2010.

[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Special Order No. 842 dated June 3, 2010.

SECOND DIVISION

[A.C. No. 5736. June 18, 2010]

RURAL BANK OF CALAPE, INC. (RBCI) BOHOL, *complainant, vs.* **ATTY. JAMES BENEDICT FLORIDO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DUTIES OF A LAWYER. — The first and foremost duty of a lawyer is to maintain allegiance to the Republic of the Philippines, uphold the Constitution and obey the laws of the land. Likewise, it is the lawyer's duty to promote respect for the law and legal processes and to abstain from activities aimed at defiance of the law or lessening confidence in the legal system. Canon 19 of the Code provides that a lawyer shall represent his client with zeal within the bounds of the law. For this reason, Rule 15.07 of the Code requires a lawyer to impress upon his client compliance with the law and principles of fairness. A lawyer must employ only fair and honest means to attain the lawful objectives of his client. It is his duty to counsel his clients to use peaceful and lawful methods in seeking justice and refrain from doing an intentional wrong to their adversaries.

2. ID.; ID.; ID.; A LAWYER'S DUTY IS NOT TO HIS CLIENT BUT TO THE ADMINISTRATION OF JUSTICE; EXPLAINED. — We agree with Commissioner Villadolid, Jr.'s conclusion: Lawyers are indispensable instruments of justice and peace. Upon taking their professional oath, they become guardians of truth and the rule of law. Verily, when they appear before a tribunal, they act not merely as representatives of a party but, first and foremost, as officers of the court. Thus, their duty to protect their clients' interests is secondary to their obligation to assist in the speedy and efficient administration of justice. While they are obliged to present every available legal remedy or defense, their fidelity to their clients must always be made within the parameters of law and ethics, never at the expense of truth, the law, and the fair administration of justice. A lawyer's

> duty is not to his client but to the administration of justice. To that end, his client's success is wholly subordinate. His conduct ought to and must always be scrupulously observant of the law and ethics. Any means, not honorable, fair and honest which is resorted to by the lawyer, even in the pursuit of his devotion to his client's cause, is condemnable and unethical.

APPEARANCES OF COUNSEL

Trabajo Lim Law Office for complainant.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a complaint for disbarment filed by the members of the Board of Directors[1] of the Rural Bank of Calape, Inc. (RBCI) Bohol against respondent Atty. James Benedict Florido (respondent) for "acts constituting grave coercion and threats when he, as counsel for the minority stockholders of RBCI, led his clients in physically taking over the management and operation of the bank through force, violence and intimidation."

The Facts

On 18 April 2002, RBCI filed a complaint for disbarment against respondent.[2] RBCI alleged that respondent violated his oath and the Code of Professional Responsibility (Code).

According to RBCI, on 1 April 2002, respondent and his clients, Dr. Domeciano Nazareno, Dr. Remedios Relampagos, Dr. Manuel Relampagos, and Felix Rengel (Nazareno-Relampagos group), through force and intimidation, with the use of armed men, forcibly took over the management and the premises of RBCI. They also forcibly evicted Cirilo A. Garay

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[1] The complaint was signed by the following members: Lilia G. Dumadag, Mark Joel Go, Michael Jeffrey Go and Rosalina N. Go.

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

(Garay), the bank manager, destroyed the bank's vault, and installed their own staff to run the bank.

In his comment, respondent denied RBCI's allegations. Respondent explained that he acted in accordance with the authority granted upon him by the Nazareno-Relampagos group, the lawfully and validly elected Board of Directors of RBCI. Respondent said he was merely effecting a lawful and valid change of management. Respondent alleged that a termination notice was sent to Garay but he refused to comply. On 1 April 2002, to ensure a smooth transition of managerial operations, respondent and the Nazareno-Relampagos group went to the bank to ask Garay to step down. However, Garay reacted violently and grappled with the security guard's long firearm. Respondent then directed the security guards to prevent entry into the bank premises of individuals who had no transaction with the bank. Respondent, through the orders of the Nazareno-Relampagos group, also changed the locks of the bank's vault.

Respondent added that the criminal complaint for malicious mischief filed against him by RBCI was already dismissed; while the complaint for grave coercion was ordered suspended because of the existence of a prejudicial question. Respondent said that the disbarment complaint was filed against him in retaliation for the administrative cases he filed against RBCI's counsel and the trial court judges of Bohol.

Moreover, respondent claimed that RBCI failed to present any evidence to prove their allegations. Respondent added that the affidavits attached to the complaint were never identified, affirmed, or confirmed by the affiants and that none of the documentary exhibits were originals or certified true copies.

The Ruling of the IBP

On 28 September 2005, IBP Commissioner Leland R. Villadolid, Jr. (Commissioner Villadolid, Jr.) submitted his report and declared that respondent failed to live up to the exacting standards expected of him as vanguard of law and justice.[3]

[3] *Id.* at 273-286.

Commissioner Villadolid, Jr. recommended the imposition on respondent of a penalty of suspension from the practice of law for six months to one year with a warning that the repetition of similar conduct in the future will warrant a more severe penalty.

According to Commissioner Villadolid, Jr., respondent knew or ought to have known that his clients could not just forcibly take over the management and premises of RBCI without a valid court order. Commissioner Villadolid, Jr. noted that the right to manage and gain majority control over RBCI was one of the issues pending before the trial court in Civil Case No. 6628. Commissioner Villadolid, Jr. said that respondent had no legal basis to implement the take over of RBCI and that it was a "naked power grab without any semblance of legality whatsoever."

Commissioner Villadolid, Jr. added that the administrative complaint against respondent before the IBP is independent of the dismissal and suspension of the criminal cases against respondent. Commissioner Villadolid, Jr. also noted that RBCI complied with the IBP Rules of Procedure when they filed a verified complaint and submitted duly notarized affidavits. Moreover, both RBCI and respondent agreed to dispense with the mandatory conference hearing and, instead, simultaneously submit their position papers.

On 20 March 2006, the IBP Board of Governors issued Resolution No. XVII-2006-120 which declared that respondent dismally failed to live up to the exacting standards of the law profession and suspended respondent from the practice of law for one year with a warning that repetition of similar conduct will warrant a more severe penalty.[4]

On 5 July 2006, respondent filed a motion for reconsideration. In its 11 December 2008 Resolution, the IBP denied respondent's motion.[5]

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[4] *Id.* at 272.

[5] *Id.* at 354-355.

The Ruling of the Court

We affirm the IBP Board of Governors' resolution.

The first and foremost duty of a lawyer is to maintain allegiance to the Republic of the Philippines, uphold the Constitution and obey the laws of the land.[6] Likewise, it is the lawyer's duty to promote respect for the law and legal processes and to abstain from activities aimed at defiance of the law or lessening confidence in the legal system.[7]

Canon 19 of the Code provides that a lawyer shall represent his client with zeal within the bounds of the law. For this reason, Rule 15.07 of the Code requires a lawyer to impress upon his client compliance with the law and principles of fairness. A lawyer must employ only fair and honest means to attain the lawful objectives of his client.[8] It is his duty to counsel his clients to use peaceful and lawful methods in seeking justice and refrain from doing an intentional wrong to their adversaries.[9]

We agree with Commissioner Villadolid, Jr.'s conclusion:

> Lawyers are indispensable instruments of justice and peace. Upon taking their professional oath, they become guardians of truth and the rule of law. Verily, when they appear before a tribunal, they act not merely as representatives of a party but, first and foremost, as officers of the court. Thus, their duty to protect their clients' interests is secondary to their obligation to assist in the speedy and efficient administration of justice. While they are obliged to present every available legal remedy or defense, their fidelity to their clients must always be made within the parameters of law and ethics, never at the expense of truth, the law, and the fair administration of justice.[10]

A lawyer's duty is not to his client but to the administration of justice. To that end, his client's success is wholly subordinate.

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[6] Canon 1, Code of Professional Responsibility.

[7] Rule 1.02, Code of Professional Responsibility.

[8] Rule 19.01, Code of Professional Responsibility.

[9] Ernesto Pineda, *LEGAL AND JUDICIAL ETHICS*, 211 (1999).

[10] *Rollo*, p. 285.

His conduct ought to and must always be scrupulously observant of the law and ethics.[11] Any means, not honorable, fair and honest which is resorted to by the lawyer, even in the pursuit of his devotion to his client's cause, is condemnable and unethical.[12]

WHEREFORE, we find respondent Atty. James Benedict Florido *GUILTY* of violating Canon 19 and Rules 1.02 and 15.07 of the Code of Professional Responsibility. Accordingly, we *SUSPEND* respondent from the practice of law for one year effective upon finality of this Decision.

Let copies of this decision be furnished the Office of the Bar Confidant, to be appended to respondent's personal record as attorney. Likewise, copies shall be furnished to the Integrated Bar of the Philippines and in all courts in the country for their information and guidance.

SO ORDERED.

Nachura, Peralta, Abad, and *Perez,*[*] *JJ.,* concur.

SECOND DIVISION

[A.M. No. P-07-2410. June 18, 2010]

MARIE DINAH TOLENTINO-FUENTES, *complainant, vs.* **MICHAEL PATRICK A. GALINDEZ, Process Server, Regional Trial Court, Branch 33, Davao City,** *respondent.*

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[11] *Maglasang v. People*, G.R. No. 90083, 4 October 1990, 190 SCRA 306.

[12] Ernesto Pineda, *LEGAL AND JUDICIAL ETHICS*, 244 (1999).

[*] Designated additional member per Special Order No. 842.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; PROCESS SERVER; DUTIES. — As a process server, Galindez has the duty to ensure that court notices are properly served to the parties. In *Atty. Dajao v. Lluch*, the Court held that: The duty of a process server is vital to the machinery of the justice system. His primary duty is "to serve court notices" which precisely requires utmost care on his part by seeing to it that all notices assigned to him are duly served upon the parties. Thus, respondent should have carefully examined each of the "voluminous notices" assigned to him, scanning and reading every page to ensure that every notice to the party concerned will be served properly.

2. ID.; ID.; ID.; ID.; ID.; ID.; HAVING A HEAVY WORKLOAD IS NOT A COMPELLING REASON TO JUSTIFY FAILURE TO PERFORM ONE'S DUTIES PROPERLY. — Galindez' excuses for his failure to serve court notices properly are weak and unpersuasive. In *Seangio v. Parce*, the Court held that having a heavy workload is not a compelling reason to justify failure to perform one's duties properly. "Otherwise, every government employee charged with negligence and dereliction of duty [would] always proffer a similar excuse to escape punishment, to the great prejudice of public service". And in *Rodrigo-Ebron v. Adolfo*, the Court held that financial difficulty is solely the employee's problem and the court should not be burdened by it.

3. ID.; ID.; ID.; ID.; ID.; SIMPLE NEGLECT OF DUTY; FAILURE TO SERVE COURT NOTICES PROPERLY; A CASE OF. — In *Collado-Lacorte v. Rabena, Labis, Jr. v. Estañol, Reyes v. Pablico*, and several other cases, the Court found process servers liable for simple neglect of duty for failure to serve court notices properly. Simple neglect of duty is failure to give proper attention to a required task. It signifies disregard of duty due to carelessness or indifference.

4. ID.; ID.; REVISED UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; LESS GRAVE OFFENSES; SIMPLE NEGLECT OF DUTY; PENALTY. — xxx Section 52(B)(1) of the Revised Uniform Rules on Administrative Cases in the Civil Service classifies simple neglect of duty as

a less grave offense punishable by one month and one day to six months suspension for the first offense. Section 54 states that the medium period of the penalty shall be imposed when there are no mitigating and aggravating circumstances.

R E S O L U T I O N

CARPIO, *J.*:

This case involves a complaint for simple neglect of duty filed by Atty. Marie Dinah S. Tolentino-Fuentes (Atty. Tolentino-Fuentes) against Michael Patrick A. Galindez (Galindez), process server, Regional Trial Court (RTC), Branch 33, Davao City.

Atty. Tolentino-Fuentes and her law office had several cases pending before the RTC. Galindez is the RTC's process server.

Criminal Case No. 55248-04

A hearing for the case was set on 29 March 2005. In a notice[1] dated 15 March 2005, the RTC canceled the 29 March 2005 hearing. The RTC released the 15 March 2005 notice on 18 March 2005. However, Atty. Tolentino-Fuentes received a copy of the 15 March 2005 notice only on 4 April 2005. Consequently, Atty. Tolentino-Fuentes and her client attended the 29 March 2005 hearing, incurred expenses, and had their time wasted.

The RTC issued an open court order[2] dated 21 February 2006, canceling the hearings set on 6 and 14 March 2006. Atty. Tolentino-Fuentes was unable to attend the 21 February 2006 hearing. Galindez received a copy of the 21 February 2006 order on 7 March 2006. However, Atty. Tolentino-Fuentes received a copy of the 21 February 2006 order only on 29 March 2006. Consequently, Atty. Tolentino-Fuentes and her client attended the 6 March 2006 hearing, incurred expenses, and had their time wasted.

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[1] *Rollo,* p. 40.

[2] *Id.* at 5.

Civil Case No. 31148-2005

In an order[3] dated 8 November 2005, the RTC set the preliminary hearing on 18 November 2005. Atty. Tolentino-Fuentes' client received a copy of the 8 November 2005 order only on 7 December 2005. The envelope[4] containing the order was postmarked 5 December 2005.

In an order[5] dated 18 November 2005, the RTC set the formal offer of exhibits in evidence on 28 November 2005. Atty. Tolentino-Fuentes' client received a copy of the 18 November 2005 order only on 7 December 2005. The envelope[6] containing the order was postmarked 5 December 2005.

Because of the late receipt of the orders, Atty. Tolentino-Fuentes' client was unable to participate in the presentation of evidence and cross-examination of witness. As a result, he had to file with the RTC a motion[7] for reconsideration of the 18 November 2005 order for lack of due process.

Civil Case No. 22989-94

A hearing was set on 28 March 2006. In a notice[8] dated 10 March 2006, the RTC canceled the 28 March 2006 hearing. Galindez received a copy of the 10 March 2006 notice on 17 March 2006. However, Atty. Tolentino-Fuentes received a copy of the 10 March 2006 notice only on 29 March 2006. Consequently, Atty. Tolentino-Fuentes and her witness attended the 29 March 2006 hearing, incurred expenses, and wasted their time.

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3 *Id.* at 11.

4 *Id.* at 12.

5 *Id.* at 13.

6 *Id.* at 13.

7 *Id.* at 14-15.

8 *Id.* at 8.

Civil Case No. 29418-2002

A hearing was set on 29 March 2006. In a notice[9] dated 14 March 2006, the RTC canceled the 29 March 2006 hearing. Atty. Tolentino-Fuentes received a copy of the 14 March 2006 notice only on 29 March 2006.

Atty. Tolentino-Fuentes filed with the Office of the Court Administrator (OCA) an affidavit-complaint[10] dated 30 March 2006, charging Galindez with simple neglect of duty. In its 1st Indorsement[11] dated 24 April 2006, the OCA directed Galindez to comment on the affidavit-complaint.

In motions dated 8 May,[12] 10 June,[13] 3 July,[14] 22 July,[15] and 5 August[16] 2006, Galindez prayed for extension of time to file his comment. In his comment[17] dated 22 August 2006, Galindez admitted Atty. Tolentino-Fuentes' accusations and gave as excuses that (1) he had a heavy workload, (2) the RTC had no vehicle, and (3) he was poor.

In its report[18] dated 18 October 2007, the OCA found Galindez guilty of inefficiency and incompetence in the performance of official duties and recommended that he be suspended for six months and one day. In a Resolution[19] dated 5 December 2007, the Court re-docketed the affidavit-complaint as a regular administrative matter. In their manifestations dated 16 January[20]

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[9] *Id.* at 9.

[10] *Id.* at 2-3.

[11] *Id.* at 18.

[12] *Id.* at 19.

[13] *Id.* at 21-23.

[14] *Id.* at 26-28.

[15] *Id.* at 32-34.

[16] *Id.* at 37-39.

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

[18] *Id.* at 127-129.

[19] *Id.* at 130.

[20] *Id.* at 133.

and 18 June[21] 2009, Atty. Tolentino-Fuentes and Galindez, respectively, submitted the case for resolution based on the pleadings filed.

The Court finds Galindez liable for simple neglect of duty.

As a process server, Galindez has the duty to ensure that court notices are properly served to the parties. In *Atty. Dajao v. Lluch*,[22] the Court held that:

> The duty of a process server is vital to the machinery of the justice system. His primary duty is "to serve court notices" which precisely requires utmost care on his part by seeing to it that all notices assigned to him are duly served upon the parties. Thus, respondent should have carefully examined each of the "voluminous notices" assigned to him, scanning and reading every page to ensure that every notice to the party concerned will be served properly.[23]

In the present case, Galindez failed to serve court notices properly: (1) Atty. Tolentino-Fuentes received a copy of the 15 March 2005 notice canceling the 29 March 2005 hearing only on 4 April 2005; (2) Atty. Tolentino-Fuentes received a copy of the 21 February 2006 order canceling the 6 and 14 March 2006 hearings only on 29 March 2006; (3) Atty. Tolentino's client received a copy of the 8 November 2005 order setting the preliminary hearing on 18 November 2005 only on 7 December 2005; (4) Atty. Tolentino's client received a copy of the 18 November 2005 order setting the formal offer of exhibits in evidence on 28 November 2005 only on 7 December 2005; (5) Atty. Tolentino-Fuentes received a copy of the 10 March 2006 notice canceling the 28 March 2006 hearing only on 29 March 2006; and (6) Atty. Tolentino-Fuentes received a copy of the 14 March 2006 notice canceling the 29 March 2006 hearing only on 29 March 2006. Because of Galindez' failure to serve court notices properly, Atty. Tolentino-Fuentes and her client incurred unnecessary expenses and had their time wasted. Also, Atty. Tolentino-Fuentes' other client was

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[21] *Id.* at 137.

[22] 429 Phil. 620 (2002).

[23] *Id.* at 624-625.

unable to participate in the presentation of evidence and cross-examination of witness.

Galindez' excuses for his failure to serve court notices properly are weak and unpersuasive. In *Seangio v. Parce*,[24] the Court held that having a heavy workload is not a compelling reason to justify failure to perform one's duties properly. "Otherwise, every government employee charged with negligence and dereliction of duty [would] always proffer a similar excuse to escape punishment, to the great prejudice of public service."[25] And in *Rodrigo-Ebron v. Adolfo*,[26] the Court held that financial difficulty is solely the employee's problem and the court should not be burdened by it.

In *Collado-Lacorte v. Rabena*,[27] *Labis, Jr. v. Estañol*,[28] *Reyes v. Pablico*,[29] and several other cases, the Court found process servers liable for simple neglect of duty for failure to serve court notices properly. Simple neglect of duty is failure to give proper attention to a required task. It signifies disregard of duty due to carelessness or indifference.[30] Section 52(B)(1) of the Revised Uniform Rules on Administrative Cases in the Civil Service[31] classifies simple neglect of duty as a less grave offense punishable by one month and one day to six months suspension for the first offense. Section 54 states that the medium period of the penalty shall be imposed when there are no mitigating and aggravating circumstances.

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[24] A.M. No. P-06-2252, 9 July 2007, 527 SCRA 24, 35.

[25] *Id*.

[26] A.M. No. P-06-2231, 27 April 2007, 522 SCRA 286, 292.

[27] A.M. No. P-09-2665, 4 August 2009, 595 SCRA 15.

[28] A.M. No. P-07-2405, 27 February 2008, 547 SCRA 11.

[29] A.M. No. P-06-2109, 27 November 2006, 508 SCRA 146.

[30] *Atty. Dajao v. Lluch*, *supra* note 22 at 626.

[31] Promulgated by the Civil Service Commission through Resolution No. 99-1936 dated 31 August 1999 and implemented by CSC Memorandum Circular No. 19, Series of 1999.

WHEREFORE, the Court finds Michael Patrick A. Galindez, Process Server, Regional Trial Court, Branch 33, Davao City, *GUILTY* of simple neglect of duty. Accordingly, the Court *SUSPENDS* him from office for three (3) months without pay and *STERNLY WARNS* him that a repetition of the same or similar acts shall be dealt with more severely.

SO ORDERED.

Nachura, Leonardo-de Castro,[*] *Peralta,* and *Abad, JJ.,* concur.

SECOND DIVISION

[A.M. No. RTJ-08-2145. June 18, 2010]

JUDGE MONA LISA T. TABORA, Presiding Judge, Regional Trial Court, San Fernando City, La Union, Branch 26, *complainant, vs.* **(Ret.) JUDGE ANTONIO A. CARBONELL, former Presiding Judge, Regional Trial Court, San Fernando City, La Union, Branch 27,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; JUDGES; NEW CODE OF JUDICIAL CONDUCT; SECTION 2, CANON 3 THEREOF, VIOLATED IN CASE AT BAR.— Clearly, Judge Carbonell fell short of the exacting standards set in Section 2, Canon 3 of the New Code of Judicial Conduct which states: CANON 3 IMPARTIALITY Impartiality is essential to the proper discharge of the judicial office. **It applies not only to the decision itself but also to the process by which the decision is made.**

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[*] Designated additional member per Raffle dated 6 January 2010.

x x x SEC. 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary. Lower court judges play a pivotal role in the promotion of the people's faith in the judiciary. They are front-liners who give human face to the judicial branch at the grassroots level in their interaction with litigants and those who do business with the courts. Thus, the admonition that judges must avoid not only impropriety but also the appearance of impropriety is more sternly applied to them. As correctly observed by the OCA, Judge Carbonell should have sought the conformity of Judge Tabora in rendering his own decision to the case as a matter of judicial courtesy and respect. Judge Carbonell tried justifying his act by reasoning that the act of filing a decision with the clerk of court already constituted a rendition of judgment or promulgation. We find this explanation unsatisfactory. Judge Carbonell had no authority to render a decision on the subject civil case. As clearly laid down in Circular No. 19-98, the pairing judge shall take cognizance of all cases until the assumption to duty of the regular judge. Since Judge Tabora was already present and performing her functions in court, it was improper for Judge Carbonell to have rendered a decision in Civil Case No. 6840 without the approval of the regular presiding judge.

2. ID.; ID.; ID.; ID.; SIMPLE MISCONDUCT, A CASE OF; DEFINED; PENALTY.— For violating Section 2, Canon 3 of the New Code of Judicial Conduct, we find Judge Carbonell guilty of simple misconduct. Simple misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers. We adhere to the OCA's recommendation of a fine of ₱10,000.00 to be deducted from Judge Carbonell's retirement benefits which have been withheld pursuant to the Court's Resolution dated 24 September 2008, which granted the payment of his disability retirement benefits subject to the withholding of ₱200,000.00 pending final resolution of the administrative cases against him.

D E C I S I O N

CARPIO, *J.*:

The Case

This administrative case arose from an Affidavit-Complaint dated 17 October 2006 filed by Caridad S. Tabisula (Tabisula) against Judge Mona Lisa T. Tabora (Judge Tabora), Presiding Judge, Regional Trial Court (RTC), San Fernando City, La Union, Branch 26, and Alfredo V. Lacsamana, Jr. (Lacsamana), Officer-in-Charge, Branch Clerk of Court (OIC-BCOC) of the same court. Tabisula charged Judge Tabora with (1) violation of Section 3(e)[1] of Republic Act No. 3019[2] (RA 3019) or the Anti-Graft and Corrupt Practices Act; (2) violation of Section 1, Canon 3[3] and Section 2, Canon 5[4] of A.M. No. 03-05-01-SC[5]

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[1] Sec. 3. *Corrupt practices of public officers.* – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[2] Took effect on 17 August 1960.

[3] CANON 3 IMPARTIALITY – Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Section 1. Judges shall perform their judicial duties without favor, bias or prejudice.

[4] CANON 5 EQUALITY – Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

x x x

Section 2. Judges shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

[5] Took effect on 1 June 2004.

or the New Code of Judicial Conduct; (3) violation of Republic Act No. 6713[6] (RA 6713) or the Code of Conduct and Ethical Standards for Public Officials and Employees; and (4) gross ignorance of the law, grave abuse of authority, oppression, serious neglect of duty and conduct prejudicial to the best interest of the service. Further, Tabisula charged Lacsamana with (1) violation of Sections 3(e)[7] and (f)[8] of RA 3019; (2) violation of Articles 226[9] and 315(3)(c)[10] of Act No. 3815[11] or the Revised

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[6] An Act Establishing a Code of Conduct and Ethical Standards for Public Officials and Employees, to Uphold the Time-Honored Principle of Public Office Being a Public Trust, Granting Incentives and Rewards for Exemplary Service, Enumerating Prohibited Acts and Transactions and Providing Penalties for Violations Thereof and For Other Purposes. Approved on 20 February 1989.

[7] *Supra* note 1.

[8] (f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

[9] ART. 226. *Removal, concealment or destruction of documents.* – Any public officer who shall remove, destroy or conceal documents or papers officially entrusted to him, shall suffer:

1. The penalty of *prision mayor* and a fine not exceeding 1,000 pesos, whenever serious damage shall have been caused thereby to a third party or to the public interest.

2. The penalty of *prision correccional* in its minimum and medium period and a fine not exceeding 1,000 pesos, whenever the damage caused to a third party or to the public interests shall not have been serious.

In either case, the additional penalty of temporary special disqualification in its maximum period to perpetual special disqualification shall be imposed.

[10] ART. 315. *Swindling (estafa).* – Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

xxx

3. Through any of the following fraudulent means:

xxx

(c) By removing, concealing, or destroying, in whole or in part, any court record, office files, document, or any other papers.

[11] Took effect on 1 January 1932.

Penal Code; and (3) violation of Sections 5(a),[12] (d),[13] and (e)[14] of RA 6713.

The Facts

In her Affidavit-Complaint dated 17 October 2006 submitted to the Office of the Court Administrator (OCA), Tabisula stated that she was the plaintiff in Civil Case No. 6840 entitled "*Caridad S. Tabisula v. Rang-ay Rural Bank, Inc*." for specific performance with accounting and damages. This case was raffled to the RTC of San Fernando City, La Union, Branch 26 presided by Judge Tabora. Tabisula narrated that due to the prolonged absence of Judge Tabora caused by a serious illness, Judge Antonio A. Carbonell (Judge Carbonell), now retired but then pairing/vice-executive judge of the RTC of San Fernando City, La Union, Branch 27, took over and heard the case from the beginning up to its termination.

Later, Tabisula found out that a decision had already been rendered by Judge Carbonell so she requested from Lacsamana a copy of the decision. However, despite several requests, Lacsamana allegedly refused to furnish Tabisula with a copy of the decision upon the instruction of Judge Tabora, who at that time had already reported back to work. Tabisula sent a

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[12] Section 5. *Duties of Public Officials and Employees.* — In the performance of their duties, all public officials and employees are under obligation to:

(a) Act promptly on letters and requests. — All public officials and employees shall, within fifteen (15) working days from receipt thereof, respond to letters, telegrams or other means of communications sent by the public. The reply must contain the action taken on the request.

[13] (d) Act immediately on the public's personal transactions. — All public officials and employees must attend to anyone who wants to avail himself of the services of their offices and must, at all times, act promptly and expeditiously.

[14] (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.

Letter-Request dated 24 August 2006 addressed to the RTC asking Judge Tabora to direct Lacsamana to give a copy of the decision rendered by Judge Carbonell. However, instead of granting the request, Judge Tabora issued an Order dated 30 August 2006, informing Tabisula that an Order dated 8 August 2006 was issued by the RTC requiring the parties to submit their respective memorandum within 15 days from receipt of the Order. Also, Judge Tabora informed Tabisula that even if the pairing judge was the one who heard the case from beginning to end, the prerogative of rendering the decision still rests entirely on the presiding judge.

On 18 September 2006, Judge Tabora rendered a decision in the case adverse to Tabisula. Tabisula then wrote a Letter dated 2 October 2006 to Judge Carbonell requesting for a copy of his decision. On 9 October 2006, Judge Carbonell replied to Tabisula's letter and attached a copy of his decision which favored Tabisula.

Tabisula then filed this case against Judge Tabora for maliciously and deliberately changing, altering and reversing a validly rendered decision of a court of equal and concurrent jurisdiction. Tabisula added that this has caused her undue injury since the defendant in Civil Case No. 6840, Rang-Ay Rural Bank Inc., represented by its President, Ives Q. Nisce, was allegedly a relative of Judge Tabora's husband.

Tabisula also charged Lacsamana for alleged manifest partiality, evident bad faith, and gross inexcusable negligence for refusing to furnish a copy of the decision rendered by Judge Carbonell despite several verbal and written demands.

In an undated Comment submitted to the OCA, Lacsamana clarified that his official designation is Sheriff IV and he was only designated as OIC-BCOC by Judge Tabora on 1 August 2006. Lacsamana explained that Judge Carbonell handed him a copy of his decision in Civil Case No. 6840 on 11 August 2006. However, that day being a Friday, Lacsamana was able to submit the decision to Judge Tabora only on the next working day, 14 August 2006. Judge Tabora informed him to just leave

a copy of the decision at her table. From then on, Lacsamana had no more knowledge of what happened to the decision.

Lacsamana added that he was the one who received Tabisula's Letter dated 24 August 2006 addressed to Judge Tabora. Lacsamana reasoned that he was not the person in charge of releasing decisions, orders, and other documents relative to a pending case and it was not within his functions to release a decision without the presiding judge's authority.

Judge Tabora then filed her Comment dated 26 February 2007 with the OCA. Judge Tabora indicated that she underwent surgery on 15 May 2006 and was later diagnosed with a serious illness. Prior to her surgery, she conducted a hearing in Civil Case No. 6840 on 21 April 2006. However, the same had been reset due to the absence of Tabisula's counsel.

On 18 May 2006, Tabisula filed a Motion for the pairing judge to hear Civil Case No. 6840 on the basis of Judge Tabora's absence. On 26 May 2006, while Judge Tabora was on leave, Judge Carbonell proceeded to hear the testimony of the lone witness for the defendant in the case without first issuing an order granting the motion filed by Tabisula.

On 13 June 2006, Judge Tabora reported back to work. However, on 19 June 2006, Judge Carbonell still acted on the formal offer of evidence by the defendants and issued an Order submitting the case for resolution.

On 8 August 2006, in the course of her inventory of court records, Judge Tabora noticed that Civil Case No. 6840 had been submitted for decision on 19 June 2006 by Judge Carbonell. Since the 90-day period for rendering a decision was soon to expire, she immediately issued an Order dated 8 August 2006 directing the parties to submit their respective memorandum.

Three days later, on 11 August 2006, Judge Carbonell issued in Civil Case No. 6840 a decision which was received by Lacsamana. On 14 August 2006, Lacsamana turned over a copy of the decision to Judge Tabora.

After receipt of the decision, Judge Tabora immediately went to Judge Carbonell and informed him that she issued an Order dated 8 August 2006 requiring the parties to submit their respective memorandum. Judge Carbonell immediately cut her off and told her to just recall her earlier order.

Judge Tabora then carefully studied the entire records of the case and found out that Judge Carbonell's decision was not in accordance with the facts of the case and the applicable law and appeared to have unjustly favored Tabisula.

Judge Tabora also wondered how Tabisula came to know of the unpromulgated decision of Judge Carbonell. Judge Carbonell's decision was never officially released to any of the parties and did not form part of the records of the case.

Judge Tabora pointed out that it was Judge Carbonell who directly furnished Tabisula with a copy of his decision a month after the decision of Judge Tabora had already been released to the parties. Also, Tabisula's insistence for the release of Judge Carbonell's decision made her determined to exercise her judicial independence since such decision would result in a miscarriage of justice.

Judge Tabora also clarified that the defendant in Civil Case No. 6840 was a bank, a corporate entity with a distinct personality. She was not disqualified from sitting in the case since under Section 1, Rule 137[15] of the Rules of Court her husband's relation with the bank's representative was remote

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[15] SECTION 1. *Disqualification of judges*. – No judge or judicial officer shall sit in any case in which he, or his wife or child, is pecuniarily interested as heir, legatee, creditor or otherwise, or in which **he is related to either party within the sixth degree of consanguinity or affinity**, or to counsel within the fourth degree, computed according to the rules of the civil law, or in which he has been an executor, administrator, guardian, trustee or counsel, or in which he has presided in any inferior court when his ruling or decision is the subject of review, without the written consent of all parties in interest, signed by them and entered upon the record.

A judge may in the exercise of his sound discretion, disqualify himself from sitting in a case, for just or valid reasons other than those mentioned above. (Emphasis supplied)

or way beyond the 6th degree. Thus, the relationship has absolutely no bearing on the outcome of the case. Judge Tabora prayed that the complaint be dismissed for lack of merit.

On 14 August 2007, the OCA submitted its Report finding no sufficient and factual legal basis to hold Judge Tabora and Lacsamana liable for any of the charges filed by Tabisula. The OCA stated that Judge Tabora, in rendering her own decision in Civil Case No. 6840, was well within her power to decide the case since she had full authority over all cases pending in her official station. As for Lacsamana, the OCA found that he could not be faulted for his failure to comply with Tabisula's request since he was only obeying the lawful order of Judge Tabora, his superior. Also, Judge Carbonell's decision in Civil Case No. 6840 was not even promulgated and did not form part of the official records of the case. Thus, there was no "prior existing valid decision."

The OCA also found that there is a need to scrutinize the actuations of Judge Carbonell since he overstepped the bounds of his authority as pairing judge for Branch 26 and has shown unusual interest in the disposition of Civil Case No. 6840.

The OCA recommended that:

(1) that the instant complaint be DISMISSED as against respondents Judge Mona Lisa T. Tabora and OIC Branch Clerk of Court Alfredo V. Lacsamana for lack of merit;

(2) that the COMMENT of respondent Judge be considered as a complaint against Judge Antonio A. Carbonell, and that Judge Carbonell be furnished with a copy of such comment and, be in turn REQUIRED to COMMENT thereon.

In a Resolution dated 1 October 2007, the Court resolved to (1) dismiss the administrative complaint against Judge Tabora and Lacsamana for lack of merit; and (2) consider the Comment dated 26 February 2007 of Judge Tabora as a complaint against Judge Carbonell and require Judge Carbonell to file his Comment within 10 days from notice.

In his Comment dated 29 October 2007, Judge Carbonell admitted the facts of the case as stated by Judge Tabora in her Comment dated 26 February 2007 from the time he took over Civil Case No. 6840 until he submitted his decision to OIC-BCOC Lacsamana. However, he disagreed with Judge Tabora's contention that the decision he rendered in Civil Case No. 6840 was not validly promulgated and released to the parties. Judge Carbonell maintained that the act of filing the decision with the clerk of court already constituted a rendition of judgment or promulgation and not its pronouncement in open court or release to the parties.

Judge Carbonell added that he was not aware of what subsequently transpired after he turned over the records of the case but admitted that after receipt of the letter-request of Tabisula asking for a copy of his decision, he immediately responded by furnishing Tabisula with a copy.

Judge Carbonell further stated that the instant administrative matter does not involve him. The dispute was originally between Tabisula against Judge Tabora and Lacsamana. The only issue between him and Judge Tabora was a divergence of legal opinion.

Thereafter, Tabisula filed a Motion for Reconsideration dated 27 November 2007 on the Court's Resolution dated 1 October 2007. Tabisula stated that the Court erred in dismissing the complaint she filed against Judge Tabora and Lacsamana.

In a Letter dated 5 March 2008, Lacsamana and seven other employees of the RTC of San Fernando City, La Union, Branch 26, wrote the OCA and narrated their negative experience toward a co-employee, Olympia Elena O. Dacanay-Queddeng (Queddeng), Legal Researcher II of the same court. In the same letter, they also gave their support in an unrelated administrative complaint filed by Judge Tabora against Queddeng.

In a Resolution dated 25 June 2008, the Court referred the case to the OCA for evaluation, report and recommendation.

The OCA's Report and Recommendation

18 September 2008, the OCA submitted its Report finding Judge Carbonell guilty of simple misconduct for violating Section 2, Canon 3 of the New Code of Judicial Conduct. The OCA reiterated that Judge Carbonell overstepped the bounds of his authority as pairing judge of Branch 26 when he prepared the decision in Civil Case No. 6840 and furnished Tabisula with a copy of such decision. As a result, Judge Carbonell created the impression that he had taken a special interest in the case.

The OCA recommended that:

(1) the Motion for Reconsideration dated November 27, 2007 of Mrs. Caridad S. Tabisula on the Resolution dated October 1, 2007, be DENIED for lack of merit;

(2) this case be RE-DOCKETED as a regular administrative matter and Judge Antonio A. Carbonell be FINED in the amount of Ten Thousand Pesos (₱10,000.00) to be deducted from the retirement benefits that he may receive; and

(3) the Letter dated March 5, 2008 of Alfredo Lacsamana, Jr., Court Sheriff, and seven (7) other employees of RTC, Branch 26, San Fernando City, La Union, against Mrs. Olympia Dacanay-Queddeng, Legal Researcher, same court, be DETACHED from the records of this administrative matter and the same be included in A.M. No. P-07-2371 (*Office of the Court Administrator vs. Ms. Olympia Elena D. Queddeng, Court Legal Researcher II, RTC, Branch 26, San Fernando, La Union*).

The Court's Ruling

The Court finds the report of the OCA well-taken.

The authority of a pairing judge to take cognizance of matters of another branch in case the presiding judge is absent can be found in two circulars issued by the Court: (1) Circular No. 7[16]

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[16] CIRCULAR NO. 7

TO: ALL DISTRICT JUDGES OF THE COURTS OF FIRST INSTANCE

x x x

VIII. PAIRING SYSTEM

effective 23 September 1974 and (2) Circular No. 19-98[17] effective 18 February 1998.

Judge Carbonell, as the pairing judge of the RTC of San Fernando City, La Union, Branch 26, assumed cognizance of Civil Case No. 6840 upon Judge Tabora's leave of absence in May 2006 due to a serious illness. Judge Carbonell fulfilled his duties by conducting hearings in the said case from May until June 2006. On 13 June 2006, Judge Tabora reported back to work as presiding judge of Branch 26. However, even though Judge Carbonell knew that Judge Tabora had already re-assumed her duties, he still issued an Order submitting the case for resolution on 19 June 2006 and even submitted a written decision to OIC-BCOC Lacsamana on 11 August 2006.

Clearly, Judge Carbonell fell short of the exacting standards set in Section 2, Canon 3[18] of the New Code of Judicial Conduct which states:

A pairing system shall be established whereby every branch shall be considered as paired with another branch. In the event of vacancy in any branch, or of the absence or disability of the judge thereof, all incidental or interlocutory matters pertaining to it may be acted upon by the judge of the other branch paired with it. xxx

[17] CIRCULAR NO. 19-98

TO: ALL JUDGES OF THE REGIONAL TRIAL COURTS, METROPOLITAN TRIAL COURTS, MUNICIPAL TRIAL COURTS IN CITIES, MUNICIPAL TRIAL COURTS AND MUNICIPAL CIRCUIT TRIAL COURTS

SUBJECT: EXPANDED AUTHORITY OF PAIRING COURTS

In the interest of efficient administration of justice, the authority of the pairing judge under Circular No. 7 dated September 23, 1974, [Pairing System for Multiple-Sala Stations] to act on incidental or interlocutory matters and those urgent matters requiring immediate action on cases pertaining to the paired court, shall henceforth be expanded to include all other matters. Thus, whenever a vacancy occurs by reason of resignation, dismissal, suspension, retirement, death, or prolonged absence of the presiding judge in a multi-sala station, the judge of the paired court shall take cognizance of all the cases thereat as acting judge therein until the appointment and assumption to duty of the regular judge or the designation of an acting presiding judge or the return of the regular incumbent judge, or until further orders from this Court.

For this purpose, the provisions of Circular No. 7 dated September 23, 1974 inconsistent with this Circular, are hereby amended.

[18] A.M. No. 03-05-01-SC. Effective 1 June 2004.

CANON 3
IMPARTIALITY

Impartiality is essential to the proper discharge of the judicial office. **It applies not only to the decision itself but also to the process by which the decision is made.**

x x x x x x x x x

SEC. 2. Judges shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary. (Emphasis supplied)

Lower court judges play a pivotal role in the promotion of the people's faith in the judiciary. They are front-liners who give human face to the judicial branch at the grassroots level in their interaction with litigants and those who do business with the courts. Thus, the admonition that judges must avoid not only impropriety but also the appearance of impropriety is more sternly applied to them.[19]

As correctly observed by the OCA, Judge Carbonell should have sought the conformity of Judge Tabora in rendering his own decision to the case as a matter of judicial courtesy and respect. Judge Carbonell tried justifying his act by reasoning that the act of filing a decision with the clerk of court already constituted a rendition of judgment or promulgation. We find this explanation unsatisfactory. Judge Carbonell had no authority to render a decision on the subject civil case. As clearly laid down in Circular No. 19-98, the pairing judge shall take cognizance of all cases until the assumption to duty of the regular judge. Since Judge Tabora was already present and performing her functions in court, it was improper for Judge Carbonell to have rendered a decision in Civil Case No. 6840 without the approval of the regular presiding judge.

Also, Judge Carbonell should have extended the same judicial deference in referring the letter of Tabisula requesting for a

[19] *Borromeo-Garcia v. Judge Pagayatan,* A.M. No. RTJ-08-2127, 25 September 2008, 566 SCRA 320, citing *Chan v. Majaducon,* 459 Phil. 754 (2003).

copy of his decision to Branch 26 for appropriate action. Instead, Judge Carbonell directly furnished Tabisula with a copy knowing fully well that she was the plaintiff in the subject case. Judge Carbonell not only disregarded the functions of the clerk of court as custodian of court records but also undermined the integrity and confidentiality of the court.

For violating Section 2, Canon 3 of the New Code of Judicial Conduct, we find Judge Carbonell guilty of simple misconduct. Simple misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers.[20] We adhere to the OCA's recommendation of a fine of ₱10,000.00 to be deducted from Judge Carbonell's retirement benefits which have been withheld pursuant to the Court's Resolution dated 24 September 2008, which granted the payment of his disability retirement benefits subject to the withholding of ₱200,000.00 pending final resolution of the administrative cases against him.

Further, we adopt the other recommendations of the OCA in its Report dated 18 September 2008. We deny for lack of merit the Motion for Reconsideration dated 27 November 2007 filed by Tabisula on this Court's Resolution dated 1 October 2007. We also direct the OCA to detach from the records of this administrative matter the Letter dated 5 March 2008 of Lacsamana and seven other employees of the RTC of San Fernando City, La Union, Branch 26, against Queddeng, Legal Researcher of the same court. The Letter is to be included in A.M. No. P-07-2371 entitled "*Office of the Court Administrator v. Ms. Olympia Elena D. Queddeng, Court Legal Researcher II, RTC, Branch 26, San Fernando, La Union.*"

WHEREFORE, we deny the Motion for Reconsideration dated 27 November 2007 filed by Caridad S. Tabisula for lack of merit. We find respondent Judge Antonio A. Carbonell, former Presiding Judge, Regional Trial Court, San Fernando City, La Union, Branch 27, *GUILTY* of simple misconduct and *FINE* him ₱10,000.00, to be deducted from his retirement

[20] *Spouses Bautista v. Sula*, A.M. No. P-04-1920, 17 August 2007, 530 SCRA 406, citing *Castelo v. Florendo*, 459 Phil. 581 (2003).

benefits which have been withheld pursuant to the Court's Resolution dated 24 September 2008.

We *DIRECT* the Office of the Court Administrator to detach from the records of this administrative matter the Letter dated 5 March 2008 of Alfredo Lacsamana, Jr. and seven other employees of the Regional Trial Court, San Fernando City, La Union, Branch 26, against Olympia Dacanay-Queddeng, Legal Researcher of the same court and include the Letter in A.M. No. P-07-2371 entitled "*Office of the Court Administrator v. Ms. Olympia Elena D. Queddeng, Court Legal Researcher II, RTC, Branch 26, San Fernando, La Union.*"

SO ORDERED.

Nachura, Leonardo-de Castro,[*] *Peralta,* and *Abad, JJ.*, concur.

SECOND DIVISION

[A.M. No. P-08-2549. June 18, 2010]

ANONYMOUS, *complainant, vs.* **EMMA BALDONADO CURAMEN, Court Interpreter I, Municipal Trial Court, Rizal, Nueva Ecija,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; WHOEVER ALLEGES A FACT MUST PROVE THAT FACT BY CONVINCING EVIDENCE; CASE AT BAR. — As to the alleged falsification of respondent's income tax return, we find no evidence on record showing that respondent listed the child as additional dependent. Respondent presented a certification issued by the

[*] Designated additional member per Raffle dated 6 January 2010.

Municipal Social Welfare and Development Office of Rizal, Nueva Ecija as well as her income tax returns for taxable years 2005 and 2006 to prove that the only dependent she claimed was her 90-year old father, Rafael Baldonado. Against this, complainant has nothing but bare allegations. Whoever alleges a fact must prove that fact by convincing evidence. Complainant failed on this score.

2. CRIMINAL LAW; CRIMES AGAINST PUBLIC INTEREST; FALSIFICATION OF PUBLIC DOCUMENT; INTENT TO INJURE A THIRD PERSON IS NOT NECESSARY; A CASE OF. — With respect to the alleged falsification of the child's birth certificate, we find respondent guilty of dishonesty and falsification of a public document. A birth certificate, being a public document, serves as *prima facie* evidence of filiation. The making of a false statement therein constitutes dishonesty and falsification of a public document. Respondent cannot escape liability by claiming that she did not have any intention to conceal the identity of the child nor cause the loss of any trace as to the child's true filiation to the child's prejudice. When public documents are falsified, the intent to injure a third person need not be present because the principal thing punished is the violation of the public faith and the destruction of the truth the document proclaims.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; DISHONESTY; DEFINED; A CASE OF. — Dishonesty is defined as intentionally making a false statement on any material fact in securing one's examination, appointment, or registration. Dishonesty is a serious offense which reflects a person's character and exposes the moral decay which virtually destroys honor, virtue, and integrity. It is a malevolent act that has no place in the judiciary, as no other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary. No doubt, court officials occupy an exalted position in society. They enjoy authoritative influence, which leaves the innocent public unlikely to raise any objection. Unfortunately, this is also the reason why they have more opportunities to commit dishonest acts. But dishonesty has no place in the judiciary and the Court will not hesitate to remove from among its ranks those found to be dishonest.

4. ID.; ID.; GRAVE OFFENSES; DISHONESTY AND FALSIFICATION OF A PUBLIC DOCUMENT; PUNISHABLE BY DISMISSAL FOR THE FIRST OFFENSE; DISHONESTY NEED NOT BE COMMITTED IN THE COURSE OF THE PERFORMANCE OF OFFICIAL DUTIES. — Under Section 52, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, dishonesty and falsification of a public document are considered grave offenses punishable by dismissal for the first offense. Dishonesty, in order to warrant dismissal, need not be committed in the course of the performance of official duties. If a government officer is dishonest, even if the conduct is not connected with the official function, it affects the discipline and morale of the service. The government cannot tolerate in its service a dishonest employee, even if official duties are performed well. Respondent cannot separate her private life as a registrant of the child's false birth certificate from her public life as a court official. She is subject to discipline the moment she commits a dishonest act, whether in her private life or in her public life.

5. ID.; ID.; ID.; ID.; ID.; EXTREME PENALTY OF DISMISSAL IS NOT AUTOMATICALLY IMPOSED WHERE MITIGATING CIRCUMSTANCES EXIST; PENALTY IN CASE AT BAR. — xxx [T]he extreme penalty of dismissal is not automatically imposed, especially where mitigating circumstances exist. Although under the schedule of penalties adopted by the Civil Service, dishonesty and falsification of a public document are classified as grave offenses punishable by dismissal, the fact that this is respondent's first offense may be considered a mitigating circumstance in her favor. The law requires that the mitigating circumstance must first be pleaded by the proper party. But in the interest of substantial justice, we may appreciate the mitigating circumstance in the imposition of penalty, even if not raised by respondent. We thus impose on respondent the penalty next lower in degree, which is suspension for six months and one day without pay with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This is an administrative case against Emma Baldonado Curamen, Court Interpreter I in the Municipal Trial Court of Rizal in Nueva Ecija, for dishonesty and falsification of a public document.

The Facts

On 6 March 2007, the Office of the Court Administrator (OCA) received an anonymous complaint[1] charging respondent with falsification of a public document and simulation of birth. The complaint alleged that respondent registered the birth of a child supposedly named Rica Mae Baldonado Curamen in the local civil registry of Rizal, Nueva Ecija. Complainant submitted the child's purported birth certificate[2] to show respondent misrepresented that she was the child's biological mother and her husband, Ricardo Curamen, was the biological father. Complainant claimed respondent was, in fact, the child's maternal grandmother. Complainant submitted the child's original birth certificate[3] to show that the child's real name was Rinea Mae Curamen Aquino and that her parents were spouses Olga Mae Baldonado Curamen Aquino and Jun Aquino. According to complainant, respondent included the child as additional dependent in her income tax declaration.

In his Report,[4] Executive Judge Rodrigo S. Caspillo of the Regional Trial Court (Branch 24) of Cabanatuan City verified that Rinea Mae Curamen Aquino and Rica Mae Baldonado Curamen were the same child. Judge Caspillo confirmed that the child was, in fact, respondent's granddaughter. The child's

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[1] *Rollo*, p. 5.

[2] *Id.* at 6.

[3] *Id.* at 8.

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

real mother, Olga, was one of respondent's children. On 27 November 2005, Olga gave birth to a child named Rinea Mae Curamen Aquino. The fact of birth was registered in the Civil Registry of Cabanatuan City, Nueva Ecija under Registry No. 2005-15495. The birth certificate indicated that the child's parents were Olga Mae Baldonado Curamen and Jun Aquino.

Judge Caspillo verified that on 31 March 2006, respondent executed an affidavit for delayed registration of the alleged birth of her child. Respondent claimed that her supposed child, Rica Mae Baldonado Curamen, was born on 30 November 2005. Respondent's application was given due course and the supposed birth of Rica Mae Baldonado Curamen was registered in the Civil Registry of Rizal, Nueva Ecija under Registry No. 2006-507. This second birth certificate of the child indicated that the child's parents were respondent and her husband.

In her Comment,[5] respondent admitted that the real parents of the child were spouses Olga Mae Baldonado Curamen and Jun Aquino. Respondent claimed that the child's parents, being unemployed, were unable to support themselves let alone their child. She asserted that the child's parents actually depended on her and her husband for support. According to respondent, it was the child's parents themselves who proposed to register the birth of the child anew. Respondent insisted she had no intention to conceal the true identity of the child. Respondent justified her act as an example of a common practice among Filipinos to extend help to family members. As to the alleged falsification of her income tax return, respondent denied listing the child as additional dependent.

The OCA's Report and Recommendation

As to the alleged falsification of the child's birth certificate, the OCA, in its Report and Recommendation,[6] found respondent guilty of conduct prejudicial to the best interest of the service. According to the OCA, respondent's act created a negative impression in the minds of the public that court officials could

[5] *Id.* at 25-28.

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

violate the law with impunity. As for the alleged falsification of respondent's income tax return, the OCA found no evidence that respondent claimed the child as additional dependent. The OCA recommended that respondent be suspended from the service for six months and one day, thus:

> Respectfully submitted for the consideration of this Honorable Court are our recommendations that:
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> 1. this administrative complaint be RE-DOCKETED as a regular administrative matter;
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> 2. respondent Emma Baldonado Curamen, Court Interpreter I, Municipal Trial Court, Rizal, Nueva Ecija, be found GUILTY of Conduct Prejudicial to the Best Interest of the Service and be SUSPENDED FROM THE SERVICE for a period of six (6) months and one (1) day, the same to take effect immediately upon receipt by the respondent of the Court's decision;
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> 3. Ms. Carmelita N. Ericta, Administrator and Civil Registrar General, National Census Statistics Office, be FURNISHED a copy of the Court's decision, the Certificate of Live Birth of Rica Mae Baldonado Curamen, and the Affidavit for Delayed Registration of Birth executed by the respondent so that appropriate amendments relative to the true circumstances of the birth of one "Rinea Mae Curamen Aquino" can be effected; and
>
> 4. the Provincial Prosecutor of Nueva Ecija be FURNISHED with a copy of the Court's decision on this administrative matter for appropriate action.[7]

The Court's Ruling

As to the alleged falsification of respondent's income tax return, we find no evidence on record showing that respondent listed the child as additional dependent. Respondent presented a certification[8] issued by the Municipal Social Welfare and Development Office of Rizal, Nueva Ecija as well as her income tax returns for taxable years 2005 and 2006 to prove that the only dependent she claimed was her 90-year old father, Rafael Baldonado. Against this, complainant has nothing but bare

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

[8] *Id.* at 31.

allegations. Whoever alleges a fact must prove that fact by convincing evidence.[9] Complainant failed on this score.

With respect to the alleged falsification of the child's birth certificate, we find respondent guilty of dishonesty and falsification of a public document. A birth certificate, being a public document, serves as *prima facie* evidence of filiation.[10] The making of a false statement therein constitutes dishonesty and falsification of a public document.

Respondent cannot escape liability by claiming that she did not have any intention to conceal the identity of the child nor cause the loss of any trace as to the child's true filiation to the child's prejudice. When public documents are falsified, the intent to injure a third person need not be present because the principal thing punished is the violation of the public faith and the destruction of the truth the document proclaims.[11]

Respondent's justification for her act – that the true parents of the child are unable to support the child as they are fully dependent on respondent for their own support – is an affront to common sense. It taxes one's imagination how concealment of the child's true parents, through falsification of the child's birth certificate, will make it easier for respondent to support the child. Respondent can very well continue supporting the child as her own, as is the practice in Filipino families, without having to tamper with the child's birth certificate.

Dishonesty is defined as intentionally making a false statement on any material fact in securing one's examination, appointment, or registration.[12] Dishonesty is a serious offense which reflects a person's character and exposes the moral decay which virtually

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[9] *Pacific Banking Corporation Employees Organization v. CA*, 351 Phil. 438 (1998).

[10] *Heirs of Cabais v. CA*, 374 Phil. 681 (1999).

[11] *Ratti v. Mendoza-De Castro*, 478 Phil. 871 (2004).

[12] *OCA v. Bermejo*, A.M. No. P-05-2004, 14 March 2008, 548 SCRA 219.

destroys honor, virtue, and integrity.[13] It is a malevolent act that has no place in the judiciary, as no other office in the government service exacts a greater demand for moral righteousness from an employee than a position in the judiciary.[14]

No doubt, court officials occupy an exalted position in society. They enjoy authoritative influence, which leaves the innocent public unlikely to raise any objection. Unfortunately, this is also the reason why they have more opportunities to commit dishonest acts. But dishonesty has no place in the judiciary and the Court will not hesitate to remove from among its ranks those found to be dishonest.

Under Section 52, Rule XIV of the Omnibus Rules Implementing Book V of Executive Order No. 292 and Other Pertinent Civil Service Laws, dishonesty and falsification of a public document are considered grave offenses punishable by dismissal for the first offense.

Dishonesty, in order to warrant dismissal, need not be committed in the course of the performance of official duties.[15] If a government officer is dishonest, even if the conduct is not connected with the official function, it affects the discipline and morale of the service.[16] The government cannot tolerate in its service a dishonest employee, even if official duties are performed well. Respondent cannot separate her private life as a registrant of the child's false birth certificate from her public life as a court official. She is subject to discipline the moment she commits a dishonest act, whether in her private life or in her public life.

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[13] *Id*.

[14] *Re: Spurious Certificate of Eligibility of Tessie G. Quires, Regional Trial Court, Office of the Clerk of Court, Quezon City*, A.M. No. 05-5-268-RTC, 4 May 2006, 489 SCRA 349.

[15] *Faelnar v. Palabrica*, A.M. No. P-06-2251, 20 January 2009, 576 SCRA 392.

[16] *Corpuz v. Ramiterre*, A.M. No. P-04-1779, 25 November 2005, 476 SCRA 108; *Alabastro v. Moncada, Sr.*, 488 Phil. 43 (2004).

However, the extreme penalty of dismissal is not automatically imposed, especially where mitigating circumstances exist. Although under the schedule of penalties adopted by the Civil Service, dishonesty and falsification of a public document are classified as grave offenses punishable by dismissal, the fact that this is respondent's first offense may be considered a mitigating circumstance in her favor. The law requires that the mitigating circumstance must first be pleaded by the proper party.[17] But in the interest of substantial justice, we may appreciate the mitigating circumstance in the imposition of penalty, even if not raised by respondent.[18]

We thus impose on respondent the penalty next lower in degree, which is suspension for six months and one day without pay with a stern warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

WHEREFORE, respondent Emma Baldonado Curamen, Court Interpreter I in the Municipal Trial Court of Rizal in Nueva Ecija, is found *GUILTY* of dishonesty and falsification of a public document and *SUSPENDED* for six (6) months and one (1) day without pay with a *STERN WARNING* that a repetition of the same or similar acts in the future shall be dealt with more severely.

Let copies of this Resolution be furnished the Provincial Prosecutor of Nueva Ecija for appropriate action, including the possible filing of a special proceeding for the cancellation of the Certificate of Live Birth of Rica Mae Baldonado Curamen as well as the Affidavit for Delayed Registration of Birth executed by respondent.

SO ORDERED.

Nachura, Leonardo-de Castro,[*] *Peralta,* and *Abad, JJ.,* concur.

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[17] *De Vera v. Rimas,* A.M. No. P-06-2118, 12 June 2008, 554 SCRA 253.

[18] *Id.*

[*] Designated additional member per Raffle dated 6 January 2010.

SECOND DIVISION

[A.M. No. P-09-2632. June 18, 2010]

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **CRISTITA L. CAYA, Records Officer I, and RHODORA A. RANTAEL, Cashier I, both from the Office of the Clerk of Court, Metropolitan Trial Court, Mandaluyong City,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; QUANTUM OF PROOF REQUIRED IN ADMINISTRATIVE PROCEEDINGS IS SUBSTANTIAL EVIDENCE; COMPLAINANT HAS THE BURDEN OF PROOF; CASE AT BAR. — In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such evidence as a reasonable mind may accept as adequate to support a conclusion. Caya, as the complainant, has the burden of proving by substantial evidence the allegations in her complaint. Caya submitted her affidavit-complaint reciting the facts of the incident, a medical certificate showing that she sustained physical injuries during the altercation, and documentary evidence of witnesses attesting to the truth of her narration of facts.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; CODE OF CONDUCT FOR COURT PERSONNEL; VIOLATED IN CASE AT BAR. — The acts of Rantael in taunting and uttering invectives at Caya and causing the latter physical harm by pulling her hair within the court premises, and during working hours, exhibit discourtesy and disrespect not only to her co-workers but also to the court. Such behavior of letting personal hatred affect public performance falls short of the standard laid down in A.M. No. 03-16-13-SC or the Code of Conduct for Court Personnel which took effect on 1 June 2004. Rantael, as the wrongdoer, should bear the burden alone. As a court employee, she should have exercised restraint and prudence in dealing with a co-employee. Being the victim of malicious rumors or unfounded accusations cannot justify resorting to physical violence against a co-worker.

3. ID.; ID.; ID.; SIMPLE MISCONDUCT; DEFINED; A CASE OF.— Without doubt, Rantael's actuations failed to live up to the high standard required of personnel in the judicial service. Thus, she must be held administratively liable for simple misconduct. Simple misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers. We adhere to the OCA's recommendation of a fine of ₱1,000.00 with a warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

4. ID.; ID.; RIGHT TO DUE PROCESS; NOT VIOLATED IN CASE AT BAR.— xxx [I]n her Supplemental Motion for Reconsideration dated 2 February 2010, Caya asserted that her right to due process was violated since the OCA unilaterally made her respondent to a case she filed against Rantael. We find that Rantael's Comment dated 6 August 2008 constitutes a counter-complaint against Caya who filed a Reply dated 18 August 2008. This Reply allowed Caya to present her defense to the counter-complaint. Thus, there is no violation of Caya's right to due process.

D E C I S I O N

CARPIO, *J.*:

The Case

This administrative case arose from an Affidavit-Complaint dated 4 July 2008 filed by Cristita L. Caya (Caya), Records Officer I, Office of the Clerk of Court, Metropolitan Trial Court (MeTC), Mandaluyong City, Branch 60, against Rhodora A. Rantael (Rantael), Cashier I of the same court, for conduct unbecoming a court employee, violation of the Code of Conduct and Ethical Standard for public officials and employees, oppression and gross violence against a co-employee.

The Facts

In her Affidavit-Complaint dated 4 July 2008 submitted to the Office of the Court Administrator (OCA), complainant Caya narrated that on 17 December 2007, while in the vicinity of the

MeTC, she was surprised when she heard Rantael quarreling with a judge on the telephone. A co-employee, Joan Yerro, grabbed the phone from Rantael in order to prevent the situation from worsening. Rantael, for no apparent reason, aired out her anger at Caya by shouting her name and throwing abusive and cursing words at her. The situation escalated when Rantael grabbed Caya by the hair and dragged her outside the office while taunting her to fight. As a result, Caya sustained physical injuries and emotional stress.

In support of her complaint, Caya attached: (1) the Medical Certificate dated 22 January 2008 of the attending physician who examined her for her physical injuries; (2) the incident report she filed with the Mandaluyong City Police Station; (3) the *Sinumpaang Salaysay* dated 28 January 2008 and 31 January 2008, respectively, of Myrna G. Galope (Galope) and Ma. Lourdes G. Rodriguez, witnesses to the incident; and (4) the Supplementary Affidavit dated 4 July 2008 of Galope stating that Rantael admitted to her the reason for her actions.

In her Comment dated 6 August 2008, Rantael disclosed that the incident was triggered by the gossip spread around by Caya and Arden Magsombol-Rañosa (Rañosa), the Branch Clerk of Court of MeTC, Mandaluyong City, Branch 59, about Judge Myrna Lim-Verano (Judge Verano) of the Regional Trial Court, Muntinlupa City, Branch 205. Rantael's husband worked at the same court as Judge Verano and allegedly Caya and Rañosa made it appear that Rantael and her husband were spreading ugly rumors about Judge Verano.

Rantael admitted conversing with Judge Verano over the telephone on 18 December 2007, not 17 December 2007 as alleged in Caya's affidavit-complaint. Judge Verano apparently heard the rumors and accused Rantael as the source. Rantael denied the allegation and pointed to Caya as the real source of the gossip.

Rantael acknowledged that she uttered invectives at Caya because she felt hurt and wanted to do something about it. Rantael denied that she initiated the physical assault but instead alleged that she only fought back by pulling Caya's hair after Caya slapped her on the face.

In her Reply dated 18 August 2008, Caya stated that Rantael's Comment only confirmed the truth of the charges in the complaint that Rantael verbally abused and physically assaulted her. Caya denied that she slapped Rantael on the face.

Meanwhile, Caya filed a criminal complaint for slander and physical injuries with the Office of the City Prosecutor (OCP) in Mandaluyong. In a Resolution dated 22 February 2008, the OCP indorsed the complaint to the OCA since the parties are both court personnel and the incident took place inside court premises. Thus, the OCP deemed it proper to refer the case to the Court to give due respect and recognition to the administrative authority of the Court over its employees.

In a Letter dated 26 June 2008 addressed to the OCA, Caya questioned the OCP's resolution and requested that the referral be set aside and the criminal case be resolved based on the merits.

The OCA's Report and Recommendation

On 20 March 2009, the OCA submitted its Report finding both Caya and Rantael at fault for the incident which occurred within the confines of the MeTC. The OCA declared that Caya and Rantael admitted to trading verbal barbs and inflicting physical injuries on each other without due regard to the consequences of their actions. Thus, regardless of who between the two started the quarrel, such incident sullied the image of the judiciary.

With regard to the criminal complaint for slander and physical injuries filed by Caya with the OCP, the OCA found that the referral of the case to the Court was not in accord with established jurisprudence, citing the case of *Maceda v. Vasquez*.[1] The OCA stated that the mere fact that the parties involved in the criminal case were court personnel does not *ipso facto* divest the OCP of authority to hear said case. The OCP can still proceed with the criminal aspect of the incident while the Court can hold them administratively liable for violating existing court circulars and guidelines.

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[1] G.R. No. 102781, 22 April 1993, 221 SCRA 464. This case involved

The OCA recommended that:

(1) the instant administrative matter be RE-DOCKETED as a regular administrative case against both Cristita L. Caya, Office of the Clerk of Court, Metropolitan Trial Court, Mandaluyong City, and respondent Rhodora A. Rantael, Cashier I of the same office;

(2) Cristita L. Caya and Rhodora A. Rantael be FOUND GUILTY of misconduct and FINED in the amount of one thousand pesos (Php 1,000.00) each, with a warning that a repetition of the same or similar act in the future shall be dealt with more severely; and

(3) the Office of the City Prosecutor of Mandaluyong City be DIRECTED to proceed with the hearings on the criminal complaint for Slander and Physical Injuries filed by Cristita Caya against Rhodora Rantael.

In a Resolution dated 22 April 2009, the Court resolved to note the affidavit-complaint, comment and reply submitted by the parties; to re-docket the instant administrative matter as a regular administrative case against both complainant Caya and respondent Rantael; and to note the Report dated 20 March 2009 of the OCA.

Caya filed an Omnibus Motion dated 27 June 2009 for reconsideration of the Resolution dated 22 April 2009 and for the formal investigation of the complaint. Caya stated that she was surprised that the resolution re-docketed the case and made her a respondent in the administrative complaint together with Rantael against whom she initially filed said complaint. Caya asked that she be dropped from the case as a respondent and Rantael be disciplined and sanctioned accordingly. Caya also requested for a formal investigation to determine the

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the authority of the Ombudsman to investigate criminal complaints against judges and court personnel. The Court held that when it took cognizance of the case involving a judge who falsified his certificate of service, it had no intention to divest the Office of the Ombudsman with its authority to investigate the criminal aspect (*i.e.* falsification of document) of the complaint. "A judge who falsifies his certificate of service is administratively liable to the Supreme Court for serious misconduct and inefficiency under the Rules of Court, and criminally liable to the State under the Revised Penal Code for this felonious act."

culpability of the parties and to allow her and her witnesses to substantiate the complaint.

In her Comment/Opposition to the Omnibus Motion dated 15 July 2009, Rantael prayed that the Omnibus Motion be denied for being bare, unsubstantiated and self-serving and that she be dismissed as a respondent in the case or in the alternative that a formal investigation and hearing be conducted.

In a Resolution dated 27 July 2009, the Court referred the omnibus motion for reconsideration and the comment/opposition to the OCA for evaluation, report and recommendation.

On 25 August 2009, the OCA submitted its Report recommending that:

(1) the Omnibus Motion, dated 27 June 2009, of Cristita L. Caya seeking a reconsideration of the Resolution, dated 22 April 2009, and for a formal investigation of the complaint, be DENIED for lack of sufficient basis;

(2) that Cristita L. Caya and Rhodora A. Rantael, both of the Metropolitan Trial Court, Office of the Clerk of Court, Mandaluyong City, be FOUND GUILTY of Simple Misconduct and FINED in the amount of One Thousand Pesos (Php 1,000.00) each, with warning that a repetition of the same or similar acts in the future shall be dealt with more severely; and

(3) the Office of the City Prosecutor, Mandaluyong City, be FURNISHED with a copy of the Resolution of the Court on this matter.

Caya filed a Supplemental Motion for Reconsideration dated 2 February 2010. Caya stated that her right to due process was violated when the OCA unilaterally made her a respondent to a case she filed against a co-employee who had caused her much suffering and humiliation. Caya prayed that the previous resolution be set aside and a new one rendered holding Rantael guilty of the administrative offenses charged.

The Court's Ruling

After a careful review of the records of the case, we find reasonable grounds to hold Rantael administratively liable for

simple misconduct. We also find that the complaint against Caya should be dismissed.

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence or such evidence as a reasonable mind may accept as adequate to support a conclusion.[2] Caya, as the complainant, has the burden of proving by substantial evidence the allegations in her complaint.

Caya submitted her affidavit-complaint reciting the facts of the incident, a medical certificate showing that she sustained physical injuries during the altercation, and documentary evidence of witnesses attesting to the truth of her narration of facts.

Rantael, on the other hand, did not deny the allegations in the complaint. She admitted that she shouted and cursed at Caya during office hours and within the vicinity of the court where both of them are employed. Rantael's justification for her acts centered on the ugly rumors about a judge that Caya allegedly started and which pointed to Rantael as the source of such gossip. Rantael reasoned that her emotions got the better of her since she only wanted to defend herself from all the false accusations.

Rantael also admitted physically assaulting Caya by pulling her hair. However, she rationalized such act by stating that Caya provoked her when the latter first slapped her on the face.

We find that these explanations do not excuse Rantael's actions.

In *De Vera, Jr. v. Rimando*,[3] we held that court employees are supposed to be well-mannered, civil and considerate in their actuations, both in their relations with co-workers and the transacting public. Boorishness, foul language, and any misbehavior in court premises diminish its sanctity and dignity.

The acts of Rantael in taunting and uttering invectives at Caya and causing the latter physical harm by pulling her hair

[2] *Bondoc v. Bulosan*, A.M. No. P-05-2058, 25 June 2007, 525 SCRA 459, citing *Ebero v. Camposano*, 469 Phil. 426 (2004).

[3] A.M. No. P-03-1672, 8 June 2007, 524 SCRA 25.

within the court premises, and during working hours, exhibit discourtesy and disrespect not only to her co-workers but also to the court. Such behavior of letting personal hatred affect public performance falls short of the standard laid down in A.M. No. 03-16-13-SC or the Code of Conduct for Court Personnel which took effect on 1 June 2004.

Rantael, as the wrongdoer, should bear the burden alone. As a court employee, she should have exercised restraint and prudence in dealing with a co-employee. Being the victim of malicious rumors or unfounded accusations cannot justify resorting to physical violence against a co-worker.

Without doubt, Rantael's actuations failed to live up to the high standard required of personnel in the judicial service. Thus, she must be held administratively liable for simple misconduct. Simple misconduct has been defined as an unacceptable behavior that transgresses the established rules of conduct for public officers.[4] We adhere to the OCA's recommendation of a fine of ₱1,000.00 with a warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

With regard to Caya, being the aggrieved party, she should not be made answerable to the foul acts done to her by a co-employee.We find that the complaint against her should be dismissed. Caya's act of filing administrative and criminal complaints against Rantael clearly demonstrates that she was offended and humiliated by the incident and she only wanted justice for the foul acts done to her person.

However, in her Supplemental Motion for Reconsideration dated 2 February 2010, Caya asserted that her right to due process was violated since the OCA unilaterally made her respondent to a case she filed against Rantael. We find that Rantael's Comment dated 6 August 2008 constitutes a counter-complaint against Caya who filed a reply dated 18 August 2008. This Reply allowed Caya to present her defense to the counter-complaint. Thus, there is no violation of Caya's right to due process.

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[4] *Spouses Bautista v. Sula*, A.M. No. P-04-1920, 17 August 2007, 530 SCRA 406, citing *Castelo v. Florendo*, 459 Phil. 581 (2003).

Further, we adopt the findings of the OCA that the OCP of Mandaluyong should proceed with the criminal complaint for slander and physical injuries filed by Caya against Rantael.

It bears stressing that any fighting or misunderstanding between and among court personnel becomes a disgraceful sight reflecting adversely on the good image of the judiciary. Professionalism, respect for the rights of others, good manners, and right conduct are expected of all judicial officers and employees.[5]

WHEREFORE, we find respondent Rhodora A. Rantael, Cashier I, Office of the Clerk of Court, Metropolitan Trial Court, Mandaluyong City, Branch 60, *GUILTY* of simple misconduct and *FINE* her ₱1,000.00 with a warning that a repetition of the same or similar acts in the future shall be dealt with more severely.

We *DISMISS* the complaint against Cristita L. Caya, Records Officer I, Office of the Clerk of Court, Metropolitan Trial Court, Mandaluyong City, Branch 60, for lack of merit.

We *DIRECT* the Office of the City Prosecutor of Mandaluyong to proceed with the hearings on the criminal complaint for Slander and Physical Injuries filed by Cristita L. Caya against Rhodora A. Rantael.

SO ORDERED.

Nachura, Leonardo-de Castro,[*] *Peralta,* and *Abad, JJ.,* concur.

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[5] *Cervantes v. Cardeño,* 501 Phil. 13 (2005).

[*] Designated additional member per Raffle dated 6 January 2010.

FIRST DIVISION

[G.R. No. 164443. June 18, 2010]

ERIBERTO S. MASANGKAY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; CRIMES AGAINST PUBLIC INTEREST; PERJURY; ELEMENTS.— For perjury to exist, (1) there must be a sworn statement that is required by law; (2) it must be made under oath before a competent officer; (3) the statement contains a *deliberate assertion of falsehood*; and (4) *the false declaration is with regard to a material matter*.

2. ID.; ID.; ID.; ID.; MATERIALITY; MATERIAL MATTER, DEFINED; PRESENT IN CASE AT BAR.— On the element of materiality, a material matter is the main fact which is the subject of the inquiry or any fact or circumstance which tends to prove that fact, or any fact or circumstance which tends to corroborate or strengthen the testimony relative to the subject of inquiry, or which legitimately affects the credit of any witness who testifies. xxx The statements for which the petitioner is tried for perjury are the very grounds he relied upon in his petition for corporate dissolution. They refer to acts of the MFI directors which are allegedly fraudulent, illegal and prejudicial, and which would allegedly justify corporate dissolution under Section 105 of the Corporation Code. Evidently, these statements are material to his petition for involuntary dissolution. The element of materiality is therefore present.

3. ID.; ID.; ID.; ID.; DELIBERATE FALSEHOOD; NOT PROVEN IN CASE AT BAR; EXPLAINED.— The prosecution, however, failed to prove the element of deliberate falsehood. The prosecution has the burden of proving beyond reasonable doubt the falsehood of petitioner's statement that the December 5, 1992 meeting "did *not actually materialize*." In other words, the prosecution has to establish that the said meeting in fact took place, *i.e.*, that the directors were actually and physically present in one place at the same time and conferred with each

other. xxx We have held before that a conviction for perjury cannot be obtained by the prosecution by merely showing the inconsistent or contradictory statements of the accused, even if both statements are sworn. The prosecution must additionally prove which of the two statements is false and must show the statement to be false by evidence *other than* the contradictory statement. The rationale for requiring evidence other than a contradictory statement is explained thus: x x x Proof that accused has given contradictory testimony under oath at a different time will not be sufficient to establish the falsity of his testimony charged as perjury, for this would leave simply one oath of the defendant as against another, and it would not appear that the testimony charged was false rather than the testimony contradictory thereof. The two statements will simply neutralize each other; there must be some corroboration of the contradictory testimony. Such corroboration, however, may be furnished by evidence *aliunde* tending to show perjury independently of the declarations of testimony of the accused. In this case, however, the prosecution was unable to prove, by convincing evidence other than the minutes, that the December 5, 1992 meeting actually took place. It merely presented, aside from the minutes, the testimony of private complainant Cesar, who is a respondent in the corporate dissolution case filed by the petitioner and is therefore not a neutral or disinterested witness. The prosecution did not present the testimony of the other directors or participants in the alleged meeting who could have testified that the meeting actually occurred. Neither did the prosecution offer any explanation why such testimony was not presented. It likewise failed to present any evidence that might circumstantially prove that on December 5, 1992, the directors were physically gathered at a single place, and there conferred with each other and came up with certain resolutions. Notably, the prosecution failed to present the *notice* for the alleged meeting. xxx [T]he petitioner is being charged with deliberate falsehood for his statement that the deed of exchange is fictitious. To support the accusation, the prosecution proved that petitioner assented to the said Deed of Exchange by virtue of his signatures in the minutes of the alleged December 5, 1992 meeting and on the instrument itself, and his participation in procuring the guardianship court's approval of the transaction. These allegedly show that the exchange was not fictitious and that Eriberto

knew it. We cannot agree with this line of reasoning. Petitioner's imputation of fictitiousness to the Deed of Exchange should not be taken out of context. He explained in paragraph 5 of his petition for involuntary dissolution that the Deed of Exchange is simulated and fictitious *pursuant to Article 1409 of the Civil Code, because it deprived Gilberto Masangkay of his property without any consideration at all.* To justify his allegation that Gilberto did not receive anything for the exchange, he stated in the same paragraph that Gilberto never became a stockholder of MFI (MFI stocks were supposed to be the consideration for Gilberto's land). This fact was subsequently proven by the petitioner through the corporate secretary Elizabeth, who admitted that MFI never issued stocks in favor of the stockholders. This testimony was never explained or rebutted by the prosecution. Thus, petitioner's statement that the exchange was "simulated and fictitious x x x because they x x x deprived [Gilberto] of his own property without any consideration at all" cannot be considered a deliberate falsehood. It is simply his characterization of the transaction, based on the fact that Gilberto did not receive consideration for the exchange of his land. As importantly, petitioner's statements in paragraph 5 of the petition for involuntary dissolution about the nature of the Deed of Exchange are *conclusions of law*, and not factual statements which are susceptible of truth or falsity. They are his opinion regarding the legal character of the Deed of Exchange. He opined that the Deed of Exchange was fictitious or simulated under Article 1409 of the Civil Code, because MFI supposedly did not perform its reciprocal obligation to issue stocks to Gilberto in exchange for his land. His opinion or legal conclusion may have been wrong (as failure of consideration does not make a contract simulated or fictitious), but it is an opinion or legal conclusion nevertheless. An opinion or a judgment cannot be taken as an intentional false statement of facts.

APPEARANCES OF COUNSEL

Alentajan Law Office for petitioner.
The Solicitor General for respondent.
Edgar Dennis A. Padernal for Cesar S. Masangkay, Jr.

D E C I S I O N

DEL CASTILLO, *J.*:

Every criminal conviction must draw its strength from the prosecution's evidence. The evidence must be such that the constitutional presumption of innocence is overthrown and guilt is established beyond reasonable doubt. The prosecutorial burden is not met when the circumstances can yield to different inferences. Such equivocation betrays a lack of moral certainty to support a judgment of conviction.

This Petition for Review[1] assails the March 16, 2004 Decision[2] and the July 9, 2004 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CR No. 25775. The dispositive portion of the assailed Decision reads:

> WHEREFORE, the petition is DENIED, and the appealed Decision is AFFIRMED with the MODIFICATION that Eriberto Masangkay is instead meted the penalty of imprisonment for a term of Six (6) months and One (1) day of *prision correccional* minimum.
>
> SO ORDERED.[4]

Factual Antecedents

Petitioner Eriberto Masangkay (Eriberto), his common-law wife Magdalena Ricaros (Magdalena), Cesar Masangkay (Cesar) and his wife Elizabeth Masangkay (Elizabeth), and Eric Dullano were the incorporators and directors of Megatel Factors, Inc. (MFI) which was incorporated in June 1990.[5]

On December 29, 1993 Eriberto filed with the Securities and Exchange Commission (SEC) a Petition for the Involuntary

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[1] *Rollo*, pp. 9-35.

[2] *Id.* at 37-45; penned by Associate Justice Roberto A. Barrios and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Fernanda Lampas Peralta.

[3] *Id.* at 47-48.

[4] *Id.* at 44.

[5] Records, Vol. III, pp. 762-774.

Dissolution[6] of MFI for violation of Section 6 of Presidential Decree (PD) No. 902-A. The named respondents were MFI, Cesar and Elizabeth.[7] The said petition was made under oath before a notary public, and alleged among others:

> 3. At or around September 1, 1993, respondent Elizabeth A. Masangkay prepared or caused to be prepared a Secretary's Certificate which states:
>
> > That at a special meeting of the Board of Directors of the said corporation held at its principal office on December 5, 1992, the following resolution by unanimous votes of the directors present at said meeting and constituting a quorum was approved and adopted:
> >
> > RESOLVED, as it is hereby resolved that Lot No. 2069-A-2 situated at Bo. Canlalay, Biñan, Laguna containing an area of 3,014 square meters covered by Transfer Certificate of Title No. T-210746 be exchanged with 3,700 shares of stock of the corporation worth or valued at ₱370,000.00 by way of a "Deed of Exchange with Cancellation of Usufruct."
>
> x x x x x x x x x
>
> 4. Said secretary's certificate is *absolutely fictitious and simulated* because the alleged meeting of the Board of Directors held on December 5, 1992 *did not actually materialize.*
>
> x x x x x x x x x
>
> 5. Using the said falsified and spurious document, x x x respondents executed another *fictitious* document known as the "Deed of Exchange with Cancellation of Usufruct."

The contract purporting to be a transfer of 3,700 shares of stock of MFI in return for a piece of a land (Lot No. 2064-A-2) located at Canlalay, Biñan, Laguna and owned by minor child Gilberto Ricaros Masangkay is void.

Article 1409 of the New Civil Code states:

> "Art. 1409. The following contracts are inexistent and void from the beginning.

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[6] *Rollo,* pp. 49-64.

[7] *Id.* at 49. The petition was docketed as Case No. 12-93-4650.

x x x x x x x x x

(2)Those which are absolutely simulated or fictitious;

(3) Those whose cause or object did not exist at the time of the transaction;

x x x x x x x x x

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

The aforementioned *contract is indeed simulated and fictitious* because they defrauded minor child Gilberto Ricaros Masangkay and deprived him of his own property without any consideration at all.

Records of the MFI revealed that minor child Gilberto Ricaros Masangkay [or] his alleged guardian Magdalena S. Ricaros never became a stockholder at any point in time of MFI.

x x x x x x x x x[8]

The case remains pending to date.[9]

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[8] *Id.* at 50-52.

[9] The case was transferred to and remains pending in Branch 90 of the Quezon City Regional Trial Court pursuant to Republic Act (RA) No. 8799 or the Securities Regulation Code, which took effect on August 9, 2000 (See *Suzuki v. De Guzman*, G.R. No. 146979, July 27, 2006, 496 SCRA 651, 666). The said Code transferred jurisdiction over intra-corporate disputes to regular courts. Section 5 of RA 8799 reads:

Section 5. *Powers and Functions of the Commission.* – x x x

5.2. The Commission's jurisdiction over all cases enumerated under Section 5 of Presidential Decree No. 902-A is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided*, That the Supreme Court in the exercise of its authority may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payment/rehabilitation cases filed as of June 30, 2000 until finally disposed.

Section 5 of PD No. 902-A reads:

Claiming that Eriberto lied under oath when he said that there was no meeting of the Board held on December 5, 1992 and that the Deed of Exchange with Cancellation of Usufruct is a fictitious instrument, the respondent in the SEC case, Cesar, filed a complaint for perjury[10] against Eriberto before the Office of the Provincial Prosecutor of Rizal.

Eriberto raised the defense of primary jurisdiction. He argued that what is involved is primarily an intra-corporate controversy; hence, jurisdiction lies with the SEC pursuant to Section 6 of PD 902-A, as amended by PD No. 1758. He also insisted that there was a prejudicial question because the truth of the allegations contained in his petition for involuntary dissolution has yet to be determined by the SEC. These defenses were sustained by the assistant provincial prosecutor and the complaint for perjury was dismissed for lack of merit.[11]

It was however reinstated upon petition for review[12] before the Department of Justice.[13] Chief State Prosecutor Zenon

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

a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission.

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

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

[10] Records, Vol. IV, pp. 1009-1011.

[11] *Rollo,* pp. 65-67.

[12] Records, Vol. IV, pp. 1012-1026.

[13] *Rollo,* pp. 68-69.

L. De Guia held that the petition for involuntary dissolution is an administrative case only and thus cannot possibly constitute a prejudicial question to the criminal case. He also rejected the claim that the SEC has exclusive authority over the case. The Chief State Prosecutor explained that the prosecution and enforcement department of the SEC has jurisdiction only over criminal and civil cases involving a violation of a law, rule, or regulation that is administered and enforced by the SEC. Perjury, penalized under Article 183 of the Revised Penal Code (RPC), is not within the SEC's authority.[14] Thus, he ordered the conduct of a preliminary investigation, which eventually resulted in the filing of the following information:

That sometime in the month of December 1992,[15] in the City of Mandaluyong, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, did then and there, willfully, unlawfully and feloniously commit acts of perjury in his Petition for Involuntary Dissolution of Megatel Factors, Inc. based on violation of Section 6 of Presidential Decree 902-A against Megatel Factors, Inc., Cesar Masangkay, Jr. and Elizabeth Masangkay which he made under oath before a notary authorized to receive and administer oath and filed with the Securities and Exchange Commission, wherein he made willful and deliberate assertion of a falsehood on a material matter when he declared the following, to wit: a) the secretary certificate dated September 1, 1993, proposed by Elizabeth Masangkay is fictitious and simulated because the alleged December 5, 1992, meeting *never took place*; and, b) the Deed of Exchange with Cancellation of Usufruct *is a fictitious document*, whereby the respondents defrauded the minor child Gilberto Ricaros Masangkay, by exchanging the child's 3,014 square meters lot with 3,700 shares of stock of the corporation, when in fact no consideration for the transfer was made as Gilberto Ricaros Masangkay or his guardian Magdalena Ricaros has never been a stockholder of the Corporation at any point in time, when in truth and in fact the accused well knew that the same statements he made in his petition and which he reaffirmed and made use as part of his evidence in the Securities and Exchange Commission (SEC) are false.[16]

[14] *Id.*

[15] Order dated March 27, 1996 (*id.* at 89) granting the prosecution's motion to amend the information.

[16] CA *rollo*, p. 65.

The information was docketed as Criminal Case No. 56495 and raffled to the Metropolitan Trial Court (MeTC) of Mandaluyong City, Branch 59.

Eriberto filed a motion to quash,[17] insisting that it is the SEC which has primary jurisdiction over the case. He also argued that the truth of the allegations contained in the information is still pending resolution in SEC Case No. 12-93-4650, thereby constituting a prejudicial question to the perjury case.

The MeTC denied the motion to quash for lack of merit.[18] It held that the fact that the parties to the criminal case are mostly stockholders of the same corporation does not automatically make the case an intra-corporate dispute that is within the SEC jurisdiction. It likewise held that the fact that the parties are stockholders is merely incidental and that the subject of the case is a criminal act and hence within the general jurisdiction of the MeTC. As regards the issue of prejudicial question, the MeTC ruled that the petition before the SEC has nothing to do with the criminal case. The truth of the statements for which he is being indicted is a matter of defense which the defendant may raise in the criminal case.

Eriberto filed a petition for *certiorari* before Branch 158 of the Pasig City Regional Trial Court (RTC) to assail the denial of his motion to quash. The denial was affirmed.[19] He then filed a petition for *certiorari* before the CA, which was denied for being a wrong mode of appeal.[20]

Failing to suspend the criminal proceedings, Eriberto entered a plea of not guilty during arraignment.[21] He then waived the conduct of a pre-trial conference.[22]

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[17] *Rollo*, pp. 70-83.

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

[19] Records, Vol. II, pp. 382-387.

[20] *Id.* at 576-577, 620.

[21] Records, Vol. I, p. 79.

[22] *Id.* at 144.

During trial, the prosecution presented the private complainant Cesar as its sole witness.[23] He testified that on December 5, 1992, a meeting of the Board of Directors was held at 9:00 o'clock in the morning at the office of MFI in Canlalay, Biñan, Laguna. He presented the minutes of the alleged meeting and reiterated the details contained therein indicating that the Board unanimously approved Magdalena's proposal to exchange her son's (Gilberto Masangkay [Gilberto]) property with MFI shares of stock.[24] The prosecution established that one of the signatures appearing in the minutes belongs to Eriberto.[25] This allegedly belies Eriberto's statement that the December 5, 1992 meeting "did not actually materialize," and shows that he knew his statement to be false because he had attended the meeting and signed the minutes thereof. The prosecution also pointed out that in the proceedings before the guardianship court to obtain approval for the exchange of properties, Eriberto had testified in support of the exchange.[26] The guardianship court subsequently approved the proposed transaction.[27] The resulting Deed of Exchange contained Eriberto's signature as first party.[28]

As for Eriberto's statement that the Deed of Exchange was simulated, the prosecution disputed this by again using the minutes of the December 5, 1992 meeting, which states that the property of Gilberto will be exchanged for 3,700 MFI shares.

For his defense, Eriberto asserted that the December 5, 1992 meeting did not actually take place. While he admitted signing, reading and understanding the minutes of the alleged meeting, he explained that the minutes were only brought by Cesar and Elizabeth to his house for signing, but there was no actual meeting.[29]

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[23] Records, Vol. II, pp. 673-691 and Records, Vol. III, pp. 695-709.

[24] Records, Vol. III, p. 752.

[25] *Id.*

[26] *Id.* at 793-794.

[27] *Id.* at 812-814 and 819.

[28] *Id.* at 817.

[29] *Id.* at 911.

To support the claim that no meeting took place in 1992, the defense presented Elizabeth, the MFI corporate secretary, who could not remember with certainty if she had sent out any notice for the December 5, 1992 meeting and could not produce any copy thereof.

The defense also presented a notice of meeting dated *October 19, 1993*, which called for the MFI board's *initial* meeting "since its business operations started," to be held on November 9, 1993. Emphasizing the words "initial meeting," Eriberto argued that this proves that prior to November 9, 1993, no meeting (including the December 5, 1992 meeting) had ever taken place.

As for the charge that he perjured himself when he stated that the Deed of Exchange was fictitious and simulated for lack of consideration, Eriberto explained that MFI never issued stock certificates in favor of his son Gilberto. Corporate secretary Elizabeth corroborated this statement and admitted that stock certificates were never issued to Gilberto or any of the stockholders.[30]

While he admitted supporting the proposed exchange and seeking its approval by the guardianship court, Eriberto maintained that he did so because he was convinced by private complainant Cesar that the exchange would benefit his son Gilberto. He however reiterated that, to date, Gilberto is not a stockholder of MFI, thus has not received any consideration for the exchange.

On rebuttal, the prosecution refuted Eriberto's claim that the board had its first actual meeting only on November 9, 1993. It explained that the November 9, 1993 meeting was the initial meeting "since business operations began," because MFI obtained permit to conduct business only in 1993. But the November 9, 1993 meeting was not the first meeting *ever held* by the board of directors. The prosecution presented the secretary's certificates of board meetings held on April 6, 1992[31] and September 5, 1992[32] — both before November 9, 1993

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[30] *Id.* at 912-913.

[31] *Id.* at 900.

[32] *Id.* at 901.

and both signed by Eriberto.[33] At this time, business operations have not yet begun because the company's hotel building was still under construction. The said secretary's certificates in fact show that MFI was still sourcing additional funds for the construction of its hotel.[34]

Ruling of the Metropolitan Trial Court

On October 18, 2000, the MeTC rendered a judgment[35] holding that the prosecution was able to prove that the December 5, 1992 meeting actually took place and that petitioner attended the same as evidenced by his signature in the minutes thereof. As for Eriberto's statement that the Deed of Exchange was "fictitious," the MeTC held that his participation in the approval and execution of the document, as well as his avowals before the guardianship court regarding the proposed exchange all militate against his previous statement. Petitioner was thus found guilty as charged and sentenced to imprisonment of two months of *arresto mayor* minimum and medium, as minimum, to one year and one day of *arresto mayor* maximum and *prision correccional* minimum, as maximum.[36]

Ruling of the Regional Trial Court

Eriberto appealed[37] his conviction to the RTC of Mandaluyong City, Branch 213, which eventually affirmed the appealed judgment.[38] The *fallo* of the Decision states that:

WHEREFORE, the decision of October 18, 2000 by Metropolitan Trial Court, Branch 59, Mandaluyong City, convicting the accused-appellant *Eriberto S. Masangkay* of the crime of perjury under Article 183 of the Revised Penal Code is hereby *affirmed in toto*.

SO ORDERED.[39]

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33 *Id.* at 900-901.

34 *Id.*

35 *Rollo,* pp. 90-98.

36 *Id.* at 98.

37 *Id.* at 100-118.

38 CA *rollo,* pp. 22-24.

39 *Id.* at 24.

Ruling of the Court of Appeals

The CA affirmed the appealed ruling of the trial courts, holding that the prosecution was able to prove that the falsehoods in the petition for involuntary dissolution were deliberately made. It explained that Eriberto's signatures on the two allegedly fictitious documents show that he participated in the execution of the Deed of Exchange and was present in the December 5, 1992 meeting. Having participated in these two matters, Eriberto knew that these were not simulated and fictitious, as he claimed in his verified petition for involuntary dissolution of MFI. Thus, he deliberately lied in his petition.[40]

The CA rejected petitioner's argument that the two statements were not material. It ruled that they were material because petitioner even cited them as principal basis for his petition for involuntary dissolution.[41]

The appellate court found no merit in the issue of prejudicial question. It held that the result of the petition for involuntary dissolution will not be determinative of the criminal case, which can be resolved independently.[42]

The CA however, corrected the imposed penalty on the ground that the trial court was imprecise in its application of the Indeterminate Sentence Law. The CA meted the penalty of imprisonment for a term of six months and one day of *prision correccional* minimum.[43]

Petitioner moved for reconsideration[44] which was denied.[45]

Hence, this petition.[46]

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[40] *Id.* at 42.

[41] *Id.* at 43.

[42] *Id.*

[43] *Id.* at 44.

[44] *Id.* at 142-153.

[45] *Id.* at 47-48.

[46] Defendant's motion for extension was initially denied by the Court (*id.* at 7) in its Resolution dated August 16, 2004, which states:

[Defendant's] motion for extension of thirty (30) days from August 4,

Issues

Petitioner submits the following issues for review:

I

WHETHER THERE WAS DELIBERATE ASSERTION OF FALSEHOOD

II

WHETHER THE TRUTHFUL ALLEGATION IN THE PETITION FOR INVOLUNTARY DISSOLUTION THAT THERE WAS NO MEETING IS MATERIAL TO THE PETITION

III

WHETHER PERJURY COULD PROSPER WHILE THE MAIN CASE REMAINS PENDING[47]

Since this is a case involving a conviction in a criminal case, the issues boil down to whether the prosecution was able to prove the accused's guilt beyond reasonable doubt.

Our Ruling

We rule that the prosecution failed to prove the crime of perjury beyond reasonable doubt.

Article 183 of the RPC provides:

False testimony in other cases and perjury in solemn affirmation. – The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period shall be imposed upon any person who, knowingly making untruthful statements and not being included

2004 within which to file petition for review on *certiorari* is DENIED for lack of sufficient showing that [defendant] has not lost the fifteen (15)-day reglementary period to appeal pursuant to Section 2, Rule 45 of the 1997 Rules of Civil Procedure, as amended, in view of the lack of statement of whether the assailed Court of Appeals' resolution dated July 9, 2004 received on July 20, 2004 is a denial/dismissal of the petition or the motion for reconsideration thereof.

Upon [defendant's] Motion for Reconsideration (*id.* at 154-157), the Court granted the motion for extension (*id.* at 160) and eventually gave due course to the Petition for Review (*id.* at 232-233).

[47] *Id.* at 240.

in the provisions of the next preceding articles shall testify under oath, or make an affidavit, upon any material matter before a competent person authorized to administer an oath in cases in which the law so requires.

Any person who, in case of a solemn affirmation made in lieu of an oath, shall commit any of the falsehoods mentioned in this and the three preceding articles of this section, shall suffer the respective penalties provided therein.

For perjury to exist, (1) there must be a sworn statement that is required by law; (2) it must be made under oath before a competent officer; (3) the statement contains a *deliberate assertion of falsehood*; and (4) *the false declaration is with regard to a material matter*.[48]

The presence of the first two elements is not disputed by the petitioner and they are indeed present in the instant case. The sworn statements which contained the alleged falsehoods in this case were submitted in support of the petition for involuntary dissolution, as required by Sections 105 and 121 of the Corporation Code.

The petition was also verified by the petitioner before a notary public[49]—an officer duly authorized by law to administer oaths. This verification was done in compliance with Section 121 of the Corporation Code.[50]

It is the elements of *deliberate falsehood* and *materiality* of the false statements to the petition for involuntary dissolution which are contested.

On the element of materiality, a material matter is the main fact which is the subject of the inquiry or any fact or circumstance which tends to prove that fact, or any fact or circumstance

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[48] *Sy Tiong Shiou v. Sy Chim and Chan Sy,* G.R. Nos. 174168 and 179438, March 30, 2009, 582 SCRA 517, 534.

[49] *Rollo,* p. 59.

[50] Section 121. *Involuntary Dissolution.* – A corporation may be dissolved by the Securities and Exchange Commission upon filing a verified complaint and after proper notice and hearing on grounds provided by existing laws, rules and regulations.

which tends to corroborate or strengthen the testimony relative to the subject of inquiry, or which legitimately affects the credit of any witness who testifies.[51]

Petitioner filed a petition for involuntary dissolution of MFI based on Section 105 of the Corporate Code, which states:

Section 105. *Withdrawal of stockholder or dissolution of corporation.* – In addition and without prejudice to the other rights and remedies available to a stockholder under this Title, any stockholder of a close corporation may, for any reason, compel the said corporation to purchase his shares at their fair value, which shall not be less than their par or issued value, when the corporation has sufficient assets in his books to cover its debts and liabilities exclusive of capital stock: *Provided,* That any stockholder of a close corporation may, by written petition to the Securities and Exchange Commission, compel the dissolution of such corporation whenever any of the acts of the directors, officers or those in control of the corporation is *illegal, or fraudulent, or dishonest, or oppressive or unfairly prejudicial* to the corporation or any stockholder, or whenever corporate assets are being misapplied or wasted.

He stated in his petition for involuntary dissolution that:

x x x x x x x x x

4. Said secretary's certificate is absolutely fictitious and simulated, because the alleged meeting of the Board of Directors held on December 5, 1992 did not actually materialize.

x x x x x x x x x

5. Using the said falsified and spurious document, x x x respondents executed another fictitious document known as the Deed of Exchange with Cancellation of Usufruct.

x x x x x x x x x

The aforementioned contract is indeed simulated and fictitious because they defrauded minor child Gilberto Ricaros Masangkay and deprived him of his own property without any consideration at all.

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[51] *United States v. Estraña,* 16 Phil. 520, 529 (1910).

x x x x x x x x x

8. The foregoing acts and deeds of the respondents, done in evident bad faith and in conspiracy with one another, are seriously *fraudulent and illegal* because they constitute estafa through falsification of documents, punishable under Articles 315 and 171 of the Revised Penal Code.

9. Likewise, said acts and deeds are feloniously *prejudicial* to the stockholders of MFI, including petitioner, as corporate assets are being misapplied and wasted.

10. MFI should therefore be ordered dissolved after appropriate proceedings before this Honorable Commission, in accordance with Sections 105 and 121 of the New Corporation Code x x x.[52]

The statements for which the petitioner is tried for perjury are the very grounds he relied upon in his petition for corporate dissolution. They refer to acts of the MFI directors which are allegedly fraudulent, illegal and prejudicial, and which would allegedly justify corporate dissolution under Section 105 of the Corporation Code. Evidently, these statements are material to his petition for involuntary dissolution. The element of materiality is therefore present.

The prosecution, however, failed to prove the element of deliberate falsehood.

The prosecution has the burden of proving beyond reasonable doubt the falsehood of petitioner's statement that the December 5, 1992 meeting "did *not actually materialize*." In other words, the prosecution has to establish that the said meeting in fact took place, *i.e.*, that the directors were actually and physically present in one place at the same time and conferred with each other.

To discharge this burden, the prosecution relied mainly on the minutes of the alleged December 5, 1992 meeting, signed by the accused, which are inconsistent with his statement that the December 5, 1992 meeting did not actually materialize. According to the minutes, a meeting actually took place. On

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[52] *Rollo*, pp. 50-54.

the other hand, according to the petitioner's statement in the petition for dissolution, the meeting did not actually materialize or take place. The two statements are obviously contradictory or inconsistent with each other. But the mere contradiction or inconsistency between the two statements merely means that one of them is false. It cannot tell us which of the two statements is actually false. The minutes could be true and the sworn statement false. But it is equally possible that the minutes are false and the sworn statement is true, as explained by the petitioner who testified that the minutes were simply brought to his house for signature, but no meeting actually transpired. Given the alternative possibilities, it is the prosecution's burden to affirmatively prove beyond reasonable doubt that the first statement (the minutes) is the true one, while the other statement (in the petition for dissolution) is the false one.

We have held before that a conviction for perjury cannot be obtained by the prosecution by merely showing the inconsistent or contradictory statements of the accused, even if both statements are sworn. The prosecution must additionally prove which of the two statements is false and must show the statement to be false by evidence *other than* the contradictory statement.[53] The rationale for requiring evidence other than a contradictory statement is explained thus:

> x x x Proof that accused has given contradictory testimony under oath at a different time will not be sufficient to establish the falsity of his testimony charged as perjury, for this would leave simply one oath of the defendant as against another, and it would not appear that the testimony charged was false rather than the testimony contradictory thereof. The two statements will simply neutralize each other; there must be some corroboration of the contradictory testimony. Such corroboration, however, may be furnished by evidence *aliunde* tending to show perjury independently of the declarations of testimony of the accused.[54]

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[53] *Villanueva v. Secretary of Justice*, G.R. No. 162187, November 18, 2005, 475 SCRA 495, 514-515.

[54] *Id.* at 515, citing *People v. McClintic*, 160 N.W. 461 (1916).

In this case, however, the prosecution was unable to prove, by convincing evidence other than the minutes, that the December 5, 1992 meeting actually took place. It merely presented, aside from the minutes, the testimony of private complainant Cesar, who is a respondent in the corporate dissolution case filed by the petitioner and is therefore not a neutral or disinterested witness.[55] The prosecution did not present the testimony of the other directors or participants in the alleged meeting who could have testified that the meeting actually occurred. Neither did the prosecution offer any explanation why such testimony was not presented. It likewise failed to present any evidence that might circumstantially prove that on December 5, 1992, the directors were physically gathered at a single place, and there conferred with each other and came up with certain resolutions. Notably, the prosecution failed to present the *notice* for the alleged meeting. The corporate secretary, Elizabeth, who was presented by the petitioner, could not even remember whether she had sent out a prior notice to the directors for the alleged December 5, 1992 meeting. The lack of certainty as to the sending of a notice raises serious doubt as to whether a meeting actually took place, for how could the directors have been gathered for a meeting if they had not been clearly notified that such a meeting would be taking place?

The insufficiency of the prosecution's evidence is particularly glaring considering that the petitioner had already explained the presence of his signature in the minutes of the meeting. He testified that while the meeting did not actually take place, the minutes were brought to his house for his signature. He affixed his signature thereto because he believed that the proposed exchange of the assets, which was the subject of the minutes, would be beneficial to his child, Gilberto. Acting on this belief, he also supported the approval of the exchange by the guardianship court.

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[55] See also *Magat v. People,* G.R. No. 92201, August 21, 1991, 201 SCRA 21, 36 and *Mercury Drug, Co., Inc. v. Court of Industrial Relations,* 155 Phil. 636, 644, 648 (1974).

Under these circumstances, we cannot say with moral certainty that the prosecution was able to prove beyond reasonable doubt that the December 5, 1992 meeting actually took place and that the petitioner's statement denying the same was a deliberate falsehood.

The second statement in the petition for involuntary dissolution claimed to be perjurious reads:

> 5. Using the said falsified and spurious document, respondents executed another fictitious document known as the Deed of Exchange with Cancellation of Usufruct.
>
> The contract purporting to be a transfer of 3,700 shares of stock of MFI in return for a piece of land (Lot No. 2064-A-2) located at Canlalay, Biñan, Laguna and owned by minor child Gilberto Masangkay is void.

Article 1409 of the New Civil Code states:

> Article 1409. The following contracts are inexistent and void from the beginning:
>
> xxx x x x xxx
>
> (2) those which are absolutely simulated or fictitious;
>
> (3) those whose cause or object did not exist at the time of the transaction;
>
> xxx x x x xxx
>
> These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

The aforementioned contract is indeed *simulated and fictitious because they defrauded* minor child Gilberto Ricaros Masangkay and deprived him of his own property *without any consideration at all.*

> Records of the MFI revealed that minor child Gilberto Ricaros Masangkay [or] his alleged guardian Magdalena S. Ricaros never became a stockholder at any point in time of MFI.

In short, the petitioner is being charged with deliberate falsehood for his statement that the deed of exchange is fictitious. To support the accusation, the prosecution proved that petitioner

assented to the said Deed of Exchange by virtue of his signatures in the minutes of the alleged December 5, 1992 meeting and on the instrument itself, and his participation in procuring the guardianship court's approval of the transaction. These allegedly show that the exchange was not fictitious and that Eriberto knew it.

We cannot agree with this line of reasoning. Petitioner's imputation of fictitiousness to the Deed of Exchange should not be taken out of context. He explained in paragraph 5 of his petition for involuntary dissolution that the Deed of Exchange is simulated and fictitious *pursuant to Article 1409 of the Civil Code, because it deprived Gilberto Masangkay of his property without any consideration at all.* To justify his allegation that Gilberto did not receive anything for the exchange, he stated in the same paragraph that Gilberto never became a stockholder of MFI (MFI stocks were supposed to be the consideration for Gilberto's land). This fact was subsequently proven by the petitioner through the corporate secretary Elizabeth, who admitted that MFI never issued stocks in favor of the stockholders. This testimony was never explained or rebutted by the prosecution. Thus, petitioner's statement that the exchange was "simulated and fictitious x x x because they x x x deprived [Gilberto] of his own property without any consideration at all" cannot be considered a deliberate falsehood. It is simply his characterization of the transaction, based on the fact that Gilberto did not receive consideration for the exchange of his land.

As importantly, petitioner's statements in paragraph 5 of the petition for involuntary dissolution about the nature of the Deed of Exchange are *conclusions of law*, and not factual statements which are susceptible of truth or falsity. They are his opinion regarding the legal character of the Deed of Exchange. He opined that the Deed of Exchange was fictitious or simulated under Article 1409 of the Civil Code, because MFI supposedly did not perform its reciprocal obligation to issue stocks to Gilberto in exchange for his land. His opinion or legal conclusion may have been wrong (as failure of

consideration does not make a contract simulated or fictitious),[56] but it is an opinion or legal conclusion nevertheless. An opinion or a judgment cannot be taken as an intentional false statement of facts.[57]

We recognize that perjury strikes at the very administration of the laws; that it is the policy of the law that judicial proceedings and judgments shall be fair and free from fraud; that litigants and parties be encouraged to tell the truth, and that they be punished if they do not.[58] However, it is also at the heart of every criminal proceeding that every person is presumed innocent until proven guilty beyond reasonable doubt.

Given the foregoing findings, there is no more need to discuss the issue involving the propriety of proceeding with the perjury case while the civil case for corporate dissolution is pending.

WHEREFORE, the petition is *GRANTED*. The assailed March 16, 2004 Decision of the Court of Appeals in CA-G.R. CR No. 25775 and its July 9, 2004 Resolution, are *REVERSED and SET ASIDE*. Petitioner Eriberto S. Masangkay is *ACQUITTED* of the charge of perjury on the ground of *REASONABLE DOUBT*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

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[56] Simulated or fictitious contracts are defective contracts, "those not really desired or intended to produce legal effects or in any way alter the juridical situation of the parties" (*Vda. de Rodriguez v. Rodriguez,* 127 Phil. 294, 301 (1967). Failure of consideration or failure to pay the consideration does not make a contract defective; it merely gives rise to a cause of action for specific performance or rescission (*Montecillo v. Reynes,* 434 Phil. 456, 468-469 (2002).

[57] See also *People v. Yanza,* 107 Phil. 888, 891 (1960).

[58] *People v. Cainglet,* 123 Phil. 568, 575 (1966).

FIRST DIVISION

[G.R. No. 169135. June 18, 2010]

JOSE DELOS REYES, *petitioner, vs.* **JOSEPHINE ANNE B. RAMNANI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; EXECUTION OF JUDGMENT; EXPIRATION OF THE ONE-YEAR REDEMPTION PERIOD FORECLOSES THE RIGHT OF THE JUDGMENT DEBTOR TO REDEEM THE SUBJECT PROPERTY; ISSUANCE OF FINAL CERTIFICATE OF SALE SHALL ISSUE AS A MATTER OF RIGHT IN FAVOR OF THE HIGHEST BIDDER; CASE AT BAR. — Petitioner, in essence, argues that the October 11, 1977 Decision was not timely executed because of respondent's failure to secure the final certificate of sale within 10 years from the entry of said judgment. This is erroneous. It is not disputed that shortly after the trial court rendered the aforesaid judgment, respondent moved for execution which was granted by the trial court. On June 6, 1978, the subject property was sold on execution sale. Respondent emerged as the highest bidder, thus, a certificate of sale was executed by the sheriff in her favor on the same day. As correctly held by the trial court, the October 11, 1977 Decision was already enforced when the subject property was levied and sold on June 6, 1978 which is within the five-year period for the execution of a judgment by motion under Section 6, Rule 39 of the Rules of Court. It is, likewise, not disputed that petitioner failed to redeem the subject property within one year from the annotation of the certificate of sale on TCT No. 480537. The expiration of the one-year redemption period foreclosed petitioner's right to redeem the subject property and the sale thereby became absolute. The issuance thereafter of a final certificate of sale is a mere formality and confirmation of the title that is already vested in respondent. Thus, the trial court properly granted the motion for issuance of the final certificate of sale.

2. ID.; ID.; MOTIONS; MOTION FOR ISSUANCE OF THE FINAL CERTIFICATE OF SALE IS A NON-LITIGIOUS MOTION;

NOTICE OF HEARING, NOT NECESSARY. — As to petitioner's claim that the subject motion is defective for lack of a notice of hearing, the CA correctly ruled that the subject motion is a non-litigious motion. While, as a general rule, all written motions should be set for hearing under Section 4, Rule 15 of the Rules of Court, excepted from this rule are non-litigious motions or motions which may be acted upon by the court without prejudicing the rights of the adverse party. As already discussed, respondent is entitled to the issuance of the final certificate of sale as a matter of right and petitioner is powerless to oppose the same. Hence, the subject motion falls under the class of non-litigious motions. At any rate, the trial court gave petitioner an opportunity to oppose the subject motion as in fact he filed a Comment/Opposition on March 1, 2004 before the trial court. Petitioner cannot, therefore, validly claim that he was denied his day in court.

APPEARANCES OF COUNSEL

Cesar D. Turiano for petitioner.
Servillano J. Conos and *Espiritu Vitales Espiritu Law Office* for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

A judgment debt is enforced by the levy and sale of the debtor's property.[1] The issuance of the final certificate of sale to the purchaser at the execution sale is a mere formality upon the debtor's failure to redeem the property within the redemption period.

This Petition for Review on *Certiorari* seeks to reverse and set aside the May 13, 2005 Decision[2] of the Court of Appeals

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[1] *Jalandoni v. Philippine National Bank*, 195 Phil. 1, 5 (1981).

[2] *Rollo*, pp. 28-34; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Rosmari D. Carandang and Monina Arevalo-Zeñarosa.

(CA) in CA-G.R. SP No. 87972, which affirmed the August 19, 2004[3] and November 10, 2004[4] Orders of the Regional Trial Court (RTC) of Pasig City, Branch 159 in Civil Case No. 24858. Also assailed is the August 3, 2005 Resolution[5] denying petitioner's motion for reconsideration.

Factual Antecedents

On October 11, 1977, the trial court rendered a Decision in Civil Case No. 24858 in favor of respondent Josephine Anne B. Ramnani. Thereafter, a writ of execution was issued by the trial court. On June 6, 1978, then Branch Sheriff Pedro T. Alarcon conducted a public bidding and auction sale over the property covered by Transfer Certificate of Title (TCT) No. 480537 (subject property) during which respondent was the highest bidder. Consequently, a certificate of sale was executed in her favor on even date. On November 17, 1978, a writ of possession was issued by the trial court. On March 8, 1990, the certificate of sale was annotated at the back of TCT No. 480537. Thereafter, the taxes due on the sale of the subject property were paid on September 26, 2001.

On February 17, 2004, respondent filed a motion (subject motion) for the issuance of an order directing the sheriff to execute the final certificate of sale in her favor. Petitioner opposed on the twin grounds that the subject motion was not accompanied by a notice of hearing and that the trial court's October 11, 1977 Decision can no longer be executed as it is barred by prescription.

Ruling of the Regional Trial Court

In its August 19, 2004 Order, the trial court granted the motion:

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[3] *Id*. at 60-62; penned by Judge Rodolfo R. Bonifacio.

[4] *Id*. at 69.

[5] *Id*. at 42; penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Rosmari D. Carandang and Monina Arevalo-Zeñarosa.

WHEREFORE, premises considered, the motion is hereby GRANTED; and this Court hereby directs the Branch Sheriff of this Court to issue the corresponding Final Certificate of Sale in the above-entitled case in accordance with the rules immediately upon receipt hereof.

SO ORDERED.[6]

The trial court ruled that the prescription for the issuance of a writ of execution is not applicable in this case. Less than a year from the October 11, 1977 Decision, respondent exercised her right to enforce the same through the levy and sale of the subject property on June 6, 1978. Although the certificate of sale was annotated on TCT No. 480537 only on March 8, 1990, petitioner did not exercise his right to redeem the subject property within one year from said registration. Thus, what remains to be done is the issuance of the final certificate of sale which was, however, not promptly accomplished at that time due to the demise of the trial court's sheriff. The issuance of the final certificate of sale is a ministerial duty of the sheriff in order to complete the already enforced judgment.

Petitioner moved for reconsideration which was denied by the trial court in its November 10, 2004 Order. Petitioner thereafter sought review via *certiorari* before the CA.

Ruling of the Court of Appeals

The CA denied the petition in its assailed May 13, 2005 Decision:

WHEREFORE, premises considered, the petition is hereby **DENIED**. The orders dated August 19, 2004 and November 10, 2004 of the RTC, Branch 159, Pasig City in Civil Case No. 24858 are hereby **AFFIRMED**.

SO ORDERED.[7]

In affirming the ruling of the trial court, the CA noted that the subject motion is a non-litigious motion, hence, the three-day

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[6] *Id*. at 62.

[7] *Id*. at 33.

notice rule does not apply. Further, it agreed with the trial court that the issuance of the final certificate of sale is not barred by prescription, laches or estoppel because the October 11, 1977 Decision was already executed through the levy and sale of the subject property on June 6, 1978. Respondent is entitled to the issuance of the final certificate of sale as a matter of right because petitioner failed to redeem the subject property.

Issues

1. Whether the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction in taking cognizance of the fatally defective motion and the subsequent issuance of the Orders dated August 19, 2004 and November 10, 2004;

2. Whether respondent is barred by prescription, laches or estoppel.[8]

Petitioner's Arguments

Petitioner contends that the motion dated February 16, 2004 filed by respondent to compel the sheriff to execute the final certificate of sale is fatally defective because it does not contain a notice of hearing. He further claims that the subject motion seeks to enforce the trial court's October 11, 1977 Decision which can no longer be done because 27 years have elapsed from the finality of said Decision.

Respondent's Arguments

Respondent contends that the subject motion is a non-litigious motion and that petitioner was not denied due process because he was given an opportunity to be heard by the trial court. She also points out that said motion is not barred by prescription, laches and estoppel considering that the levy and sale of the subject property was conducted on June 6, 1978 and petitioner failed to redeem the same.

Our Ruling

The petition lacks merit.

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[8] *Id*. at 15.

Respondent i s entitled to the issuance of the final certificate of sale as a matter of right.

Petitioner, in essence, argues that the October 11, 1977 Decision was not timely executed because of respondent's failure to secure the final certificate of sale within 10 years from the entry of said judgment. This is erroneous. It is not disputed that shortly after the trial court rendered the aforesaid judgment, respondent moved for execution which was granted by the trial court. On June 6, 1978, the subject property was sold on execution sale. Respondent emerged as the highest bidder, thus, a certificate of sale was executed by the sheriff in her favor on the same day. As correctly held by the trial court, the October 11, 1977 Decision was already enforced when the subject property was levied and sold on June 6, 1978 which is within the five-year period for the execution of a judgment by motion under Section 6,[9] Rule 39 of the Rules of Court.

It is, likewise, not disputed that petitioner failed to redeem the subject property within one year from the annotation of the certificate of sale on TCT No. 480537. The expiration of the one-year redemption period foreclosed petitioner's right to redeem the subject property and the sale thereby became absolute. The issuance thereafter of a final certificate of sale is a mere formality and confirmation of the title that is already vested in respondent.[10] Thus, the trial court properly granted the motion for issuance of the final certificate of sale.

As to petitioner's claim that the subject motion is defective for lack of a notice of hearing, the CA correctly ruled that the subject motion is a non-litigious motion. While, as a general

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[9] SECTION 6. *Execution by motion or by independent action*. — A final and executory judgment or order may be executed on motion within five (5) years from the date of its entry. After the lapse of such time, and before it is barred by the statute of limitations, a judgment may be enforced by action. The revived judgment may also be enforced by motion within five (5) years from the date of its entry and thereafter by action before it is barred by the statute of limitations.

[10] *Calacala v. Republic of the Philippines*, 502 Phil. 681, 691 (2005).

rule, all written motions should be set for hearing under Section 4,[11] Rule 15 of the Rules of Court, excepted from this rule are non-litigious motions or motions which may be acted upon by the court without prejudicing the rights of the adverse party.[12] As already discussed, respondent is entitled to the issuance of the final certificate of sale as a matter of right and petitioner is powerless to oppose the same.[13] Hence, the subject motion falls under the class of non-litigious motions. At any rate, the trial court gave petitioner an opportunity to oppose the subject motion as in fact he filed a Comment/Opposition[14] on March 1, 2004 before the trial court. Petitioner cannot, therefore, validly claim that he was denied his day in court.

WHEREFORE, the petition is *DENIED*. The May 13, 2005 Decision and August 3, 2005 Resolution of the Court of Appeals in CA-G.R. SP No. 87972 are *AFFIRMED*.

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[11] SECTION 4. *Hearing of motion.* – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

[12] *Id*.

[13] Section 33, Rule 39 provides:

SECTION 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. The deed shall be executed by the officer making the sale or by his successor in office, and in the latter case shall have the same validity as though the officer making the sale had continued in office and executed it.

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. The possession of the property shall be given to the purchaser or last redemptioner by the same officer unless a third party is actually holding the property adversely to the judgment obligor.

[14] *Rollo*, pp. 92-94.

Costs against petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 171201. June 18, 2010]

SPOUSES BENEDICT and MARICEL DY TECKLO, *petitioners, vs.* **RURAL BANK OF PAMPLONA, INC. represented by its President/Manager, JUAN LAS,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; MORTGAGES SECURING FUTURE LOANS ARE VALID AND LEGAL CONTRACTS. — A blanket mortgage clause, which makes available future loans without need of executing another set of security documents, has long been recognized in our jurisprudence. It is meant to save time, loan closing charges, additional legal services, recording fees, and other costs. A blanket mortgage clause is designed to lower the cost of loans to borrowers, at the same time making the business of lending more profitable to banks. Settled is the rule that mortgages securing future loans are valid and legal contracts.

2. ID.; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); IT IS THE ACT OF REGISTRATION WHICH CREATES A CONSTRUCTIVE NOTICE TO THE WHOLE WORLD AND BINDS THIRD PERSONS; REGISTRATION, DEFINED. — It is the act of registration which creates a constructive notice to the whole world and binds third persons. By definition, registration is

the ministerial act by which a deed, contract, or instrument is inscribed in the records of the office of the Register of Deeds and annotated on the back of the TCT covering the land subject of the deed, contract, or instrument. A person dealing with registered land is not required to go beyond the TCT to determine the liabilities attaching to the property. He is only charged with notice of such burdens on the property as are duly annotated on the TCT. To require him to do more is to defeat one of the primary objects of the Torrens system.

3. ID.; ID.; ID.; ID.; SUBSEQUENT LOANS NEED NOT BE SEPARATELY ANNOTATED ON THE CERTIFICATE OF TITLE WHEN THE MORTGAGE CONTRACT CONTAINING THE BLANKET MORTGAGE CLAUSE WAS ALREADY ANNOTATED ON THE TITLE OF THE MORTGAGED PROPERTY; RELEVANT RULING, CITED.— As to whether the second loan should have been annotated on the TCT of the mortgaged property in order to bind third parties, the case of *Tad-Y v. Philippine National Bank* is in point. The case involved a mortgage contract containing a provision that future loans would also be secured by the mortgage. This Court ruled that since the mortgage contract containing the blanket mortgage clause was already annotated on the TCT of the mortgaged property, subsequent loans need not be separately annotated on the said TCT in order to bind third parties. We quote the pertinent portion of this Court's discussion in *Tad-Y v. Philippine National Bank:* Petitioner-appellant advances the argument that the latter loans should have also been noted on TCT 2417. But We believe there was no necessity for such a notation because it already appears in the said title that aside from the amount of ₱840 first borrowed by the mortgagors, other obligations would also be secured by the mortgage. As already stated, it was incumbent upon any subsequent mortgagee or encumbrancer of the property in question to have examined the books or records of the PNB, as first mortgagee, the credit standing of the debtors. Records of the present case show that the mortgage contract, containing the provision that future loans would also be secured by the mortgage, is duly annotated on the TCT of the mortgaged property. This constitutes sufficient notice to the world that the mortgage secures not only the first loan but also future loans the mortgagor may obtain from respondent bank. Applying the doctrine laid down in *Tad-Y v. Philippine National Bank,*

the second loan need not be separately annotated on the said TCT in order to bind third parties such as petitioners.

4. MERCANTILE LAW; FORECLOSURE OF REAL ESTATE MORTGAGE; FAILURE TO INCLUDE A SECOND LOAN IN ONE'S APPLICATION FOR EXTRAJUDICIAL FORECLOSURE AS WELL AS IN THE BID AT THE AUCTION SALE RESULTS TO WAIVER OF ONE'S LIEN ON THE MORTGAGED PROPERTY WITH RESPECT TO THE SECOND LOAN; A CASE OF. — xxx [W]e note the curious fact that respondent bank's petition for extrajudicial foreclosure was solely for the satisfaction of the first loan although the second loan had also become due and demandable. In its Appellant's Brief filed in the Court of Appeals, respondent bank even admitted that the second loan was not included in its bid at the public auction sale. To quote from page 5 of the Appellant's Brief filed by respondent bank: For failure to pay the first loan, the mortgage was foreclosed and the property covered by TCT No. 24196 was sold at public auction on December 19, 1994, for ₱142,000, which was the bid of the mortgagee bank. **The bank did not include in its bid the second loan of ₱150,000**. For its failure to include the second loan in its application for extrajudicial foreclosure as well as in its bid at the public auction sale, respondent bank is deemed to have waived its lien on the mortgaged property with respect to the second loan. Of course, respondent bank may still collect the unpaid second loan, and the interest thereon, in an ordinary collection suit before the right to collect prescribes.

5. ID.; ID.; SECOND LOAN NOT INCLUDED IN THE APPLICATION FOR EXTRAJUDICIAL FORECLOSURE IS IN THE NATURE OF A DEFICIENCY AMOUNT AFTER FORECLOSURE TO BE COLLECTED IN AN ORDINARY ACTION FOR COLLECTION. — After the foreclosure of the mortgaged property, the mortgage is extinguished and the purchaser at auction sale acquires the property free from such mortgage. Any deficiency amount after foreclosure cannot constitute a continuing lien on the foreclosed property, but must be collected by the mortgagee-creditor in an ordinary action for collection. In this case, the second loan from the same mortgage deed is in the nature of a deficiency amount after foreclosure.

6. ID.; ID.; ID.; IN ORDER TO EFFECT REDEMPTION, REDEMPTION AMOUNT MUST BE PAID; SECOND LOAN, NOT INCLUDED. — In order to effect redemption, the judgment debtor or his successor-in-interest need only pay the purchaser at the public auction sale the redemption amount composed of (1) the price which the purchaser at the public auction sale paid for the property and (2) the amount of any assessment or taxes which the purchaser may have paid on the property after the purchase, plus the applicable interest. Respondent bank's demand that the second loan be added to the actual amount paid for the property at the public auction sale finds no basis in law or jurisprudence.

7. ID.; BANKING LAWS; REPUBLIC ACT NO. 337 (GENERAL BANKING ACT; REDEMPTION AMOUNT, HOW COMPUTED; CASE AT BAR. — Coming now to the computation of the redemption amount, Section 78 of Republic Act No. 337, otherwise known as the General Banking Act, governs in cases where the mortgagee is a bank. It provides: Sec. 78. x x x In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, or the amount due under the mortgage deed, as the case may be, **with interest thereon at the rate specified in the mortgage,** and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. x x x Applying Section 78 of the General Banking Act, the 24% per annum interest rate specified in the mortgage should apply. Thus, the redemption amount should be computed as follows:

₱ 142,000.00	=	winning bid at auction sale
₱ 2,647.00	=	registration expenses for provisional Certificate of sale

19 Dec. 1994 - 9 Aug. 1995 =	233 days from date of auction to date of tender
12 Jan. 1995 - 9 Aug. 1995 =	211 days from date of registration of provisional sale to date of tender
₱ 142,000.00 x 24% x 233/360=	₱ 22,057.33
2,647.00 x 24% x 211/360=	372.35
	₱ 22,429.68
Plus winning bid	142,000.00
Plus registration expenses	2,647.00
Total	**₱ 167,076.68**

After deducting petitioners' tender of ₱155,769.50, there is a deficiency of ₱11,307.18 on the redemption amount, as computed above. Petitioners should thus pay respondent bank the deficiency amounting to ₱11,307.18, with interest at the rate of 24% per annum from 22 May 1998 until fully paid.

APPEARANCES OF COUNSEL

Avelino V. Sales, Jr. for petitioners.
Carmona Tuy Ablay & Associates for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 17 May 2005 Decision[2] and the 14 December 2005 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 59769. In its 17 May 2005 Decision, the Court of Appeals affirmed with modification the 22 May 1998

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

[2] *Rollo*, pp. 22-29. Penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Rodrigo V. Cosico and Danilo B. Pine, concurring.

[3] *Id.* at 31-32.

Decision[4] of the Regional Trial Court (Branch 61) of Naga City in Civil Case No. RTC 96-3521. In its 14 December 2005 Resolution, the Court of Appeals denied petitioners' motion for reconsideration.

The Antecedent Facts

On 20 January 1994, spouses Roberto and Maria Antonette Co obtained from respondent Rural Bank of Pamplona, Inc. a ₱100,000.00 loan[5] due in three months or on 20 April 1994. The loan was secured by a real estate mortgage[6] on a 262-square meter residential lot owned by spouses Co located in San Felipe, Naga City and covered by Transfer Certificate of Title (TCT) No. 24196.

The mortgage was registered in the Register of Deeds of Naga City on 21 January 1994 and duly annotated on the TCT of the mortgaged property as Entry No. 58182.[7]

One of the stipulations in the mortgage contract was that the mortgaged property would also answer for the future loans of the mortgagor. Pursuant to this provision, spouses Co obtained on 4 March 1994 a second loan[8] from respondent bank in the amount of ₱150,000.00 due in three months or on 2 June 1994.

Petitioners, spouses Benedict and Maricel Dy Tecklo, meanwhile instituted an action for collection of sum of money against spouses Co. The case, docketed as Civil Case No. 94-3161, was assigned to the Regional Trial Court (Branch 25) of Naga City. In the said case, petitioners obtained a writ of attachment on the mortgaged property of spouses Co. The notice of attachment was annotated on the TCT of the mortgaged property as Entry No. 58941.[9]

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[4] *Id.* at 49-53.

[5] *Id.* at 40.

[6] *Id.* at 41.

[7] Records, pp. 143-144.

[8] *Rollo,* p. 42.

[9] Records, pp. 143-144.

When the two loans remained unpaid after becoming due and demandable, respondent bank instituted extrajudicial foreclosure proceedings. In its 5 September 1994 petition for extrajudicial foreclosure, respondent bank sought the satisfaction solely of the first loan although the second loan had also become due.[10] At the public auction scheduled on 19 December 1994, respondent bank offered the winning bid of ₱142,000.00, which did not include the second loan.[11] The provisional certificate of sale to respondent bank was annotated on the TCT of the mortgaged property as Entry No. 60794.[12]

Petitioners then exercised the right of redemption as successors-in-interest of the judgment debtor. Stepping into the shoes of spouses Co, petitioners tendered on 9 August 1995 the amount of ₱155,769.50, based on the computation made by the Office of the Provincial Sheriff, as follows:

Bid price ….....	₱142,000.00
Interest on the bid price from December 19, 1994 to August 9, 1995 at 1% per month ….....	10,934.00
Expenses incurred in connection with the registration of the Provisional Certificate of Sale ….....	2,647.00
Interest on the expenses ….....	188.50
	₱155,769.50

Respondent bank objected to the non-inclusion of the second loan. It also claimed that the applicable interest rate should be the rate fixed in the mortgage, which was 24% per annum plus 3% service charge per annum and 18% penalty per annum. However, the Provincial Sheriff insisted that the interest rate should only be 12% per annum. Respondent bank then sought annulment of the redemption, injunction, and damages in the Regional Trial Court (Branch 61) of Naga City docketed as Civil Case No. RTC 96-3521.

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[10] *Id.* at 168.

[11] CA *rollo*, p. 20.

[12] Records, pp. 143-144.

The Ruling of the Trial Court

The trial court ruled, among others, that the second loan, not having been annotated on the TCT of the mortgaged property, could not bind third persons such as petitioners. Applying the 24% per annum interest rate fixed in the mortgage, the trial court computed the redemption price as follows:

Bid price ….....	₱142,000.00
Interest rate on the bid price for 233 days	22,057.33
Expenses of registration of the Prov. Sale…..	2,647.00
Interest on the expenses for 211 days.....	372.24
	₱167,076.57[13]

In its 22 May 1998 Decision, the trial court dismissed respondent bank's complaint for annulment of redemption and ordered petitioners to pay respondent bank the deficiency of ₱11,307.07 on the redemption amount, to wit:

> WHEREFORE, premises considered, this Civil Case No. RTC-96-3521 is hereby dismissed and defendants Dy Tecklos are hereby ordered to pay herein plaintiff the insufficiency of the redemption price in the amount of ₱11,307.07, and thereafter, upon receipt of said amount, the Rural Bank of Pamplona is also ordered to surrender to said defendants Dy Tecklos TCT No. 24196. No pronouncement as to costs.[14]

Respondent bank elevated the case to the Court of Appeals insisting that the foreclosed mortgage also secured the second loan of ₱150,000.00.

The Ruling of the Court of Appeals

The appellate court ruled that the redemption amount should have included the second loan even though it was not annotated on the TCT of the mortgaged property. In its 17 May 2005 Decision, the Court of Appeals affirmed the trial court's decision with the modification that petitioners pay respondent bank the deficiency amounting ₱204,407.18, with interest at the rate of 24% per annum from 22 May 1998 until fully paid, thus:

[13] *Rollo*, p. 52.

[14] *Id.* at 52-53.

WHEREFORE, premises considered, in continued exercise of liberality in redemption, the dismissal of Civil Case No. RTC-96-3521 is AFFIRMED and defendants Dy Tecklo are hereby ordered to pay plaintiff the deficiency of the redemption price in the amount of ₱204,407.18 with interest at the rate of 24% per annum from May 22, 1998 until fully paid. Upon receipt of the full amount inclusive of interest the Rural Bank of Pamplona, Inc. is ordered to surrender to defendants-spouses Dy Tecklo the owner's duplicate of TCT No. 24196.[15]

Aggrieved, petitioners filed a motion for reconsideration, which the Court of Appeals denied. Hence, the present petition for review.

The Issue

The sole issue is whether the redemption amount includes the second loan in the amount of ₱150,000.00 even if it was not included in respondent bank's application for extrajudicial foreclosure.

The Court's Ruling

The Court finds the petition meritorious.

Petitioners pointed out that the second loan was not annotated as an additional loan on the TCT of the mortgaged property. Petitioners argued that the second loan was just a private contract between respondent bank and spouses Co, which could not bind third parties unless duly registered. Petitioners stressed that respondent bank's application for extrajudicial foreclosure referred solely to the first loan.

Respondent bank insisted that the mortgage secured not only the first loan but also future loans spouses Co might obtain from respondent bank. According to respondent bank, this was specifically provided in the mortgage contract. Respondent bank contended that petitioners, as redemptioner by virtue of the preliminary attachment they obtained against spouses Co, should assume all the debts secured by the mortgaged property.

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[15] *Id.* at 28.

The mortgage contract in this case contains the following blanket mortgage clause:

> 1. That as security for the payment of the loan or advance in the principal sum of ONE HUNDRED THOUSAND PESOS ONLY (₱100,000.00) PESOS, Philippine Currency, **and such other loans or advances** already obtained and/or **still to be obtained by the MORTGAGOR/S**, either as MAKER/S, CO-MAKER/S, SURETY/IES OR GUARANTOR/S from the MORTGAGEE payable on the date/s stated in the corresponding promissory note/s and subject to the payment of interest, other bank charges, and to other conditions mentioned thereon, x x x.[16] (Emphasis supplied)

A blanket mortgage clause, which makes available future loans without need of executing another set of security documents, has long been recognized in our jurisprudence. It is meant to save time, loan closing charges, additional legal services, recording fees, and other costs. A blanket mortgage clause is designed to lower the cost of loans to borrowers, at the same time making the business of lending more profitable to banks. Settled is the rule that mortgages securing future loans are valid and legal contracts.[17]

Presidential Decree No. 1529, otherwise known as the Property Registration Decree, mandates:

> SEC. 51. *Conveyance and other dealings by registered owner*. – x x x
>
> The act of registration shall be the operative act to convey or affect the land insofar as third persons are concerned, and in all cases under this Decree, the registration shall be made in the office of the Register of Deeds for the province or city where the land lies.
>
> SEC. 52. *Constructive notice upon registration*. – Every conveyance, mortgage, lease, lien, attachment, order, judgment, instrument, or entry affecting registered land shall, if registered, filed, or entered in the office of the Register of Deeds for the province

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[16] *Id.* at 41.

[17] *Lim Julian v. Lutero*, 49 Phil. 703 (1926); *Tad-Y v. Philippine National Bank*, 120 Phil. 806 (1964).

or city where the land to which it relates lies, be constructive notice to all persons from the time of such registering, filing, or entering.

It is the act of registration which creates a constructive notice to the whole world and binds third persons. By definition, registration is the ministerial act by which a deed, contract, or instrument is inscribed in the records of the office of the Register of Deeds and annotated on the back of the TCT covering the land subject of the deed, contract, or instrument.[18]

A person dealing with registered land is not required to go beyond the TCT to determine the liabilities attaching to the property. He is only charged with notice of such burdens on the property as are duly annotated on the TCT. To require him to do more is to defeat one of the primary objects of the Torrens system.[19]

As to whether the second loan should have been annotated on the TCT of the mortgaged property in order to bind third parties, the case of *Tad-Y v. Philippine National Bank*[20] is in point. The case involved a mortgage contract containing a provision that future loans would also be secured by the mortgage. This Court ruled that since the mortgage contract containing the blanket mortgage clause was already annotated on the TCT of the mortgaged property, subsequent loans need not be separately annotated on the said TCT in order to bind third parties. We quote the pertinent portion of this Court's discussion in *Tad-Y v. Philippine National Bank:*[21]

Petitioner-appellant advances the argument that the latter loans should have also been noted on TCT 2417. But We believe there was no necessity for such a notation because it already appears in the said title that aside from the amount of ₱840 first borrowed by the mortgagors, other obligations would also be secured by the mortgage. As already stated, it was incumbent upon any subsequent

[18] *Agricultural Credit Cooperative Association of Hinigaran v. Yusay*, 107 Phil. 791 (1960).

[19] *Cañgas v. Tan Chuan Leong*, 110 Phil. 168 (1960).

[20] 120 Phil. 806 (1964).

[21] *Id*.

mortgagee or encumbrancer of the property in question to have examined the books or records of the PNB, as first mortgagee, the credit standing of the debtors.[22]

Records of the present case show that the mortgage contract, containing the provision that future loans would also be secured by the mortgage, is duly annotated on the TCT of the mortgaged property. This constitutes sufficient notice to the world that the mortgage secures not only the first loan but also future loans the mortgagor may obtain from respondent bank. Applying the doctrine laid down in *Tad-Y v. Philippine National Bank,*[23] the second loan need not be separately annotated on the said TCT in order to bind third parties such as petitioners.

However, we note the curious fact that respondent bank's petition for extrajudicial foreclosure was solely for the satisfaction of the first loan although the second loan had also become due and demandable.[24] In its Appellant's Brief filed in the Court of Appeals, respondent bank even admitted that the second loan was not included in its bid at the public auction sale. To quote from page 5 of the Appellant's Brief filed by respondent bank:

> For failure to pay the first loan, the mortgage was foreclosed and the property covered by TCT No. 24196 was sold at public auction on December 19, 1994, for ₱142,000, which was the bid of the mortgagee bank. **The bank did not include in its bid the second loan of ₱150,000**.[25] (Emphasis supplied)

For its failure to include the second loan in its application for extrajudicial foreclosure as well as in its bid at the public auction sale, respondent bank is deemed to have waived its lien on the mortgaged property with respect to the second loan. Of course, respondent bank may still collect the unpaid second loan, and the interest thereon, in an ordinary collection suit before the right to collect prescribes.

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[22] *Id.* at 811.

[23] *Id.*

[24] Records, p. 168.

[25] CA *rollo*, p. 20.

After the foreclosure of the mortgaged property, the mortgage is extinguished and the purchaser at auction sale acquires the property free from such mortgage.[26] Any deficiency amount after foreclosure cannot constitute a continuing lien on the foreclosed property, but must be collected by the mortgagee-creditor in an ordinary action for collection. In this case, the second loan from the same mortgage deed is in the nature of a deficiency amount after foreclosure.

In order to effect redemption, the judgment debtor or his successor -in-interest need only pay the purchaser at the public auction sale the redemption amount composed of (1) the price which the purchaser at the public auction sale paid for the property and (2) the amount of any assessment or taxes which the purchaser may have paid on the property after the purchase, plus the applicable interest.[27] Respondent bank's demand that the second loan be added to the actual amount paid for the property at the public auction sale finds no basis in law or jurisprudence.

Coming now to the computation of the redemption amount, Section 78 of Republic Act No. 337, otherwise known as the General Banking Act, governs in cases where the mortgagee is a bank.[28] It provides:

> Sec. 78. x x x In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan granted before the passage of this Act or under the provisions of this Act, the mortgagor or debtor whose real property has been sold at public auction, judicially or extrajudicially, for the full or partial payment of an obligation to any bank, banking or credit institution, within the purview of this Act shall have the right, within one year after the sale of the real estate as a result of the foreclosure of the respective mortgage, to redeem the property by paying the amount fixed by the court in the order of execution, or the amount due under the mortgage deed**,** as the case may be, **with interest**

[26] *New Sampaguita Builders Construction, Inc. v. Philippine National Bank*, G.R. No. 148753, 30 July 2004, 435 SCRA 565.

[27] *Metropolitan Bank and Trust Company v. Spouses Tan*, G.R. No. 178449, 17 October 2008, 569 SCRA 814.

[28] *Heirs of Quisumbing v. PNB*, G.R. No. 178242, 20 January 2009, 576 SCRA 762.

thereon at the rate specified in the mortgage, and all the costs, and judicial and other expenses incurred by the bank or institution concerned by reason of the execution and sale and as a result of the custody of said property less the income received from the property. x x x (Emphasis supplied)

Applying Section 78 of the General Banking Act, the 24% per annum interest rate specified in the mortgage should apply. Thus, the redemption amount should be computed as follows:

₱ 142, 000.00	=	winning bid at auction sale
₱ 2,647.00	=	registration expenses for provisional certificate of sale
19 Dec. 1994 - 9 Aug. 1995	=	233 days from date of auction to date of tender
12 Jan. 1995 - 9 Aug. 1995	=	211 days from date of registration of provisional sale to date of tender
₱ 142,000.00 x 24% x 233/360=		₱ 22,057.33
2,647.00 x 24% x 211/360=		372.35
		₱ 22,429.68
Plus winning bid		142,000.00
Plus registration expenses		2,647.00
Total		**₱ 167,076.68**

After deducting petitioners' tender of ₱155,769.50, there is a deficiency of ₱11,307.18 on the redemption amount, as computed above. Petitioners should thus pay respondent bank the deficiency amounting to ₱11,307.18, with interest at the rate of 24% per annum from 22 May 1998 until fully paid.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 17 May 2005 Decision and the 14 December 2005 Resolution of the Court of Appeals in CA-G.R. CV No. 59769. Petitioners Benedict and Maricel Dy Tecklo are ordered to pay respondent Rural Bank of Pamplona, Inc. the deficiency of ₱11,307.18 on the redemption amount, with interest at the rate of 24% per

annum from 22 May 1998 until fully paid. Upon receipt of the full amount inclusive of interest, respondent Rural Bank of Pamplona, Inc. is ordered to surrender to petitioners Benedict and Maricel Dy Tecklo the owner's duplicate of TCT No. 24196.

No pronouncement as to costs.

SO ORDERED.

Nachura, Peralta, Abad, and *Perez,*[*] *JJ.,* concur.

SECOND DIVISION

[G.R. No. 171327. June 18, 2010]

ESTRELLA VELASCO, *petitioner, vs.* **TRANSIT AUTOMOTIVE SUPPLY, INC. and ANTONIO DE DIOS,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; SUBSTANTIAL EVIDENCE; QUANTUM OF PROOF REQUIRED IN ADMINISTRATIVE PROCEEDINGS. — In administrative proceedings, the quantum of proof required is substantial evidence, which is more than a mere scintilla of evidence, but such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. The Court of Appeals may review the factual findings of the NLRC and reverse its ruling if it finds that the decision of the NLRC lacks substantial basis, as it did in this case.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; DEFINED;

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[*] Designated additional member per Special Order No. 842.

WHEN PRESENT. — We agree with the Court of Appeals in reversing the ruling of the NLRC and in finding that petitioner was not constructively dismissed from employment. In this case, it is undisputed that petitioner was holding three positions: Head of the Accounting Department, Secretary to the President and General Manager, and Comptroller. She was asked to relinquish her duties as Comptroller. Constructive dismissal is defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely, or when there is a demotion in rank or a diminution of pay. It exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.

3. ID.; ID.; ID.; ABSENT ANY EVIDENCE OF BAD FAITH, IT IS WITHIN THE EXERCISE OF EMPLOYER'S MANAGEMENT PREROGATIVE TO TRANSFER SOME OF ITS EMPLOYEE'S DUTIES IF IN THEIR JUDGMENT, IT WOULD BE BENEFICIAL TO THE COMPANY. — Here, there was no diminution of petitioner's salary and other benefits. There was no evidence that she was harassed or discriminated upon, or that respondents made it difficult for her to continue with her other duties. Absent any evidence of bad faith, it is within the exercise of respondents' management prerogative to transfer some of petitioner's duties if in their judgment, it would be more beneficial to the corporation. There was no basis for the NLRC's finding that from performing managerial functions, petitioner was reduced to performing clerical tasks.

4. ID.; ID.; ID.; NO TERMINATION OF EMPLOYMENT BUT MERE TRANSFER OF SOME DUTIES AND RESPONSIBILITIES. — Respondents allowed petitioner to take a leave of absence for the whole month of February 1993. It was only on 5 March 1993 when respondents called her attention that she had been absent without official leave since 1 March 1993. Respondents required petitioner to explain her absence within three days from receipt of the letter. However, it was only on 31 March 1993 when petitioner answered that she had nothing to explain because in February 1993, she was verbally informed by De Dios to resign from her employment as Comptroller. Petitioner's belated reply showed her lack of intention to report back to work and to perform her other responsibilities. Instead, she

filed a case for constructive dismissal against respondents which we find to be without factual and legal basis.

APPEARANCES OF COUNSEL

Francisco L. Rosario, Jr. for petitioner.
Daniel Salomon for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review assailing the 1 September 2005 Decision[1] and 3 February 2006 Resolution[2] of the Court of Appeals in CA-G.R. SP No. 53901.

The Antecedent Facts

Estrella Velasco (petitioner) was an employee of Transit Automotive Supply, Inc. (respondent corporation) from 1972 to 1993. Petitioner was originally hired as accounting clerk and later became the head of the Accounting Department while concurrently the Secretary to the President and General Manager, and Comptroller. Petitioner alleged that in January 1993, she was asked to resign as Comptroller and to concentrate on the preparation of respondent corporation's Income Statement. Jose F. Andan was then appointed Comptroller. When petitioner refused, her office table, things and personal belongings were allegedly transferred without her consent. Petitioner took a leave of absence for the whole month of February 1993. In a letter dated 5 March 1993,[3] respondent corporation called petitioner's attention that she had been absent without official leave since 1 March 1993. Respondent corporation required petitioner to explain her absence within three days from receipt

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[1] *Rollo*, pp. 233-246. Penned by Associate Justice Monina Arevalo-Zeñarosa with Associate Justices Remedios A. Salazar-Fernando and Rosmari D. Carandang, concurring.

[2] *Id.* at 270-272.

[3] *Id.* at 39.

of the letter; otherwise, her absence would be considered an abandonment of her duties and responsibilities. In her answer dated 31 March 1993,[4] petitioner through her counsel alleged that she had nothing to explain because in February 1993, she was verbally informed by respondent corporation's President and General Manager, Antonio De Dios (De Dios), to resign from her employment as Comptroller. Petitioner then filed an action for constructive dismissal against respondent corporation and De Dios (collectively, respondents).

The Decision of the Labor Arbiter

In his Decision[5] dated 29 October 1993, the Labor Arbiter dismissed the complaint. The Labor Arbiter ruled that petitioner was holding multiple positions and that respondents only exercised their management prerogative. The Labor Arbiter noted that there was no diminution in petitioner's salary and benefits. The Labor Arbiter also noted that as per petitioner's own evidence, she was applying with a multinational firm while she was on leave during the whole month of February 1993, thus showing that she had no intention to return to respondent corporation.

Petitioner appealed to the National Labor Relations Commission (NLRC).

The Decision of the NLRC

In its Decision[6] promulgated on 23 November 1994, the NLRC found that petitioner was constructively dismissed from employment. The NLRC ruled that petitioner's reinstatement was logical except that it was not proper due to the strained relationship between the parties. Hence, the NLRC allowed the recovery of separation pay. The NLRC ruled:

WHEREFORE, premises considered, the decision dated October 29, 1993 is hereby Vacated and Set Aside and a new one Entered

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[4] *Id.* at 40.

[5] *Id.* at 74-80. Penned by Labor Arbiter Arthur L. Amansec.

[6] *Id.* at 98-120. Penned by Commissioner Victoriano R. Calaycay with Presiding Commissioner Raul T. Aquino and Commissioner Rogelio I. Rayala, concurring.

ordering the respondent to pay the complainant the amount of ₱521,325.00, representing backwages from March, 1993 up to September 30, 1994; separation pay in the amount of ₱608,212.50, representing the twenty one (21) years of service; and attorney's fees equivalent to 10% of the award pursuant to law.

All other claims are dismissed for lack of merit.

SO ORDERED.[7]

Respondents came to this Court assailing the 23 November 1994 Decision of the NLRC. The case was docketed as G.R. No. 119424.

Respondents alleged that the NLRC "in a glaring gesture of partiality, merely copied the appeal memorandum of the private respondent *verbatim* including all its blatant errors not only of grammar and spelling but also of fact and law without examining the evidence on record nor studying the existing jurisprudence on the matter."

In an unsigned Resolution[8] dated 30 September 1996, this Court ruled that while it held that it was proper for the Court of Appeals to copy the facts of the case as summarized in the Appellee's Brief, a judicial or quasi-judicial tribunal like the NLRC should not be allowed to copy *verbatim* and *in toto* the appeal memorandum's conclusion of law. This Court ruled that the NLRC should make its own analysis and should show how the law and jurisprudence justify the conclusion it had reached. This Court deemed the NLRC's decision incomplete and ordered the NLRC to render a new decision on the case.

Thus, the NLRC promulgated a new Decision[9] on 27 January 1998. The NLRC ruled that petitioner's transfer was a demotion. The NLRC ruled that from performing a managerial function, petitioner was asked to perform a clerical task although she retained her salary and rank.

The dispositive portion of the NLRC Decision reads:

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[7] *Id.* at 119.

[8] *Id.* at 144-145.

[9] *Id.* at 146-155.

Accordingly, premises considered, the decision appealed from is hereby vacated and a new one entered declaring respondent guilty of illegal transfer and illegal dismissal and ordering the same to pay complainant ₱599,062.50 in separation pay and ₱1,891,493.75 in backwages.

SO ORDERED.[10]

Respondents filed a petition for *certiorari* before this Court, docketed as G.R. No. 134238. In its 16 June 1999 Resolution,[11] this Court referred the case to the Court of Appeals pursuant to *St. Martin Funeral Home v. NLRC.*[12]

The Decision of the Court of Appeals

In its 1 September 2005 Decision, the Court of Appeals set aside the NLRC's 27 January 1998 decision and reinstated the Labor Arbiter's 29 October 1993 decision. The Court of Appeals ruled that substantial evidence showed that petitioner's transfer was valid. The Court of Appeals ruled that there was nothing in the records which would show that petitioner was harassed to force her to resign from work. Neither was petitioner maltreated, or a deliberate scheme employed to make her work grossly inconvenient or almost impossible to bear. The Court of Appeals noted that petitioner even admitted that respondents tried to contact her when she absented herself from work for a month.

The Court of Appeals further ruled that petitioner was not asked to perform a function she had not been performing for years. Instead, there was only a transfer of some of her duties. The Court of Appeals ruled that petitioner was not terminated without cause or due process nor was she constructively dismissed.

The dispositive portion of the Court of Appeals' decision reads:

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[10] *Id.* at 154.

[11] *Id.* at 231-232.

[12] 356 Phil. 811 (1998).

WHEREFORE, the writ of *certiorari* prayed for is hereby GRANTED and the Decision of public respondent NLRC dated January 27, 1998 is hereby NULLIFIED and SET ASIDE, and the Decision of the Labor Arbiter dated October 29, 1993 dismissing private respondent Erlinda Velasco's complaint for illegal dismissal is hereby REINSTATED.

SO ORDERED.[13]

Petitioner filed a motion for reconsideration. In its 3 February 2006 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the present petition.

The Issue

The sole issue in this case is whether petitioner was constructively dismissed from employment.

The Ruling of this Court

The petition has no merit.

In administrative proceedings, the quantum of proof required is substantial evidence, which is more than a mere scintilla of evidence, but such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[14] The Court of Appeals may review the factual findings of the NLRC and reverse its ruling if it finds that the decision of the NLRC lacks substantial basis,[15] as it did in this case.

We agree with the Court of Appeals in reversing the ruling of the NLRC and in finding that petitioner was not constructively dismissed from employment. In this case, it is undisputed that petitioner was holding three positions: Head of the Accounting Department, Secretary to the President and General Manager, and Comptroller. She was asked to relinquish her duties as Comptroller.

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[13] *Rollo*, pp. 245-246.

[14] *Vicente v. Court of Appeals*, G.R. No. 175988, 24 August 2007, 531 SCRA 240.

[15] *Id.*

Constructive dismissal is defined as a quitting because continued employment is rendered impossible, unreasonable or unlikely, or when there is a demotion in rank or a diminution of pay.[16] It exists when an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee leaving him with no option but to forego with his continued employment.[17]

Here, there was no diminution of petitioner's salary and other benefits. There was no evidence that she was harassed or discriminated upon, or that respondents made it difficult for her to continue with her other duties. Absent any evidence of bad faith, it is within the exercise of respondents' management prerogative to transfer some of petitioner's duties if in their judgment, it would be more beneficial to the corporation. There was no basis for the NLRC's finding that from performing managerial functions, petitioner was reduced to performing clerical tasks.

Respondents allowed petitioner to take a leave of absence for the whole month of February 1993. It was only on 5 March 1993 when respondents called her attention that she had been absent without official leave since 1 March 1993. Respondents required petitioner to explain her absence within three days from receipt of the letter. However, it was only on 31 March 1993 when petitioner answered that she had nothing to explain because in February 1993, she was verbally informed by De Dios to resign from her employment as Comptroller. Petitioner's belated reply showed her lack of intention to report back to work and to perform her other responsibilities. Instead, she filed a case for constructive dismissal against respondents which we find to be without factual and legal basis.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 1 September 2005 Decision and 3 February 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 53901.

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[16] *Norkis Trading Co., Inc. v. Gnilo,* G.R. No. 159730, 11 February 2008, 544 SCRA 279.

[17] *Formantes v. Duncan Pharmaceuticals Phil., Inc.*, G.R. No. 170661, 4 December 2009.

SO ORDERED.

Nachura, Peralta, Abad, and *Perez,*[*] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 179801. June 18, 2010]

BANK OF THE PHILIPPINE ISLANDS and BPI FAMILY BANK, *petitioners, vs.* **HONORABLE NATIONAL LABOR RELATIONS COMMISSION (FIRST DIVISION) and MA. ROSARIO N. ARAMBULO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; SEPARATION PAY SHALL BE ALLOWED AS A MEASURE OF SOCIAL JUSTICE ONLY IN THOSE INSTANCES WHERE THE EMPLOYEE IS VALIDLY DISMISSED FOR CAUSES OTHER THAN THOSE JUST CAUSES FOR DISMISSAL PROVIDED IN ARTICLE 282 OF THE LABOR CODE.— While as a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to separation pay, the Court has allowed in numerous cases the grant of separation pay or some other financial assistance to an employee dismissed for just causes on the basis of equity. In the leading case of *Philippine Long Distance Telephone Co. v. NLRC,* the Court stated that separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. In granting separation pay to respondent, the NLRC and Court of Appeals both adhered to this jurisprudential precept and cleared respondent of bad faith. However, the succeeding

[*] Designated additional member per Special Order No. 842.

case of *Toyota Motor Phils. Corp. Workers Association v. NLRC* reaffirmed the general rule that separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes **other than serious misconduct, willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, commission of a crime against the employer or his family, or those reflecting on his moral character.** These five grounds are just causes for dismissal as provided in Article 282 of the Labor Code.

2. ID.; ID.; AN EMPLOYEE DISMISSED ON THE GROUND OF LOSS OF TRUST AND CONFIDENCE IS NOT ENTITLED TO SEPARATION PAY; CASE AT BAR.— It may not be amiss to emphasize that if an employee has been dismissed for a just cause under Article 282 of the Labor Code, he is not entitled to separation pay. In the instant case, respondent was dismissed on the ground of loss of trust and confidence. It is significant to stress that for there to be a valid dismissal based on loss of trust and confidence, the breach of trust must be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable excuse. The basic premise for dismissal on the ground of loss of confidence is that the employees concerned hold a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee. Respondent, in affixing her signatures on the withdrawal slips which were later found to have been accomplished through forgery, clearly failed to monitor these 46 instances of unauthorized withdrawals. While the evidence presented by BPI fell short of proving respondent's complicity in the forging of these withdrawal slips, her omission, coupled with unusual accommodation extended to certain bank clients in violation of the bank's standard operating procedures, cost her job. In fact, the validity of her dismissal for loss of trust and confidence was no longer disputed by respondent. In the recent case of *Reno Foods v. NLM,* this Court reiterated the *Toyota* ruling and maintained that labor adjudicatory officials and the Court of Appeals must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family – grounds under Art. 282 of the Labor Code that sanction

dismissals of employees. The case of *Aromin v. NLRC* is in all fours. In said case, Aromin was the assistant vice-president of BPI when he was validly dismissed for loss of trust and confidence. Invoking the pronouncement in *Toyota*, the Court disallowed the payment of separation pay on the ground that Aromin was found guilty of willful betrayal of trust, a serious offense akin to dishonesty. Therefore, applying the doctrine laid down in *Toyota*, respondent should be denied of separation pay.

APPEARANCES OF COUNSEL

Alonso & Associates for petitioners.
Zosimo G. Linato for private respondent.

D E C I S I O N

PEREZ, *J.*:

Assailed in this petition for review on *certiorari* under Rule 45 of the Rules of Court is the Decision[1] of the Court of Appeals dated 3 July 2007, as well as its Resolution[2] dated 20 September 2007 affirming the ruling of the National Labor Relations Commission (NLRC)[3] directing the payment of separation pay to respondent Ma. Rosario N. Arambulo.

Records show that respondent was initially employed as Clerk in 1972 at Citytrust Banking Corporation, which eventually merged with the Bank of Philippine Islands (BPI). She later became Lead Teller, then as Sales Manager, and subsequently, as Bank Manager in BPI-San Pablo, Laguna Branch in 1996.

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[1] Penned by Associate Justice Sesinando E. Villon with Associate Justices Martin S. Villarama, Jr. (now Supreme Court Associate Justice) and Noel G. Tijam, concurring. *Rollo*, pp. 65-79.

[2] *Id.* at 81.

[3] Penned by Commissioner Romeo L. Go, and concurred in by Commissioners Roy V. Señeres and Ernesto S. Dinopol.

On 4 October 2001, respondent was reprimanded for the improper handling and retention of a client's account.[4] She was transferred to BPI Family Bank in Los Baños, Laguna on 21 November 2001.

On 26 April 2002, a client of BPI-San Pablo, Laguna Branch requested for a certification of her savings account. Her balance reflected an amount less than the actual amount deposited. Hence, BPI conducted an investigation and discovered that its bank teller, Teotima Helen Azucena (Azucena) was making unauthorized withdrawals. A show cause memorandum was served to Azucena asking her to explain the unauthorized withdrawals. In her written response, Azucena implicated respondent, in that the latter, on many occasions, would make temporary cash borrowings and would return the money at the end of the day through withdrawals from her own or other clients' accounts. There were times when respondent would fail to return the money withdrawn resulting in shortages on the part of Azucena. When respondent was transferred to Los Baños, Laguna, Azucena added that the same practice was continued by her son, Artie Arambulo.[5]

BPI conducted a thorough investigation and discovered that respondent had approved several withdrawals from various accounts of clients whose signatures were forged.[6]

Azucena, in a letter dated 2 July 2002, again implicated respondent stating that the latter instructed her to make unauthorized withdrawals.[7]

Ma. Concepcion Millares, the Assistant Manager of BPI San-Pablo, Laguna Branch, was also directed to explain why no disciplinary action should be taken against her. Millares submitted a memorandum attributing the accommodation of unusual transactions to respondent.[8]

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[4] *Rollo,* p. 82.

[5] *Id.* at 83.

[6] *Id.* at 17.

[7] *Id.* at 106-107.

[8] *Id.* at 108-110.

On 22 August 2002, a show-cause memorandum was issued to respondent informing her of the audit findings relating to temporary borrowings she made from the initial cash requisitions of Azucena, which support the finding of the claims that fraudulent withdrawals were used to cover the shortages/non-payment of temporary borrowings. The report states:

ON TEMPORARY BORROWINGS

Teller T.H. Azucena disclosed during the Audit investigation and in her reply to the "Show Cause Memo" from Branch Management that during your tenure as Branch Head of San Pablo-Regidor, you ordered her to request considerable amount of money from the branch cashier in the morning. You would then borrow from her cash ranging from ₱500K to ₱1.0M without any supporting document(s).

The "temporarily borrowed" fund/s was/were replaced either in cash or through withdrawal from your savings account or from other clients' accounts during the day.

In instances when the amount borrowed from teller Azucena in the morning was not returned in full in the afternoon, you would then instruct teller Azucena to withdraw the difference from the accounts of other depositors with sufficient balances.

Ms. T.H. Azucena had disclosed that you have made the "temporary borrowings" to accommodate Mr. Vicente Amante (formerly city mayor) whom you had allowed to fund his NSF honored checks after disposition of referred items or after banking hours. The unfunded checks were covered through withdrawals or check/encashment from other depositors' account, namely: Mr. Emeterio Dikitan, Ms. Penny Penaloza, Mr.Cheung Tin Chee, Mr. Anderson Ong, Mr. Edmund Dee, among others.

Audit report dated 09/12/01 covering the audit of BPI San Pablo-Regidor with audit cut-off date June 22, 2001 further show the following:

Two (2) withdrawal slips on 06/27/01 on the account of Mr. Amante totaling ₱700K were validated but were not signed by said client at the time of validation. Per audit report, you personally accomplished the withdrawal slip for ₱700K. Immediately thereafter, said amount was deposited to the account of Mr. E. Dikitan. The two (2) (validated but unsigned) withdrawal slips held by you were signed by Mr. Liezl

Amante Avanzado (co-depositor of V. Amante) only in the evening of 6/27/01-8:00PM.

The unfunded checks of Mr. V Amante being deposited to other depositor's accounts with the branch were also covered by transfers of fund (thru the use of withdrawal/deposit slip) in the afternoon from the same account where the unfunded check was deposited. Amount of withdrawal/transfer is the same as the unfunded check to be covered. Amount of withdrawals ranged from ₱100K to 400K which were validated from 5:03PM to 6:26PM.

Audit findings further show that you personally accomplished the withdrawal slips of E. Dikitan for ₱100K dated 6/21/01 and for ₱400K dated 6/20/01.[9]

Respondent admitted that she prepared the unsigned withdrawal slips on the account of Mr. Vicente Amante (Mr. Amante) totaling ₱700,000.00 upon request of the latter. Respondent also explained that she processed the withdrawal slips of Mr. Emeterio Dikitan, with the latter signing later on, to expedite his transaction with the bank. Respondent denied any knowledge with regard to the unfunded checks of Mr. Amante that were supposedly deposited to other depositor's account. She argued that the posting is done by the teller and only amounts over ₱150,000.00 pass through her.[10]

A hearing was conducted on 2 September 2002 to give respondent opportunity to present additional explanation.

On 16 January 2003, respondent was served with the notice of termination on the ground of loss of trust and confidence, for gross violation of policies and procedures as follows:

a) Temporary Borrowings/Lapping – During your tenure as branch head of San Pablo-Regidor, and in connivance with Teller Teotima H. Azucena, you would order the latter to request considerable amounts of money from the branch cashier in the morning. You would then borrow from her the said cash requisitioned and engage in private lending to accommodate a third person. The "temporary borrowed" funds were returned/replaced either in cash or through withdrawal

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[9] *Id.* at 31-32.

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

from your savings account or from other clients' accounts during the day. In instances when the amount borrowed from teller Teotima H. Azucena in the morning was not returned in full in the afternoon, you would then instruct teller Teotima H. Azucena to withdraw the difference from the accounts of other depositors with sufficient balances.

Bank Internal Audit had verified 928 transactions in your and Ms. Azucena's temporary borrowings/lapping activities which continued even after you were transferred to another branch in November 2001 and the net unaccounted amount of PHP 7,140,000.00 (of which 2,665,000.00 was reimbursed by Ms. Azucena) unauthorized withdrawals from various branch clients' accounts.

b) Two (2) withdrawals slips on June 27, 2001 on the Maxi-one account number 3413-0819-46 totaling PHP 700K were validated but unsigned by the said client at the time of validation. Per internal audit report, you personally accomplished the withdrawal slips for PHP 700K. Immediately thereafter, said amount was deposited to the account of 3413-0851-43. The two (2) (validated but unsigned) withdrawal slips in your possession were signed by the co-depositor of account number 3413-0819-46 beyond banking hours of June 27, 2001.

c) You approved the deposit of unfunded checks of Maxi-one account 3413-0819-46 to other depositor's account which were covered by transfers of funds thru the use of withdrawal/deposit slips ranging from PHP 100K to PHP 400K in the afternoon from where the unfunded check was deposited. The withdrawal slips were validated beyond banking hours.[11]

On 14 March 2003, respondent filed a complaint for illegal dismissal with the labor arbiter[12] praying for payment of separation pay, backwages and attorney's fees.

Respondent argued that the allegations of Azucena, founded on mere speculations, presumptions and conclusions, do not establish a case for loss of trust and confidence.

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[11] *Id.* at 117-118.

[12] Labor Arbiter Numeriano D. Villena.

The labor arbiter found respondent's dismissal for cause in accordance with the law. It was established that respondent had approved withdrawals which were later proven to be forged.[13]

On appeal, the NLRC sustained the dismissal but ordered the payment of separation pay.

> WHEREFORE, premises considered, and in the interest of justice and equity, judgment is hereby rendered PARTIALLY GRANTING the appeal and, in conformity therewith, MODIFYING the assailed Decision dated 10 November 2003 insofar as AWARDING herein complainant-appellant separation pay/severance pay/financial assistance equivalent to one-month pay inclusive of allowances and other like benefits for every year of service counted from 20 April 1972 up to 17 January 2003, plus attorney's fees equivalent to 10% of the total amount of the herein award and, finally, DIRECTING respondents-appellees banks to forthwith pay the said award.[14]

The NLRC observed that respondent failed to address the charges of 46 instances of forgeries cited in the labor arbiter's decision. The NLRC did not accept respondent's invocation of good faith in affixing her signatures on the withdrawal slips and held that these numerous lapses indicate failure on her part as branch manager to oversee and ensure the implementation of an effective system of check and balances in the processing, disposition and monitoring of deposits and withdrawals, among others. However, the NLRC believed that BPI failed to prove that respondent affixed her signatures on the deposit slips with malice or bad faith. Hence, in the interest of justice and equity, separation pay was granted.

Petitioner filed a motion for partial reconsideration of the NLRC decision and argued that respondent's misdeeds constitute serious misconduct and reflect upon her moral character. Petitioner advanced that, therefore, respondent should not be given separation pay.[15] The NLRC denied it for lack of merit.[16]

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[13] *Rollo,* pp. 164-165.

[14] *Id.* at 208.

[15] *Id.* at 212.

[16] *Id.* at 235.

Thereupon, petitioner filed a petition for *certiorari* with the Court of Appeals. The appellate court, finding no grave abuse of discretion on the part of the NLRC, affirmed its decision and order.

While upholding respondent's dismissal for loss of trust and confidence as lawful, the appellate court declared that petitioners failed to prove by the requisite quantum of evidence that respondent was motivated by bad faith or with unlawful intent to gain, when she affixed her signatures on the withdrawal slips. Considering that her dismissal was not based on serious misconduct or that which negatively reflected on her moral character, the appellate court justified the granting of separation pay.[17]

In the instant petition, BPI essentially questions the award of separation pay. It argues that the very existence of respondent's signature on the forged withdrawal slips in such frequency and involving huge amounts of money, transacted beyond banking hours, and without the presence of the clients, should be sufficient to hold respondent liable for fraud, thus negating the finding of good faith.[18] BPI urges this Court to give more weight to the explanations made by its witnesses against the blanket denial of respondent.[19] BPI stresses that under the principle of command responsibility, respondent should be held liable for failure to detect the fraudulent activities and irregularities in her branch. Respondents' omissions, as claimed by BPI, cannot be considered as simple negligence or misconduct. Thus, BPI insists that respondents' acts should have been properly considered in the disposition of the case.[20]

Respondent concedes that there is a legal ground to terminate her for loss of trust and confidence on account of simple neglect of duty and misconduct in not being able to properly implement

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[17] *Id.* at 77.

[18] *Id.* at 34.

[19] *Id.* at 41.

[20] *Id.* at 46-50.

and follow bank policies and procedure. However, she justifies her entitlement to separation pay in that her dismissal was not based on serious misconduct, gross and habitual neglect of duty, nor did her conduct reflect on her moral character.[21] She claims that the allegations, issues and arguments raised in the petition have already been exhaustively discussed and resolved by the Court of Appeals. Respondent dismisses the issues submitted by petitioner as factual.[22]

Respondent does not contest her dismissal but insists on her entitlement to separation pay. Therefore, the issue boils down to whether or not respondent should be awarded separation pay.

We find the petition meritorious.

While as a general rule, an employee who has been dismissed for any of the just causes enumerated under Article 282 of the Labor Code is not entitled to separation pay, the Court has allowed in numerous cases the grant of separation pay or some other financial assistance to an employee dismissed for just causes on the basis of equity.

In the leading case of *Philippine Long Distance Telephone Co. v. NLRC,*[23] the Court stated that separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character.[24] In granting separation pay to respondent, the NLRC and Court of Appeals both adhered to this jurisprudential precept and cleared respondent of bad faith.

However, the succeeding case of *Toyota Motor Phils. Corp. Workers Association v. NLRC*[25] reaffirmed the general rule that

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[21] *Id.* at 345.

[22] *Id.* at 346.

[23] G.R. No. 80609, 23 August 1988, 164 SCRA 671.

[24] *Id.* at 682.

[25] G.R. Nos. 158786 & 158789, October 19, 2007, 537 SCRA 171.

separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes **other than serious misconduct, willful disobedience, gross and habitual neglect of duty, fraud or willful breach of trust, commission of a crime against the employer or his family, or those reflecting on his moral character.** These five grounds are just causes for dismissal as provided in Article 282 of the Labor Code.

Verily, it may not be amiss to emphasize that if an employee has been dismissed for a just cause under Article 282 of the Labor Code, he is not entitled to separation pay.

In the instant case, respondent was dismissed on the ground of loss of trust and confidence.

It is significant to stress that for there to be a valid dismissal based on loss of trust and confidence, the breach of trust must be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable excuse. The basic premise for dismissal on the ground of loss of confidence is that the employees concerned hold a position of trust and confidence. It is the breach of this trust that results in the employer's loss of confidence in the employee.[26]

Respondent, in affixing her signatures on the withdrawal slips which were later found to have been accomplished through forgery, clearly failed to monitor these 46 instances of unauthorized withdrawals. While the evidence presented by BPI fell short of proving respondent's complicity in the forging of these withdrawal slips, her omission, coupled with unusual accommodation extended to certain bank clients in violation of the bank's standard operating procedures, cost her job. In fact, the validity of her dismissal for loss of trust and confidence was no longer disputed by respondent.

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[26] *Baron v. National Labor Relations Commission*, G.R. No. 182299, 22 February 2010; *National Sugar Refineries Corp. v. National Labor Relations Commission*, G.R. No. 122277, 24 February 1998, 286 SCRA 478, 485.

In the recent case of *Reno Foods v. NLM*,[27] this Court reiterated the *Toyota* ruling and maintained that labor adjudicatory officials and the Court of Appeals must demur the award of separation pay based on social justice when an employee's dismissal is based on serious misconduct or willful disobedience; gross and habitual neglect of duty; fraud or willful breach of trust; or commission of a crime against the person of the employer or his immediate family – grounds under Art. 282 of the Labor Code that sanction dismissals of employees.[28]

The case of *Aromin v. NLRC*[29] is in all fours. In said case, Aromin was the assistant vice-president of BPI when he was validly dismissed for loss of trust and confidence. Invoking the pronouncement in *Toyota*, the Court disallowed the payment of separation pay on the ground that Aromin was found guilty of willful betrayal of trust, a serious offense akin to dishonesty.[30]

Therefore, applying the doctrine laid down in *Toyota*, respondent should be denied of separation pay.

WHEREFORE, the instant petition is hereby *GRANTED*. The Decision of the Court of Appeals dated 3 July 2007, insofar as it orders BPI to pay respondent separation pay, is *REVERSED AND SET ASIDE*. No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Del Castillo, JJ.,* concur.

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[27] G.R. No. 164016, 15 March 2010.

[28] *Id.*

[29] G.R. No. 164824, 30 April 2008, 553 SCRA 273.

[30] *Id.* at 293.

FIRST DIVISION

[G.R. No. 183409. June 18, 2010]

CHAMBER OF REAL ESTATE AND BUILDERS ASSOCIATIONS, INC. (CREBA), *petitioner, vs.* **THE SECRETARY OF AGRARIAN REFORM,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; *CERTIORARI*; ALTHOUGH THE SUPREME COURT, THE COURT OF APPEALS AND THE REGIONAL TRIAL COURTS HAVE CONCURRENT JURISDICTION TO ISSUE WRITS OF *CERTIORARI*, SUCH CONCURRENCE DOES NOT GIVE THE PETITIONER UNRESTRICTED FREEDOM OF CHOICE OF COURT FORUM; RATIONALE. — Primarily, although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction, **such concurrence does not give the petitioner unrestricted freedom of choice of court forum.** In *Heirs of Bertuldo Hinog v. Melicor*, citing *People v. Cuaresma*, this Court made the following pronouncements: **This Court's original jurisdiction to issue writs of *certiorari* is not exclusive.** It is shared by this Court with Regional Trial Courts and with the Court of Appeals. This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. **There is after all a hierarchy of courts.** That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. **A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and**

specifically set out in the petition. This is [an] established policy. It is a policy 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 further over-crowding of the Court's docket. The rationale for this rule is two-fold: (a) it would be an imposition upon the precious time of this Court; and (b) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had 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 because this Court is not a trier of facts.

2. ID.; ID.; ID.; PETITIONER FAILED TO SPECIFICALLY AND SUFFICIENTLY SET FORTH SPECIAL AND IMPORTANT REASONS TO JUSTIFY DIRECT RECOURSE TO THE COURT AND WHY THE COURT SHOULD GIVE RECOURSE TO THE PETITION IN THE FIRST INSTANCE. — This Court thus reaffirms the judicial policy that it will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, and exceptional and compelling circumstances, such as cases of national interest and of serious implications, justify the availment of the extraordinary remedy of writ of *certiorari*, calling for the exercise of its primary jurisdiction. xxx In the case at bench, **petitioner failed to specifically and sufficiently set forth special and important reasons to justify direct recourse to this Court and why this Court should give due course to this petition** in the first instance, hereby failing to fulfill the conditions set forth in *Heirs of Bertuldo Hinog v. Melicor*. The present petition should have been initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts. Failure to do so is sufficient cause for the dismissal of this petition.

3. ID.; ID.; ID.; INSTANT PETITION PARTAKES OF THE NATURE OF A PETITION FOR DECLARATORY RELIEF OVER WHICH THE SUPREME COURT HAS ONLY APPELLATE NOT ORIGINAL JURISDICTION UNDER SECTION 5, ARTICLE VIII OF THE 1987 CONSTITUTION. — Although the instant petition is styled as a Petition for *Certiorari*, in essence, it seeks the declaration by this Court of the unconstitutionality or illegality of the questioned DAR AO No. 01-02, as amended, and Memorandum No. 88. It, thus, partakes of the nature of a

Petition for Declaratory Relief over which this Court has only appellate, not original, jurisdiction under Section 5, Article VIII of the 1987 Philippine Constitution. xxx With that, this Petition must necessarily fail because this Court does not have original jurisdiction over a Petition for Declaratory Relief even if only questions of law are involved.

4. ID.; ID.; ID.; ESSENTIAL REQUISITES OF A PETITION FOR *CERTIORARI*; EXPLAINED. — Even if the petitioner has properly observed the doctrine of judicial hierarchy, this Petition is still dismissible. The **special civil action for *certiorari* is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction**. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction. The essential requisites for a Petition for *Certiorari* under Rule 65 are: (1) the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law. **Excess of jurisdiction** as distinguished from absence of jurisdiction means that an act, though within the general power of a tribunal, board or officer, is not authorized and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting. **Without jurisdiction** means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority. **Grave abuse of discretion** implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.

5. ID.; ID.; ID.; A PETITION FOR *CERTIORARI* IS A SPECIAL CIVIL ACTION THAT MAY BE INVOKED ONLY AGAINST A TRIBUNAL, BOARD, OR OFFICER EXERCISING JUDICIAL FUNCTIONS. — In the case before this Court, the petitioner fails to meet the above-mentioned requisites for the proper invocation of a Petition for *Certiorari* under Rule 65. The Secretary of Agrarian Reform in issuing the assailed DAR AO No. 01-02, as amended, as well as Memorandum No. 88 did so in accordance with his mandate to implement the land use conversion provisions of Republic Act No. 6657. In the process, he neither acted in any judicial or quasi-judicial capacity nor assumed unto himself any performance of judicial or quasi-judicial prerogative. **A Petition for *Certiorari* is a special civil action that may be invoked only against a tribunal, board, or officer exercising judicial functions**. xxx A tribunal, board, or officer is said to be exercising **judicial function** where it has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties. **Quasi-judicial function**, on the other hand, is "a term which applies to the actions, discretion, *etc*., of public administrative officers or bodies x x x required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature." Before a tribunal, board, or officer may exercise judicial or quasi-judicial acts, it is necessary that there be a law that gives rise to some specific rights of persons or property under which adverse claims to such rights are made, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the respective rights of the contending parties.

6. ID.; ID.; ID.; THE SECRETARY OF AGRARIAN REFORM DOES NOT FALL WITHIN THE AMBIT OF A TRIBUNAL, BOARD, OR OFFICER EXERCISING JUDICIAL OR QUASI-JUDICIAL FUNCTIONS. — The Secretary of Agrarian Reform does not fall within the ambit of a tribunal, board, or officer exercising judicial or quasi-judicial functions. The issuance and enforcement by the Secretary of Agrarian Reform of the questioned DAR AO No. 01-02, as amended, and Memorandum No. 88 were done in the exercise of his quasi-legislative and administrative functions and not of judicial or quasi-judicial

functions. In issuing the aforesaid administrative issuances, the Secretary of Agrarian Reform never made any adjudication of rights of the parties. As such, it can never be said that the Secretary of Agrarian Reform had acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing and enforcing DAR AO No. 01-02, as amended, and Memorandum No. 88 for he never exercised any judicial or quasi-judicial functions but merely his quasi-legislative and administrative functions.

7. ID.; ID.; ID.; IT IS BEYOND THE PROVINCE OF *CERTIORARI* TO DECLARE THE ADMINISTRATIVE ISSUANCES UNCONSTITUTIONAL AND ILLEGAL BECAUSE *CERTIORARI* IS CONFINED ONLY TO THE DETERMINATION OF THE EXISTENCE OF GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION. — Furthermore, as this Court has previously discussed, the instant petition in essence seeks the declaration by this Court of the unconstitutionality or illegality of the questioned DAR AO No. 01-02, as amended, and Memorandum No. 88. Thus, the adequate and proper remedy for the petitioner therefor is to file a Petition for Declaratory Relief, which this Court has only appellate and not original jurisdiction. It is beyond the province of *certiorari* to declare the aforesaid administrative issuances unconstitutional and illegal because *certiorari* is confined only to the determination of the existence of grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioner cannot simply allege grave abuse of discretion amounting to lack or excess of jurisdiction and then invoke *certiorari* to declare the aforesaid administrative issuances unconstitutional and illegal. Emphasis must be given to the fact that the writ of *certiorari* dealt with in Rule 65 of the 1997 Revised Rules of Civil Procedure is a prerogative writ, never demandable as a matter of right, "**never issued except in the exercise of judicial discretion**."

8. LABOR AND SOCIAL LEGISLATION; DEPARTMENT OF AGRARIAN REFORM (DAR); HAS THE AUTHORITY TO APPROVE LAND CONVERSION AND CONCOMITANT TO SUCH AUTHORITY IS THE AUTHORITY TO INCLUDE IN THE DEFINITION OF AGRICULTURAL LANDS NOT CLASSIFIED AS RESIDENTIAL, COMMERCIAL, INDUSTRIAL OR OTHER NON-AGRICULTURAL USES

BEFORE 15 JUNE 1988 FOR PURPOSES OF LAND USE CONVERSION. — Under DAR AO No. 01-02, as amended, "lands **not reclassified** as residential, commercial, industrial or other non-agricultural uses **before 15 June 1988**" have been included in the definition of agricultural lands. In so doing, the Secretary of Agrarian Reform merely acted within the scope of his authority stated in the aforesaid sections of Executive Order No. 129-A, which is to promulgate rules and regulations for agrarian reform implementation and that includes the authority to define agricultural lands for purposes of land use conversion. Further, the definition of agricultural lands under DAR AO No. 01-02, as amended, merely refers to the category of agricultural lands that may be the subject for conversion to non-agricultural uses and is not in any way confined to agricultural lands in the context of land redistribution as provided for under Republic Act No. 6657. More so, Department of Justice Opinion No. 44, Series of 1990, which Opinion has been recognized in many cases decided by this Court, clarified that after the effectivity of Republic Act No. 6657 on 15 June 1988 the DAR has been given the authority to approve land conversion. Concomitant to such authority, therefore, is the authority to include in the definition of agricultural lands "lands **not reclassified** as residential, commercial, industrial or other non-agricultural uses **before 15 June 1988**" for purposes of land use conversion.

9. ID.; ID.; COMPREHENSIVE AGRARIAN REFORM LAW; THE INCLUSION OF LANDS NOT RECLASSIFIED AS RESIDENTIAL, COMMERCIAL, INDUSTRIAL OR OTHER NON-AGRICULTURAL USES BEFORE 15 JUNE 1988 DOES NOT UNDULY EXPAND OR ENLARGE THE DEFINITION OF AGRICULTURAL LANDS, INSTEAD, IT MADE CLEAR WHAT ARE THE LANDS THAT CAN BE THE SUBJECT DAR'S CONVERSION AUTHORITY, SERVING THE VERY PURPOSE OF THE LAND USE CONVERSION OF REPUBLIC ACT NO. 6657. — The authority of the Secretary of Agrarian Reform to include "lands **not reclassified** as residential, commercial, industrial or other non-agricultural uses **before 15 June 1988**" in the definition of agricultural lands finds basis in jurisprudence. In *Ros v. Department of Agrarian Reform*, this Court has enunciated that **after** the passage of Republic Act No. 6657, agricultural lands, **though reclassified**, **have to go through the process of**

conversion, jurisdiction over which is vested in the DAR. However, agricultural lands, which are already reclassified **before** the effectivity of Republic Act No. 6657 which is 15 June 1988, are exempted from conversion. It bears stressing that the said date of effectivity of Republic Act No. 6657 served as the cut-off period for automatic reclassifications or rezoning of agricultural lands that no longer require any DAR conversion clearance or authority. It necessarily follows that any reclassification made thereafter can be the subject of DAR's conversion authority. Having recognized the DAR's conversion authority over lands reclassified after 15 June 1988, it can no longer be argued that the Secretary of Agrarian Reform was wrongfully given the authority and power to include "lands **not reclassified** as residential, commercial, industrial or other non-agricultural uses **before 15 June 1988**" in the definition of agricultural lands. Such inclusion does not unduly expand or enlarge the definition of agricultural lands; instead, it made clear what are the lands that can be the subject of DAR's conversion authority, thus, serving the very purpose of the land use conversion provisions of Republic Act No. 6657.

10. ID.; ID.; ID.; TO SUGGEST THAT THE LIMITED CASES CITED BY PETITIONER ARE THE ONLY INSTANCES THAT THE DAR CAN REQUIRE CONVERSION CLEARANCES WOULD OPEN A LOOPHOLE IN REPUBLIC ACT NO. 6657 WHICH EVERY LANDOWNER MAY USE TO EVADE COMPLIANCE WITH THE AGRARIAN REFORM PROGRAM. — The argument of the petitioner that DAR AO No. 01-02, as amended, was made in violation of Section 65 of Republic Act No. 6657, as it covers even those non-awarded lands and reclassified lands by the LGUs or by way of Presidential Proclamations on or after 15 June 1988 is specious. As explained in Department of Justice Opinion No. 44, series of 1990, it is true that the DAR's express power over land use conversion provided for under Section 65 of Republic Act No. 6657 is limited to cases in which agricultural lands already awarded have, after five years, ceased to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes. To suggest, however, that these are the only instances that the DAR can require conversion clearances would open a loophole in Republic Act No. 6657 which every landowner may use to evade compliance with the

agrarian reform program. It should logically follow, therefore, from the said department's express duty and function to execute and enforce the said statute that any reclassification of a private land as a residential, commercial or industrial property, on or after the effectivity of Republic Act No. 6657 on 15 June 1988 should first be cleared by the DAR.

11. ID.; ID.; ID.; RECLASSIFICATION ALONE WILL NOT SUFFICE TO USE THE AGRICULTURAL LANDS FOR OTHER PURPOSES; CONVERSION IS NEEDED TO CHANGE THE CURRENT USE OF RECLASSIFIED AGRICULTURAL LANDS. — This Court held in *Alarcon v. Court of Appeals* that reclassification of lands does not suffice. Conversion and reclassification differ from each other. **Conversion** is the act of changing the current use of a piece of agricultural land into some other use **as approved by the DAR** while **reclassification** is the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, and commercial, as embodied in the land use plan, subject to the requirements and procedures for land use conversion. In view thereof, a mere reclassification of an agricultural land does not automatically allow a landowner to change its use. He has to undergo the process of conversion before he is permitted to use the agricultural land for other purposes. It is clear from the aforesaid distinction between reclassification and conversion that agricultural lands though reclassified to residential, commercial, industrial or other non-agricultural uses must still undergo the process of conversion before they can be used for the purpose to which they are intended. Nevertheless, emphasis must be given to the fact that DAR's conversion authority can only be exercised after the effectivity of Republic Act No. 6657 on 15 June 1988. The said date served as the cut-off period for automatic reclassification or rezoning of agricultural lands that no longer require any DAR conversion clearance or authority. Thereafter, reclassification of agricultural lands is already subject to DAR's conversion authority. Reclassification alone will not suffice to use the agricultural lands for other purposes. Conversion is needed to change the current use of reclassified agricultural lands.

12. ID.; ID.; ID.; RECLASSIFICATION IS DIFFERENT FROM CONVERSION. — Even reclassification of agricultural lands by way of Presidential Proclamations to non-agricultural uses,

such as school sites, needs conversion clearance from the DAR. We reiterate that reclassification is different from conversion. Reclassification alone will not suffice and does not automatically allow the landowner to change its use. It must still undergo conversion process before the landowner can use such agricultural lands for such purpose. Reclassification of agricultural lands is one thing, conversion is another. Agricultural lands that are reclassified to non-agricultural uses do not *ipso facto* allow the landowner thereof to use the same for such purpose. Stated differently, despite having reclassified into school sites, the landowner of such reclassified agricultural lands must apply for conversion before the DAR in order to use the same for the said purpose. Any reclassification, therefore, of agricultural lands to residential, commercial, industrial or other non-agricultural uses either by the LGUs or by way of Presidential Proclamations **enacted on or after 15 June 1988** must undergo the process of conversion, despite having undergone reclassification, before agricultural lands may be used for other purposes.

13. ID.; ID.; ID.; THE SECRETARY OF AGRARIAN REFORM DID NOT ACT WITHOUT JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION IN ISSUING AND ENFORCING DAR AO NO. 01-02, AS AMENDED. — The Secretary of Agrarian Reform did not act without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in (1) including lands **not reclassified** as residential, commercial, industrial or other non-agricultural uses **before 15 June 1988** in the definition of agricultural lands under DAR AO No. 01-02, as amended, and; (2) issuing and enforcing DAR AO No. 01-02, as amended, subjecting to DAR's jurisdiction for conversion lands which had already been reclassified as residential, commercial, industrial or for other non-agricultural uses on or after 15 June 1988.

14. ID.; ID.; ID.; DAR AO NO. 01-02 DID NOT VIOLATE THE AUTONOMY OF LOCAL GOVERNMENT UNITS. — DAR AO No. 01-02, as amended, providing that the reclassification of agricultural lands by LGUs shall be subject to the requirements of land use conversion procedure or that DAR's approval or clearance must be secured to effect reclassification, did not violate the autonomy of the LGUs. Section 20 of Republic Act No. 7160 xxx show that the power of the LGUs to reclassify

agricultural lands is not absolute. The authority of the DAR to approve conversion of agricultural lands covered by Republic Act No. 6657 to non-agricultural uses has been validly recognized by said Section 20 of Republic Act No. 7160 by explicitly providing therein that, "nothing in this section shall be construed as repealing or modifying in any manner the provisions of Republic Act No. 6657."

15. ID.; ID. ID.; DAR AO NO. 01-02 DID NOT ALSO VIOLATE THE DUE PROCESS CLAUSE, AS WELL AS THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION. — DAR AO No. 01-02, as amended, does not also violate the due process clause, as well as the equal protection clause of the Constitution. In providing administrative and criminal penalties in the said administrative order, the Secretary of Agrarian Reform simply implements the provisions of Sections 73 and 74 of Republic Act No. 6657. Contrary to petitioner's assertions, the administrative and criminal penalties provided for under DAR AO No. 01-02, as amended, are imposed upon the illegal or premature conversion of lands within DAR's jurisdiction, *i.e.*, "lands **not reclassified** as residential, commercial, industrial or for other non-agricultural uses **before 15 June 1998**.**"**

16. ID.; ID.; ID.; MEMORANDUM NO. 88 WAS MADE PURSUANT TO THE GENERAL WELFARE OF THE PUBLIC SO IT CANNOT BE ARGUED THAT IT WAS MADE WITHOUT BASIS. — The petitioner's argument that DAR Memorandum No. 88 is unconstitutional, as it suspends the land use conversion without any basis, stands on hollow ground. It bears emphasis that said Memorandum No. 88 was issued upon the instruction of the President in order to address the unabated conversion of prime agricultural lands for real estate development because of the worsening rice shortage in the country at that time. Such measure was made in order to ensure that there are enough agricultural lands in which rice cultivation and production may be carried into. The issuance of said Memorandum No. 88 was made pursuant to the general welfare of the public, thus, it cannot be argued that it was made without any basis.

APPEARANCES OF COUNSEL

J. Calida & Associates Law Firm and Manuel M. Serrano for petitioner.

The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

This case is a Petition for *Certiorari* and Prohibition (with application for temporary restraining order and/or writ of preliminary injunction) under Rule 65 of the 1997 Revised Rules of Civil Procedure, filed by herein petitioner Chamber of Real Estate and Builders Associations, Inc. (CREBA) seeking to nullify and prohibit the enforcement of Department of Agrarian Reform (DAR) Administrative Order (AO) No. 01-02, as amended by DAR AO No. 05-07,[1] and DAR Memorandum No. 88,[2] for having been issued by the Secretary of Agrarian Reform with grave abuse of discretion amounting to lack or excess of jurisdiction as some provisions of the aforesaid administrative issuances are illegal and unconstitutional.

Petitioner CREBA, a private non-stock, non-profit corporation duly organized and existing under the laws of the Republic of the Philippines, is the umbrella organization of some 3,500 private corporations, partnerships, single proprietorships and individuals directly or indirectly involved in land and housing development, building and infrastructure construction, materials production and supply, and services in the various related fields of engineering, architecture, community planning and development financing. The Secretary of Agrarian Reform is named respondent as he is the duly appointive head of the DAR whose administrative issuances are the subject of this petition.

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[1] *Rollo*, pp. 182-183.

[2] *Id.* at 185.

The Antecedent Facts

The Secretary of Agrarian Reform issued, on 29 October 1997, DAR AO No. 07-97,[3] entitled "*Omnibus Rules and Procedures Governing Conversion of Agricultural Lands to Non-Agricultural Uses*," which consolidated all existing implementing guidelines related to land use conversion. The aforesaid rules embraced all private agricultural lands regardless of tenurial arrangement and commodity produced, and all untitled agricultural lands and agricultural lands reclassified by Local Government Units (LGUs) into non-agricultural uses after 15 June 1988.

Subsequently, on 30 March 1999, the Secretary of Agrarian Reform issued DAR AO No. 01-99,[4] entitled "*Revised Rules and Regulations on the Conversion of Agricultural Lands to Non-agricultural Uses*," amending and updating the previous rules on land use conversion. Its coverage includes the following agricultural lands, to wit: (1) those to be converted to residential, commercial, industrial, institutional and other non-agricultural purposes; (2) those to be devoted to another type of agricultural activity such as livestock, poultry, and fishpond the effect of which is to exempt the land from the Comprehensive Agrarian Reform Program (CARP) coverage; (3) those to be converted to non-agricultural use other than that previously authorized; and (4) those reclassified to residential, commercial, industrial, or other non-agricultural uses on or after the effectivity of Republic Act No. 6657[5] on 15 June 1988 pursuant to Section 20[6] of

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[3] *Id.* at 42-59.

[4] *Id.* at 77-110.

[5] Otherwise known as "The Comprehensive Agrarian Reform Law of 1988."

[6] SECTION 20. ***Reclassification of Lands***. – (a) A city or municipality may, through an ordinance passed by the *sanggunian* after conducting public hearings for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture or (2) where the land shall have substantially greater economic value for residential,

Republic Act No. 7160[7] and other pertinent laws and regulations, and are to be converted to such uses.

On 28 February 2002, the Secretary of Agrarian Reform issued another Administrative Order, *i.e.*, DAR AO No. 01-02, entitled "*2002 Comprehensive Rules on Land Use Conversion*," which further amended DAR AO No. 07-97 and DAR AO No. 01-99, and repealed all issuances inconsistent therewith. The aforesaid DAR AO No. 01-02 covers all applications for conversion from agricultural to non-agricultural uses or to another agricultural use.

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commercial, or industrial purposes, as determined by the *sanggunian* concerned: *Provided*, That such reclassification shall be limited to the following percentage of the total agricultural land area at the time of the passage of the ordinance:

(1) For highly urbanized and independent component cities, fifteen percent (15%);

(2) For component cities and first to third class municipalities, ten percent (10%); and

(3) For fourth to sixth class municipalities, five percent (5%): *Provided*, further, That agricultural lands distributed to agrarian reform beneficiaries pursuant to Republic Act Numbered Sixty-six hundred fifty-seven (R.A. No. 6657), otherwise known as "The Comprehensive Agrarian Reform Law," shall not be affected by the said reclassification and the conversion of such lands into other purposes shall be governed by Section 65 of said Act.

(b) The President may, when public interest so requires and upon recommendation of the National Economic and Development Authority, authorize a city or municipality to reclassify lands in excess of the limits set in the next preceding paragraph.

(c) The local government units shall, in conformity with existing laws, continue to prepare their respective comprehensive land use plans enacted through zoning ordinances which shall be the primary and dominant bases for the future use of land resources: *Provided*, That the requirements for food production, human settlements, and industrial expansion shall be taken into consideration in the preparation of such plans.

(d) Where approval by a national agency is required for reclassification, such approval shall not be unreasonably withheld. Failure to act on a proper and complete application for reclassification within three (3) months from receipt of the same shall be deemed as approval thereof.

(e) Nothing in this Section shall be construed as repealing, amending, or modifying in any manner the provisions of R.A. No. 6657.

[7] Otherwise known as "The Local Government Code of 1991."

Thereafter, on 2 August 2007, the Secretary of Agrarian Reform amended certain provisions[8] of DAR AO No. 01-02 by formulating DAR AO No. 05-07, particularly addressing land conversion in time of exigencies and calamities.

To address the unabated conversion of prime agricultural lands for real estate development, the Secretary of Agrarian Reform further issued Memorandum No. 88 on 15 April 2008, which temporarily suspended the processing and approval of all land use conversion applications.

By reason thereof, petitioner claims that there is an actual slow down of housing projects, which, in turn, aggravated the housing shortage, unemployment and illegal squatting problems to the substantial prejudice not only of the petitioner and its members but more so of the whole nation.

Hence, this petition.

The Issues

In its Memorandum, petitioner posits the following issues:

I.

WHETHER THE DAR SECRETARY HAS JURISDICTION OVER LANDS THAT HAVE BEEN RECLASSIFIED AS RESIDENTIAL, COMMERCIAL, INDUSTRIAL, OR FOR OTHER NON-AGRICULTURAL USES.

II.

WHETHER THE DAR SECRETARY ACTED IN EXCESS OF HIS JURISDICTION AND GRAVELY ABUSED HIS DISCRETION BY ISSUING AND ENFORCING [DAR AO NO. 01-02, AS AMENDED] WHICH SEEK TO REGULATE RECLASSIFIED LANDS.

III.

WHETHER [DAR AO NO. 01-02, AS AMENDED] VIOLATE[S] THE LOCAL AUTONOMY OF LOCAL GOVERNMENT UNITS.

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[8] Particularly Sections 3.1 and 6.2 of DAR AO No. 01-02.

IV.

WHETHER [DAR AO NO. 01-02, AS AMENDED] VIOLATE[S] THE DUE PROCESS AND EQUAL PROTECTION CLAUSE[S] OF THE CONSTITUTION.

V.

WHETHER MEMORANDUM NO. 88 IS A VALID EXERCISE OF POLICE POWER.[9]

The subject of the submission that the DAR Secretary gravely abused his discretion is AO No. 01-02, as amended, which states:

Section 3. *Applicability of Rules.* – These guidelines shall apply to all applications for conversion, from agricultural to non-agricultural uses or to another agricultural use, such as:

x x x x x x x x x

3.4 Conversion of agricultural lands or areas that have been reclassified by the LGU or by way of a Presidential Proclamation, to residential, commercial, industrial, or other non-agricultural uses **on or after the effectivity of RA 6657 on 15 June 1988**, x x x. [Emphasis supplied].

Petitioner holds that under Republic Act No. 6657 and Republic Act No. 8435,[10] the term agricultural lands refers to "lands devoted to or suitable for the cultivation of the soil, planting of crops, growing of fruit trees, raising of livestock, poultry or fish, including the harvesting of such farm products, and other farm activities and practices performed by a farmer in conjunction with such farming operations done by a person whether natural or juridical, and not classified by the law as mineral, forest, residential, commercial or industrial land." When the Secretary of Agrarian Reform, however, issued DAR AO No. 01-02, as amended, he included in the definition of agricultural lands "lands **not reclassified** as residential, commercial, industrial or other non-agricultural uses **before 15 June 1988**." In effect, lands

[9] *Rollo*, p. 272.

[10] Otherwise known as "The Agriculture and Fisheries Modernization Act of 1997."

reclassified from agricultural to residential, commercial, industrial, or other non-agricultural uses after 15 June 1988 are considered to be agricultural lands for purposes of conversion, redistribution, or otherwise. In so doing, petitioner avows that the Secretary of Agrarian Reform acted without jurisdiction as he has no authority to expand or enlarge the legal signification of the term agricultural lands through DAR AO No. 01-02. Being a mere administrative issuance, it must conform to the statute it seeks to implement, *i.e.*, Republic Act No. 6657, or to the Constitution, otherwise, its validity or constitutionality may be questioned.

In the same breath, petitioner contends that DAR AO No. 01-02, as amended, was made in violation of Section 65[11] of Republic Act No. 6657 because it covers all applications for conversion from agricultural to non-agricultural uses or to other agricultural uses, such as the conversion of agricultural lands or areas that have been reclassified by the LGUs or by way of Presidential Proclamations, to residential, commercial, industrial or other non-agricultural uses on or after 15 June 1988. According to petitioner, there is nothing in Section 65 of Republic Act No. 6657 or in any other provision of law that confers to the DAR the jurisdiction or authority to require that non-awarded lands or reclassified lands be submitted to its conversion authority. Thus, in issuing and enforcing DAR AO No. 01-02, as amended, the Secretary of Agrarian Reform acted with grave abuse of discretion amounting to lack or excess of jurisdiction.

Petitioner further asseverates that Section 2.19,[12] Article I of DAR AO No. 01-02, as amended, making reclassification of

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[11] SEC. 65. *Conversion of Lands.* — After the lapse of five (5) years from its award, when the land ceases to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes, the DAR, upon application of the beneficiary or the landowner, with due notice to the affected parties, and subject to existing laws, may authorize the reclassification or conversion of the land and its disposition: *Provided*, That the beneficiary shall have fully paid his obligation.

[12] Section 2.19. **Reclassification of Agricultural Lands** refers to the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as, residential, industrial, commercial, as embodied in the land use

agricultural lands subject to the requirements and procedure for land use conversion, violates Section 20 of Republic Act No. 7160, because it was not provided therein that reclassification by LGUs shall be subject to conversion procedures or requirements, or that the DAR's approval or clearance must be secured to effect reclassification. The said Section 2.19 of DAR AO No. 01-02, as amended, also contravenes the constitutional mandate on local autonomy under Section 25,[13] Article II and Section 2,[14] Article X of the 1987 Philippine Constitution.

Petitioner similarly avers that the promulgation and enforcement of DAR AO No. 01-02, as amended, constitute deprivation of liberty and property without due process of law. There is deprivation of liberty and property without due process of law because under DAR AO No. 01-02, as amended, lands that are not within DAR's jurisdiction are unjustly, arbitrarily and oppressively prohibited or restricted from legitimate use on pain of administrative and criminal penalties. More so, there is discrimination and violation of the equal protection clause of the Constitution because the aforesaid administrative order is patently biased in favor of the peasantry at the expense of all other sectors of society.

As its final argument, petitioner avows that DAR Memorandum No. 88 is not a valid exercise of police power for it is the prerogative of the legislature and that it is unconstitutional because it suspended the land use conversion without any basis.

The Court's Ruling

This petition must be dismissed.

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plan, subject to the requirements and procedure for land use conversion, undertaken by a Local Government Unit (LGU) in accordance with Section 20 of RA 7160 and Joint Housing and Land Use Regulatory Board (HLURB), DAR, DA, and Department of Interior and Local Government (DILG) MC-54-1995. It also includes the reversion of non-agricultural lands to agricultural use.

[13] Section 25. The State shall ensure the autonomy of local governments.

[14] Section 2. The territorial and political subdivisions shall enjoy local autonomy.

Primarily, although this Court, the Court of Appeals and the Regional Trial Courts have concurrent jurisdiction to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction, **such concurrence does not give the petitioner unrestricted freedom of choice of court forum**.[15] In *Heirs of Bertuldo Hinog v. Melicor*,[16] citing *People v. Cuaresma*,[17] this Court made the following pronouncements:

> **This Court's original jurisdiction to issue writs of *certiorari* is not exclusive**. It is shared by this Court with Regional Trial Courts and with the Court of Appeals.This concurrence of jurisdiction is not, however, to be taken as according to parties seeking any of the writs an absolute, unrestrained freedom of choice of the court to which application therefor will be directed. **There is after all a hierarchy of courts**.That hierarchy is determinative of the venue of appeals, and also serves as a general determinant of the appropriate forum for petitions for the extraordinary writs. A becoming regard for that judicial hierarchy most certainly indicates that petitions for the issuance of extraordinary writs against first level ("inferior") courts should be filed with the Regional Trial Court, and those against the latter, with the Court of Appeals. **A direct invocation of the Supreme Court's original jurisdiction to issue these writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition**. This is [an] established policy. It is a policy 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 further over-crowding of the Court's docket.[18] (Emphasis supplied.)

The rationale for this rule is two-fold: (a) it would be an imposition upon the precious time of this Court; and (b) it would cause an inevitable and resultant delay, intended or otherwise, in the adjudication of cases, which in some instances had to be remanded or referred to the lower court as the proper forum

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[15] *Heirs of Bertuldo Hinog v. Melicor*, G.R. No. 140954, 12 April 2005, 455 SCRA 460, 470.

[16] *Id.*

[17] 254 Phil. 418 (1989).

[18] *Heirs of Bertuldo Hinog v. Melicor*, *supra* note 15 at 471.

under the rules of procedure, or as better equipped to resolve the issues because this Court is not a trier of facts.[19]

This Court thus reaffirms the judicial policy that it will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, and exceptional and compelling circumstances, such as cases of national interest and of serious implications, justify the availment of the extraordinary remedy of writ of *certiorari*, calling for the exercise of its primary jurisdiction.[20]

Exceptional and compelling circumstances were held present in the following cases: (a) *Chavez v. Romulo,*[21] on citizens' right to bear arms; (b) *Government of [the] United States of America v. Hon. Purganan,*[22] on bail in extradition proceedings; (c) *Commission on Elections v. Judge Quijano-Padilla,*[23] on government contract involving modernization and computerization of voters' registration list; (d) *Buklod ng Kawaning EIIB v. Hon. Sec. Zamora,*[24] on status and existence of a public office; and (e) *Hon. Fortich v. Hon. Corona,*[25] on the so-called "Win-Win Resolution" of the Office of the President which modified the approval of the conversion to agro-industrial area.[26]

In the case at bench, **petitioner failed to specifically and sufficiently set forth special and important reasons to justify direct recourse to this Court and why this Court should give due course to this petition** in the first instance, hereby

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[19] *Liga ng mga Barangay National v. City Mayor of Manila*, 465 Phil. 529, 543 (2004); *Santiago v. Vasquez*, G.R. Nos. 99289-90, 27 January 1993, 217 SCRA 633, 652.

[20] *Tano v. Hon. Gov. Socrates*, 343 Phil. 670, 700 (1997).

[21] G.R. No. 157036, 9 June 2004, 431 SCRA 534.

[22] 438 Phil. 417 (2002).

[23] 438 Phil. 72 (2002).

[24] 413 Phil. 281 (2001).

[25] 352 Phil. 461 (1998).

[26] *Heirs of Bertuldo Hinog v. Melicor, supra* note 15.

failing to fulfill the conditions set forth in *Heirs of Bertuldo Hinog v. Melicor*.[27] The present petition should have been initially filed in the Court of Appeals in strict observance of the doctrine on the hierarchy of courts. Failure to do so is sufficient cause for the dismissal of this petition.

Moreover, although the instant petition is styled as a Petition for *Certiorari*, in essence, it seeks the declaration by this Court of the unconstitutionality or illegality of the questioned DAR AO No. 01-02, as amended, and Memorandum No. 88. It, thus, partakes of the nature of a Petition for Declaratory Relief over which this Court has only appellate, not original, jurisdiction.[28] Section 5, Article VIII of the 1987 Philippine Constitution provides:

> Sec. 5. The Supreme Court shall have the following powers:
>
> (1) Exercise original jurisdiction over cases affecting ambassadors, other public ministers and consuls, and over petitions for *certiorari*, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*.
>
> (2) Review, revise, reverse, modify, or affirm **on appeal or *certiorari* as the law or the Rules of Court may provide, final judgments and orders of lower courts in**:
>
> (a) **All cases** in which the **constitutionality or validity of any** treaty, international or executive agreement, law, presidential decree, proclamation, **order, instruction, ordinance, or regulation is in question**. (Emphasis supplied.)

With that, this Petition must necessarily fail because this Court does not have original jurisdiction over a Petition for Declaratory Relief even if only questions of law are involved.

Even if the petitioner has properly observed the doctrine of judicial hierarchy, this Petition is still dismissible.

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[27] *Id*.

[28] *Philnabank Employees Association v. Estanislao*, G.R. No. 104209, 16 November 1993, 227 SCRA 804, 811.

The **special civil action for *certiorari* is intended for the correction of errors of jurisdiction only or grave abuse of discretion amounting to lack or excess of jurisdiction**. Its principal office is only to keep the inferior court within the parameters of its jurisdiction or to prevent it from committing such a grave abuse of discretion amounting to lack or excess of jurisdiction.[29]

The essential requisites for a Petition for *Certiorari* under Rule 65 are: (1) the writ is directed against a tribunal, a board, or an officer exercising judicial or quasi-judicial functions; (2) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (3) there is no appeal or any plain, speedy, and adequate remedy in the ordinary course of law.[30]

Excess of jurisdiction as distinguished from absence of jurisdiction means that an act, though within the general power of a tribunal, board or officer, is not authorized and invalid with respect to the particular proceeding, because the conditions which alone authorize the exercise of the general power in respect of it are wanting.[31] **Without jurisdiction** means lack or want of legal power, right or authority to hear and determine a cause or causes, considered either in general or with reference to a particular matter. It means lack of power to exercise authority.[32] **Grave abuse of discretion** implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, where the power is exercised in an arbitrary manner by reason of passion, prejudice, or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[33]

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[29] *People v. Court of Appeals*, 468 Phil. 1, 10 (2004).

[30] *Rivera v. Hon. Espiritu*, 425 Phil. 169, 179-180 (2002).

[31] *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 785 (2003).

[32] *Id*.

[33] *Id.* at 786.

In the case before this Court, the petitioner fails to meet the above-mentioned requisites for the proper invocation of a Petition for *Certiorari* under Rule 65. The Secretary of Agrarian Reform in issuing the assailed DAR AO No. 01-02, as amended, as well as Memorandum No. 88 did so in accordance with his mandate to implement the land use conversion provisions of Republic Act No. 6657. In the process, he neither acted in any judicial or quasi-judicial capacity nor assumed unto himself any performance of judicial or quasi-judicial prerogative. **A Petition for *Certiorari* is a special civil action that may be invoked only against a tribunal, board, or officer exercising judicial functions**. Section 1, Rule 65 of the 1997 Revised Rules of Civil Procedure is explicit on this matter, *viz.*:

> SECTION 1. *Petition for certiorari.* – When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment must be rendered annulling or modifying the proceedings of such tribunal, board or officer.

A tribunal, board, or officer is said to be exercising **judicial function** where it has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties. **Quasi-judicial function**, on the other hand, is "a term which applies to the actions, discretion, *etc*., of public administrative officers or bodies x x x required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature."[34]

Before a tribunal, board, or officer may exercise judicial or quasi-judicial acts, it is necessary that there be a law that gives rise to some specific rights of persons or property under which

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[34] *Liga ng mga Barangay National v. City Mayor of Manila*, *supra* note 19 at 541.

adverse claims to such rights are made, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the respective rights of the contending parties.[35]

The Secretary of Agrarian Reform does not fall within the ambit of a tribunal, board, or officer exercising judicial or quasi-judicial functions. The issuance and enforcement by the Secretary of Agrarian Reform of the questioned DAR AO No. 01-02, as amended, and Memorandum No. 88 were done in the exercise of his quasi-legislative and administrative functions and not of judicial or quasi-judicial functions. In issuing the aforesaid administrative issuances, the Secretary of Agrarian Reform never made any adjudication of rights of the parties. As such, it can never be said that the Secretary of Agrarian Reform had acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing and enforcing DAR AO No. 01-02, as amended, and Memorandum No. 88 for he never exercised any judicial or quasi-judicial functions but merely his quasi-legislative and administrative functions.

Furthermore, as this Court has previously discussed, the instant petition in essence seeks the declaration by this Court of the unconstitutionality or illegality of the questioned DAR AO No. 01-02, as amended, and Memorandum No. 88. Thus, the adequate and proper remedy for the petitioner therefor is to file a Petition for Declaratory Relief, which this Court has only appellate and not original jurisdiction. It is beyond the province of *certiorari* to declare the aforesaid administrative issuances unconstitutional and illegal because *certiorari* is confined only to the determination of the existence of grave abuse of discretion amounting to lack or excess of jurisdiction. Petitioner cannot simply allege grave abuse of discretion amounting to lack or excess of jurisdiction and then invoke *certiorari* to declare the aforesaid administrative issuances unconstitutional and illegal. Emphasis must be given to the fact that the writ of *certiorari* dealt with in Rule 65 of the 1997 Revised Rules of Civil Procedure is a prerogative writ, never demandable as a matter of right,

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[35] *Id.*

"**never issued except in the exercise of judicial discretion**."[36]

At any rate, even if the Court will set aside procedural infirmities, the instant petition should still be dismissed.

Executive Order No. 129-A[37] vested upon the DAR the responsibility of implementing the CARP. Pursuant to the said mandate and to ensure the successful implementation of the CARP, Section 5(c) of the said executive order authorized the DAR **to establish and promulgate** operational policies, **rules and regulations and priorities for agrarian reform implementation**. Section 4(k) thereof authorized the DAR **to approve or disapprove the conversion, restructuring or readjustment of agricultural lands into non-agricultural uses**. Similarly, Section 5(l) of the same executive order has given the DAR **the exclusive authority to approve or disapprove conversion of agricultural lands for residential, commercial, industrial, and other land uses as may be provided for by law.** Section 7 of the aforesaid executive order clearly provides that "the authority and responsibility for the exercise of the mandate of the [DAR] and the discharge of its powers and functions shall be vested in the Secretary of Agrarian Reform x x x."

Under DAR AO No. 01-02, as amended, "lands **not reclassified** as residential, commercial, industrial or other non-agricultural uses **before 15 June 1988**" have been included in the definition of agricultural lands. In so doing, the Secretary of Agrarian Reform merely acted within the scope of his authority stated in the aforesaid sections of Executive Order No. 129-A, which is to promulgate rules and regulations for agrarian reform implementation and that includes the authority to define agricultural lands for purposes of land use conversion. Further, the definition of agricultural lands under DAR AO No. 01-02, as amended, merely refers to the category of agricultural lands

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[36] *Mayor Balindong v. Vice Gov. Dacalos*, 484 Phil. 574, 579 (2004).

[37] Otherwise known as "The Reorganization Act of the Department of Agrarian Reform," which was approved on 26 July 1987.

that may be the subject for conversion to non-agricultural uses and is not in any way confined to agricultural lands in the context of land redistribution as provided for under Republic Act No. 6657.

More so, Department of Justice Opinion No. 44, Series of 1990, which Opinion has been recognized in many cases decided by this Court, clarified that after the effectivity of Republic Act No. 6657 on 15 June 1988 the DAR has been given the authority to approve land conversion.[38] Concomitant to such authority, therefore, is the authority to include in the definition of agricultural lands "lands **not reclassified** as residential, commercial, industrial or other non-agricultural uses **before 15 June 1988**" for purposes of land use conversion.

In the same vein, the authority of the Secretary of Agrarian Reform to include "lands **not reclassified** as residential, commercial, industrial or other non-agricultural uses **before 15 June 1988**" in the definition of agricultural lands finds basis in jurisprudence. In *Ros v. Department of Agrarian Reform*,[39] this Court has enunciated that **after** the passage of Republic Act No. 6657, agricultural lands, **though reclassified**, **have to go through the process of conversion**, jurisdiction over which is vested in the DAR. However, agricultural lands, which are already reclassified **before** the effectivity of Republic Act No. 6657 which is 15 June 1988, are exempted from conversion.[40] It bears stressing that the said date of effectivity of Republic Act No. 6657 served as the cut-off period for automatic reclassifications or rezoning of agricultural lands that no longer

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[38] In the said Opinion, the Secretary of Justice declared, *viz*: Based on the foregoing premises, we reiterate the view that with respect to conversions of agricultural lands covered by Republic Act No. 6657 to non-agricultural uses, the authority of DAR to approve such conversions may be exercised from the date of the law's effectivity on 15 June 1988. This conclusion is based on a liberal interpretation of Republic Act No. 6657 in the light of DAR's mandate and the extensive coverage of the agrarian reform program.

[39] G.R. No. 132477, 31 August 2005, 468 SCRA 471.

[40] *Junio v. Garilao*, G.R. No. 147146, 29 July 2005, 465 SCRA 173, 182-183.

require any DAR conversion clearance or authority.[41] It necessarily follows that any reclassification made thereafter can be the subject of DAR's conversion authority. Having recognized the DAR's conversion authority over lands reclassified after 15 June 1988, it can no longer be argued that the Secretary of Agrarian Reform was wrongfully given the authority and power to include "lands **not reclassified** as residential, commercial, industrial or other non-agricultural uses **before 15 June 1988**" in the definition of agricultural lands. Such inclusion does not unduly expand or enlarge the definition of agricultural lands; instead, it made clear what are the lands that can be the subject of DAR's conversion authority, thus, serving the very purpose of the land use conversion provisions of Republic Act No. 6657.

The argument of the petitioner that DAR AO No. 01-02, as amended, was made in violation of Section 65 of Republic Act No. 6657, as it covers even those non-awarded lands and reclassified lands by the LGUs or by way of Presidential Proclamations on or after 15 June 1988 is specious. As explained in Department of Justice Opinion No. 44, series of 1990, it is true that the DAR's express power over land use conversion provided for under Section 65 of Republic Act No. 6657 is limited to cases in which agricultural lands already awarded have, after five years, ceased to be economically feasible and sound for agricultural purposes, or the locality has become urbanized and the land will have a greater economic value for residential, commercial or industrial purposes. To suggest, however, that these are the only instances that the DAR can require conversion clearances would open a loophole in Republic Act No. 6657 which every landowner may use to evade compliance with the agrarian reform program. It should logically follow, therefore, from the said department's express duty and function to execute and enforce the said statute that any reclassification of a private land as a residential, commercial or

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[41] *Heirs of Francisco R. Tantoco, Sr. v. Court of Appeals*, G.R. No. 149621, 5 May 2006, 489 SCRA 590, 606-607.

industrial property, on or after the effectivity of Republic Act No. 6657 on 15 June 1988 should first be cleared by the DAR.[42]

This Court held in *Alarcon v. Court of Appeals*[43] that reclassification of lands does not suffice. Conversion and reclassification differ from each other. **Conversion** is the act of changing the current use of a piece of agricultural land into some other use **as approved by the DAR** while **reclassification** is the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, and commercial, as embodied in the land use plan, subject to the requirements and procedures for land use conversion. In view thereof, a mere reclassification of an agricultural land does not automatically allow a landowner to change its use. He has to undergo the process of conversion before he is permitted to use the agricultural land for other purposes.[44]

It is clear from the aforesaid distinction between reclassification and conversion that agricultural lands though reclassified to residential, commercial, industrial or other non-agricultural uses must still undergo the process of conversion before they can be used for the purpose to which they are intended.

Nevertheless, emphasis must be given to the fact that DAR's conversion authority can only be exercised after the effectivity of Republic Act No. 6657 on 15 June 1988.[45] The said date served as the cut-off period for automatic reclassification or rezoning of agricultural lands that no longer require any DAR conversion clearance or authority.[46] Thereafter, reclassification of agricultural lands is already subject to DAR's conversion authority. Reclassification alone will not suffice to use the agricultural lands for other purposes. Conversion is needed to change the current use of reclassified agricultural lands.

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[42] *Ros v. Department of Agrarian Reform, supra* note 39 at 483.

[43] 453 Phil. 373, 382-383 (2003).

[44] *Id.*

[45] *Junio v. Garilao*, G.R. No. 147146, 29 July 2005, 465 SCRA 173, 181-182.

[46] *Heirs of Francisco R. Tantoco, Sr. v. Court of Appeals*, *supra* note 41.

It is of no moment whether the reclassification of agricultural lands to residential, commercial, industrial or other non-agricultural uses was done by the LGUs or by way of Presidential Proclamations because either way they must still undergo conversion process. It bears stressing that the act of reclassifying agricultural lands to non-agricultural uses simply specifies how agricultural lands shall be utilized for non-agricultural uses and does not automatically convert agricultural lands to non-agricultural uses or for other purposes. As explained in DAR Memorandum Circular No. 7, Series of 1994, cited in the 2009 case of *Roxas & Company, Inc. v. DAMBA-NFSW and the Department of Agrarian Reform*,[47] reclassification of lands denotes their allocation into some specific use and providing for the manner of their utilization and disposition or the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, or commercial, as embodied in the land use plan. For reclassified agricultural lands, therefore, to be used for the purpose to which they are intended there is still a need to change the current use thereof through the process of conversion. The authority to do so is vested in the DAR, which is mandated to preserve and maintain agricultural lands with increased productivity. Thus, notwithstanding the reclassification of agricultural lands to non-agricultural uses, they must still undergo conversion before they can be used for other purposes.

Even reclassification of agricultural lands by way of Presidential Proclamations to non-agricultural uses, such as school sites, needs conversion clearance from the DAR. We reiterate that reclassification is different from conversion. Reclassification alone will not suffice and does not automatically allow the landowner to change its use. It must still undergo conversion process before the landowner can use such agricultural lands for such purpose.[48] Reclassification of agricultural lands is one thing, conversion is another. Agricultural lands that are

[47] G.R. Nos. 149548, 167505, 167540, 167543, 167845, 169163 and 179650, 4 December 2009.

[48] *Roxas & Company, Inc. v. DAMBA-NFSW and the Department of Agrarian Reform, id.*

reclassified to non-agricultural uses do not *ipso facto* allow the landowner thereof to use the same for such purpose. Stated differently, despite having reclassified into school sites, the landowner of such reclassified agricultural lands must apply for conversion before the DAR in order to use the same for the said purpose.

Any reclassification, therefore, of agricultural lands to residential, commercial, industrial or other non-agricultural uses either by the LGUs or by way of Presidential Proclamations **enacted on or after 15 June 1988** must undergo the process of conversion, despite having undergone reclassification, before agricultural lands may be used for other purposes.

It is different, however, when through Presidential Proclamations public agricultural lands have been reserved in whole or in part for public use or purpose, *i.e.*, public school, *etc*., because in such a case, conversion is no longer necessary. As held in *Republic v. Estonilo*,[49] only a positive act of the President is needed to segregate or reserve a piece of land of the public domain for a public purpose. As such, reservation of public agricultural lands for public use or purpose in effect converted the same to such use without undergoing any conversion process and that they must be actually, directly and exclusively used for such public purpose for which they have been reserved, otherwise, they will be segregated from the reservations and transferred to the DAR for distribution to qualified beneficiaries under the CARP.[50] More so, public agricultural lands already reserved for public use or purpose no longer form part of the alienable and disposable lands of the public domain suitable for agriculture.[51] Hence, they are outside the coverage of the CARP and it logically follows that they are also beyond the conversion authority of the DAR.

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[49] G.R. No. 157306, 25 November 2005, 476 SCRA 265, 274.

[50] Section 1.A of Executive Order No. 506 dated 18 February 1992.

[51] *Department of Agrarian Reform v. Department of Education, Culture and Sports*, 469 Phil. 1083, 1092-1093 (2004) citing *Central Mindanao University v. Department of Agrarian Reform Adjudication Board*, G.R. No. 100091, 22 October 1992, 215 SCRA 86, 99.

Clearly from the foregoing, the Secretary of Agrarian Reform did not act without jurisdiction or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction in (1) including lands **not reclassified** as residential, commercial, industrial or other non-agricultural uses **before 15 June 1988** in the definition of agricultural lands under DAR AO No. 01-02, as amended, and; (2) issuing and enforcing DAR AO No. 01-02, as amended, subjecting to DAR's jurisdiction for conversion lands which had already been reclassified as residential, commercial, industrial or for other non-agricultural uses on or after 15 June 1988.

Similarly, DAR AO No. 01-02, as amended, providing that the reclassification of agricultural lands by LGUs shall be subject to the requirements of land use conversion procedure or that DAR's approval or clearance must be secured to effect reclassification, did not violate the autonomy of the LGUs.

Section 20 of Republic Act No. 7160 states that:

SECTION 20. ***Reclassification of Lands***. – (a) A city or municipality may, through an ordinance passed by the *sanggunian* after conducting public hearings for the purpose, authorize the reclassification of agricultural lands and provide for the manner of their utilization or disposition in the following cases: (1) when the land ceases to be economically feasible and sound for agricultural purposes as determined by the Department of Agriculture or (2) where the land shall have substantially greater economic value for residential, commercial, or industrial purposes, as determined by the *sanggunian* concerned: *Provided*, That such reclassification shall be limited to the following percentage of the total agricultural land area at the time of the passage of the ordinance:

x x x x x x x x x

(3) For fourth to sixth class municipalities, five percent (5%): *Provided, further*, That agricultural lands distributed to agrarian reform beneficiaries pursuant to Republic Act Numbered Sixty-six hundred fifty-seven (R.A. No. 6657), otherwise known as "The Comprehensive Agrarian Reform Law," shall not be affected by the said reclassification and the conversion of such lands into other purposes shall be governed by Section 65 of said Act.

x x x x x x x x x

e) Nothing in this Section shall be construed as repealing, amending, or modifying in any manner the provisions of R.A. No. 6657.

The aforequoted provisions of law show that the power of the LGUs to reclassify agricultural lands is not absolute. The authority of the DAR to approve conversion of agricultural lands covered by Republic Act No. 6657 to non-agricultural uses has been validly recognized by said Section 20 of Republic Act No. 7160 by explicitly providing therein that, "nothing in this section shall be construed as repealing or modifying in any manner the provisions of Republic Act No. 6657."

DAR AO No. 01-02, as amended, does not also violate the due process clause, as well as the equal protection clause of the Constitution. In providing administrative and criminal penalties in the said administrative order, the Secretary of Agrarian Reform simply implements the provisions of Sections 73 and 74 of Republic Act No. 6657, thus:

Sec. 73. Prohibited Acts and Omissions. – The following are prohibited:

x x x x x x x x x

(c) The conversion by any landowner of his agricultural land into any non-agricultural use with intent to avoid the application of this Act to his landholdings and to disposes his tenant farmers of the land tilled by them;

x x x x x x x x x

(f) The sale, transfer or conveyance by a beneficiary of the right to use or any other usufructuary right over the land he acquired by virtue of being a beneficiary, in order to circumvent the provisions of this Act.

x x x x x x x x x

Sec. 74. Penalties. — Any person who knowingly or willfully violates the provisions of this Act shall be punished by imprisonment of not less than one (1) month to not more than three (3) years or a fine of not less than one thousand pesos (₱1,000.00) and not more

than fifteen thousand pesos (₱15,000.00), or both, at the discretion of the court.

If the offender is a corporation or association, the officer responsible therefor shall be criminally liable.

And Section 11 of Republic Act No. 8435, which specifically provides:

Sec. 11. *Penalty for Agricultural Inactivity and Premature Conversion.* – x x x.

Any person found guilty of premature or illegal conversion shall be penalized with imprisonment of two (2) to six (6) years, or a fine equivalent to one hundred percent (100%) of the government's investment cost, or both, at the discretion of the court, and an accessory penalty of forfeiture of the land and any improvement thereon.

In addition, the DAR may impose the following penalties, after determining, in an administrative proceedings, that violation of this law has been committed:

a. Consolation or withdrawal of the authorization for land use conversion; and

b. Blacklisting, or automatic disapproval of pending and subsequent conversion applications that they may file with the DAR.

Contrary to petitioner's assertions, the administrative and criminal penalties provided for under DAR AO No. 01-02, as amended, are imposed upon the illegal or premature conversion of lands within DAR's jurisdiction, *i.e.*, "lands **not reclassified** as residential, commercial, industrial or for other non-agricultural uses **before 15 June 1998**."

The petitioner's argument that DAR Memorandum No. 88 is unconstitutional, as it suspends the land use conversion without any basis, stands on hollow ground.

It bears emphasis that said Memorandum No. 88 was issued upon the instruction of the President in order to address the unabated conversion of prime agricultural lands for real estate development because of the worsening rice shortage in the country at that time. Such measure was made in order to ensure that

there are enough agricultural lands in which rice cultivation and production may be carried into. The issuance of said Memorandum No. 88 was made pursuant to the general welfare of the public, thus, it cannot be argued that it was made without any basis.

WHEREFORE, premises considered, the instant Petition for *Certiorari* is *DISMISSED.* Costs against petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Del Castillo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 188611. June 21, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **BELEN MARIACOS,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; WARRANTLESS SEARCHES AND SEIZURES; SEARCH OF A MOVING VEHICLE; ESSENTIAL REQUISITE OF PROBABLE CAUSE MUST STILL BE SATISFIED BEFORE A WARRANTLESS SEARCH AND SEIZURE CAN BE LAWFULLY CONDUCTED. — Both the trial court and the CA anchored their respective decisions on the fact that the search was conducted on a moving vehicle to justify the validity of the search. Indeed, the search of a moving vehicle is one of the doctrinally accepted exceptions to the Constitutional mandate that no search or seizure shall be made except by virtue of a warrant issued by a judge after personally determining the existence of probable cause. In *People v.*

Bagista, the Court said: The constitutional proscription against warrantless searches and seizures admits of certain exceptions. Aside from a search incident to a lawful arrest, a warrantless search had been upheld in cases of a moving vehicle, and the seizure of evidence in plain view. With regard to the search of moving vehicles, this had been justified on the ground that the mobility of motor vehicles makes it possible for the vehicle to be searched to move out of the locality or jurisdiction in which the warrant must be sought. This in no way, however, gives the police officers unlimited discretion to conduct warrantless searches of automobiles in the absence of probable cause. When a vehicle is stopped and subjected to an extensive search, such a warrantless search has been held to be valid only as long as the officers conducting the search have reasonable or probable cause to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched. It is well to remember that in the instances we have recognized as exceptions to the requirement of a judicial warrant, it is necessary that the officer effecting the arrest or seizure must have been impelled to do so because of probable cause. The essential requisite of probable cause must be satisfied before a warrantless search and seizure can be lawfully conducted. Without probable cause, the articles seized cannot be admitted in evidence against the person arrested.

2. ID.; ID.; ID.; ID.; PROBABLE CAUSE; DEFINED. — Probable cause is defined as a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to induce a cautious man to believe that the person accused is guilty of the offense charged. It refers to the existence of such facts and circumstances that can lead a reasonably discreet and prudent man to believe that an offense has been committed, and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law are in the place to be searched. The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable

cause, coupled with good faith on the part of the peace officers making the arrest.

3. ID.; ID.; ID.; ID.; REASON FOR EXCEPTION OF SEARCH OF MOVING VEHICLE. — Over the years, the rules governing search and seizure have been steadily liberalized whenever a moving vehicle is the object of the search on the basis of practicality. This is so considering that before a warrant could be obtained, the place, things and persons to be searched must be described to the satisfaction of the issuing judge – a requirement which borders on the impossible in instances where moving vehicle is used to transport contraband from one place to another with impunity. This exception is easy to understand. A search warrant may readily be obtained when the search is made in a store, dwelling house or other immobile structure. But it is impracticable to obtain a warrant when the search is conducted on a mobile ship, on an aircraft, or in other motor vehicles since they can quickly be moved out of the locality or jurisdiction where the warrant must be sought. Given the discussion above, it is readily apparent that the search in this case is valid. The vehicle that carried the contraband or prohibited drugs was about to leave. PO2 Pallayoc had to make a quick decision and act fast. It would be unreasonable to require him to procure a warrant before conducting the search under the circumstances. Time was of the essence in this case. The searching officer had no time to obtain a warrant. Indeed, he only had enough time to board the vehicle before the same left for its destination.

4. ID.; ID.; ID.; SEARCH INCIDENTAL TO LAWFUL ARREST; IT IS IMPERATIVE THAT THERE BE A PRIOR VALID ARREST. — This Court has also, time and again, upheld as valid a warrantless search incident to a lawful arrest. Thus, Section 13, Rule 126 of the Rules of Court provides: SEC. 13. *Search incident to lawful arrest.*—A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant. For this rule to apply, it is imperative that there be a prior valid arrest. Although, generally, a warrant is necessary for a valid arrest, the Rules of Court provides the exceptions therefor, to wit: SEC. 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) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and (c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another. 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. Be that as it may, we have held that a search substantially contemporaneous with an arrest can precede the arrest if the police has probable cause to make the arrest at the outset of the search. Given that the search was valid, appellant's arrest based on that search is also valid.

5. ID.; ID.; FAILURE TO QUESTION THE CUSTODY AND DISPOSITION OF THE ITEMS SEIZED OR MOVED FOR THE QUASHAL OF THE INFORMATION AT THE FIRST INSTANCE IS DEEMED A WAIVER OF ANY OBJECTION ON THE MATTER. — While it is true that the arresting officer failed to state explicitly the justifiable ground for non-compliance with Section 21, this does not necessarily mean that appellant's arrest was illegal or that the items seized are inadmissible. The justifiable ground will remain unknown because appellant did not question the custody and disposition of the items taken from her during the trial. Even assuming that the police officers failed to abide by Section 21, appellant should have raised this issue before the trial court. She could have moved for the quashal of the information at the first instance. But she did not. Hence, she is deemed to have waived any objection on the matter.

6. ID.; EVIDENCE; THE ACTIONS OF THE POLICE OFFICERS, IN RELATION TO THE PROCEDURAL RULES ON THE CHAIN OF CUSTODY, ENJOYED THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL FUNCTIONS. — Further, the actions of the police officers, in relation to the procedural rules on the chain of

custody, enjoyed the presumption of regularity in the performance of official functions. Courts accord credence and full faith to the testimonies of police authorities, as they are presumed to be performing their duties regularly, absent any convincing proof to the contrary. In sum, the prosecution successfully established appellant's guilt. Thus, her conviction must be affirmed.

7. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL POSSESSION OR TRANSPORTATION OF PROHIBITED DRUGS; OWNERSHIP OF THE DRUGS IS IMMATERIAL. — Appellant averred that the packages she was carrying did not belong to her but to a neighbor who had asked her to carry the same for him. This contention, however, is of no consequence. When an accused is charged with illegal possession or transportation of prohibited drugs, the ownership thereof is immaterial. Consequently, proof of ownership of the confiscated marijuana is not necessary. Appellant's alleged lack of knowledge does not constitute a valid defense. Lack of criminal intent and good faith are not exempting circumstances where the crime charged is *malum prohibitum*, as in this case. Mere possession and/or delivery of a prohibited drug, without legal authority, is punishable under the Dangerous Drugs Act. Anti-narcotics laws, like anti-gambling laws, are regulatory statutes. They are rules of convenience designed to secure a more orderly regulation of the affairs of society, and their violation gives rise to crimes *mala prohibita*. Laws defining crimes *mala prohibita* condemn behavior directed not against particular individuals, but against public order.

8. ID.; ID.; ID.; THE FACT THAT THERE IS ACTUAL CONVEYANCE SUFFICES TO SUPPORT A FINDING THAT THE ACT OF TRANSPORTING WAS COMMITTED AND IT IS IMMATERIAL WHETHER OR NOT THE PLACE OF DESTINATION IS REACHED. — Jurisprudence defines "transport" as "to carry or convey from one place to another." There is no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act. The fact that there is actual conveyance suffices to support a finding that the act of

transporting was committed and it is immaterial whether or not the place of destination is reached.

9. ID.; ID.; ID.; NON-COMPLIANCE WITH SECTION 21 OF RA NO. 9165 IS NOT FATAL AND WILL NOT RENDER AN ACCUSED'S ARREST ILLEGAL, OR MAKE THE ITEMS SEIZED INADMISSIBLE. — In all prosecutions for violation of the Dangerous Drugs Act, the existence of all dangerous drugs is a *sine qua non* for conviction. The dangerous drug is the very *corpus delicti* of that crime. xxx PO2 Pallayoc testified that after apprehending appellant, he immediately brought her to the police station. At the station, the police requested the Mayor to witness the opening of the bags seized from appellant. When the Mayor arrived, he opened the bag in front of appellant and the other police officers. The black bag yielded three bricks of marijuana wrapped in newspaper, while the plastic bag yielded two bundles of marijuana and two bricks of marijuana fruiting tops. PO2 Pallayoc identified the bricks. He and PO3 Stanley Campit then marked the same. Then the seized items were brought to the PNP Crime Laboratory for examination. It is admitted that there were no photographs taken of the drugs seized, that appellant was not accompanied by counsel, and that no representative from the media and the DOJ were present. However, this Court has already previously held that non-compliance with Section 21 is not fatal and will not render an accused's arrest illegal, or make the items seized inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items.

10. ID.; ID.; ID.; CHAIN OF CUSTODY OF SEIZED DRUGS; ESTABLISHED; CASE AT BAR.— Based on the testimony of PO2 Pallayoc, after appellant's arrest, she was immediately brought to the police station where she stayed while waiting for the Mayor. It was the Mayor who opened the packages, revealing the illegal drugs, which were thereafter marked and sent to the police crime laboratory the following day. Contrary to appellant's claim, the prosecution's evidence establishes the chain of custody from the time of appellant's arrest until the prohibited drugs were tested at the police crime laboratory.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

NACHURA, *J.*:

Before this Court is an appeal from the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 02718, which affirmed the decision[2] of the Regional Trial Court (RTC), Branch 29, San Fernando City, La Union, in Criminal Case No. 7144, finding appellant Belen Mariacos guilty of violating Article II, Section 5 of Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

The facts of the case, as summarized by the CA, are as follows:

> Accused-appellant Belen Mariacos was charged in an Information, dated November 7, 2005 of violating Section 5, Article II of Republic Act [No.] 9165, allegedly committed as follows:
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> > "That on or about the 27th day of October, 2005, in the Municipality of San Gabriel, Province of La Union, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously transport, deliver 7,030.3, (sic) grams of dried marijuana fruiting tops without the necessary permit or authority from the proper government agency or office.
> >
> > CONTRARY TO LAW."
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> When arraigned on December 13, 2005, accused-appellant pleaded not guilty. During the pre-trial, the following were stipulated upon:
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> "1. Accused admits that she is the same person identified in the information as Belen Mariacos;

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[1] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Estela M. Perlas-Bernabe, concurring; *rollo*, pp. 2-13.

[2] CA *rollo*, pp. 13-29.

2. That accused is a resident of Brgy. Lunoy, San Gabriel, La Union;

3. That at the time of the arrest of the accused, accused had just alighted from a passenger jeepney;

4. That the marijuana allegedly taken from the possession of the accused contained in two (2) bags were submitted for examination to the Crime Lab;

5. That per Chemistry Report No. D-109-2005, the alleged drug submitted for examination gave positive result for the presence of marijuana;

6. That the drugs allegedly obtained from the accused contained (sic) and submitted for examination weighed 7,030.3 grams;

7. The Prosecutor admits the existence of a counter-affidavit executed by the accused; and

8. The existence of the affidavits executed by the witnesses of the accused family (sic): Lyn Punasen, Mercedes Tila and Magdalena Carino."

During the trial, the prosecution established the following evidence:

On October 26, 2005, in the evening, the San Gabriel Police Station of San Gabriel, La Union, conducted a checkpoint near the police station at the *poblacion* to intercept a suspected transportation of marijuana from *Barangay* Balbalayang, San Gabriel, La Union. The group at the checkpoint was composed of PO2 Lunes B. Pallayoc ("PO2 Pallayoc"), the Chief of Police, and other policemen. When the checkpoint did not yield any suspect or marijuana, the Chief of Police instructed PO2 Pallayoc to proceed to *Barangay* Balbalayang to conduct surveillance operation (sic).

At dawn on October 27, 2005, in *Barangay* Balbalayang, PO2 Pallayoc met with a secret agent of the *Barangay* Intelligence Network who informed him that a baggage of marijuana had been loaded on a passenger jeepney that was about to leave for the *poblacion*. The agent mentioned three (3) bags and one (1) blue plastic bag. Further, the agent described a backpack bag with an "O.K." marking. PO2 Pallayoc then boarded the said jeepney and positioned himself on top thereof. While the vehicle was in motion, he found the black backpack with an "O.K." marking and peeked inside its contents.

PO2 Pallayoc found bricks of marijuana wrapped in newspapers. He then asked the other passengers on top of the jeepney about the owner of the bag, but no one knew.

When the jeepney reached the *poblacion*, PO2 Pallayoc alighted together with the other passengers. Unfortunately, he did not notice who took the black backpack from atop the jeepney. He only realized a few moments later that the said bag and three (3) other bags, including a blue plastic bag, were already being carried away by two (2) women. He caught up with the women and introduced himself as a policeman. He told them that they were under arrest, but one of the women got away.

PO2 Pallayoc brought the woman, who was later identified as herein accused-appellant Belen Mariacos, and the bags to the police station. At the police station, the investigators contacted the Mayor of San Gabriel to witness the opening of the bags. When the Mayor arrived about fifteen (15) minutes later, the bags were opened and three (3) bricks of marijuana wrapped in newspaper, two (2) round bundles of marijuana, and two (2) bricks of marijuana fruiting tops, all wrapped in a newspaper, were recovered.

Thereafter, the investigators marked, inventoried and forwarded the confiscated marijuana to the crime laboratory for examination. The laboratory examination showed that the stuff found in the bags all tested positive for marijuana, a dangerous drug.

When it was accused-appellant's turn to present evidence, she testified that:

On October 27, 2005, at around 7:00 in the morning, accused-appellant, together with Lani Herbacio, was inside a passenger jeepney bound for the *poblacion*. While the jeepney was still at the terminal waiting for passengers, one Bennie Lao-ang ("Lao-ang"), her neighbor, requested her to carry a few bags which had been loaded on top of the jeepney. At first, accused-appellant refused, but she was persuaded later when she was told that she would only be carrying the bags. When they reached the *poblacion*, Lao-ang handed accused-appellant and her companion, Lani Herbacio, the bags, and then Lao-ang suddenly ran away. A few moments later, PO2 Pallayoc was upon them, arresting them. Without explanation, they were brought to the police station. When they were at the police station, Lani Herbacio disappeared. It was also at the police station that accused-appellant discovered the true contents of the bags which she was asked to

carry. She maintained that she was not the owner of the bags and that she did not know what were contained in the bags. At the police station (sic) she executed a Counter-Affidavit.[3]

On January 31, 2007, the RTC promulgated a decision, the dispositive portion of which states:

> WHEREFORE, the Court finds the accused **Belen Mariacos GUILTY** as charged and sentences here (sic) to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00.
>
> The 7,030.3 grams of marijuana are ordered confiscated and turned over to the Philippine Drug Enforcement Agency for destruction in the presence of the Court personnel and media.
>
> SO ORDERED.[4]

Appellant appealed her conviction to the CA. She argued that the trial court erred in considering the evidence of the prosecution despite its inadmissibility.[5] She claimed that her right against an unreasonable search was flagrantly violated by Police Officer (PO)2 Pallayoc when the latter searched the bag, assuming it was hers, without a search warrant and with no permission from her. She averred that PO2 Pallayoc's purpose for apprehending her was to verify if the bag she was carrying was the same one he had illegally searched earlier. Moreover, appellant contended that there was no probable cause for her arrest.[6]

Further, appellant claimed that the prosecution failed to prove the *corpus delicti* of the crime.[7] She alleged that the apprehending police officers violated Dangerous Drugs Board Regulation No. 3, Series of 1979, as amended by Board Regulation No. 2, Series of 1990, which prescribes the procedure in the custody of seized prohibited and regulated drugs, instruments, apparatuses,

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[3] *Rollo*, pp. 2-5.

[4] CA *rollo*, p. 29.

[5] *Id.* at 45.

[6] *Id.* at 48.

[7] *Id.* at 50.

and articles. The said regulation directs the apprehending team having initial custody and control of the drugs and/or paraphernalia, immediately after seizure or confiscation, to have the same physically inventoried and photographed in the presence of appellant or her representative, who shall be required to sign copies of the inventory. The failure to comply with this directive, appellant claimed, casts a serious doubt on the identity of the items allegedly confiscated from her. She, likewise, averred that the prosecution failed to prove that the items allegedly confiscated were indeed prohibited drugs, and to establish the chain of custody over the same.

On the other hand, the People, through the Office of the Solicitor General (OSG), argued that the warrantless arrest of appellant and the warrantless seizure of marijuana were valid and legal,[8] justified as a search of a moving vehicle. It averred that PO2 Pallayoc had reasonable ground to believe that appellant had committed the crime of delivering dangerous drugs based on reliable information from their agent, which was confirmed when he peeked into the bags and smelled the distinctive odor of marijuana.[9] The OSG also argued that appellant was now estopped from questioning the illegality of her arrest since she voluntarily entered a plea of "not guilty" upon arraignment and participated in the trial and presented her evidence.[10] The OSG brushed aside appellant's argument that the bricks of marijuana were not photographed and inventoried in her presence or that of her counsel immediately after confiscation, positing that physical inventory may be done at the nearest police station or at the nearest office of the apprehending team, whichever was practicable.[11]

In a Decision dated January 19, 2009, the CA dismissed appellant's appeal and affirmed the RTC decision *in toto*.[12] It

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[8] *Id.* at 108.

[9] *Id.* at 112.

[10] *Id.* at 113.

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

[12] *Rollo*, p. 13.

held that the prosecution had successfully proven that appellant carried away from the *jeepney* a number of bags which, when inspected by the police, contained dangerous drugs. The CA ruled that appellant was caught *in flagrante delicto* of "carrying and conveying" the bag that contained the illegal drugs, and thus held that appellant's warrantless arrest was valid. The appellate court ratiocinated:

> It must be stressed that PO2 Pallayoc had earlier ascertained the contents of the bags when he was aboard the jeep. He saw the bricks of marijuana wrapped in newspaper. That said marijuana was on board the jeepney to be delivered to a specified destination was already unlawful. PO2 Pallayoc needed only to see for himself to whom those bags belonged. So, when he saw accused-appellant carrying the bags, PO2 Pallayoc was within his lawful duty to make a warrantless arrest of accused-appellant.
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> Firstly, this Court opines that the invocation of Section 2, Article III of the Constitution is misplaced. At the time, when PO2 Pallayoc looked into the contents of the suspicious bags, there was no identified owner. He asked the other passengers atop the jeepney but no one knew who owned the bags. Thus, there could be no violation of the right when no one was entitled thereto at that time.
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> Secondly, the facts of the case show the urgency of the situation. The local police has been trying to intercept the transport of the illegal drugs for more than a day, to no avail. Thus, when PO2 Pallayoc was tipped by the secret agent of the *Barangay* Intelligence Network, PO2 Pallayoc had no other recourse than to verify as promptly as possible the tip and check the contents of the bags.
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> Thirdly, x x x the search was conducted in a moving vehicle. Time and again, a search of a moving vehicle has been justified on the ground that the mobility of motor vehicles makes it possible for the vehicle to move out of the locality or jurisdiction in which the warrant must be sought. Thus, under the facts, PO2 Pallayoc could not be expected to secure a search warrant in order to check the contents of the bags which were loaded on top of the moving jeepney. Otherwise, a search warrant would have been of no use because the motor vehicle had already left the locality.[13]

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

Appellant is now before this Court, appealing her conviction.

Once again, we are asked to determine the limits of the powers of the State's agents to conduct searches and seizures. Over the years, this Court had laid down the rules on searches and seizures, providing, more or less, clear parameters in determining which are proper and which are not.

Appellant's main argument before the CA centered on the inadmissibility of the evidence used against her. She claims that her constitutional right against unreasonable searches was flagrantly violated by the apprehending officer.

Thus, we must determine if the search was lawful. If it was, then there would have been probable cause for the warrantless arrest of appellant.

Article III, Section 2 of the Philippine 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.

Law and jurisprudence have laid down the instances when a warrantless search is valid. These are:

> 1. *Warrantless search incidental to a lawful arrest* recognized under Section 12 [now Section 13], Rule 126 of the Rules of Court and by prevailing jurisprudence;
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> 2. Seizure of evidence in "plain view," the elements of which are:
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> (a) a prior valid intrusion based on the valid warrantless arrest in which the police are legally present in the pursuit of their official duties;

(b) the evidence was inadvertently discovered by the police who had the right to be where they are;

(c) the evidence must be immediately apparent[;] and;

(d) "plain view" justified mere seizure of evidence without further search.

3. Search of a moving vehicle. Highly regulated by the government, the vehicle's inherent mobility reduces expectation of privacy especially when its transit in public thoroughfares furnishes a highly reasonable suspicion amounting to probable cause that the occupant committed a criminal activity;

4. Consented warrantless search;

5. Customs search;

6. Stop and Frisk; and

7. Exigent and Emergency Circumstances.[14]

Both the trial court and the CA anchored their respective decisions on the fact that the search was conducted on a moving vehicle to justify the validity of the search.

Indeed, the search of a moving vehicle is one of the doctrinally accepted exceptions to the Constitutional mandate that no search or seizure shall be made except by virtue of a warrant issued by a judge after personally determining the existence of probable cause.[15]

In *People v. Bagista*,[16] the Court said:

The constitutional proscription against warrantless searches and seizures admits of certain exceptions. Aside from a search incident

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[14] *People v. Aruta*, 351 Phil. 868, 879-880 (1998). (Citations omitted.)

[15] *Asuncion v. Court of Appeals*, 362 Phil. 118, 126 (1999), citing *Mustang Lumber, Inc. v. Court of Appeals*, 257 SCRA 430 (1996); and *People v. Lo Ho Wing*, 193 SCRA 122 (1991).

[16] G.R. No. 86218, September 18, 1992, 214 SCRA 63, 68-69. (Citations omitted.)

to a lawful arrest, a warrantless search had been upheld in cases of a moving vehicle, and the seizure of evidence in plain view.

With regard to the search of moving vehicles, this had been justified on the ground that the mobility of motor vehicles makes it possible for the vehicle to be searched to move out of the locality or jurisdiction in which the warrant must be sought.

This in no way, however, gives the police officers unlimited discretion to conduct warrantless searches of automobiles in the absence of probable cause. When a vehicle is stopped and subjected to an extensive search, such a warrantless search has been held to be valid only as long as the officers conducting the search have reasonable or probable cause to believe before the search that they will find the instrumentality or evidence pertaining to a crime, in the vehicle to be searched.

It is well to remember that in the instances we have recognized as exceptions to the requirement of a judicial warrant, it is necessary that the officer effecting the arrest or seizure must have been impelled to do so because of probable cause. The essential requisite of probable cause must be satisfied before a warrantless search and seizure can be lawfully conducted.[17] Without probable cause, the articles seized cannot be admitted in evidence against the person arrested.[18]

Probable cause is defined as a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to induce a cautious man to believe that the person accused is guilty of the offense charged. It refers to the existence of such facts and circumstances that can lead a reasonably discreet and prudent man to believe that an offense has been committed, and that the items, articles or objects sought in connection with said offense or subject to seizure and destruction by law are in the place to be searched.[19]

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[17] *People v. Aruta, supra* note 14, at 880.

[18] Except when the prohibited items are in plain view.

[19] *People v. Aruta, supra* note 14, at 880, citing *People v. Encinada*, 345 Phil. 301 (1997).

The grounds of suspicion are reasonable when, in the absence of actual belief of the arresting officers, the suspicion that the person to be arrested is probably guilty of committing the offense is based on actual facts, *i.e.*, supported by circumstances sufficiently strong in themselves to create the probable cause of guilt of the person to be arrested. A reasonable suspicion therefore must be founded on probable cause, coupled with good faith on the part of the peace officers making the arrest.[20]

Over the years, the rules governing search and seizure have been steadily liberalized whenever a moving vehicle is the object of the search on the basis of practicality. This is so considering that before a warrant could be obtained, the place, things and persons to be searched must be described to the satisfaction of the issuing judge – a requirement which borders on the impossible in instances where moving vehicle is used to transport contraband from one place to another with impunity.[21]

This exception is easy to understand. A search warrant may readily be obtained when the search is made in a store, dwelling house or other immobile structure. But it is impracticable to obtain a warrant when the search is conducted on a mobile ship, on an aircraft, or in other motor vehicles since they can quickly be moved out of the locality or jurisdiction where the warrant must be sought.[22]

Given the discussion above, it is readily apparent that the search in this case is valid. The vehicle that carried the contraband or prohibited drugs was about to leave. PO2 Pallayoc had to make a quick decision and act fast. It would be unreasonable to require him to procure a warrant before conducting the search under the circumstances. Time was of the essence in this case. The searching officer had no time to obtain a warrant. Indeed,

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[20] *People v. Doria*, 361 Phil. 595, 632 (1999).

[21] *People v. Lo Ho Wing, supra* note 15, at 128-129, citing *Carroll v. United States*, 267 U.S. 132, 153 (1925); *People v. Del Mundo*, 418 Phil. 740 (2001).

[22] *Salvador v. People*, 502 Phil. 60, 72 (2005).

he only had enough time to board the vehicle before the same left for its destination.

It is well to remember that on October 26, 2005, the night before appellant's arrest, the police received information that marijuana was to be transported from *Barangay* Balbalayang, and had set up a checkpoint around the area to intercept the suspects. At dawn of October 27, 2005, PO2 Pallayoc met the secret agent from the *Barangay* Intelligence Network, who informed him that a baggage of marijuana was loaded on a passenger *jeepney* about to leave for the *poblacion*. Thus, PO2 Pallayoc had probable cause to search the packages allegedly containing illegal drugs.

This Court has also, time and again, upheld as valid a warrantless search incident to a lawful arrest. Thus, Section 13, Rule 126 of the Rules of Court provides:

> SEC. 13. *Search incident to lawful arrest.*—A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.[23]

For this rule to apply, it is imperative that there be a prior valid arrest. Although, generally, a warrant is necessary for a valid arrest, the Rules of Court provides the exceptions therefor, to wit:

> SEC. 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) When an offense has just been committed and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

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[23] Revised Rules on Criminal Procedure, Rule 126.

(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

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.[24]

Be that as it may, we have held that a search substantially contemporaneous with an arrest can precede the arrest if the police has probable cause to make the arrest at the outset of the search.[25]

Given that the search was valid, appellant's arrest based on that search is also valid.

Article II, Section 5 of the Comprehensive Dangerous Drugs Act of 2002 states:

SEC. 5 *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) 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

[24] Revised Rules on Criminal Procedure, Rule 113.

[25] *People v. Nuevas*, G.R. No. 170233, February 22, 2007, 516 SCRA 463, citing *People v. Tudtud*, 458 Phil. 752 (2003).

controlled precursor and essential chemical, or shall act as a broker in such transactions.

In her defense, appellant averred that the packages she was carrying did not belong to her but to a neighbor who had asked her to carry the same for him. This contention, however, is of no consequence.

When an accused is charged with illegal possession or transportation of prohibited drugs, the ownership thereof is immaterial. Consequently, proof of ownership of the confiscated marijuana is not necessary.[26]

Appellant's alleged lack of knowledge does not constitute a valid defense. Lack of criminal intent and good faith are not exempting circumstances where the crime charged is *malum prohibitum*, as in this case.[27] Mere possession and/or delivery of a prohibited drug, without legal authority, is punishable under the Dangerous Drugs Act.[28]

Anti-narcotics laws, like anti-gambling laws, are regulatory statutes. They are rules of convenience designed to secure a more orderly regulation of the affairs of society, and their violation gives rise to crimes *mala prohibita*. Laws defining crimes *mala prohibita* condemn behavior directed not against particular individuals, but against public order.[29]

Jurisprudence defines "transport" as "to carry or convey from one place to another."[30] There is no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act.[31] The fact that there

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[26] *People v. Del Mundo, supra* note 21, at 751. (Citations omitted.)

[27] *Id.*, citing *People v. Sy Bing Yok*, 309 SCRA 28, 38 (1999).

[28] *People v. Beriarmente*, 418 Phil. 229, 239 (2001).

[29] *People v. Doria, supra* note 20, at 618. (Citations omitted.)

[30] *People v. Peñaflorida,* G.R. No. 175604, April 10, 2008, 551 SCRA 111, 125.

[31] *People v. Jones*, 343 Phil. 865, 877 (1997).

is actual conveyance suffices to support a finding that the act of transporting was committed and it is immaterial whether or not the place of destination is reached.[32]

Moreover, appellant's possession of the packages containing illegal drugs gave rise to the disputable presumption[33] that she is the owner of the packages and their contents.[34] Appellant failed to rebut this presumption. Her uncorroborated claim of lack of knowledge that she had prohibited drug in her possession is insufficient.

Appellant's narration of facts deserves little credence. If it is true that Bennie Lao-ang merely asked her and her companion to carry some baggages, it is but logical to first ask what the packages contained and where these would be taken. Likewise, if, as appellant said, Lao-ang ran away after they disembarked from the *jeepney*, appellant and her companion should have ran after him to give him the bags he had left with them, and not to continue on their journey without knowing where they were taking the bags.

Next, appellant argues that the prosecution failed to prove the *corpus delicti* of the crime. In particular, she alleged that the apprehending police officers failed to follow the procedure in the custody of seized prohibited and regulated drugs, instruments, apparatuses, and articles.

In all prosecutions for violation of the Dangerous Drugs Act, the existence of all dangerous drugs is a *sine qua non* for

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[32] *People v. Correa*, G.R. No. 119246, January 30, 1998, 285 SCRA 679, 700.

[33] Section 3 (j) of Rule 131 of the Revised Rules of Court states:

Sec. 3. *Disputable presumptions.*—The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x x

(j) That a person found in possession of a thing taken in the doing of a recent wrongful act is the taker and the doer of the whole act; otherwise, that things which a person possesses, or exercises acts of ownership over, are owned by him.

[34] See *People v. Del Mundo*, *supra* note 21.

conviction. The dangerous drug is the very *corpus delicti* of that crime.[35]

Thus, Section 21 of R.A. No. 9165 prescribes the procedure for custody and disposition of seized dangerous drugs, to wit:

> **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:
>
> (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.

The Implementing Rules and Regulations (IRR) of R.A. No. 9165 further provides:

> **SECTION 21.** ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*** – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such

[35] *People v. Kimura*, 471 Phil. 895, 909 (2004), citing *People v. Mendiola*, 235 SCRA 116, 120 (1994).

> items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

PO2 Pallayoc testified that after apprehending appellant, he immediately brought her to the police station. At the station, the police requested the Mayor to witness the opening of the bags seized from appellant. When the Mayor arrived, he opened the bag in front of appellant and the other police officers. The black bag yielded three bricks of marijuana wrapped in newspaper, while the plastic bag yielded two bundles of marijuana and two bricks of marijuana fruiting tops.[36] PO2 Pallayoc identified the bricks. He and PO3 Stanley Campit then marked the same. Then the seized items were brought to the PNP Crime Laboratory for examination.

It is admitted that there were no photographs taken of the drugs seized, that appellant was not accompanied by counsel, and that no representative from the media and the DOJ were present. However, this Court has already previously held that non-compliance with Section 21 is not fatal and will not render an accused's arrest illegal, or make the items seized inadmissible. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items.[37]

Based on the testimony of PO2 Pallayoc, after appellant's arrest, she was immediately brought to the police station where she stayed while waiting for the Mayor. It was the Mayor

[36] CA *rollo*, p. 16.

[37] *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 436-437, citing *People v. Del Monte*, 552 SCRA 627 (2008).

who opened the packages, revealing the illegal drugs, which were thereafter marked and sent to the police crime laboratory the following day. Contrary to appellant's claim, the prosecution's evidence establishes the chain of custody from the time of appellant's arrest until the prohibited drugs were tested at the police crime laboratory.

While it is true that the arresting officer failed to state explicitly the justifiable ground for non-compliance with Section 21, this does not necessarily mean that appellant's arrest was illegal or that the items seized are inadmissible. The justifiable ground will remain unknown because appellant did not question the custody and disposition of the items taken from her during the trial.[38] Even assuming that the police officers failed to abide by Section 21, appellant should have raised this issue before the trial court. She could have moved for the quashal of the information at the first instance. But she did not. Hence, she is deemed to have waived any objection on the matter.

Further, the actions of the police officers, in relation to the procedural rules on the chain of custody, enjoyed the presumption of regularity in the performance of official functions. Courts accord credence and full faith to the testimonies of police authorities, as they are presumed to be performing their duties regularly, absent any convincing proof to the contrary.[39]

In sum, the prosecution successfully established appellant's guilt. Thus, her conviction must be affirmed.

WHEREFORE, the foregoing premises considered, the appeal is *DISMISSED*. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 02718 is *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Perez,*[*] *JJ.,* concur.

[38] See *People v. Pringas*, G.R. No. 175928, August 31, 2007, 531 SCRA 828; *People v. Sta. Maria*, G.R. No. 171019, February 23, 2007, 516 SCRA 621, 633.

[39] *People v. Santiago*, G.R. No. 175326, November 28, 2007, 539 SCRA 198, 223.

[*] Additional member in lieu of Associate Justice Jose Catral Mendoza per Raffle dated February 22, 2010.

EN BANC

[G.R. No. 190681. June 21, 2010]

DR. EDILBERTO ESTAMPA, JR., *petitioner, vs.* **CITY GOVERNMENT OF DAVAO,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; PERSONS WHO CAN INITIATE ADMINISTRATIVE ACTIONS IN LOCAL GOVERNMENT UNITS; WHEN IS A PERSON CONSIDERED FORMALLY CHARGED. — As the Davao City government pointed out, Executive Order (E.O.) 292 (the 1987 Administrative Code) and the CSC Uniform Rules on Administrative Cases vest in heads of cities the power to investigate and decide disciplinary actions against their officers and employees. E.O. 292 also allows the heads of local units, like the mayor, the authority to initiate administrative actions against subordinate officials or employees even without the complaints being subscribed and sworn to. In these proceedings, a person is considered formally charged a) upon charges initiated by the disciplining authority or b) upon the finding by such disciplining authority of a *prima facie* case against him based on a private person's complaint. The Davao City Health Officer's inquiry into the status of Dr. Estampa's case did not partake of a complaint under E.O. 292 as he suggests. That inquiry was a mere follow up of the fact-finding investigation that Dr. Alcantara began. Nor did the City Legal Officer's order during the preliminary investigation, which required Dr. Estampa to file his answer and supporting documents, constitute the "complaint" under the law. That order was merely an incident of the preliminary investigation. The real formal charge against Dr. Estampa was that which the city mayor signed, charging the doctor, in his capacity as Disaster Coordinator of the City Health Office, with neglect of duty for failing to respond to the March 4, 2003 bombing in Davao. That formal charge directed him to submit his answer, accompanied by the sworn statements of his witnesses, and to indicate if he preferred a formal trial or would rather waive it. He was thus properly charged.

2. ID.; ID.; ID.; NO DENIAL OF DUE PROCESS. — Dr. Estampa cannot complain that he was not heard on his defense. The record shows that, initially, his immediate superior asked him to explain why he did not respond to the bombing incident and he submitted his explanation. In the next instance, he was asked during the preliminary investigation to file his answer and submit evidence in his defense although he chose not to do so. After being formally charged, he was again asked to file his answer to the charge. And he filed one, accompanied by supporting documents. He also took part at the pre-trial and elected to have the case decided based on the parties' position paper or memorandum. Surely, Dr. Estampa has no reason to complain of denial of his right to due process.

3. ID.; ID.; ID.; THE RIGHT TO SPEEDY DISPOSITION OF CASES MAY BE DEEMED VIOLATED ONLY WHEN THE PROCEEDINGS ARE ATTENDED BY VEXATIOUS, CAPRICIOUS AND OPPRESSIVE DELAYS. — Dr. Estampa laments that almost a year passed from the time his immediate superior asked him to submit a written explanation of the incident to the time when preliminary investigation of his case began. The delay, according to him, violated his right to the speedy disposition of his case. But, Dr. Alcantara's action cannot be regarded as part of the administrative proceeding against Dr. Estampa. It was but a fact-finding investigation done by an immediate superior to determine whether disciplinary action was warranted in his case. And, although Dr. Alcantara was later heard to say that he regarded the matter closed after reading Dr. Estampa's explanation, Dr. Alcantara took no step to formalize his finding by reporting the matter to his superior, the Davao City Health Officer, with his recommendation. Besides, to reiterate what the CA said, the right to speedy disposition of cases may be deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays. In this case, the Assistant City Legal Officer finished the preliminary investigation of Dr. Estampa's case in only a little over three weeks from the time it began.

4. ID.; ID.; ID.; IN ADMINISTRATIVE CASES, WHAT CONTROLS IS THE ALLEGATION OF THE ACTS COMPLAINED OF AND NOT THE DESIGNATION OF THE OFFENSE IN THE FORMAL CHARGE. — The claim of Dr. Estampa that he could not be found guilty of "gross" neglect of duty when he was

charged only with simple neglect of duty is unmeritorious. The charge against the respondent in an administrative case need not be drafted with the precision of the information in a criminal action. It is enough that he is informed of the substance of the charge against him. And what controls is the allegation of the acts complained of, not the designation of the offense in the formal charge. Here, the formal charge accused him of failing to respond, as was his duty as Disaster Coordinator of the City Health Office, to the March 4, 2003 bombing incident that saw many people killed and maimed. It was a serious charge although the formal charge failed to characterize it correctly as "gross neglect of duty." Gross neglect of duty denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. It has been held that gross negligence exists when a public official's breach of duty is flagrant and palpable.

5. ID.; ID.; ID.; GROSS NEGLECT OF DUTY; PETITIONER CANNOT CLAIM IGNORANCE OF HIS DUTIES AS THE CITY HEALTH OFFICE'S COORDINATOR TO THE DISASTER COORDINATING COUNCIL. — Dr. Estampa claims that the city failed to show that he had an obligation to respond to the Davao City bombing and that no one advised him of his duties and responsibilities as city health office's Coordinator to the Disaster Coordinating Council. But Dr. Estampa cannot claim ignorance of his duties. The local government code, the provision of which he may be assumed to know, provides that a government health officer has the duty, among others, to be in the frontline of the delivery of health services, particularly during and in the aftermath of man-made and natural disasters and calamities. Furthermore, as Medical Officer VI, one of his specified duties was "to act as head of a task force unit for any untoward events in his area of responsibility." It was precisely because of his position as Medical Officer VI that he had been designated Disaster Coordinator for his office. When Dr. Estampa accepted his post and swore to perform his duties, he entered into a covenant with the city to act with dedication, speed, and courage in the face of disasters like the bombing of populated places in the city. As the CA pointed out, the bombing incident on March 4, 2003 caused so many deaths and injuries that the victims had to be farmed out among several hospitals in the city. Plainly, the City needed public health officers to come to the rescue of the victims in whatever way their sufferings or those of their families could be assuaged.

As disaster coordinator, the city needed Dr. Estampa to organize and coordinate all efforts to meet the emergency. Yet, although he knew of the bombing, he chose to stay at home.

6. ID.; ID.; ID.; A PERSON'S DUTY TO HIS FAMILY IS NOT INCOMPATIBLE WITH HIS JOB-RELATED COMMITMENT TO COME TO THE RESCUE OF DISASTERS; PETITIONER ABANDONED HIS POSITION WHEN IT NEEDED HIM. — Dr. Estampa justified his absence from the emergency rooms of the hospitals to attend to the bombing victims with the claim that he needed to attend to his family first. Initially, he could not leave his one-year-old daughter because they had no house help. When his wife arrived from work shortly, he also could not leave because she was six months pregnant. Further, a bomb was found some meters from their apartment a few weeks earlier. Dr. Estampa said in his letter that he was unable from the beginning to give full commitment to his job since he gave priority to his family. He simply was not the right person for the job of disaster coordinator. Dr. Estampa's defense is not acceptable. A person's duty to his family is not incompatible with his job-related commitment to come to the rescue of victims of disasters. Disasters do not strike every day. Besides, knowing that his job as senior medical health officer entailed the commitment to make a measure of personal sacrifice, he had the choice to resign from it when he realized that he did not have the will and the heart to respond. Assuming that he had a one-year-old daughter in the house, he could have taken her to relatives temporarily while his wife was still on her way from work. But he did not. And when his wife arrived shortly at 9 p.m., he still did not leave under the pretext that his wife was six months pregnant. Yet, he had in fact permitted her to work away from home up to the evening. What marked his gross irresponsibility was that he did not even care to call up his superior or associates to inform them of his inability to respond to the emergency. As a result, the city health office failed to provide the needed coordination of all efforts intended to cope with the disaster. Who knows? Better coordination and dispatch of victims to the right emergency rooms could have saved more lives. The Court finds no excuse for reinstating Dr. Estampa to the position he abandoned when it needed him.

APPEARANCES OF COUNSEL

Sycip Salazar Hernandez and Gatmaitan for petitioner.
The City Legal Officer (Davao City) for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the failure of a city's medical health officer and disaster coordinator to respond to a catastrophic bombing incident upon the excuse that he needed to attend first to the needs of his family.

The Facts and the Case

On February 1, 2001 the City Government of Davao appointed petitioner Dr. Edilberto Estampa, Jr. as Medical Officer VI at its City Health Office. The position made him head of a Task Force Unit assigned to deal with any untoward event taking place in the city and Disaster Coordinator for the Davao City Health Office under the Davao City Disaster Coordinating Council.

On March 4, 2003, at around 6 p.m., a powerful bomb exploded at the passengers' terminal of the Davao International Airport, killing 22 persons and injuring 113 others. Dr. Estampa had just arrived home at that time and was taking care of his one-year-old daughter. He learned of the bombing incident between 7 to 8 p.m. His wife arrived at 9 p.m. from her work at the Davao Medical Center where most of the bombing victims were brought for treatment. She prevailed on Dr. Estampa to stay home and he did.

On March 6, 2003 Dr. Roberto V. Alcantara, Officer-in-Charge of the Davao City Health Office, required Dr. Estampa to explain in writing why he failed to respond to the bombing incident. Dr. Estampa submitted his explanation. Apparently satisfied with the explanation and believing that Dr. Estampa's presence in the aftermath of the bombing was not indispensable considering the presence of other medical practitioners, Dr. Alcantara considered the case closed. The latter did not, however,

bother to endorse the case to a superior officer or to the City Legal Office with his recommendation.

About 10 months later or on January 26, 2004 Dr. Josephine J. Villafuerte, the Davao City Health Officer, queried the head of the City's Human Resource Management Office (HRMO) regarding the status of the case against Dr. Estampa for failing to respond to the bombing incident. Reacting to this, the HRMO endorsed the matter to the City Legal Office for verification and investigation. Subsequently, the Assistant City Legal Officer required Dr. Estampa to answer the charge against him. But he did not do so.

On March 19, 2004 the Assistant City Legal Officer submitted an Investigation Report, finding a *prima facie* case against Dr. Estampa for neglect of duty[1] and recommending the filing of a formal charge against him. The city mayor approved the report and signed the formal charge. On receiving the same, Dr. Estampa filed his answer and supporting documents.

At the pre-trial, Dr. Estampa waived his right to counsel. The parties agreed to dispense with a formal hearing and to just submit their position papers or memoranda. On November 12, 2004 the City Legal Officer found Dr. Estampa guilty of "grave" neglect of duty and recommended his dismissal. On February 8, 2005 the city mayor approved the recommendation and dismissed Dr. Estampa. The latter moved for reconsideration but this was denied, prompting him to appeal to the Civil Service Commission (CSC).

On June 2, 2006 the CSC denied Dr. Estampa's appeal, corrected the denomination of his offense to gross neglect of duty, and affirmed his dismissal. The CSC also denied Dr. Estampa's motion for reconsideration for lack of merit.

Dr. Estampa appealed to the Court of Appeals (CA) by petition for review under Rule 43. The CA denied his application for issuance of a TRO and writ of preliminary injunction and eventually rendered a decision on March 30, 2009, denying his

[1] Violation of Sec. 46, par. (b)(3), Book V of Executive Order 292 (E.O. 292).

petition and affirming the resolutions of the CSC. The CA also found no merit in his motion for reconsideration.

The Issue Presented

The only issue presented in this case is whether or not the CA erred in affirming the rulings of the City Legal Officer and the CSC that found Dr. Estampa guilty of gross neglect of duty for failing to respond to the March 4, 2003 Davao City bombing.

The Ruling of the Court

Dr. Estampa points out that his dismissal was void because: (1) neither a proper complaint nor a formal charge initiated the case against him; (2) the CA considered and appreciated evidence not presented at the hearing before the City Legal Officer; (3) the delay in the preliminary investigation of Dr. Estampa's case violated his rights to due process and speedy disposition of his case; (4) he could not be held liable for "gross" neglect of duty since the charge against him was only for simple neglect of duty; and (5) the evidence presented did not support the findings against him.

1. But, as the Davao City government pointed out, Executive Order (E.O.) 292 (the 1987 Administrative Code)[2] and the CSC Uniform Rules on Administrative Cases vest in heads of cities the power to investigate and decide disciplinary actions against their officers and employees.[3] E.O. 292 also allows the heads of local units, like the mayor, the authority to initiate administrative actions against subordinate officials or employees[4] even without the complaints being subscribed and sworn to.[5] In these proceedings, a person is considered formally charged a) upon charges initiated by the disciplining authority or b) upon the

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[2] Specifically Book V on the Civil Service.

[3] Sec. 47 (2), Ch. 7, Subtitle A, Title I, Book V of E.O. 292.

[4] Sec. 48 (1), Ch. 6, Subtitle A, Title I, Book V of E.O. 292.

[5] Sec. 46 (1), Ch. 6, Subtitle A, Title I, Book V of E.O. 292 and Sec. 8, Rule II, Uniform Rules on Administrative Cases in the Civil Service.

finding by such disciplining authority of a *prima facie* case against him based on a private person's complaint.[6]

The Davao City Health Officer's inquiry into the status of Dr. Estampa's case did not partake of a complaint under E.O. 292 as he suggests. That inquiry was a mere follow up of the fact-finding investigation that Dr. Alcantara began. Nor did the City Legal Officer's order during the preliminary investigation, which required Dr. Estampa to file his answer and supporting documents, constitute the "complaint" under the law. That order was merely an incident of the preliminary investigation.[7]

The real formal charge against Dr. Estampa was that which the city mayor signed, charging the doctor, in his capacity as Disaster Coordinator of the City Health Office, with neglect of duty for failing to respond to the March 4, 2003 bombing in Davao. That formal charge directed him to submit his answer, accompanied by the sworn statements of his witnesses, and to indicate if he preferred a formal trial or would rather waive it. He was thus properly charged.

2. Dr. Estampa claims that the CA considered and appreciated evidence that was not presented before the City Legal Officer, in particular referring to the letters of Dr. Villafuerte (to the HRMO inquiring about the status of the case against him), Mr. Escalada, HRMO head (endorsing the case to the City Legal Office), and the affidavit of Dr. Samuel G. Cruz, Assistant City Health Officer (that Dr. Estampa failed to answer phone calls to him after the bombing and that he ignored the driver who was sent to fetch him). Dr. Estampa was not furnished with copies of these documents which were mentioned for the first time only on appeal to the CSC in the City Government's Comment.

The letters of Dr. Villafuerte and Mr. Escalada are official communications and form part of the records of the case. They are public documents. As to the affidavit of Dr. Cruz, the City

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[6] *Crisostomo M. Plopinio v. Atty. Liza Zabala-Cariño*, A.M. No. P-08-2458, March 22, 2010.

[7] See Investigation Report dated March 19, 2004, *rollo*, pp. 203-204.

Government admits that it was not presented in evidence although it still formed part of the case records since it was officially endorsed to the City Legal Office by Dr. Cruz.

The decisions of the CSC and the CA are not based only on these documents. Dr. Estampa's guilt is evidenced by his own evidence and inaction, as will be shown later on. The letters of Dr. Villafuerte and Mr. Escalada merely show the process of investigation of the case. Dr. Cruz' affidavit is also merely corroborating at best and may even be dispensed with.

3. Dr. Estampa cannot complain that he was not heard on his defense. The record shows that, initially, his immediate superior asked him to explain why he did not respond to the bombing incident and he submitted his explanation. In the next instance, he was asked during the preliminary investigation to file his answer and submit evidence in his defense although he chose not to do so. After being formally charged, he was again asked to file his answer to the charge. And he filed one, accompanied by supporting documents. He also took part at the pre-trial and elected to have the case decided based on the parties' position paper or memorandum. Surely, Dr. Estampa has no reason to complain of denial of his right to due process.

Dr. Estampa laments that almost a year passed from the time his immediate superior asked him to submit a written explanation of the incident to the time when preliminary investigation of his case began. The delay, according to him, violated his right to the speedy disposition of his case.

But, Dr. Alcantara's action cannot be regarded as part of the administrative proceeding against Dr. Estampa. It was but a fact-finding investigation done by an immediate superior to determine whether disciplinary action was warranted in his case. And, although Dr. Alcantara was later heard to say that he regarded the matter closed after reading Dr. Estampa's explanation, Dr. Alcantara took no step to formalize his finding by reporting the matter to his superior, the Davao City Health Officer, with his recommendation.

Besides, to reiterate what the CA said, the right to speedy disposition of cases may be deemed violated only when the proceedings are attended by vexatious, capricious, and oppressive delays. In this case, the Assistant City Legal Officer finished the preliminary investigation of Dr. Estampa's case in only a little over three weeks from the time it began.

4. The claim of Dr. Estampa that he could not be found guilty of "gross" neglect of duty when he was charged only with simple neglect of duty is unmeritorious. The charge against the respondent in an administrative case need not be drafted with the precision of the information in a criminal action. It is enough that he is informed of the substance of the charge against him. And what controls is the allegation of the acts complained of, not the designation of the offense in the formal charge.[8] Here, the formal charge accused him of failing to respond, as was his duty as Disaster Coordinator of the City Health Office, to the March 4, 2003 bombing incident that saw many people killed and maimed. It was a serious charge although the formal charge failed to characterize it correctly as "gross neglect of duty."

Gross neglect of duty denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty.[9] It has been held that gross negligence exists when a public official's breach of duty is flagrant and palpable.[10]

5. Dr. Estampa claims that the city failed to show that he had an obligation to respond to the Davao City bombing and that no one advised him of his duties and responsibilities as city health office's Coordinator to the Disaster Coordinating Council. But Dr. Estampa cannot claim ignorance of his duties. The local government code, the provision of which he may be assumed to know, provides that a government health officer

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[8] *Dadubo v. Civil Service Commission*, G.R. No. 106498, June 28, 1993, 223 SCRA 747, 754.

[9] *Philippine Retirement Authority v. Rupa*, 415 Phil. 713, 721 (2001).

[10] *Civil Service Commission v. Rabang*, G.R. No. 167763, March 14, 2008, 548 SCRA 541, 547.

has the duty, among others, to be in the frontline of the delivery of health services, particularly during and in the aftermath of man-made and natural disasters and calamities.[11] Furthermore, as Medical Officer VI, one of his specified duties was "to act as head of a task force unit for any untoward events in his area of responsibility." It was precisely because of his position as Medical Officer VI that he had been designated Disaster Coordinator for his office.

When Dr. Estampa accepted his post and swore to perform his duties, he entered into a covenant with the city to act with dedication, speed, and courage in the face of disasters like the bombing of populated places in the city. As the CA pointed out, the bombing incident on March 4, 2003 caused so many deaths and injuries that the victims had to be farmed out among several hospitals in the city. Plainly, the City needed public health officers to come to the rescue of the victims in whatever way their sufferings or those of their families could be assuaged. As disaster coordinator, the city needed Dr. Estampa to organize and coordinate all efforts to meet the emergency. Yet, although he knew of the bombing, he chose to stay at home.

In his letter-explanation, Dr. Estampa justified his absence from the emergency rooms of the hospitals to attend to the bombing victims with the claim that he needed to attend to his family first. Initially, he could not leave his one-year-old daughter because they had no house help. When his wife arrived from work shortly, he also could not leave because she was six months pregnant. Further, a bomb was found some meters from their apartment a few weeks earlier. Dr. Estampa said in his letter that he was unable from the beginning to give full commitment to his job since he gave priority to his family. He simply was not the right person for the job of disaster coordinator.

Dr. Estampa's defense is not acceptable. A person's duty to his family is not incompatible with his job-related commitment to come to the rescue of victims of disasters. Disasters do not strike every day. Besides, knowing that his job as senior medical

[11] Republic Act No. 7160 (The Local Government Code of 1991), Art. VIII, Sec. 478 (b)(5).

health officer entailed the commitment to make a measure of personal sacrifice, he had the choice to resign from it when he realized that he did not have the will and the heart to respond.

Assuming that he had a one-year-old daughter in the house, he could have taken her to relatives temporarily while his wife was still on her way from work. But he did not. And when his wife arrived shortly at 9 p.m., he still did not leave under the pretext that his wife was six months pregnant. Yet, he had in fact permitted her to work away from home up to the evening. What marked his gross irresponsibility was that he did not even care to call up his superior or associates to inform them of his inability to respond to the emergency. As a result, the city health office failed to provide the needed coordination of all efforts intended to cope with the disaster. Who knows? Better coordination and dispatch of victims to the right emergency rooms could have saved more lives.

The Court finds no excuse for reinstating Dr. Estampa to the position he abandoned when it needed him.

WHEREFORE, the Court *DISMISSES* the petition and *AFFIRMS* the decision dated March 30, 2009 and resolution dated November 20, 2009 of the Court of Appeals in CA-G.R. SP 02191-MIN.

SO ORDERED.

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

Mendoza, J., on leave.

FIRST DIVISION

[G.R. No. 167678. June 22, 2010]

SOUTHEASTERN SHIPPING and SOUTHEASTERN SHIPPING GROUP, LTD., *petitioners, vs.* **FEDERICO U. NAVARRA, JR.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; OVERSEAS EMPLOYMENT; SEAFARERS; THE EMPLOYMENT OF SEAFARERS INCLUDING CLAIM FOR DEATH BENEFITS IS GOVERNED BY CONTRACTS THEY SIGN EVERY TIME THEY ARE HIRED OR REHIRED. — The Constitution affirms labor as a primary social economic force. Along this vein, the State vowed to afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. "The employment of seafarers, including claims for death benefits, is governed by the contracts they sign every time they are hired or rehired; and as long as the stipulations therein are not contrary to law, morals, public order or public policy, they have the force of law between the parties."

2. ID.; ID.; ID.; ID.; ARTICLE 291 OF THE LABOR CODE IS NOT LIMITED TO MONEY CLAIMS RECOVERABLE UNDER THE LABOR CODE, BUT ALSO APPLIES TO CLAIMS OF OVERSEAS CONTRACT WORKERS AND PREVAILS OVER SECTION 28 OF THE STANDARD EMPLOYMENT CONTRACT FOR SEAFARERS. — In *Cadalin v. POEA's Administrator*, we held that Article 291 of the Labor Code covers all money claims from employer-employee relationship. **"It is not limited to money claims recoverable under the Labor Code, but *applies also to claims of overseas contract workers*".** Based on the foregoing, it is therefore clear that Article 291 is the law governing the prescription of money claims of seafarers, a class of overseas contract workers. This law prevails over Section 28 of the Standard Employment Contract for Seafarers which provides for claims to be brought only within one year from the date of the seafarer's return to the point of hire.

3. ID.; ID.; ID.; ID.; PRESCRIPTIVE PERIOD OF CLAIMS UNDER ARTICLE 291 OF THE LABOR CODE IS THREE YEARS FROM THE TIME THE CAUSE OF ACTION ACCRUES; SECTION 28 OF THE STANDARD EMPLOYMENT CONTRACT FOR SEAFARERS, INSOFAR AS IT LIMITS THE PRESCRIPTIVE PERIOD OF CLAIMS TO ONE YEAR IS DECLARED NULL AND VOID. — For the guidance of all, Section 28 of the Standard Employment Contract for Seafarers, insofar as it limits the prescriptive period within which the seafarers may file their money claims, is hereby declared null and void. The applicable provision is Article 291 of the Labor Code, it being more favorable to the seafarers and more in accord with the State's declared policy to afford full protection to labor. The prescriptive period in the present case is thus three years from the time the cause of action accrues. In the present case, there is no exact showing of when the cause of action accrued. Nevertheless, it could not have accrued earlier than January 21, 1998 which is the date of his last contract. Hence, the claim has not yet prescribed, since the complaint was filed with the arbitration branch of the NLRC on September 6, 1999.

4. ID.; ID.; ID.; ID.; COMPENSATION AND BENEFITS FOR DEATH; THE DEATH OF A SEAMAN AFTER THE TERMINATION OF HIS CONTRACT OF EMPLOYMENT WILL NOT ENTITLE HIS BENEFICIARIES TO DEATH BENEFITS; CASE AT BAR. — Section 20 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels states: A. COMPENSATION AND BENEFITS FOR DEATH 1. In case of death of the seafarer **during the term of his contact (sic)**, the employer shall pay his beneficiaries the Philippine currency equivalent to the amount of Fifty Thousand US Dollars (US$50,000) and an additional amount of Seven Thousand US Dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four children, at the exchange rate prevailing during the time of payment. Thus, as we declared in *Gau Sheng Phils., Inc. v. Joaquin, Hermogenes v. Oseo Shipping Services, Inc., Prudential Shipping and Management Corporation v. Sta. Rita, Klaveness Maritime Agency, Inc. v. Beneficiaries of Allas*, in order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract. For emphasis, we reiterate that the death of a seaman during the term of

employment makes the employer liable to his heirs for death compensation benefits, but if the seaman dies after the termination of his contract of employment, his beneficiaries are not entitled to the death benefits. Federico did not die while he was under the employ of petitioners. His contract of employment ceased when he arrived in the Philippines on March 30, 1998, whereas he died on April 29, 2000. Thus, his beneficiaries are not entitled to the death benefits under the Standard Employment Contract for Seafarers.

5. ID.; ID.; ID.; ID.; NO PROOF THAT THE CANCER WAS BROUGHT ABOUT BY THE DECEASED SEAMAN'S STINT ON BOARD PETITIONER'S VESSEL. —There is no showing that the cancer was brought about by Federico's stint on board petitioners' vessel. The records show that he got sick a month after he boarded M/V George Mcleod. He was then brought to a doctor who diagnosed him to have acute respiratory tract infection. It was only on June 6, 1998, more than two months after his contract with petitioners had expired, that he was diagnosed to have Hodgkin's Disease. There is no proof and we are not convinced that his exposure to the motor fumes of the vessel, as alleged by Federico, caused or aggravated his Hodgkin's Disease.

6. ID.; ID.; ID.; ID.; PRINCIPLE OF LIBERALITY IN FAVOR OF LABOR DOES NOT INCLUDE ALLOWANCE OF CLAIMS FOR COMPENSATION BASED ON SURMISES. — While the Court adheres to the principle of liberality in favor of the seafarer in construing the Standard Employment Contract, we cannot allow claims for compensation based on surmises. When the evidence presented negates compensability, we have no choice but to deny the claim, lest we cause injustice to the employer. The law in protecting the rights of the employees, authorizes neither oppression nor self-destruction of the employer – there may be cases where the circumstances warrant favoring labor over the interests of management but never should the scale be so tilted as to result in an injustice to the employer.

APPEARANCES OF COUNSEL

Elizabeth R. Padron for petitioners.
Christopher Lycurgus Q. Morania for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

Money claims arising from employer-employee relations, including those specified in the Standard Employment Contract for Seafarers, prescribe within three years from the time the cause of action accrues.[1] However, for death benefit claims to prosper, the seafarer's death must have occurred during the effectivity of said contract.

This Petition for Review assails the January 31, 2005 Decision[2] and the April 4, 2005 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP. No. 85584. The CA dismissed the petition for *certiorari* filed before it assailing the May 7, 2003 Decision[4] of the National Labor Relations Commission (NLRC) ordering petitioners to pay to Evelyn J. Navarra (Evelyn), the surviving spouse of deceased Federico U. Navarra, Jr. (Federico), death compensation, allowances of the three minor children, burial expenses plus 10% of the total monetary awards as and for attorney's fees.

Factual Antecedents

Petitioner Southeastern Shipping, on behalf of its foreign principal, petitioner Southeastern Shipping Group, Ltd., hired Federico to work on board the vessel "George McLeod." Federico signed 10 successive separate employment contracts of varying durations covering the period from October 5, 1995 to March 30, 1998. His latest contract was approved by the Philippine Overseas Employment Administration (POEA) on January 21, 1998 for 56 days extendible for another 56 days. He worked as roustabout during the first contract and as a motorman during the succeeding contracts.

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[1] LABOR CODE, Art. 291.

[2] *Rollo*, pp. 8-17; penned by Associate Justice Vicente Q. Roxas and concurred in by Associate Justices Salvador J. Valdez, Jr. and Juan Q. Enriquez, Jr.

[3] *Id*. at 7.

[4] *Id*. at 386-395.

On March 6, 1998, Federico, while on board the vessel, complained of having a sore throat and on and off fever with chills. He also developed a soft mass on the left side of his neck. He was given medication.

On March 30, 1998, Federico arrived back in the Philippines. On April 21, 1998 the specimen excised from his neck lymph node was found negative for malignancy.[5] On June 4, 1998, he was diagnosed at the Philippine General Hospital to be suffering from a form of cancer called Hodgkin's Lymphoma, Nodular Sclerosing Type (also known as Hodgkin's Disease). This diagnosis was confirmed in another test conducted at the Medical Center Manila on June 8, 1998.

On September 6, 1999, Federico filed a complaint against petitioners with the arbitration branch of the NLRC claiming entitlement to disability benefits, loss of earning capacity, moral and exemplary damages, and attorney's fees.

During the pendency of the case, on April 29, 2000, Federico died. His widow, Evelyn, substituted him as party complainant on her own behalf and in behalf of their three children. The claim for disability benefits was then converted into a claim for death benefits.

Ruling of the Labor Arbiter

On May 10, 2000, Labor Arbiter Ermita T. Abrasaldo-Cuyuca rendered a Decision dismissing the complaint on the ground that "Hodgkin's Lymphoma is not one of the occupational or compensable diseases or the exact cause is not known," the dispositive portion of which states:

> WHEREFORE, premises considered judgment is hereby rendered dismissing the complaint for lack of merit.
>
> SO ORDERED.[6]

Evelyn appealed the Decision to the NLRC.

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[5] *Id.* at 280.

[6] *Id.* at 152.

Ruling of the NLRC

On May 7, 2003, the NLRC rendered a Decision reversing that of the Labor Arbiter, the dispositive portion of which provides:

> WHEREFORE, the appealed decision is REVERSED and SET ASIDE. Judgment is hereby rendered ordering the respondents Southeastern Shipping/Southeastern Shipping Group Ltd. jointly and severally, to pay complainant Evelyn J. Navarra the following:
>
> | | | |
> |---|---|---|
> | Death compensation | - | US$ 50,000.00 |
> | Minor child allowance (3 x US$ 7,000) | - | 21,000.00 |
> | Burial expense | - | 1,000.00 |
> | Total | | US$ 72,000.00 |
>
> Plus 10% of the total monetary awards as and for attorney's fees.
>
> SO ORDERED.[7]

Petitioners filed a Motion for Reconsideration which was denied by the NLRC. They, thus, filed a petition for *certiorari* with the CA.

Ruling of the Court of Appeals

The CA found that the claim for benefits had not yet prescribed despite the complaint being filed more than one year after Federico's return to the Philippines. It also found that although Federico died 17 months after his contract had expired, his heirs could still claim death benefits because the cause of his death was the same illness for which he was repatriated. The dispositive portion of the CA Decision states:

> WHEREFORE, premises considered, petition is hereby DISMISSED for lack of merit and the May 7, 2003 Decision of the National Labor Relations Commission is hereby AFFIRMED *en toto*.
>
> SO ORDERED.[8]

After the denial by the CA of their motion for reconsideration, petitioners filed the present petition for review.

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[7] *Id.* at 184.

[8] *Id.* at 17.

Issues

Petitioners raise the following issues:

I

THE HON. COURT OF APPEALS ERRED IN RULING THAT PRESCRIPTION DOES NOT APPLY DESPITE THE LATE FILING OF THE COMPLAINT OF THE RESPONDENT FEDERICO U. NAVARRA, JR.

II

THE HONORABLE COURT OF APPEALS ERRED IN RULING THAT HODGKIN'S DISEASE IS A COMPENSABLE ILLNESS.

III

THE HON. COURT OF APPEALS ERRED IN ITS CONCLUSION THAT PETITIONERS ARE LIABLE FOR THE DEATH OF THE RESPONDENT AS SUCH DEATH WAS DURING THE TERM OF HIS EMPLOYMENT CONTRACT.[9]

Petitioners' Arguments

Petitioners contend that the factual findings of the CA were not supported by sufficient evidence. They argue that as can be seen from the medical report of Dr. Salim Marangat Paul, Federico suffered from and was treated for Acute Respiratory Tract Infection, not Hodgkin's Disease, during his employment in March 1998. They further contend that Federico returned to the Philippines on March 30, 1998 because he had already finished his contract, not because he had to undergo further medical treatment.

They also insist that the complaint has already prescribed. Despite having been diagnosed on June 4, 1998 of Hodgkin's Disease, the complaint was filed only on September 6, 1999, one year and five months after Federico arrived in Manila from Qatar.

They also posit that respondents are not entitled to the benefits claimed because Federico did not die during the term of his

[9] *Id.* at 339.

contract and the cause of his death was not contracted by him during the term of his contract.

Respondents' Arguments

Respondents on the other hand contend that the complaint has not prescribed and that the prescriptive period for filing seafarer claims is three years from the time the cause of action accrued. They claim that in case of conflict between the law and the POEA Contract, it is the law that prevails.

Respondents also submit that Federico contracted on board the vessel the illness which later caused his death, hence it is compensable.

Our Ruling

The petition is partly meritorious.

Prescription

The employment contract signed by Federico stated that "the same shall be deemed an integral part of the Standard Employment Contract for Seafarers," Section 28 of which states:

SECTION 28. JURISDICTION

The Philippine Overseas Employment Administration (POEA) or the National Labor Relations Commission (NLRC) shall have original and exclusive jurisdiction over any and all disputes or controversies arising out of or by virtue of this Contract.

Recognizing the peculiar nature of overseas shipboard employment, the employer and the seafarer agree that all claims arising from this contract shall be made within one (1) year from the date of the seafarer's return to the point of hire.

On the other hand, the Labor Code states:

Art. 291. Money claims. — All money claims arising from employer-employee relations during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall forever be barred.

The Constitution affirms labor as a primary social economic force.[10] Along this vein, the State vowed to afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.[11]

"The employment of seafarers, including claims for death benefits, is governed by the contracts they sign every time they are hired or rehired; and as long as the stipulations therein are not contrary to law, morals, public order or public policy, they have the force of law between the parties."[12]

In *Cadalin v. POEA's Administrator*,[13] we held that Article 291 of the Labor Code covers all money claims from employer-employee relationship. **"It is not limited to money claims recoverable under the Labor Code, but *applies also to claims of overseas contract workers.*"**[14]

Based on the foregoing, it is therefore clear that Article 291 is the law governing the prescription of money claims of seafarers, a class of overseas contract workers. This law prevails over Section 28 of the Standard Employment Contract for Seafarers which provides for claims to be brought only within one year from the date of the seafarer's return to the point of hire. Thus, for the guidance of all, Section 28 of the Standard Employment Contract for Seafarers, insofar as it limits the prescriptive period within which the seafarers may file their money claims, is hereby declared null and void. The applicable provision is Article 291 of the Labor Code, it being more favorable to the seafarers and more in accord with the State's declared policy to afford

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[10] Constitution, Article II, Section 18.

[11] Constitution, Article XIII, Section 3.

[12] *Coastal Safeway Marine Services, Inc. v. Delgado*, G.R. No. 168210, June 17, 2008, 554 SCRA 590, 595-596.

[13] G.R. Nos. 104776 and 104911-14, December 5, 1994, 238 SCRA 721, 764.

[14] *Degamo v. Avantgarde Shipping Corp.*, G.R. No. 154460, November 22, 2005, 475 SCRA 671, 676-677.

full protection to labor. The prescriptive period in the present case is thus three years from the time the cause of action accrues.

In the present case, there is no exact showing of when the cause of action accrued. Nevertheless, it could not have accrued earlier than January 21, 1998 which is the date of his last contract. Hence, the claim has not yet prescribed, since the complaint was filed with the arbitration branch of the NLRC on September 6, 1999.

Compensability and Liability

In petitions for review on *certiorari*, only questions of law may be raised, the only exceptions being when the factual findings of the appellate court are erroneous, absurd, speculative, conjectural, conflicting, or contrary to the findings culled by the court of origin. Considering the conflicting findings of the NLRC, the CA and the Labor Arbiter, we are impelled to resolve the factual issues in this case along with the legal ones.[15]

Section 20 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels states:

> A. COMPENSATION AND BENEFITS FOR DEATH
>
> 1. In case of death of the seafarer **during the term of his contact (sic)**, the employer shall pay his beneficiaries the Philippine currency equivalent to the amount of Fifty Thousand US Dollars (US$50,000) and an additional amount of Seven Thousand US Dollars (US$7,000) to each child under the age of twenty-one (21) but not exceeding four children, at the exchange rate prevailing during the time of payment. (Emphasis supplied)

Thus, as we declared in *Gau Sheng Phils., Inc. v. Joaquin, Hermogenes v. Oseo Shipping Services, Inc., Prudential*

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[15] *Prudential Shipping and Management Corporation v. Sta. Rita*, G.R. No. 166580, February 8, 2007, 515 SCRA 157, 167. See also *White Diamond Trading Corporation v. National Labor Relations Commission*, G.R. No. 186019, March 29, 2010.

Shipping and Management Corporation v. Sta. Rita, Klaveness Maritime Agency, Inc. v. Beneficiaries of Allas, in order to avail of death benefits, the death of the employee should occur during the effectivity of the employment contract.[16] For emphasis, we reiterate that the death of a seaman during the term of employment makes the employer liable to his heirs for death compensation benefits, but if the seaman dies after the termination of his contract of employment, his beneficiaries are not entitled to the death benefits.[17] Federico did not die while he was under the employ of petitioners. His contract of employment ceased when he arrived in the Philippines on March 30, 1998, whereas he died on April 29, 2000. Thus, his beneficiaries are not entitled to the death benefits under the Standard Employment Contract for Seafarers.

Moreover, there is no showing that the cancer was brought about by Federico's stint on board petitioners' vessel. The records show that he got sick a month after he boarded M/V George Mcleod. He was then brought to a doctor who diagnosed him to have acute respiratory tract infection. It was only on June 6, 1998, more than two months after his contract with petitioners had expired, that he was diagnosed to have Hodgkin's Disease. There is no proof and we are not convinced that his exposure to the motor fumes of the vessel, as alleged by Federico, caused or aggravated his Hodgkin's Disease.

While the Court adheres to the principle of liberality in favor of the seafarer in construing the Standard Employment Contract, we cannot allow claims for compensation based on surmises. When the evidence presented negates compensability, we have no choice but to deny the claim, lest we cause injustice to the employer.

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[16] *Estate of Posedio Ortega v. Court of Appeals*, G.R. No. 175005, April 30, 2008, 553 SCRA 649, 655-656.

[17] *Prudential Shipping and Management Corporation v. Sta. Rita*, *supra* at 168-169.

The law in protecting the rights of the employees, authorizes neither oppression nor self-destruction of the employer – there may be cases where the circumstances warrant favoring labor over the interests of management but never should the scale be so tilted as to result in an injustice to the employer.[18]

WHEREFORE, the petition is *PARTLY GRANTED.* The January 31, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 85584 holding that the claim for death benefits has not yet prescribed is *AFFIRMED with MODIFICATION* that petitioners are not liable to pay to respondents death compensation benefits for lack of showing that Federico's disease was brought about by his stint on board petitioners' vessels and also considering that his death occurred after the effectivity of his contract.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

EN BANC

[G.R. No. 175349. June 22, 2010]

OFFICE OF THE OMBUDSMAN (VISAYAS), *petitioner, vs.* **RODOLFO ZALDARRIAGA,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; SUBSTANTIAL EVIDENCE; EXPLAINED. — Basic is the rule that, in administrative cases, the quantum of evidence necessary to find an individual administratively liable is

[18] *Ledesma, Jr. v. National Labor Relations Commission*, 537 SCRA 358, 371.

substantial evidence. Substantial evidence does not necessarily mean preponderant proof as required in ordinary civil cases, but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion or evidence commonly accepted by reasonably prudent men in the conduct of their affairs.

2. ID.; ID.; ID.; ID.; EVIDENCE ANCHORED UPON RESPONDENT'S ADMINISTRATIVE LIABILITY LACKED THAT DEGREE OF CERTAINTY REQUIRED IN ADMINISTRATIVE CASES.— The evidence upon which respondent's administrative liability would be anchored lacked that degree of certainty required in administrative cases, because the entries found in the two separate audit conducted by the COA yielded conflicting results. On November 16, 1998, the COA auditors conducted an audit of respondent's cash and accounts covering the period November 30, 1997 to November 16, 1998. xxx The discrepancies cannot be ignored. Evidence of shortage is imperative in order for the respondent to be held liable. In the case at bar, the evidence could not be relied upon. The second audit report necessarily puts into question the reliability of the initial audit findings. Whether the zero balance as appearing in the second audit report was correct or inadvertently indicated, the credibility and accuracy of the two audit reports were already tarnished.

3. ID.; ID.; ID.; ID.; EVEN IN ADMINISTRATIVE CASES, DEGREE OF MORAL CERTAINTY IS NECESSARY TO SUPPORT A FINDING OF LIABILITY.— Accounts should be examined carefully and thoroughly to the last detail and with absolute certainty in strict compliance with the Manual of Instructions. Had the Audit Team been more thorough and complete in its examination by reconciling the two audit reports, the reports would have been more credible and accurate. In the audit of accounts of accountable officers, COA auditors should act with great care and caution bearing in mind that their conclusion constitutes sufficient basis for the filing of appropriate charges against the erring employee and any erroneous conclusion would cause more than substantial hardships, whether financially or emotionally, on the part of the accountable officer concerned. As stated in *Tinga v. People* - x x x [J]ust as government treasurers are held to strict accountability as regards funds entrusted to them in a fiduciary capacity, so also should examining COA auditors act with greater care and caution in

> the audit of the accounts of such accountable officers to avoid the perpetration of any injustice. Accounts should be examined carefully and thoroughly "to the last detail," "with absolute certainty" in strict compliance with the Manual of Instructions. x x x Verily, the veracity of the two audit reports cannot be relied upon, as they both cast clouds of doubt in their respective conclusions. A separate and more thorough audit would be required to dispel any uncertainties and to arrive at respondent's true and correct accountability. The shortage of funds was clearly not indubitably established. Until such audit is conducted, the two audit reports cannot be used to prove or disprove any shortage in respondent's cash and accounts. Even in administrative cases, a degree of moral certainty is necessary to support a finding of liability. In the instant case, the evidence submitted to conclude that respondent was administratively liable is sorely wanting.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Hector P. Teodosio for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* assailing the Decision[1] dated October 27, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 81392, which reversed and set aside the Decision of the Office of the Ombudsman (Visayas) dismissing respondent from government service.

The procedural and factual antecedents are as follows:

Respondent Rodolfo Zaldarriaga was the Municipal Treasurer of the Municipality of Lemery, Iloilo.

On November 16, 1998, the Commission on Audit (COA), through State Auditors Sergia G. Garachico, Cresencia H. Gulangayan, and Shelly H. Gorriceta, conducted an audit

[1] Penned by Associate Justice Pampio A. Abarintos, with Associate

examination of the accountabilities of respondent's cash and accounts covering the period November 30, 1997 to November 16, 1998. Based on the audit conducted, the COA auditors prepared a report showing a deficiency amounting to ₱4,711,463.82.[2]

Respondent was asked to restitute the deficiency but he failed to do so. Instead, respondent sent letters to State Auditor Garachico requesting for a bill of particulars on his alleged accountability.[3] The COA, however, failed to clarify the basis of the shortage. Subsequently, on the strength of the COA auditors' report, the COA filed a Letter-Complaint[4] against the respondent before the Office of the Ombudsman (Visayas).

In his Counter-Affidavit, respondent contested the findings of the COA auditors alleging that it was inaccurate, incorrect, and devoid of merit. He stated that during the audit examination, the COA team never mentioned any discrepancy in the cashbook nor found any accountability. Respondent claimed that during the said audit examination, the COA team established that the balance for the General Fund was only in the amount of ₱998.00 and that all other accounts showed a zero balance. Respondent also pointed out that the COA's failure to show a detailed "disbursements and cash items validated and/or disallowed" placed doubt as to the accuracy and reliability of the findings.

Meanwhile, the Office of the Provincial Treasurer also conducted its own investigation on the alleged deficiency. Its findings, however, did not indicate any shortage but, instead, pointed out that had the municipal mayor, municipal treasurer, and municipal accountant observed the COA Rules and Regulations in the proper disbursement of funds, the irregularity would not have been committed.[5]

Justices Agustin S. Dizon and Priscilla Baltazar-Padilla, concurring; *rollo*, pp. 33-45.

[2] *Rollo*, pp. 33-34.

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

[4] *Id.* at 46.

[5] *Id.* at 373.

Thereafter, the COA conducted another audit examination of respondent's cash and accounts covering the period November 17, 1998 to May 25, 2000. In the report of cash examination,[6] State Auditor II Malvie Melocoton, reported a zero balance during the last examination conducted on November 16, 1998.[7] Respondent then sought for the dismissal of the complaint filed against him on the ground that the latest COA report dated May 25, 2000 indicated that there was no shortage.

After the parties filed their respective pleadings, the Office of the Ombudsman (Visayas) rendered a Decision[8] dismissing respondent from government service for dishonesty, the dispositive portion of which reads as follows:

> WHEREFORE, finding *substantial evidence* to hold respondent **RODOLFO B. ZALDARRIAGA**, Municipal Treasurer of Lemery, Iloilo, administratively guilty of ***Dishonesty***, he is hereby meted the penalty of DISMISSAL FROM THE SERVICE with the corresponding *accessory penalties* of perpetual disqualification for re-employment in the government service, and cancellation of eligibility and forfeiture of retirement benefits.
>
> This Office also WARNED the other responsible Municipal Officials of the Municipal Government of Lemery, Iloilo to be more discreet and circumspect in their actions by properly observing existing COA and Civil Service Rules and Regulations.
>
> For complainant COA, it is hereby ADVISED to be more vigilant in its duties and responsibilities. The said Office must see to it that there should be proper observance of its Rules and Regulations in every government agency, particularly the Local Government Unit of Lemery, Iloilo.[9]

In ruling against the respondent, the Ombudsman opined, among other things, that while it may be true that both the Municipal Mayor and the respondent were signatories of several Land Bank checks covering the Municipality's cash advances

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

[7] *Id.* at 57.

[8] *Id.* at 74-82.

[9] *Id.* at 82.

during the said period, it was the respondent who encashed and received their proceeds; thus, he should be the one responsible and accountable for the same. Respondent never denied having received these funds. His failure to account the same when audited and his alleged lack of cooperation with the Audit Team constitute substantial evidence of dishonesty. Also, the Ombudsman did not give much credence (1) to the second audit examination conducted by State Auditor Melocoton, reasoning that it was conducted two years from November 16, 1998; (2) that of the three assigned state auditors, it was only State Auditor Melocoton who signed the second report; and (3) on conclusion that there was no shortage in the second report may be due to the fact that petitioner had restituted the missing funds after its discovery.

Respondent filed a Motion for Reconsideration, which was denied in an Order[10] dated July 1, 2003.

Aggrieved, respondent sought recourse before the CA arguing, among other things, that the Office of the Ombudsman erred (1) in ruling that the amount of ₱4,711,463.82 was lost, despite the absence of substantial evidence on how the COA Auditors reached the conclusion; (2) in failing to declare that the audit conducted by the COA Auditors was incomplete, inaccurate, replete with errors, and in violation of the COA Rules and Regulations; and (3) in dismissing him from the service notwithstanding the absence of substantial evidence.

On October 27, 2006, the CA rendered a Decision[11] in favor of the respondent, the decretal portion of which reads:

> WHEREFORE, premises considered, the *Petition for Review* is **GRANTED**. The *Decision* dated 27 January 2003 and the *Order* dated 1 July 2003 of the Office of the Ombudsman (Visayas) finding petitioner administratively guilty of *Dishonesty* and dismissing him from service are **REVERSED** and **SET ASIDE**.
>
> SO ORDERED.[12]

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[10] *Id.* at 83-93.

[11] *Id.* at 33-45.

[12] *Id.* at 45.

Ruling in favor of the respondent, the CA opined that since the shortage was not clearly and indubitably established, the administrative case against respondent should be dismissed.

Hence, the present petition assigning the following errors:

THE COURT OF APPEALS GRAVELY ERRED IN REVERSING THE OMBUDSMAN'S ORDER DISMISSING RESPONDENT FROM THE SERVICE.

A. THE OMBUDSMAN'S ORDER DISMISSING RESPONDENT [FROM] THE SERVICE IS BASED ON SUFFICIENT EVIDENCE.

B. THE ZERO-SHORTAGE FINDING OF STATE AUDITOR M[ELO]COTON DOES NOT NEGATE THE COA'S FINDING ON RESPONDENT'S CASH SHORTAGE.[13]

Petitioner argues that the COA findings that respondent failed to account for the shortage and his unjustified release of cash advances constitute sufficient basis for his dismissal. These findings were duly supported by records from respondent's own office, and, as such, could not have been merely contrived in order to implicate him. Petitioner insists that respondent was given ample time and opportunity to refute and rebut the charges against him and was provided documents supporting the audit findings. Despite being fully apprised of the details of the charges against him, respondent failed to present countervailing evidence in his favor; instead, respondent was content on simply denying the adverse findings of the COA.

Petitioner maintains that the zero-balance reflected in State Auditor Melocoton's report, which was prepared two years after the first COA audit, cannot negate the latter's finding of cash shortage, considering that Melocoton's report is defective.

The petition is bereft of merit.

Basic is the rule that, in administrative cases, the quantum of evidence necessary to find an individual administratively

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[13] *Id.* at 468-469.

liable is substantial evidence. Section 5, Rule 133 of the Rules of Court is explicit, to wit:

> Sec. 5. *Substantial evidence*. – In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is *supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.*[14]

Substantial evidence does not necessarily mean preponderant proof as required in ordinary civil cases, but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion or evidence commonly accepted by reasonably prudent men in the conduct of their affairs.[15]

In the present case, the evidence upon which respondent's administrative liability would be anchored lacked that degree of certainty required in administrative cases, because the entries found in the two separate audit conducted by the COA yielded conflicting results. On November 16, 1998, the COA auditors conducted an audit of respondent's cash and accounts covering the period November 30, 1997 to November 16, 1998. The alleged shortage is reflected in the corresponding report, as follows:

	Collections	Cash Advances	Total
Total Debits to Accountability	₱3,420,839.74	₱11,341,502.45	₱14,762,342.19
Less: Total Credits to Accountability	3,309,680.50	6,656,120.77	9,965,801.27
Balance of Accountability As of 11/16/98	111,159.24	₱4,685,381.68	₱4,796,540.92
Inventory of Cash and/or Valid Cash Items	85,077.10	-0-	85,077.10
Shortage	₱ 26,082.14	₱ 4,685,381.68	**₱ 4,711,463.82**[16]

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[14] Italics supplied.

[15] *Ombudsman v. Jurado*, G.R. No. 154155, August 6, 2008, 561 SCRA 135, 154; *Go v. Office of the Ombudsman*, 460 Phil. 14, 35 (2003).

[16] *Rollo*, p. 123.

However, in the succeeding audit examination of respondent's accounts covering the period November 17, 1998 to May 25, 2000, the report of cash examination prepared by State Auditor Melocoton reflected that there was no balance during the last examination conducted on November 16, 1998, *viz.*:

NATURE OF FUNDS	GEN. FUND	ACV.	SEF.	TF	CASH ADV	TOTAL
	8-70-100	8-70-500	8-70-100	8-70-100	8-70-500	
BALANCE, Last Examination 11/16/98 (date)	**-0-**	**-0-**	**-0-**	**-0-**	**-0-**	**-0-**
ADD: Debits to Accountability						
11/17/30/98	85,030.00	xxx	xxx	xxx	xxx	xxx[17]

These discrepancies cannot be ignored. Evidence of shortage is imperative in order for the respondent to be held liable. In the case at bar, the evidence could not be relied upon. The second audit report necessarily puts into question the reliability of the initial audit findings. Whether the zero balance as appearing in the second audit report was correct or inadvertently indicated, the credibility and accuracy of the two audit reports were already tarnished. As aptly held by the CA:

> Here, the balance on 16 November 1998 (zero) entered in the cash examination report for a subsequent audit substantially differs from the balance on 16 November 1998 (shortage of ₱4,711,463.82) entered in the previous cash examination report. This cannot be ignored nor overlooked. Such a significant disparity or inconsistency should have prompted COA to re-examine carefully and thoroughly "*to the last detail" and "with absolute certainty"* its findings for the cash examination conducted on 16 November 1998. Just as government treasurers are held to strict accountability as regards funds entrusted to them in a fiduciary capacity, so also should examining COA auditors act with greater care and caution in the audit of the accounts of such accountable officers to avoid the perpetration of any injustice. More so in this case when even the COA records negate a showing

[17] *Id.* at 57.

of the care and caution needed to be employed by the COA Auditors during audit examinations.

The inconsistent "balance" entries for the last cash examination on 16 November 1998 in the COA reports has led this Court to doubt if there was indeed a shortage of ₱4,711,463.82. In fact, the presumption that the audit examination conducted is regular, accurate and correct is now disputed in view of the inconsistencies in the entries (balance on 16 November 1998) in the cash examination reports prepared by COA. It is then possible that the cash examination conducted lacked the necessary thoroughness and completeness to ascertain and establish the correct balance account. Under these circumstances, the findings of the COA were susceptible to errors and inaccuracies that consequently, the shortage of funds attributed to petitioner could not be considered as indubitably established.[18]

The Manual of Instructions to Treasurers and Auditors and Other Guidelines provides:

Sec. 561. *Prohibition of Incomplete examinations*. – Examinations shall be thorough and complete in every case to the last detail. Mere count of cash and valid cash items without verifying the stock of issued and unissued accountable forms and various records of collections and disbursements, as well as the entries in the cashbook is not examination at all. x x x

Clearly, accounts should be examined carefully and thoroughly to the last detail and with absolute certainty in strict compliance with the Manual of Instructions. Had the Audit Team been more thorough and complete in its examination by reconciling the two audit reports, the reports would have been more credible and accurate. In the audit of accounts of accountable officers, COA auditors should act with great care and caution bearing in mind that their conclusion constitutes sufficient basis for the filing of appropriate charges against the erring employee and any erroneous conclusion would cause more than substantial hardships, whether financially or emotionally, on the part of the accountable officer concerned. As stated in *Tinga v. People*[19] —

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[18] *Id.* at 44.

[19] G.R. No. 57650, April 15, 1988, 160 SCRA 483, 491.

x x x [J]ust as government treasurers are held to strict accountability as regards funds entrusted to them in a fiduciary capacity, so also should examining COA auditors act with greater care and caution in the audit of the accounts of such accountable officers to avoid the perpetration of any injustice. Accounts should be examined carefully and thoroughly "to the last detail," "with absolute certainty" in strict compliance with the Manual of Instructions. x x x

Verily, the veracity of the two audit reports cannot be relied upon, as they both cast clouds of doubt in their respective conclusions. A separate and more thorough audit would be required to dispel any uncertainties and to arrive at respondent's true and correct accountability. The shortage of funds was clearly not indubitably established. Until such audit is conducted, the two audit reports cannot be used to prove or disprove any shortage in respondent's cash and accounts.

Even in administrative cases, a degree of moral certainty is necessary to support a finding of liability. In the instant case, the evidence submitted to conclude that respondent was administratively liable is sorely wanting.

WHEREFORE, premises considered, the petition is *DENIED.* The Decision of the Court of Appeals dated October 27, 2006 in CA-G.R. SP No. 81392 is *AFFIRMED.*

SO ORDERED.

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

Nachura, J., no part.

Mendoza, J., on leave.

EN BANC

[G.R. Nos. 179431-32. June 22, 2010]

LUIS K. LOKIN, JR., as the second nominee of CITIZENS BATTLE AGAINST CORRUPTION (CIBAC), *petitioner, vs.* **COMMISSION ON ELECTIONS and the HOUSE OF REPRESENTATIVES,** *respondents.*

[G.R. No. 180443. June 22, 2010]

LUIS K. LOKIN, JR., *petitioner, vs.* **COMMISSION ON ELECTIONS (COMELEC), EMMANUEL JOEL J. VILLANUEVA, CINCHONA C. GONZALES and ARMI JANE R. BORJE,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; ELECTION PROTEST; DISTINGUISHED FROM A SPECIAL CIVIL ACTION FOR *QUO WARRANTO*. — An *election protest* proposes to oust the winning candidate from office. It is strictly a contest between the defeated and the winning candidates, based on the grounds of electoral frauds and irregularities, to determine who between them has actually obtained the majority of the legal votes cast and is entitled to hold the office. It can only be filed by a candidate who has duly filed a certificate of candidacy and has been voted for in the preceding elections. A special civil action for *quo warranto* refers to questions of disloyalty to the State, or of ineligibility of the winning candidate. The objective of the action is to unseat the ineligible person from the office, but not to install the petitioner in his place. Any voter may initiate the action, which is, strictly speaking, not a contest where the parties strive for supremacy because the petitioner will not be seated even if the respondent may be unseated.

2. ID.; ID.; ID.; INSTANT CASE IS NEITHER AN ELECTION PROTEST NOR AN ACTION FOR *QUO WARRANTO*. — The controversy involving Lokin is neither an election protest nor an action for *quo warranto,* for it concerns a very peculiar

situation in which Lokin is seeking to be seated as the second nominee of CIBAC. Although an election protest may properly be available to one party-list organization seeking to unseat another party-list organization to determine which between the defeated and the winning party-list organizations actually obtained the majority of the legal votes, Lokin's case is not one in which a nominee of a particular party-list organization thereby wants to unseat another nominee of the same party-list organization. Neither does an action for *quo warranto* lie, considering that the case does not involve the ineligibility and disloyalty of Cruz-Gonzales to the Republic of the Philippines, or some other cause of disqualification for her.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPER REMEDY IN CASE AT BAR. — Lokin has correctly brought this special civil action for *certiorari* against the COMELEC to seek the review of the September 14, 2007 resolution of the COMELEC in accordance with Section 7 of Article IX-A of the 1987 Constitution, notwithstanding the oath and assumption of office by Cruz-Gonzales. The constitutional mandate is now implemented by Rule 64 of the 1997 *Rules of Civil Procedure*, which provides for the review of the judgments, final orders or resolutions of the COMELEC and the Commission on Audit. As Rule 64 states, the mode of review is by a petition for *certiorari* in accordance with Rule 65 to be filed in the Supreme Court within a limited period of 30 days. Undoubtedly, the Court has original and exclusive jurisdiction over Lokin's petitions for *certiorari* and for *mandamus* against the COMELEC.

4. ID.; CIVIL PROCEDURE; FORUM SHOPPING; EXPOUNDED; REASON FOR PROSCRIPTION. — Forum shopping consists of the 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. Thus, forum shopping may arise: (*a*) whenever as a result of an adverse decision in one forum, a party seeks a favorable decision (other than by appeal or *certiorari*) in another; or (*b*) if, after having filed a petition in the Supreme Court, a party files another petition in the Court of Appeals, because he thereby deliberately splits appeals "in the hope that even as one case in which a particular remedy is sought is dismissed, another case (offering a similar remedy) would still be open"; or (*c*) where a party attempts to

obtain a writ of preliminary injunction from a court after failing to obtain the writ from another court. What is truly important to consider in determining whether forum shopping exists or not is the vexation caused to the courts and the litigants by a party who accesses different courts and administrative agencies to rule on the same or related causes or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue. The filing of identical petitions in different courts is prohibited, because such act constitutes forum shopping, a malpractice that is proscribed and condemned as trifling with the courts and as abusing their processes. Forum shopping is an improper conduct that degrades the administration of justice.

5. ID.; ID.; ID.; THE CONSECUTIVE FILING OF AN ACTION FOR *CERTIORARI* AND AN ACTION FOR *MANDAMUS* IS NOT VIOLATIVE OF THE RULE AGAINST FORUM SHOPPING EVEN IF THE ACTIONS INVOLVED THE SAME PARTIES, BECAUSE THEY WERE BASED ON DIFFERENT CAUSES OF ACTION AND THE RELIEFS THEY SOUGHT WERE DIFFERENT. — The mere filing of several cases based on the same incident does not necessarily constitute forum shopping. The test is whether the several actions filed involve the same transactions and the same essential facts and circumstances. The actions must also raise identical causes of action, subject matter, and issues. Elsewise stated, 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 other. Lokin has filed the petition for *mandamus* to compel the COMELEC to proclaim him as the second nominee of CIBAC upon the issuance of NBC Resolution No. 07-72 (announcing CIBAC's entitlement to an additional seat in the House of Representatives), and to strike down the provision in NBC Resolution No. 07-60 and NBC Resolution No. 07-72 holding in abeyance "all proclamation of the nominees of concerned parties, organizations and coalitions with pending disputes shall likewise be held in abeyance until final resolution of their respective cases." He has insisted that the COMELEC had the ministerial duty to proclaim him due to his being CIBAC's second nominee; and that the COMELEC had no authority to exercise discretion and to suspend or defer the proclamation of winning party-list organizations with pending disputes. On

the other hand, Lokin has resorted to the petition for *certiorari* to assail the September 14, 2007 resolution of the COMELEC (approving the withdrawal of the nomination of Lokin, Tugna and Galang and the substitution by Cruz-Gonzales as the second nominee and Borje as the third nominee); and to challenge the validity of Section 13 of Resolution No. 7804, the COMELEC's basis for allowing CIBAC's withdrawal of Lokin's nomination. Applying the test for forum shopping, the consecutive filing of the action for *certiorari* and the action for *mandamus* did not violate the rule against forum shopping even if the actions involved the same parties, because they were based on different causes of action and the reliefs they sought were different.

6. POLITICAL LAW; LEGISLATIVE DEPARTMENT; DELEGATION OF LEGISLATIVE POWER; THE LEGISLATURE CAN, UNDER CERTAIN CIRCUMSTANCES, DELEGATE TO EXECUTIVE OFFICERS AND ADMINISTRATIVE BOARDS THE AUTHORITY TO ADOPT AND PROMULGATE IMPLEMENTING RULES AND REGULATIONS (IRR's). — The legislative power of the Government is vested exclusively in the Legislature in accordance with the doctrine of separation of powers. As a general rule, the Legislature cannot surrender or abdicate its legislative power, for doing so will be unconstitutional. Although the power to make laws cannot be delegated by the Legislature to any other authority, a power that is not legislative in character may be delegated. Under certain circumstances, the Legislature can delegate to executive officers and administrative boards the authority to adopt and promulgate IRRs. To render such delegation lawful, the Legislature must declare the policy of the law and fix the legal principles that are to control in given cases. The Legislature should set a definite or primary standard to guide those empowered to execute the law. For as long as the policy is laid down and a proper standard is established by statute, there can be no unconstitutional delegation of legislative power when the Legislature leaves to selected instrumentalities the duty of making subordinate rules within the prescribed limits, although there is conferred upon the executive officer or administrative board a large measure of discretion. There is a distinction between the delegation of power to make a law and the conferment of an authority or a discretion to be exercised under

and in pursuance of the law, for the power to make laws necessarily involves a discretion as to what it shall be.

7. ID.; ID.; ID.; THE AUTHORITY TO MAKE IMPLEMENTING RULES AND REGULATIONS (IRR's) IS ADMINISTRATIVE IN NATURE; REQUISITES TO BE COMPLIED WITH IN ORDER TO MAKE ADMINISTRATIVE IMPLEMENTING RULES AND REGULATIONS (IRR's) VALID. — The authority to make IRRs in order to carry out an express legislative purpose, or to effect the operation and enforcement of a law is not a power exclusively legislative in character, but is rather administrative in nature. The rules and regulations adopted and promulgated must not, however, subvert or be contrary to existing statutes. The function of promulgating IRRs may be legitimately exercised only for the purpose of carrying out the provisions of a law. The power of administrative agencies is confined to implementing the law or putting it into effect. Corollary to this is that administrative regulation cannot extend the law and amend a legislative enactment. It is axiomatic that the clear letter of the law is controlling and cannot be amended by a mere administrative rule issued for its implementation. Indeed, administrative or executive acts shall be valid only when they are not contrary to the laws or the Constitution. To be valid, therefore, the administrative IRRs must comply with the following requisites to be valid: 1. Its promulgation must be authorized by the Legislature; 2. It must be within the scope of the authority given by the Legislature; 3. It must be promulgated in accordance with the prescribed procedure; and 4. It must be reasonable.

8. ID.; ID.; ID.; THE FIRST AND THE THIRD REQUISITE FOR VALIDITY ARE COMPLIED WITH. — The COMELEC is constitutionally mandated to enforce and administer all laws and regulations relative to the conduct of an election, a plebiscite, an initiative, a referendum, and a recall. In addition to the powers and functions conferred upon it by the Constitution, the COMELEC is also charged to promulgate IRRs implementing the provisions of the *Omnibus Election Code* or other laws that the COMELEC enforces and administers. The COMELEC issued Resolution No. 7804 pursuant to its powers under the Constitution, *Batas Pambansa Blg*. 881, and the *Party-List System Act*. Hence, the COMELEC met the first requisite. The COMELEC also met the third requisite. There is

no question that Resolution No. 7804 underwent the procedural necessities of publication and dissemination in accordance with the procedure prescribed in the resolution itself.

9. ID.; ID.; ID.; THE DELEGATED AUTHORITY MUST BE PROPERLY EXERCISED; THE RESULTING ADMINISTRATIVE IMPLEMENTING RULES AND REGULATIONS (IRR's) MUST NOT BE *ULTRA VIRES* AS TO BE ISSUED BEYOND THE LIMITS OF THE AUTHORITY CONFERRED. — As earlier said, the delegated authority must be properly exercised. This simply means that the resulting IRRs must not be *ultra vires* as to be issued beyond the limits of the authority conferred. It is basic that an administrative agency cannot amend an act of Congress, for administrative IRRs are solely intended to carry out, not to supplant or to modify, the law. The administrative agency issuing the IRRs may not enlarge, alter, or restrict the provisions of the law it administers and enforces, and cannot engraft additional non-contradictory requirements not contemplated by the Legislature.

10. ID.; ID.; ID.; THE LEGISLATIVE INTENT TO DEPRIVE THE PARTY-LIST ORGANIZATION OF THE RIGHT TO CHANGE THE NOMINEES OR TO ALTER THE ORDER OF NOMINEES IS DAYLIGHT CLEAR. — Section 8 of R.A. No. 7941 daylight clear. The Legislature thereby deprived the party-list organization of the right to change its nominees or to alter the order of nominees once the list is submitted to the COMELEC, except when: (*a*) the nominee dies; (*b*) the nominee withdraws in writing his nomination; or (*c*) the nominee becomes incapacitated. The provision must be read literally because its language is plain and free from ambiguity, and expresses a single, definite, and sensible meaning. Such meaning is conclusively presumed to be the meaning that the Legislature has intended to convey. Even where the courts should be convinced that the Legislature really intended some other meaning, and even where the literal interpretation should defeat the very purposes of the enactment, the explicit declaration of the Legislature is still the law, from which the courts must not depart. When the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application. Accordingly, an administrative agency tasked to implement a statute may not construe it by expanding its meaning where its provisions are clear and unambiguous.

The legislative intent to deprive the party-list organization of the right to change the nominees or to alter the order of the nominees was also expressed during the deliberations of the Congress.

11. STATUTORY CONSTRUCTION; STATUTES; THE USAGE OF "NO" IN SECTION 8 OF RESOLUTION NO. 7805 MAKES THE PROVISION A NEGATIVE LAW AND IS INDICATIVE OF THE LEGISLATIVE INTENT TO MAKE THE STATUTE MANDATORY. — The usage of "No" in Section 8 – "No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, or becomes incapacitated, in which case the name of the substitute nominee shall be placed last in the list" – renders Section 8 a negative law, and is indicative of the legislative intent to make the statute mandatory. Prohibitive or negative words can rarely, if ever, be directory, for there is but one way to obey the command "*thou shall not*," and that is to completely refrain from doing the forbidden act, subject to certain exceptions stated in the law itself, like in this case.

12. POLITICAL LAW; ELECTION LAW; PARTY LIST SYSTEM ACT (REPUBLIC ACT NO. 7941); THE PROHIBITION IN SECTION 8 MERELY DIVESTS THE PARTY LIST ORGANIZATION OF THE RIGHT TO CHANGE ITS NOMINEES OR TO ALTER THE ORDER IN THE LIST OF ITS NOMINEES' NAMES AFTER SUBMISSION OF THE LIST TO THE COMELEC; THE PROHIBITION IS NOT ARBITRARY OR CAPRICIOUS AND IS DESIGNED TO ELIMINATE THE POSSIBILITY OF CIRCUMVENTION OF THE LAW. — Section 8 does not unduly deprive the party-list organization of its right to choose its nominees, but merely divests it of the right to change its nominees or to alter the order in the list of its nominees' names after submission of the list to the COMELEC. The prohibition is not arbitrary or capricious; neither is it without reason on the part of lawmakers. The COMELEC can rightly presume from the submission of the list that the list reflects the true will of the party-list organization. The COMELEC will not concern itself with whether or not the list contains the real intended nominees of the party-list organization, but will only determine whether the

nominees pass all the requirements prescribed by the law and whether or not the nominees possess all the qualifications and none of the disqualifications. Thereafter, the names of the nominees will be published in newspapers of general circulation. Although the people vote for the party-list organization itself in a party-list system of election, not for the individual nominees, they still have the right to know who the nominees of any particular party-list organization are. The publication of the list of the party-list nominees in newspapers of general circulation serves that right of the people, enabling the voters to make intelligent and informed choices. In contrast, allowing the party-list organization to change its nominees through withdrawal of their nominations, or to alter the order of the nominations after the submission of the list of nominees circumvents the voters' demand for transparency. The lawmakers' exclusion of such arbitrary withdrawal has eliminated the possibility of such circumvention.

13. ID.; ID.; ID.; THE EXCEPTIONS IN SECTION 8 OF RA NO. 7941 ARE EXCLUSIVE; ELUCIDATED. — Section 8 of R.A. No. 7941 enumerates *only* three instances in which the party-list organization can substitute another person in place of the nominee whose name has been submitted to the COMELEC, namely: (*a*) when the nominee dies; (*b*) when the nominee withdraws in writing his nomination; and (*c*) when the nominee becomes incapacitated. The enumeration is exclusive, for, necessarily, the general rule applies to all cases not falling under any of the three exceptions. When the statute itself enumerates the exceptions to the application of the general rule, the exceptions are strictly but reasonably construed. The exceptions extend only as far as their language fairly warrants, and all doubts should be resolved in favor of the general provision rather than the exceptions. Where the general rule is established by a statute with exceptions, none but the enacting authority can curtail the former. Not even the courts may add to the latter by implication, and it is a rule that an express exception excludes all others, although it is always proper in determining the applicability of the rule to inquire whether, in a particular case, it accords with reason and justice. The appropriate and natural office of the exception is to exempt something from the scope of the general words of a statute, which is otherwise within the scope and meaning of such general words. Consequently, the existence of an exception in a statute

clarifies the intent that the statute shall apply to all cases not excepted. Exceptions are subject to the rule of strict construction; hence, any doubt will be resolved in favor of the general provision and against the exception. Indeed, the liberal construction of a statute will seem to require in many circumstances that the exception, by which the operation of the statute is limited or abridged, should receive a restricted construction.

14. ID.; ID.; ID.; SECTION 13 OF COMELEC RESOLUTION NO. 7804 EXPANDED THE EXCEPTIONS UNDER SECTION 8 OF RA NO. 7491 OR THE PARTY LIST SYSTEM ACT. — Unlike Section 8 of R.A. No. 7941, the foregoing regulation provides four instances, the fourth being when the "nomination is withdrawn by the party." Lokin insists that the COMELEC gravely abused its discretion in expanding to four the three statutory grounds for substituting a nominee. We agree with Lokin. The COMELEC, despite its role as the implementing arm of the Government in the enforcement and administration of all laws and regulations relative to the conduct of an election, has neither the authority nor the license to expand, extend, or add anything to the law it seeks to implement thereby. The IRRs the COMELEC issues for that purpose should always accord with the law to be implemented, and should not override, supplant, or modify the law. It is basic that the IRRs should remain consistent with the law they intend to carry out. Indeed, administrative IRRs adopted by a particular department of the Government under legislative authority must be in harmony with the provisions of the law, and should be for the sole purpose of carrying the law's general provisions into effect. The law itself cannot be expanded by such IRRs, because an administrative agency cannot amend an act of Congress.

15. ID.; ID.; ID.; THE COMELEC DID NOT MERELY REWORD OR REPHRASE THE TEXT OF SECTION 8 OF RA NO. 7941 BECAUSE IT ESTABLISHED AN ENTIRELY NEW GROUND NOT FOUND IN THE TEXT OF THE PROVISION; THE NEW GROUND GRANTED CONFLICTED WITH THE STATUTORY INTENT OF THE LAW. — The COMELEC explains that Section 13 of Resolution No. 7804 has added nothing to Section 8 of R.A. No. 7941, because it has merely reworded and rephrased the statutory provision's phraseology. The explanation does not persuade. *To reword* means to alter the wording of or to

restate in other words; *to rephrase* is to phrase anew or in a new form. Both terms signify that the meaning of the original word or phrase is not altered. However, the COMELEC did not merely reword or rephrase the text of Section 8 of R.A. No. 7941, because it established an entirely new ground not found in the text of the provision. The new ground granted to the party-list organization the unilateral right to withdraw its nomination already submitted to the COMELEC, which Section 8 of R.A. No. 7941 did not allow to be done. Neither was the grant of the unilateral right contemplated by the drafters of the law, who precisely denied the right to withdraw the nomination (as the quoted record of the deliberations of the House of Representatives has indicated). The grant thus conflicted with the statutory intent to save the nominee from falling under the whim of the party-list organization once his name has been submitted to the COMELEC, and to spare the electorate from the capriciousness of the party-list organizations.

16. ID.; ID.; ID.; SECTION 13 OF COMELEC RESOLUTION NO. 7804, TO THE EXTENT THAT IT ALLOWS THE PARTY-LIST ORGANIZATION TO WITHDRAW ITS NOMINATION TO THE COMELEC IS INVALID. — We further note that the new ground would not secure the object of R.A. No. 7941 of developing and guaranteeing a full, free and open party-list electoral system. The success of the system could only be ensured by avoiding any arbitrariness on the part of the party-list organizations, by seeing to the transparency of the system, and by guaranteeing that the electorate would be afforded the chance of making intelligent and informed choices of their party-list representatives. The insertion of the new ground was invalid. An axiom in administrative law postulates that administrative authorities should not act arbitrarily and capriciously in the issuance of their IRRs, but must ensure that their IRRs are reasonable and fairly adapted to secure the end in view. If the IRRs are shown to bear no reasonable relation to the purposes for which they were authorized to be issued, they must be held to be invalid and should be struck down.

APPEARANCES OF COUNSEL

Alma Kristina O. Alobba and Kristina Joy R. Diaz and (*Ret.) Justice Cuevas Law Office* for petitioner.

The Solicitor General for public respondent.

Borje Atienza and Partners Law Offices for Armi Jane R. Borje.

Noel K. Cruz for Cinchona Cruz-Gonzales.

D E C I S I O N

BERSAMIN, *J.*:

The principal question posed in these consolidated special civil actions for *certiorari* and *mandamus* is whether the Commission on Elections (COMELEC) can issue implementing rules and regulations (IRRs) that provide a ground for the substitution of a party-list nominee not written in Republic Act (R.A.) No. 7941,[1] otherwise known as the *Party-List System Act*, the law that the COMELEC thereby implements.

Common Antecedents

The Citizens' Battle Against Corruption (CIBAC) was one of the organized groups duly registered under the party-list system of representation that manifested their intent to participate in the May 14, 2007 synchronized national and local elections. Together with its manifestation of intent to participate,[2] CIBAC, through its president, Emmanuel Joel J. Villanueva, submitted a list of five nominees from which its representatives would be chosen should CIBAC obtain the required number of qualifying votes. The nominees, in the order that their names appeared in the certificate of nomination dated March 29, 2007,[3] were: (1) Emmanuel Joel J. Villanueva; (2) herein petitioner Luis K. Lokin, Jr.; (3) Cinchona C. Cruz-Gonzales; (4) Sherwin Tugna; and (5) Emil L. Galang. The nominees' certificates of acceptance were attached to the certificate of nomination filed by CIBAC. The list of nominees was later published in two newspapers of

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[1] Entitled *An Act Providing for the Election of Party-List Representatives through the Party-List System, and Appropriating Funds Therefor.*

[2] *Rollo*, G.R. No. 179431 and No. 179432, pp. 74-75.

[3] *Id.,* p. 76.

general circulation, *The Philippine Star News*[4] (sic) and *The Philippine Daily Inquirer*.[5]

Prior to the elections, however, CIBAC, still through Villanueva, filed a certificate of nomination, substitution and amendment of the list of nominees dated May 7, 2007,[6] whereby it withdrew the nominations of Lokin, Tugna and Galang and substituted Armi Jane R. Borje as one of the nominees. The amended list of nominees of CIBAC thus included: (1) Villanueva, (2) Cruz-Gonzales, and (3) Borje.

Following the close of the polls, or on June 20, 2007, Villanueva sent a letter to COMELEC Chairperson Benjamin Abalos,[7] transmitting therewith the signed petitions of more than 81% of the CIBAC members, in order to confirm the withdrawal of the nomination of Lokin, Tugna and Galang and the substitution of Borje. In their petitions, the members of CIBAC averred that Lokin and Tugna were not among the nominees presented and proclaimed by CIBAC in its proclamation rally held in May 2007; and that Galang had signified his desire to focus on his family life.

On June 26, 2007, CIBAC, supposedly through its counsel, filed with the COMELEC *en banc* sitting as the National Board of Canvassers a motion seeking the proclamation of Lokin as its second nominee.[8] The right of CIBAC to a second seat as well as the right of Lokin to be thus proclaimed were purportedly based on Party-List Canvass Report No. 26, which showed CIBAC to have garnered a grand total of 744,674 votes. Using all relevant formulas, the motion asserted that CIBAC was clearly entitled to a second seat and Lokin to a proclamation.

The motion was opposed by Villanueva and Cruz-Gonzales.

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[4] *Id.*, p. 90.

[5] *Id.*, p. 89.

[6] *Id.*, pp. 91-92.

[7] *Id.*, pp. 93-196.

[8] *Id.*, pp. 51-55.

Notwithstanding Villanueva's filing of the certificate of nomination, substitution and amendment of the list of nominees and the petitions of more than 81% of CIBAC members, the COMELEC failed to act on the matter, prompting Villanueva to file a petition to confirm the certificate of nomination, substitution and amendment of the list of nominees of CIBAC on June 28, 2007.[9]

On July 6, 2007, the COMELEC issued Resolution No. 8219,[10] whereby it resolved to set the matter pertaining to the validity of the withdrawal of the nominations of Lokin, Tugna and Galang and the substitution of Borje for proper disposition and hearing. The case was docketed as E.M. No. 07-054.

In the meantime, the COMELEC *en banc*, sitting as the National Board of Canvassers, issued National Board of Canvassers (NBC) Resolution No. 07-60 dated July 9, 2007[11] to partially proclaim the following parties, organizations and coalitions participating under the Party-List System as having won in the May 14, 2007 elections, namely: Buhay Hayaan Yumabong, Bayan Muna, CIBAC, Gabriela Women's Party, Association of Philippine Electric Cooperatives, Advocacy for Teacher Empowerment Through Action, Cooperation and Harmony Towards Educational Reforms, Inc., Akbayan! Citizen's Action Party, Alagad, Luzon Farmers Party, Cooperative-Natco Network Party, Anak Pawis, Alliance of Rural Concerns and Abono; and to defer the proclamation of the nominees of the parties, organizations and coalitions with pending disputes until final resolution of their respective cases.

The COMELEC *en banc* issued another resolution, NBC Resolution No. 07-72 dated July 18, 2007,[12] proclaiming Buhay Hayaan Yumabong as entitled to 2 additional seats and Bayan Muna, CIBAC, Gabriela Women's Party, and Association of

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[9] *Id.*, pp. 197-200.

[10] *Id.*, pp. 68-71.

[11] *Id.*, pp. 37-42.

[12] *Id.*, pp. 43-47.

Philippine Electric Cooperatives to an additional seat each; and holding in abeyance the proclamation of the nominees of said parties, organizations and coalitions with pending disputes until the final resolution of their respective cases.

With the formal declaration that CIBAC was entitled to an additional seat, Ricardo de los Santos, purportedly as secretary general of CIBAC, informed Roberto P. Nazareno, Secretary General of the House of Representatives, of the promulgation of NBC Resolution No. 07-72 and requested that Lokin be formally sworn in by Speaker Jose de Venecia, Jr. to enable him to assume office. Nazareno replied, however, that the request of Delos Santos could not be granted because COMELEC Law Director Alioden D. Dalaig had notified him of the pendency of E.M. 07-054.

On September 14, 2007, the COMELEC *en banc* resolved E.M. No. 07-054[13] thuswise:

> WHEREFORE, considering the above discussion, the Commission hereby approves the withdrawal of the nomination of Atty. Luis K. Lokin, Sherwin N. Tugna and Emil Galang as second, third and fourth nominees respectively and the substitution thereby with Atty. Cinchona C. Cruz-Gonzales as second nominee and Atty. Armi Jane R. Borje as third nominee for the party list CIBAC. The new order of CIBAC's nominees therefore shall be:
>
> 1. Emmanuel Joel J. Villanueva
> 2. Cinchona C. Cruz-Gonzales
> 3. Armi Jane R. Borje
>
> SO ORDERED.

The COMELEC *en banc* explained that the actions of Villanueva in his capacity as the president of CIBAC were presumed to be within the scope of his authority as such; that the president was charged by Section 1 of Article IV of the CIBAC By-Laws to oversee and direct the corporate activities,

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[13] *Id.*, pp. 243-260.

which included the act of submitting the party's manifestation of intent to participate in the May 14, 2007 elections as well as its certificate of nominees; that from all indications, Villanueva as the president of CIBAC had always been provided the leeway to act as the party's representative and that his actions had always been considered as valid; that the act of withdrawal, although done without any written Board approval, was accomplished with the Board's acquiescence or at least understanding; and that the intent of the party should be given paramount consideration in the selection of the nominees.

As a result, the COMELEC *en banc* proclaimed Cruz-Gonzales as the official second nominee of CIBAC.[14] Cruz-Gonzales took her oath of office as a Party-List Representative of CIBAC on September 17, 2007.[15]

Precís of the Consolidated Cases

In G.R. No. 179431 and G.R. No. 179432, Lokin seeks through *mandamus* to compel respondent COMELEC to proclaim him as the official second nominee of CIBAC.

In G.R. No. 180443, Lokin assails Section 13 of Resolution No. 7804 promulgated on January 12, 2007;[16] and the resolution dated September 14, 2007 issued in E.M. No. 07-054 (approving CIBAC's withdrawal of the nominations of Lokin, Tugna and Galang as CIBAC's second, third and fourth nominees, respectively, and the substitution by Cruz-Gonzales and Borje in their stead, based on the right of CIBAC to change its nominees under Section 13 of Resolution No. 7804).[17] He alleges that Section 13 of Resolution No. 7804 expanded Section 8 of R.A.

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[14] *Id.*, p. 324.

[15] *Id.*, p. 325.

[16] Entitled *Rules and Regulations Governing the Filing of Manifestation of Intent to Participate, and Submission of Names of Nominees Under the Party-List System of Representation, in Connection with the 14 May 2007 Synchronized National and Local Elections.*

[17] *Rollo*, G.R. No. 180443, pp. 65-82.

No. 7941.[18] The law that the COMELEC seeks to thereby implement.

In its comment, the COMELEC asserts that a petition for *certiorari* is an inappropriate recourse in law due to the proclamation of Cruz-Gonzales as Representative and her assumption of that office; that Lokin's proper recourse was an electoral protest filed in the House of Representatives Electoral Tribunal (HRET); and that, therefore, the Court has no jurisdiction over the matter being raised by Lokin.

For its part, CIBAC posits that Lokin is guilty of forum shopping for filing a petition for *mandamus* and a petition for *certiorari*, considering that both petitions ultimately seek to have him proclaimed as the second nominee of CIBAC.

Issues

The issues are the following:

(a) Whether or not the Court has jurisdiction over the controversy;

(b) Whether or not Lokin is guilty of forum shopping;

(c) Whether or not Section 13 of Resolution No. 7804 is unconstitutional and violates the *Party-List System Act*; and

(d) Whether or not the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in approving the withdrawal of the nominees of CIBAC and allowing the amendment of the list of nominees of CIBAC without any basis in fact or law and after the close of the polls, and in ruling on matters that were intra-corporate in nature.

Ruling

The petitions are granted.

A

The Court has jurisdiction over the case

[18] Entitled *An Act Providing for the Election of Party-List Representatives through the Party-List System, and Appropriating Funds Therefor.*

The COMELEC posits that once the proclamation of the winning party-list organization has been done and its nominee has assumed office, any question relating to the election, returns and qualifications of the candidates to the House of Representatives falls under the jurisdiction of the HRET pursuant to Section 17, Article VI of the 1987 Constitution. Thus, Lokin should raise the question he poses herein either in an election protest or in a special civil action for *quo warranto* in the HRET, not in a special civil action for *certiorari* in this Court.

We do not agree.

An *election protest* proposes to oust the winning candidate from office. It is strictly a contest between the defeated and the winning candidates, based on the grounds of electoral frauds and irregularities, to determine who between them has actually obtained the majority of the legal votes cast and is entitled to hold the office. It can only be filed by a candidate who has duly filed a certificate of candidacy and has been voted for in the preceding elections.

A special civil action for *quo warranto* refers to questions of disloyalty to the State, or of ineligibility of the winning candidate. The objective of the action is to unseat the ineligible person from the office, but not to install the petitioner in his place. Any voter may initiate the action, which is, strictly speaking, not a contest where the parties strive for supremacy because the petitioner will not be seated even if the respondent may be unseated.

The controversy involving Lokin is neither an election protest nor an action for *quo warranto,* for it concerns a very peculiar situation in which Lokin is seeking to be seated as the second nominee of CIBAC. Although an election protest may properly be available to one party-list organization seeking to unseat another party-list organization to determine which between the defeated and the winning party-list organizations actually obtained the majority of the legal votes, Lokin's case is not one in which a nominee of a particular party-list organization thereby wants to unseat another nominee of the same party-list organization. Neither does an action for *quo warranto* lie, considering that

the case does not involve the ineligibility and disloyalty of Cruz-Gonzales to the Republic of the Philippines, or some other cause of disqualification for her.

Lokin has correctly brought this special civil action for *certiorari* against the COMELEC to seek the review of the September 14, 2007 resolution of the COMELEC in accordance with Section 7 of Article IX-A of the 1987 Constitution, notwithstanding the oath and assumption of office by Cruz-Gonzales. The constitutional mandate is now implemented by Rule 64 of the 1997 *Rules of Civil Procedure*, which provides for the review of the judgments, final orders or resolutions of the COMELEC and the Commission on Audit. As Rule 64 states, the mode of review is by a petition for *certiorari* in accordance with Rule 65 to be filed in the Supreme Court within a limited period of 30 days. Undoubtedly, the Court has original and exclusive jurisdiction over Lokin's petitions for *certiorari* and for *mandamus* against the COMELEC.

B

Petitioner is not guilty of forum shopping

Forum shopping consists of the 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. Thus, forum shopping may arise: (*a*) whenever as a result of an adverse decision in one forum, a party seeks a favorable decision (other than by appeal or *certiorari*) in another; or (*b*) if, after having filed a petition in the Supreme Court, a party files another petition in the Court of Appeals, because he thereby deliberately splits appeals "in the hope that even as one case in which a particular remedy is sought is dismissed, another case (offering a similar remedy) would still be open"; or (*c*) where a party attempts to obtain a writ of preliminary injunction from a court after failing to obtain the writ from another court.[19]

What is truly important to consider in determining whether forum shopping exists or not is the vexation caused to the courts

[19] *Executive Secretary v. Gordon*, G.R. No. 134171, November 18, 1998, 298 SCRA 736.

and the litigants by a party who accesses different courts and administrative agencies to rule on the same or related causes or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue.[20]

The filing of identical petitions in different courts is prohibited, because such act constitutes forum shopping, a malpractice that is proscribed and condemned as trifling with the courts and as abusing their processes. Forum shopping is an improper conduct that degrades the administration of justice.[21]

Nonetheless, the mere filing of several cases based on the same incident does not necessarily constitute forum shopping. The test is whether the several actions filed involve the same transactions and the same essential facts and circumstances.[22] The actions must also raise identical causes of action, subject matter, and issues.[23] Elsewise stated, 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 other.[24]

Lokin has filed the petition for *mandamus* to compel the COMELEC to proclaim him as the second nominee of CIBAC upon the issuance of NBC Resolution No. 07-72 (announcing CIBAC's entitlement to an additional seat in the House of Representatives), and to strike down the provision in NBC Resolution No. 07-60 and NBC Resolution No. 07-72 holding in abeyance "all proclamation of the nominees of concerned parties, organizations and coalitions with pending disputes shall

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[20] *First Philippine International Bank v. Court of Appeals,* G.R. No. 115849, January 24, 1996, 252 SCRA 259.

[21] *Bugnay Construction and Development Corporation v. Laron,* G.R. No. 79983, August 10, 1989, 176 SCRA 240.

[22] *Paredes, Jr. v. Sandiganbayan, Second Division,* G.R. No. 108251, January 31, 1996, 252 SCRA 641.

[23] *International Container Terminal Services, Inc. v. Court of Appeals,* G.R. No. 116910, October 18, 1995, 249 SCRA 389.

[24] *Buan v. Lopez, Jr.,* G.R. No. 75349, October 13, 1986, 145 SCRA 34.

likewise be held in abeyance until final resolution of their respective cases." He has insisted that the COMELEC had the ministerial duty to proclaim him due to his being CIBAC's second nominee; and that the COMELEC had no authority to exercise discretion and to suspend or defer the proclamation of winning party-list organizations with pending disputes.

On the other hand, Lokin has resorted to the petition for *certiorari* to assail the September 14, 2007 resolution of the COMELEC (approving the withdrawal of the nomination of Lokin, Tugna and Galang and the substitution by Cruz-Gonzales as the second nominee and Borje as the third nominee); and to challenge the validity of Section 13 of Resolution No. 7804, the COMELEC's basis for allowing CIBAC's withdrawal of Lokin's nomination.

Applying the test for forum shopping, the consecutive filing of the action for *certiorari* and the action for *mandamus* did not violate the rule against forum shopping even if the actions involved the same parties, because they were based on different causes of action and the reliefs they sought were different.

C

Invalidity of Section 13 of Resolution No. 7804

The legislative power of the Government is vested exclusively in the Legislature in accordance with the doctrine of separation of powers. As a general rule, the Legislature cannot surrender or abdicate its legislative power, for doing so will be unconstitutional. Although the power to make laws cannot be delegated by the Legislature to any other authority, a power that is not legislative in character may be delegated.[25]

Under certain circumstances, the Legislature can delegate to executive officers and administrative boards the authority to adopt and promulgate IRRs. To render such delegation lawful, the Legislature must declare the policy of the law and fix the legal principles that are to control in given cases. The Legislature

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[25] Crawford, Earl. T., *The Construction of Statutes*, Thomas Law Book Company, St. Louis, Missouri, pp. 24-25 (1940).

should set a definite or primary standard to guide those empowered to execute the law. For as long as the policy is laid down and a proper standard is established by statute, there can be no unconstitutional delegation of legislative power when the Legislature leaves to selected instrumentalities the duty of making subordinate rules within the prescribed limits, although there is conferred upon the executive officer or administrative board a large measure of discretion. There is a distinction between the delegation of power to make a law and the conferment of an authority or a discretion to be exercised under and in pursuance of the law, for the power to make laws necessarily involves a discretion as to what it shall be.[26]

The authority to make IRRs in order to carry out an express legislative purpose, or to effect the operation and enforcement of a law is not a power exclusively legislative in character, but is rather administrative in nature. The rules and regulations adopted and promulgated must not, however, subvert or be contrary to existing statutes. The function of promulgating IRRs may be legitimately exercised only for the purpose of carrying out the provisions of a law. The power of administrative agencies is confined to implementing the law or putting it into effect. Corollary to this is that administrative regulation cannot extend the law and amend a legislative enactment. It is axiomatic that the clear letter of the law is controlling and cannot be amended by a mere administrative rule issued for its implementation. Indeed, administrative or executive acts shall be valid only when they are not contrary to the laws or the Constitution.[27]

To be valid, therefore, the administrative IRRs must comply with the following requisites to be valid:[28]

1. Its promulgation must be authorized by the Legislature;

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[26] *Id.,* pp. 29-30.

[27] *Metropolitan Bank and Trust Company, Inc. v. National Wages and Productivity Commission,* G.R. No. 144322, February 6, 2007, 514 SCRA 346, 349-350.

[28] Cruz, *Philippine Administrative Law,* pp. 50-51 (2007).

2. It must be within the scope of the authority given by the Legislature;

3. It must be promulgated in accordance with the prescribed procedure; and

4. It must be reasonable.

The COMELEC is constitutionally mandated to enforce and administer all laws and regulations relative to the conduct of an election, a plebiscite, an initiative, a referendum, and a recall.[29] In addition to the powers and functions conferred upon it by the Constitution, the COMELEC is also charged to promulgate IRRs implementing the provisions of the *Omnibus Election Code* or other laws that the COMELEC enforces and administers.[30]

The COMELEC issued Resolution No. 7804 pursuant to its powers under the Constitution, *Batas Pambansa Blg*. 881, and the *Party-List System Act.*[31] Hence, the COMELEC met the first requisite.

The COMELEC also met the third requisite. There is no question that Resolution No. 7804 underwent the procedural necessities of publication and dissemination in accordance with the procedure prescribed in the resolution itself.

Whether Section 13 of Resolution No. 7804 was valid or not is thus to be tested on the basis of whether the second and fourth requisites were met. It is in this respect that the challenge of Lokin against Section 13 succeeds.

As earlier said, the delegated authority must be properly exercised. This simply means that the resulting IRRs must not be *ultra vires* as to be issued beyond the limits of the authority

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[29] 1987 Constitution, Article IX-C, Section 2(1).

[30] *Batas Pambansa Bilang* 881, Article VII, Section 52(c).

[31] The *Party-List System Act* (R.A. No. 7941) provides:

Section 18. *Rules and Regulations*. — The COMELEC shall promulgate the necessary rules and regulations as may be necessary to carry out the purposes of this act.

conferred. It is basic that an administrative agency cannot amend an act of Congress,[32] for administrative IRRs are solely intended to carry out, not to supplant or to modify, the law. The administrative agency issuing the IRRs may not enlarge, alter, or restrict the provisions of the law it administers and enforces, and cannot engraft additional non-contradictory requirements not contemplated by the Legislature.[33]

Section 8 of R.A. No. 7941 reads:

> Section 8. *Nomination of Party-List Representatives.* — Each registered party, organization or coalition shall submit to the COMELEC not later that forty-five (45) days before the election a list of names, not less than five (5), from which party-list representatives shall be chosen in case it obtains the required number of votes.
>
> A person may be nominated in one (1) list only. Only persons who have given their consent in writing may be named in the list. The list shall not include any candidate of any elective office or a person who has lost his bid for an elective office in the immediately preceding election. No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, becomes incapacitated in which case the name of the substitute nominee shall be placed last in the list. Incumbent sectoral representatives in the House of Representatives who are nominated in the party-list system shall not be considered resigned.

The provision is daylight clear. The Legislature thereby deprived the party-list organization of the right to change its nominees or to alter the order of nominees once the list is submitted to the COMELEC, except when: (*a*) the nominee dies; (*b*) the nominee withdraws in writing his nomination; or (*c*) the nominee becomes incapacitated. The provision must

[32] *Boie-Takeda Chemicals, Inc. v. De la Serna,* G.R. Nos. 92174 and 102552, December 10, 1993, 228 SCRA 329.

[33] *Pilipinas Kao, Inc. v. Court of Appeals,* G.R. No. 105014, December 18, 2001, 372 SCRA 548, 551-552; *Commissioner of Internal Revenue v. Central Luzon Drug Corporation,* G.R. No. 159647, April 15, 2005, 456 SCRA 414, 441.

be read literally because its language is plain and free from ambiguity, and expresses a single, definite, and sensible meaning. Such meaning is conclusively presumed to be the meaning that the Legislature has intended to convey. Even where the courts should be convinced that the Legislature really intended some other meaning, and even where the literal interpretation should defeat the very purposes of the enactment, the explicit declaration of the Legislature is still the law, from which the courts must not depart.[34] When the law speaks in clear and categorical language, there is no reason for interpretation or construction, but only for application.[35] Accordingly, an administrative agency tasked to implement a statute may not construe it by expanding its meaning where its provisions are clear and unambiguous.[36]

The legislative intent to deprive the party-list organization of the right to change the nominees or to alter the order of the nominees was also expressed during the deliberations of the Congress, *viz*:

MR. LAGMAN: And again on Section 5, on the nomination of party list representatives, I do not see any provision here which prohibits or for that matter allows the nominating party to change the nominees or to alter the order of prioritization of names of nominees. Is the implication correct that at any time after submission the names could still be changed or the listing altered?

MR. ABUEG: Mr. Speaker, that is a good issue brought out by the distinguished Gentleman from Albay and perhaps a perfecting amendment may be introduced therein. The sponsoring committee will gladly consider the same.

MR. LAGMAN: In other words, what I would like to see is that after the list is submitted to the COMELEC officially, no

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[34] Black, *Construction and Interpretation of Laws*, 2nd Edition, p. 45.

[35] *Land Bank of the Philippines v. Court of Appeals*, G.R. Nos. 118712 and 118745, July 5, 1996, 258 SCRA 404.

[36] Agpalo, *Statutory Construction*, p. 65 (5th ed., 2003).

more changes should be made in the names or in the order of listing.

MR. ABUEG: Mr. Speaker, there may be a situation wherein the name of a particular nominee has been submitted to the Commission on Elections but before election day the nominee changed his political party affiliation. The nominee is therefore no longer qualified to be included in the party list and the political party has a perfect right to change the name of that nominee who changed his political party affiliation.

MR. LAGMAN: Yes of course. In that particular case, the change can be effected but will be the exception rather than the rule. Another exception most probably is the nominee dies, then there has to be a change but any change for that matter should always be at the last part of the list so that the prioritization made by the party will not be adversely affected.[37]

The usage of "No" in Section 8 – "No change of names or alteration of the order of nominees shall be allowed after the same shall have been submitted to the COMELEC except in cases where the nominee dies, or withdraws in writing his nomination, or becomes incapacitated, in which case the name of the substitute nominee shall be placed last in the list" – renders Section 8 a negative law, and is indicative of the legislative intent to make the statute mandatory. Prohibitive or negative words can rarely, if ever, be directory, for there is but one way to obey the command "*thou shall not*," and that is to completely refrain from doing the forbidden act,[38] subject to certain exceptions stated in the law itself, like in this case.

Section 8 does not unduly deprive the party-list organization of its right to choose its nominees, but merely divests it of the right to change its nominees or to alter the order in the list of its nominees' names after submission of the list to the COMELEC.

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[37] Record of the Deliberations of the House of Representatives, 3rd Regular Session (1994-1995), Volume III, November 22, 1994, p. 336.

[38] *McGee v. Republic*, 94 Phil. 820 (1954).

The prohibition is not arbitrary or capricious; neither is it without reason on the part of lawmakers. The COMELEC can rightly presume from the submission of the list that the list reflects the true will of the party-list organization. The COMELEC will not concern itself with whether or not the list contains the real intended nominees of the party-list organization, but will only determine whether the nominees pass all the requirements prescribed by the law and whether or not the nominees possess all the qualifications and none of the disqualifications. Thereafter, the names of the nominees will be published in newspapers of general circulation. Although the people vote for the party-list organization itself in a party-list system of election, not for the individual nominees, they still have the right to know who the nominees of any particular party-list organization are. The publication of the list of the party-list nominees in newspapers of general circulation serves that right of the people, enabling the voters to make intelligent and informed choices. In contrast, allowing the party-list organization to change its nominees through withdrawal of their nominations, or to alter the order of the nominations after the submission of the list of nominees circumvents the voters' demand for transparency. The lawmakers' exclusion of such arbitrary withdrawal has eliminated the possibility of such circumvention.

D

Exceptions in Section 8 of R.A. 7941 are exclusive

Section 8 of R.A. No. 7941 enumerates *only* three instances in which the party-list organization can substitute another person in place of the nominee whose name has been submitted to the COMELEC, namely: (*a*) when the nominee dies; (*b*) when the nominee withdraws in writing his nomination; and (*c*) when the nominee becomes incapacitated.

The enumeration is exclusive, for, necessarily, the general rule applies to all cases not falling under any of the three exceptions.

When the statute itself enumerates the exceptions to the application of the general rule, the exceptions are strictly but

reasonably construed. The exceptions extend only as far as their language fairly warrants, and all doubts should be resolved in favor of the general provision rather than the exceptions. Where the general rule is established by a statute with exceptions, none but the enacting authority can curtail the former. Not even the courts may add to the latter by implication, and it is a rule that an express exception excludes all others, although it is always proper in determining the applicability of the rule to inquire whether, in a particular case, it accords with reason and justice.[39]

The appropriate and natural office of the exception is to exempt something from the scope of the general words of a statute, which is otherwise within the scope and meaning of such general words. Consequently, the existence of an exception in a statute clarifies the intent that the statute shall apply to all cases not excepted. Exceptions are subject to the rule of strict construction; hence, any doubt will be resolved in favor of the general provision and against the exception. Indeed, the liberal construction of a statute will seem to require in many circumstances that the exception, by which the operation of the statute is limited or abridged, should receive a restricted construction.

E

Section 13 of Resolution No. 7804 expanded the exceptions under Section 8 of R.A. No. 7941

Section 13 of Resolution No. 7804 states*:*

Section 13. *Substitution of nominees.* – **A party-list nominee may be substituted only when he dies, or his nomination is withdrawn by the party, or he becomes incapacitated to continue as such, or he withdraws his acceptance to a nomination.** In any of these cases, the name of the substitute nominee shall be placed last in the list of nominees.

No substitution shall be allowed by reason of withdrawal after the polls.

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[39] *Salaysay v. Castro*, 98 Phil. 364 (1956).

Unlike Section 8 of R.A. No. 7941, the foregoing regulation provides four instances, the fourth being when the "nomination is withdrawn by the party."

Lokin insists that the COMELEC gravely abused its discretion in expanding to four the three statutory grounds for substituting a nominee.

We agree with Lokin.

The COMELEC, despite its role as the implementing arm of the Government in the enforcement and administration of all laws and regulations relative to the conduct of an election,[40] has neither the authority nor the license to expand, extend, or add anything to the law it seeks to implement thereby. The IRRs the COMELEC issues for that purpose should always accord with the law to be implemented, and should not override, supplant, or modify the law. It is basic that the IRRs should remain consistent with the law they intend to carry out.[41]

Indeed, administrative IRRs adopted by a particular department of the Government under legislative authority must be in harmony with the provisions of the law, and should be for the sole purpose of carrying the law's general provisions into effect. The law itself cannot be expanded by such IRRs, because an administrative agency cannot amend an act of Congress.[42]

The COMELEC explains that Section 13 of Resolution No. 7804 has added nothing to Section 8 of R.A. No. 7941,[43] because it has merely reworded and rephrased the statutory provision's phraseology.

The explanation does not persuade.

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[40] Section 2(1) of Article IX-C of the 1987 Constitution.

[41] *Romulo, Mabanta, Buenaventura, Sayoc and De los Angeles v. Home Development Mutual Fund*, G.R. No. 131082, June 19, 2000, 333 SCRA 777.

[42] *Cebu Oxygen & Acetylene Co., Inc. v. Drilon*, G.R. No. 82849, August 2, 1989, 176 SCRA 24, 29.

[43] *Rollo*, p. 509.

To reword means to alter the wording of or to restate in other words; *to rephrase* is to phrase anew or in a new form.[44] Both terms signify that the meaning of the original word or phrase is not altered.

However, the COMELEC did not merely reword or rephrase the text of Section 8 of R.A. No. 7941, because it established an entirely new ground not found in the text of the provision. The new ground granted to the party-list organization the unilateral right to withdraw its nomination already submitted to the COMELEC, which Section 8 of R.A. No. 7941 did not allow to be done. Neither was the grant of the unilateral right contemplated by the drafters of the law, who precisely denied the right to withdraw the nomination (as the quoted record of the deliberations of the House of Representatives has indicated). The grant thus conflicted with the statutory intent to save the nominee from falling under the whim of the party-list organization once his name has been submitted to the COMELEC, and to spare the electorate from the capriciousness of the party-list organizations.

We further note that the new ground would not secure the object of R.A. No. 7941 of developing and guaranteeing a full, free and open party-list electoral system. The success of the system could only be ensured by avoiding any arbitrariness on the part of the party-list organizations, by seeing to the transparency of the system, and by guaranteeing that the electorate would be afforded the chance of making intelligent and informed choices of their party-list representatives.

The insertion of the new ground was invalid. An axiom in administrative law postulates that administrative authorities should not act arbitrarily and capriciously in the issuance of their IRRs, but must ensure that their IRRs are reasonable and fairly adapted to secure the end in view. If the IRRs are shown to bear no reasonable relation to the purposes for which they were authorized to be issued, they must be held to be invalid and should be struck down.[45]

[44] Webster's *Third New International Dictionary*.

[45] *Lupangco v. Court of Appeals*, No. 77372, April 29, 1988, 160 SCRA 848, 858-859.

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Effect of partial nullity of Section 13 of Resolution No. 7804

An IRR adopted pursuant to the law is itself law.[46] In case of conflict between the law and the IRR, the law prevails. There can be no question that an IRR or any of its parts not adopted pursuant to the law is no law at all and has neither the force nor the effect of law.[47] The invalid rule, regulation, or part thereof cannot be a valid source of any right, obligation, or power.

Considering that Section 13 of Resolution No. 7804 – to the extent that it allows the party-list organization to withdraw its nomination already submitted to the COMELEC – was invalid, CIBAC's withdrawal of its nomination of Lokin and the others and its substitution of them with new nominees were also invalid and ineffectual. It is clear enough that any substitution of Lokin and the others could only be for any of the grounds expressly stated in Section 8 of R.A. No. 7941. Resultantly, the COMELEC's approval of CIBAC's petition of withdrawal of the nominations and its recognition of CIBAC's substitution, both through its assailed September 14, 2007 resolution, should be struck down for lack of legal basis. Thereby, the COMELEC acted without jurisdiction, having relied on the invalidly issued Section 13 of Resolution No. 7804 to support its action.

WHEREFORE, we grant the petitions for *certiorari* and *mandamus*.

We declare Section 13 of Resolution No. 7804 invalid and of no effect to the extent that it authorizes a party-list organization to withdraw its nomination of a nominee once it has submitted the nomination to the Commission on Elections.

Accordingly, we annul and set aside:

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[46] *Banco Filipino Savings and Mortgage Bank v. Navarro*, No. L-46591, July 28, 1987, 152 SCRA 346.

[47] *Commissioner of Internal Revenue v. Central Luzon Drug Corporation, supra,* note 33.

(*a*) The resolution dated September 14, 2007 issued in E. M. No. 07-054 approving Citizens' Battle Against Corruption's withdrawal of the nominations of Luis K. Lokin, Jr., Sherwin N. Tugna, and Emil Galang as its second, third, and fourth nominees, respectively, and ordering their substitution by Cinchona C. Cruz-Gonzales as second nominee and Armi Jane R. Borje as third nominee; and

(*b*) The proclamation by the Commission on Elections of Cinchona C. Cruz-Gonzales as a Party-List Representative representing Citizens' Battle Against Corruption in the House of Representatives.

We order the Commission on Elections to forthwith proclaim petitioner Luis K. Lokin, Jr. as a Party-List Representative representing Citizens' Battle Against Corruption in the House of Representatives.

We make no pronouncements on costs of suit.

SO ORDERED.

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

Peralta, J., no part.

Mendoza, J., on leave.

EN BANC

[G.R. No. 180564. June 22, 2010]

JESUS P. DISINI, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN and THE REPUBLIC OF THE PHILIPPINES, as represented by the**

PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG), *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT; POWER TO GRANT IMMUNITY FROM CRIMINAL OR CIVIL PROSECUTION; SCOPE OF IMMUNITY THAT CAN BE GRANTED; CLARIFIED. — [T]he Court has ruled in a previous case that the scope of immunity offered by the PCGG may vary. It has discretion to grant appropriate levels of criminal immunity depending on the situation of the witness and his relative importance to the prosecution of ill-gotten wealth cases. It can even agree, as in this case, to conditions expressed by the witness as sufficient to induce cooperation. The language of Section 5, E.O. 14, said the Court, affords latitude to the PCGG in determining the extent of that criminal immunity. In petitioner Disini's case, respondent Republic, acting through the PCGG, offered him not only criminal and civil immunity but also immunity against being compelled to testify in any domestic or foreign proceeding, other than the civil and arbitration cases identified in the Immunity Agreement, just so he would agree to testify. Trusting in the Government's honesty and fidelity, Disini agreed and fulfilled his part of the bargain. Surely, the principle of fair play, which is the essence of due process, should hold the Republic on to its promise.

2. ID.; ID.; ID.; ID.; THE GRANT OF IMMUNITY TO PETITIONER AGAINST BEING COMPELLED TO TESTIFY IS ULTIMATELY A GRANT OF IMMUNITY FROM BEING CRIMINALLY PROSECUTED BY THE STATE FOR REFUSAL TO TESTIFY, SOMETHING THAT FALLS WITHIN THE EXPRESS COVERAGE OF THE IMMUNITY GIVEN HIM. — In criminal contempt, the proceedings are regarded as criminal and the rules of criminal procedure apply. What is more, it is generally held that the State or respondent Republic is the real prosecutor in such a case. The grant, therefore, of immunity to petitioner Disini against being compelled to testify is ultimately a grant of immunity from being criminally prosecuted by the State for refusal to testify, something that falls within the express coverage of the immunity given him.

3. ID.; ID.; ID.; ID.; ESTOPPEL DOES NOT HAVE ANY EFFECT ON THE STATE'S RIGHT TO THE RECOVERY OF ILL-GOTTEN WEALTH NOR DOES IT BAR THE GOVERNMENT BASED ON UNAUTHORIZED ACTS OF ITS PUBLIC OFFICERS SINCE THE PCGG ACTED WITHIN ITS AUTHORITY WHEN IT PROVIDED PETITIONER WITH GUARANTEE AGAINST HAVING TO TESTIFY IN OTHER CASES. — [F]irst, the estoppel that petitioner Disini invokes does not have the effect, if recognized, of denying the state its right to recover whatever ill-gotten wealth Herminio may have acquired under the Marcos regime. The action against Herminio can continue, hampered only by the exclusion of Disini's testimony. And there are other ways of proving the existence of ill-gotten wealth. Second, although the government cannot be barred by estoppel based on unauthorized acts of public officers, such principle cannot apply to this case since, as already pointed out, respondent PCGG acted within its authority when it provided Disini with a guarantee against having to testify in other cases.

4. ID.; ID.; ID.; ID.; TO ALLOW THE REPUBLIC TO REVOKE THE AGREEMENT AT THIS STAGE WILL RUN AFOUL OF THE RULE THAT A PARTY TO A COMPROMISE CANNOT ASK FOR A RESCISSION AFTER IT HAD ENJOYED THE BENEFITS. — A contract is the law between the parties. It cannot be withdrawn except by their mutual consent. This applies with more reason in this case where petitioner Disini had already complied with the terms and conditions of the Immunity Agreement. To allow the Republic to revoke the Agreement at this late stage will run afoul of the rule that a party to a compromise cannot ask for a rescission after it had enjoyed its benefits.

5. ID.; ID.; ID.; ID.; WHERE A STIPULATION IN AN AGREEMENT IS CLEAR, ITS LITERAL MEANING CONTROLS. — The Republic also cites the last sentence of paragraph 3 of the Immunity Agreement which reads: **Nothing herein shall affect Jesus P. Disini's obligation to provide truthful information or testimony.** The Republic interprets this as enjoining Disini, despite the immunity given him against being compelled to testify in other cases, to "provide truthful information or testimony" in such other cases. But this reasoning does not sound right. The grant of immunity in

paragraph 3 of the agreement quoted above to petitioner Disini against being compelled to testify in "other cases" against Herminio is quite clear and does not need any interpretation. Where a stipulation in an agreement is clear, its literal meaning controls. Besides, Disini undertook to testify for the Republic in its two foreign cases and provide its lawyers all the information and testimony they needed to prosecute the same. The last sentence in the paragraph that enjoins Disini to "provide truthful information or testimony," despite the guarantee not to be compelled to testify against Herminio, merely emphasizes the fact that such concessions does not affect his obligation to "provide truthful information or testimony" in the two cases mentioned in the preceding paragraphs.

6. ID.; ID.; ID.; ID.; ID.; THE GOVERNMENT NEEDS TO FULFILL ITS OBLIGATIONS HONORABLY AS PETITIONER DID. — The Court should not allow respondent Republic, to put it bluntly, to double cross petitioner Disini. The Immunity Agreement was the result of a long drawn out process of negotiations with each party trying to get the best concessions out of it. The Republic did not have to enter that agreement. It was free not to. But when it did, it needs to fulfill its obligations honorably as Disini did. More than any one, the government should be fair.

BERSAMIN, *J., dissenting opinion:*

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT; POWER TO GRANT IMMUNITY FROM CRIMINAL OR CIVIL PROSECUTION; THE PRESIDENTIAL COMMISSION ON GOOD GOVERNMENT (PCGG) VALIDLY ISSUED RESOLUTION NO. 2007-031 REVOKING AND NULLIFYING PARAGRAPH 3 OF THE IMMUNITY AGREEMENT. — Section 5 of Executive Order No. 14 vests in PCGG the authority to grant immunity from criminal prosecution. xxx Aside from its aforementioned statutory authority to grant immunity from criminal prosecution, PCGG has the authority to grant civil immunity to anyone who aids the Government in its efforts to recover all ill-gotten wealth. In exchange for the immunity from civil or criminal prosecution given by the Government, the grantee should agree to testify and to give up his right to remain silent. Thus, paragraph 2 of the Immunity Agreement granted

the petitioner immunity from civil and criminal prosecution in exchange for his undertaking to testify truthfully in the civil and arbitration cases pending before the U.S. District Court and the International Chamber of Commerce Court of Arbitration. The Government respected its undertaking and refrained from prosecuting him.

2. ID.; ID.; ID.; ID.; THE GRANT OF IMMUNITY TO PETITIONER FROM TESTIFYING AGAINST HIS SECOND COUSIN PURSUANT TO SECTION 3 OF THE IMMUNITY AGREEMENT CONTRAVENED THE ESSENTIAL PURPOSE BEHIND PCGG'S ESTABLISHMENT. — The petitioner is invoking not just his immunity from civil and criminal prosecution, but his immunity from testifying against Herminio pursuant to paragraph 3 of the Immunity Agreement. It is grossly wrong and unfair to sustain the petitioner. *Firstly*: The grant of immunity from testifying against Herminio pursuant to paragraph 3 *contravened* the essential purpose behind PCGG's establishment as explicitly embodied in Executive Order No. 1. xxx The objective of PCGG's granting immunity from civil or criminal prosecution has been to encourage individuals to divulge their knowledge of the unlawful acquisition of Government property without fear of self-incrimination, in order to enable the Government to recover illegally acquired assets as soon as possible. In direct contrast, the immunity granted under paragraph 3 prevented the petitioner from disclosing any knowledge he might have regarding Herminio, a crony of the Marcoses. Considering that his affidavit dated February 22, 1989 and his supplemental affidavit dated March 1, 1989 revealed that the petitioner had been privy to the various business transactions between Herminio, who had conducted business through Herdis Group, Inc., and former President Marcos, who had owned two-thirds of Herdis Group, Inc., the petitioner's refusal to testify because of paragraph 3 would effectively deprive the Government of the opportunity to successfully prosecute Herminio and his companies in the actions already pending in the Sandiganbayan since 1987 yet.

3. ID.; ID.; ID.; ID.; PETITIONER CANNOT INVOKE ESTOPPEL TO PREVENT PCGG FROM ISSUING RESOLUTION NO. 2007-031; THE RIGHT OF THE STATE TO RECOVER PROPERTIES UNLAWFULLY ACQUIRED BY PUBLIC OFFICIALS AND EMPLOYEES SHALL NOT BE BARRED BY

ESTOPPEL. — We must not ignore that Section 15, Article XI of the 1987 Constitution expressly provides: "The right of the State to recover properties unlawfully acquired by public officials or employees from them or from their nominees, or transferees, shall not be barred by prescription, laches or estoppel." In revoking and nullifying paragraph 3, PCGG simply acknowledged paragraph 3's inherent inefficaciousness under this constitutional edict. The petitioner cannot consequently invoke estoppel to prevent PCGG from issuing Resolution No. 2007-031.

4. ID.; ID.; ID.; ID.; THE PCGG HAS THE POWER TO REVOKE THE QUALIFIED IMMUNITY GRANTED TO PETITIONER. — The Sandiganbayan was correct, and should be sustained. In the first place, even the petitioner conceded that his immunity under paragraph 3 was not absolute, but was subject of the qualification that he should provide truthful information or testimony. As such, PCGG's revocation of the qualified immunity could not be successfully challenged. Moreover, his own admission barred the petitioner from assailing PCGG's authority to repudiate paragraph 3. He had acknowledged PCGG's authority to repudiate the Immunity Agreement in paragraph 19 of his reply dated July 10, 2007, which he had personally *signed* and *submitted* to the Sandiganbayan, as follows: xxx 19. The immunity agreement of undersigned having been approved by the PCGG *en banc* in accordance with its rules, only the Commission *en banc* could repudiate the agreement. The lawyers of plaintiff could not on their own strike down the agreement. xxx xxx Lastly, the language and intent of paragraph 3, *viz*: xxx 3. Should the Republic of the Philippines name Herminio T. Disini a defendant in any of the above-referenced matters, or in any resulting arbitration proceeding, or any other proceeding ancillary to said matters, the Republic of the Philippines shall not call Jesus P. Disini to testify as a witness in said matters on any claim brought by the Republic of the Philippines against Herminio T. Disini. Nothing herein shall affect Jesus P. Disini's obligation to provide truthful information or testimony. xxx plainly indicate the *prospective* application of paragraph 3, *that is*, the immunity applied only to cases filed against Herminio *after* February 16, 1989, not to those already pending as of said date.

5. ID.; ID.; ID.; ID.; PARAGRAPH 3 OF THE IMMUNITY AGREEMENT IS VOID AND INEFFICACIOUS FOR BEING

CONTRARY TO THE STATE'S POLICY TO RECOVER ILLEGALLY ACQUIRED WEALTH AMASSED BY THE FORMER PRESIDENT, HIS FAMILY, RELATIVES AND CLOSE ASSOCIATES. — The petitioner cannot also validly plead that the mutuality of contracts prohibited the revocation of paragraph 3. Although parties to an agreement are free to enter into whatever terms they deem proper, and that entering into a compromise agreement necessarily contemplates mutual concessions and mutual gains to put an end to litigation, it is still indispensable that such terms be not contrary to law, morals, good customs, public order, or public policy. However, paragraph 3 was contrary to the State's policy on the urgent need to recover all the illegally acquired wealth amassed by President Marcos, his immediate family, relatives, and close associates; hence, it was void and inefficacious. Needless to stress, such policy was the reason why paragraph 3 carried the qualification.

6. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT PRIVILEGE; REQUISITES; NOT PRESENT IN CASE AT BAR. — For the attorney-client privilege to apply, the following requisites must be present: 1. Relationship of lawyer and client; 2. Communication made by the client to the attorney, or advice given by the latter to the former; 3. Communication or advice must have been made confidentially. 4. Such communication must have been made in the course of professional employment. An examination of the petitioner's situation indicates that he did not establish the concurrence of the requisites. To begin with, the petitioner's contention that his employment necessarily included the rendering of legal advice to Herminio as his employer deserves scant consideration, mainly because it was not substantiated. The relationship between the petitioner and Herminio was one between an employee and his employer; hence, no lawyer-client relationship existed between them. On the contrary, the petitioner himself admitted in his affidavits dated February 22, 1989 and March 18, 1989 that his personal knowledge of Herminio's business operations had been acquired by virtue of his employment as an executive in Herminio's companies from May 1971 to July 1984. It is axiomatic that the party asserting the privilege carries the burden of proving that the privilege applies. Thus, the petitioner's mere assertion of the attorney-client privilege was not enough.

7. ID.; ID.; ID.; THE MERE FACT THAT PETITIONER IS A LAWYER DID NOT AUTOMATICALLY MEAN THAT THE COMMUNICATIONS OF HIS COUSIN TO HIM OR VICE VERSA WERE COVERED BY THE ATTORNEY-CLIENT PRIVILEGE. — That the petitioner was a lawyer did not automatically mean that the communications of Herminio to him (or vice versa) were covered by the attorney-client privilege. The petitioner was a mere employee of Herminio or of his companies, not their retained counsel. A communication is not privileged only because it is made by or to a person who happens to be a lawyer. There are many cases, indeed, in which attorneys are employed in transacting business, not properly professional, and where the business may be transacted by another agent. In such cases, the fact that the agent sustains the character of an attorney does not protect the communications attending the transactions with the privilege; hence, the communications may be testified to by him as by any other agent.

8. ID.; ID.; ID.; NO PROOF THAT THE COMMUNICATIONS BETWEEN PETITIONER AND HIS COUSIN HAD BEEN MADE IN CONFIDENCE BY A CLIENT TO A LAWYER, OR THAT THE COMMUNICATIONS HAD BEEN SPECIFICALLY MADE IN THE COURSE OF A PROFESSIONAL RELATIONSHIP BETWEEN THEM. — Assuming that he then acted as a lawyer of Herminio, the petitioner did not show that the communications between him and Herminio had been made in confidence by a client to a lawyer, or that the communications had been specifically made in the course of a professional relationship between them. The lawyer-client privilege cannot be extended to communications made to a corporate secretary and general counsel where there is no evidence which hat he is wearing when he receives the communications. Moreover, the privilege does not apply where the legal services are so intertwined with the business activities that a clearer distinction between the two is impossible to discern. It is worth pointing out that evidentiary and testimonial privileges, being exceptions to the general rule, are not lightly created or expansively construed, because they are in derogation of the search for truth. It is appropriate to recognize privilege only to a very limited extent, such that permitting a refusal to testify or excluding relevant

evidence has the public good transcending normally the predominant principle of utilizing all rational means for ascertaining truth.

9. ID.; ID.; ID.; NO GRAVE ABUSE OF DISCRETION ON THE PART OF THE SANDIGANBAYAN AND THE PCGG. — The following requisites must concur in order that the petition for *certiorari* may prosper, namely: (*a*) that the writ is directed against a tribunal, a board, or any officer exercising judicial or quasi-judicial functions; (*b*) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (*c*) there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law. *Without jurisdiction* means that the tribunal, board, or officer acted with absolute lack of authority. There is *excess of jurisdiction* when the public respondent 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; otherwise stated, 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. *Certiorari* does not lie. The Sandiganbayan committed no grave abuse of discretion in issuing its assailed resolutions dated August 16, 2007 and October 10, 2007, which were correct and in accord with the Constitution and the pertinent law.

APPEARANCES OF COUNSEL

Disini & Disini Law Office for petitioner.
The Solicitor General for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the elementary rule of fair play and the dire effect on the Republic's credibility when it reneges on its undertaking to protect witnesses to whom it had given immunity from prosecution.

The Facts and the Case

In 1989 respondent Republic of the Philippines, represented in this case by the Presidential Commission on Good Government (PCGG), wanted petitioner Jesus P. Disini to testify for his government in its case against Westinghouse Electric Corporation[1] (Westinghouse) before the United States District Court of New Jersey and in the arbitration case that Westinghouse International Projects Company and others filed against the Republic[2] before the International Chamber of Commerce Court of Arbitration. Disini worked for his second cousin, Herminio T. Disini (Herminio), as an executive in the latter's companies from 1971 to 1984. The Republic believed that the Westinghouse contract for the construction of the Bataan Nuclear Power Plant, brokered by one of Herminio's companies, had been attended by anomalies.

On February 16, 1989 respondent Republic and petitioner Disini entered into an Immunity Agreement under which Disini undertook to testify for his government and provide its lawyers with the information, affidavits, and documents they needed for prosecuting the two cases.[3] Acknowledging Disini's concern that the Republic could become a party to yet other proceedings relating to the matters subject of his testimony, the Republic

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[1] *Republic of the Philippines, et al. v. Westinghouse Electric Corporation, et al.*

[2] *Westinghouse International Projects Company, Westinghouse Electric S.A., Westinghouse Electric Corporation v. National Power Corporation, Republic of the Philippines; and Burns & Roe Enterprises v. National Power Corporation, Republic of the Philippines.*

[3] *Rollo,* p. 33, par. 1.

guaranteed that, apart from the two cases, it shall not compel Disini to testify in any other domestic or foreign proceeding brought by the Republic against Herminio.[4]

The pertinent terms of the immunity read:

1. Jesus P. Disini agrees to appear and to testify truthfully in the civil matter captioned *Republic of the Philippines, et al. v. Westinghouse Electric Corporation, et al.*, (now pending as No. 88-5150 in the United States District Court for the District of New Jersey (or any jurisdiction to which it may be transferred) and in the arbitration proceedings captioned *Westinghouse International Projects Company, Westinghouse Electric S.A. Westinghouse Electric Corporation v. National Power Corporation, Republic of the Philippines and Burns & Roe Enterprises v. National Power Corporation, Republic of the Philippines* (now pending as Nos. 6401/BGD and 6423/BGD, respectively in the International Chamber of Commerce Court of Arbitration); to provide to the attorneys for the Republic of the Philippines all documents in his possession or under his control related to the subject matter of said action; to submit to interviews by those attorneys upon reasonable notice; to provide affidavits regarding his knowledge of the subject matter of said actions; and to cooperate truthfully with the Republic of the Philippines and its attorneys in the prosecution of this action, subject to the provision set forth in this paragraph and at paragraph 3, below. The parties acknowledge that the Republic of the Philippines is or may become a party to other proceedings relating to circumstances as to which Jesus P. Disini may have knowledge. The Republic of the Philippines by this instrument agrees that it shall not compel the testimony of Jesus P. Disini in any proceeding, domestic or foreign, other than this civil matter and these arbitration proceedings and, in the event this civil matter or any portion thereof is referred for arbitration, then and in that event, in said arbitration proceedings resulting from said reference.

2. The Republic of the Philippines agrees that is shall not institute, prosecute or maintain any criminal, civil or administrative proceeding, audit or investigation against Jesus P. Disini, for or in connection with (a) any conduct directly or indirectly relating to or arising out of the construction of the Philippine Nuclear Power Plant in Bataan, Philippines or Jesus P. Disini's former employment by

[4] *Id.* at 34, par. 3.

Herminio T. Disini or any company in which Herminio T. Disini owned any interest prior to July 1, 1984; or (b) any claim or matter, civil, criminal or administrative, known or unknown, arising under the Internal Revenue Code of the Philippines, which exits as of the date of this agreement; and it further agrees that it shall not use, directly or indirectly, against Jesus P. Disini, any information, lead or document obtained from him pursuant to this agreement.

3. Should the Republic of the Philippines name Herminio T. Disini a defendant in any of the above-referenced matters, or in any resulting arbitration proceeding, or any other proceeding ancillary to said matters, the Republic of the Philippines shall not call Jesus P. Disini to testify as a witness in said matters on any claim brought by the Republic of the Philippines against Herminio T. Disini. Nothing herein shall affect Jesus P. Disini's obligation to provide truthful information or testimony. (Underscoring supplied.)

Petitioner Disini complied with his undertaking but 18 years later or on February 27, 2007, upon application of respondent Republic, respondent Sandiganbayan issued a subpoena *duces tecum* and *ad testificandum* against Disini, commanding him to testify and produce documents before that court on March 6 and 30, 2007 in an action that the Republic filed against Herminio.[5] Disini filed a motion to quash the subpoena, invoking his immunity agreement with the Republic, but respondent Sandiganbayan ignored the motion and issued a new subpoena, directing him to testify before it on May 6 and 23, 2007.

On July 19, 2007 the PCGG issued Resolution 2007-031,[6] revoking and nullifying the Immunity Agreement between petitioner Disini and respondent Republic insofar as it prohibited the latter from requiring Disini to testify against Herminio. On August 16, 2007 respondent Sandiganbayan denied Disini's motion to quash subpoena,[7] prompting the latter to take recourse to this Court.

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[5] Civil Case 0013, *Republic of the Philippines v. Herminio T. Disini, et al.*

[6] *Rollo,* p. 66.

[7] *Id.* at 22-25, penned by Associate Justice Diosdado M. Peralta (now a member of this Court) and concurred in by then Presiding Justice Teresita

The Issues

Two issues are presented:

1. Whether or not the PCGG acted within its authority when it revoked and nullified the Immunity Agreement between respondent Republic and petitioner Disini; and

2. Whether or not respondent Sandiganbayan gravely abused its discretion when it denied petitioner Disini's motion to quash the subpoena addressed to him.

Discussion

One. Respondent Republic contends that the power to grant immunity given the PCGG covers only immunity from civil or criminal prosecution. It does not cover immunity from providing evidence in court. The Republic even believes that immunity from the need to testify in other ill-gotten wealth cases would defeat the very purpose of Executive Order 1 which charged the PCGG with the task of recovering all ill-gotten wealth of former President Marcos, his family, relatives, subordinates, and close associates.

Section 5 of Executive Order (E.O.) 14, which vests on the PCGG the power to grant immunity to witnesses provides:

Sec. 5. The Presidential Commission on Good Government is authorized to grant immunity from criminal prosecution to any person who provides information or testifies in any investigation conducted by such Commission to establish the unlawful manner in which any respondent, defendant or accused has acquired or accumulated the property or properties in question in any case where such information or testimony is necessary to ascertain or prove the latter's guilt or his civil liability. The immunity thereby granted shall be continued to protect the witness who repeats such testimony before the Sandiganbayan when required to do so by the latter or by the Commission.

J. Leonardo-de Castro (now a member of this Court) and Associate Justice Efren N. De La Cruz.

Construing the above, the Court has ruled in a previous case that the scope of immunity offered by the PCGG may vary.[8] It has discretion to grant appropriate levels of criminal immunity depending on the situation of the witness and his relative importance to the prosecution of ill-gotten wealth cases. It can even agree, as in this case, to conditions expressed by the witness as sufficient to induce cooperation.

The language of Section 5, E.O. 14, said the Court, affords latitude to the PCGG in determining the extent of that criminal immunity.[9] In petitioner Disini's case, respondent Republic, acting through the PCGG, offered him not only criminal and civil immunity[10] but also immunity against being compelled to testify in any domestic or foreign proceeding, other than the civil and arbitration cases identified in the Immunity Agreement, just so he would agree to testify. Trusting in the Government's honesty and fidelity, Disini agreed and fulfilled his part of the bargain. Surely, the principle of fair play, which is the essence of due process, should hold the Republic on to its promise.

The Republic of course points out that the immunity from criminal or civil prosecution that Section 5 of E.O. 14 authorizes does not cover immunity from giving evidence in a case before a court of law.

But in reality the guarantee given to petitioner Disini against being compelled to testify in other cases against Herminio constitutes a grant of immunity from civil or criminal prosecution. If Disini refuses to testify in those other cases he would face indirect contempt, which is essentially a prosecution for willful disobedience of a valid court order, a subpoena.[11] His refusal to testify will warrant the imposition against him of the penalty

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[8] *Tanchanco v. Sandiganbayan*, G.R. Nos. 141675-96, November 25, 2005, 476 SCRA 202, 229.

[9] *Id.* at 230.

[10] *Rollo*, p. 34, par. 2.

[11] Section 3(f), Rule 71, Rules of Court.

of fine not exceeding ₱30,000.00 or imprisonment not exceeding 6 months or both fine and imprisonment.[12]

Here, petitioner Disini's refusal to testify as ordered by the Sandiganbayan is certain to result in prosecution for criminal contempt. It constitutes criminal contempt since guilt would draw a penalty of fine or imprisonment or both. Said the Court in *Montenegro v. Montenegro*:[13]

Contempt, whether direct or indirect, may be civil or criminal depending on the nature and effect of the contemptuous act. Criminal contempt is "conduct directed against the authority and dignity of the court or a judge acting judicially; it is an act obstructing the administration of justice which tends to bring the court into disrepute or disrespect. On the other hand, civil contempt is the failure to do something ordered to be done by a court or a judge for the benefit of the opposing party therein and is therefore an offense against the party in whose behalf the violated order was made. If the purpose is to punish, then it is criminal in nature, but if to compensate, then it is civil.[14]

In criminal contempt, the proceedings are regarded as criminal and the rules of criminal procedure apply. What is more, it is generally held that the State or respondent Republic is the real prosecutor in such a case.[15] The grant, therefore, of immunity to petitioner Disini against being compelled to testify is ultimately a grant of immunity from being criminally prosecuted by the State for refusal to testify, something that falls within the express coverage of the immunity given him.

Respondent Republic claims that the grant of immunity to petitioner Disini against being compelled to testify against Herminio contravenes the state's public policy respecting the recovery of illegally acquired wealth under the regime of former President Marcos.

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[12] Section 7, Rule 71, Rules of Court.

[13] G.R. No. 156829, June 8, 2004, 431 SCRA 415.

[14] *Id.* at 424-425.

[15] *People v. Godoy*, 312 Phil. 977, 1002 (1995).

But the same authority that adopted such policy, former President Corazon C. Aquino, is the same authority that gave the PCGG the power to grant immunity to witnesses whom it might use to recover illegally acquired wealth during that regime. In the case of *Tanchanco v. Sandiganbayan*,[16] the Court regarded as valid and binding on the government the immunity it gave former National Food Authority Administrator, Jesus Tanchanco for all "culpable acts of his during his service in the Marcos government," which would include possible prosecution for any illegal wealth that he may himself have acquired during that service. The Court did not regard such immunity in contravention of the state policy on recovery of ill-gotten wealth under the auspices of the Marcos regime.

True, respondent Republic may have other cases in which it also needed petitioner Disini's testimony. But such circumstance does not necessarily invalidate the concession it gave him—the freedom from being compelled to give evidence in specific cases. It may be assumed that the Republic regarded Disini's testimony in the two cases covered by the agreement more important and critical than those other cases. It is well known that the cases with Westinghouse before the New Jersey District Court and the International Arbitration Tribunal concerning the construction of the Bataan Nuclear Power Plant had so huge a financial impact on the Republic that it was willing to waive its power and right to compel petitioner Disini's testimony in other cases.

Two. Petitioner Disini argues that respondent Republic, through the PCGG, should not be allowed to revoke the guarantee it gave him against being compelled to testify in other cases, the Republic being in estoppel for making him believe that it had the authority to provide such guarantee. The Republic rejects this argument, however, invoking Section 15, Article XI of the 1987 Constitution which provides: "The right of the State to recover properties unlawfully acquired by public officials or employees from them or from their nominees, or transferees, shall not be barred by prescription, laches or estoppel."

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[16] *Supra* note 8.

But, first, the estoppel that petitioner Disini invokes does not have the effect, if recognized, of denying the state its right to recover whatever ill-gotten wealth Herminio may have acquired under the Marcos regime. The action against Herminio can continue, hampered only by the exclusion of Disini's testimony. And there are other ways of proving the existence of ill-gotten wealth. Second, although the government cannot be barred by estoppel based on unauthorized acts of public officers,[17] such principle cannot apply to this case since, as already pointed out, respondent PCGG acted within its authority when it provided Disini with a guarantee against having to testify in other cases.

A contract is the law between the parties. It cannot be withdrawn except by their mutual consent.[18] This applies with more reason in this case where petitioner Disini had already complied with the terms and conditions of the Immunity Agreement. To allow the Republic to revoke the Agreement at this late stage will run afoul of the rule that a party to a compromise cannot ask for a rescission after it had enjoyed its benefits.[19]

The Republic also cites the last sentence of paragraph 3 of the Immunity Agreement which reads:

Nothing herein shall affect Jesus P. Disini's obligation to provide truthful information or testimony.[20]

The Republic interprets this as enjoining Disini, despite the immunity given him against being compelled to testify in other cases, to "provide truthful information or testimony" in such other cases.

But this reasoning does not sound right. The grant of immunity in paragraph 3 of the agreement quoted above to petitioner Disini

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[17] *Republic v. Sandiganbayan*, G.R. Nos. 108292, 108368, 108548-49 & 108550, September 10, 1993, 226 SCRA 314, 325-326.

[18] *Arco Metal Products Co., Inc. v. Samahan ng mga Manggagawa sa Arco Metal-NAFLU (SAMARM-NAFLU)*, G.R. No. 170734, May 14, 2008, 554 SCRA 110, 121 (*J.* Brion, Separate Concurring Opinion).

[19] *Republic v. Sandiganbayan*, *supra* note 17, at 321-322.

[20] *Rollo*, p. 34, par. 3.

against being compelled to testify in "other cases" against Herminio is quite clear and does not need any interpretation. Where a stipulation in an agreement is clear, its literal meaning controls.[21]

Besides, Disini undertook to testify for the Republic in its two foreign cases and provide its lawyers all the information and testimony they needed to prosecute the same. The last sentence in the paragraph that enjoins Disini to "provide truthful information or testimony," despite the guarantee not to be compelled to testify against Herminio, merely emphasizes the fact that such concessions does not affect his obligation to "provide truthful information or testimony" in the two cases mentioned in the preceding paragraphs.

Final Note

The Court should not allow respondent Republic, to put it bluntly, to double cross petitioner Disini. The Immunity Agreement was the result of a long drawn out process of negotiations with each party trying to get the best concessions out of it.[22] The Republic did not have to enter that agreement. It was free not to. But when it did, it needs to fulfill its obligations honorably as Disini did. More than any one, the government should be fair.[23]

WHEREFORE, the Court *GRANTS* the petition and *ANNULS* Resolution 2007-031 dated July 19, 2007 of the Presidential Commission on Good Government and the Resolution dated August 16, 2007 of respondent Sandiganbayan in Civil Case 0013, *Republic of the Philippines v. Herminio T. Disini, et al.*

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Nachura, Brion, and *Del Castillo, JJ.,* concur.

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[21] *Frias v. San Diego-Sison*, G.R. No. 155223, April 3, 2007, 520 SCRA 244, 254.

[22] *Republic v. Sandiganbayan*, *supra* note 17, at 327.

[23] *Id.* at 330.

Velasco, Jr., Villarama, Jr., and *Perez, JJ.,* join the dissent of *J.* Bersamin.

Bersamin, J., I dissent.

Leonardo-de Castro and *Peralta, JJ.*,no part.

Mendoza, J., on leave.

DISSENTING OPINION

BERSAMIN, *J.*:

Today, the Court rules that the petitioner – a vital resource holding credible information sufficient and competent to establish a strong case against Herminio T. Disini (Herminio) and Herminio's companies in the action pending before the Sandiganbayan – should not be compelled to stand as a witness in that action. The Court opines that the Government should not be allowed to "double-cross" the petitioner by compelling him to testify against Herminio and the latter's companies after he had performed his part under his agreement with the Government.

The decision inflicts a severe blow to the faltering effort of the Government to recover ill-gotten wealth from Herminio and his companies. I insist that the State's effort to recover ill-gotten wealth from *whoever* holds or hides it should not be obstructed or stymied. If there is going to be any "double cross," the victims will be the Government and the long-suffering Filipino people, not the petitioner, and only because the petitioner is now permitted to shirk from his obligation to testify truthfully in the action against Herminio and his companies.

I dissent.

Antecedents

The petitioner assails the resolutions on August 16, 2007 and October 10, 2007 by the Sandiganbayan issued in Civil Case No. 0013 entitled *Republic of the Philippines v. Herminio*

T. Disini, et al.,[1] as well as Resolution No. 2007-031 adopted by the PCGG,[2] alleging that the Sandiganbayan and PCGG thereby committed grave abuse of discretion amounting to lack or excess of jurisdiction. Essentially, the petitioner desires to stop PCGG from calling him as a witness against Herminio, a defendant in Civil Case No. 0013, or from compelling the petitioner to give testimony in any other case involving Herminio, on the ground that (*a*) the Immunity Agreement he had entered into with PCGG covered such testimony, and (*b*) he acted as an attorney on the matters of the proposed testimony.

I submit that the Presidential Commission on Good Government (PCGG) validly revoked the Immunity Agreement between the Government and the petitioner, and that the Sandiganbayan correctly upheld the revocation by refusing to quash the subpoena issued to the petitioner to compel him to testify against Herminio and the latter's companies.

Before I state my reasons for my submission, let us look at the following background facts.

On February 16, 1989, the petitioner and the Government executed an Immunity Agreement,[3] whereby he agreed to appear and testify in Civil Case No. 88-5150 (entitled *Republic of the Philippines, et al. v. Westinghouse Electric Corporation, et al.*) pending in the United States District Court for the District of New Jersey and in the arbitration proceedings No. 6404/ BGD and No. 6423/BGD (entitled *Westinghouse Electric Corporation v. National Power Corporation, Republic of the Philippines* and *Burns & Roe Enterprises v. National Power Corporation, Republic of the Philippines*) in the International Chamber of Commerce Court of Arbitration.

The Immunity Agreement provided in its paragraph 1 that:

[1] Penned by Associate Justice Diosdado M. Peralta (now a member of the Court), with Presiding Justice Teresita J. Leonardo-de Castro (now a member of the Court) and Associate Justice Efren N. dela Cruz, concurring; *rollo*, at pp. 22-25 and 27-32.

[2] *Rollo*, at p. 66.

[3] *Id.*, at pp. 33-35.

1. Jesus P. Disini agrees to appear and to testify truthfully in the civil matter captioned *Republic of the Philippines, et al. v. Westinghouse Electric Corporation, et al.* (now pending as No. 88-5150 in the United States District Court for the District of New Jersey (or any jurisdiction to which it may be transferred) and in the arbitration proceedings captioned *Westinghouse International Projects Company, Westinghouse Electric S.A., Westinghouse Electric Corporation v. National Power Corporation, Republic of the Philippines* and *Burns & Roe Enterprises vs. National Power Corporation, Republic of the Philippines* (now pending as Nos. 6401/BGD and 6423/BGD, respectively in the International Chamber of Commerce Court of Arbitration); to provide to the attorneys for the Republic of the Philippines all documents in his possession or under his control related to the subject matter of said action; to submit to interviews by those attorneys upon reasonable notice; to provide affidavits regarding his knowledge of the subject matter of said actions; and to cooperate truthfully with the Republic of the Philippines and its attorneys in the prosecution of this action, subject to the provision set forth in this paragraph and at paragraph 3, below. The parties acknowledge that the Republic of the Philippines is or may become a party to other proceedings relating to circumstances as to which Jesus P. Disini may have knowledge. The Republic of the Philippines by this instrument agrees that it shall not compel the testimony of Jesus P. Disini in any proceeding, domestic or foreign, other than this civil matter and these arbitration proceedings and, in the event this civil matter or any portion thereof is referred for arbitration, then and in that event, in said arbitration proceeding resulting from said reference.[4]

In return for the petitioner's undertaking, the Government ostensibly agreed not to compel his testimony in any proceeding, domestic or foreign, other than in the mentioned civil and arbitration cases. The Government further bound itself not to call him as a witness to testify in any case brought by the Government against Herminio. In that regard, paragraphs 2 and 3 of the Immunity Agreement stated:

2. The Republic of the Philippines agrees that it shall not institute, prosecute or maintain any criminal, civil or administrative proceeding, audit or investigation against Jesus P. Disini, for or in connection

[4] *Id.*, pp. 33-34.

with any conduct directly or indirectly relating to or arising out of the construction of the Philippine Nuclear Power Plant in Bataan, Philippines or Jesus P. Disini's former employment by Herminio T. Disini or any company in which Herminio T. Disini owned any interest prior to July 1, 1984; or any claim or matter, civil, criminal or administrative, known or unknown, arising under the Internal Revenue Code of the Philippines which exists as of the date of this agreement; and it further agrees that it shall not use, directly or indirectly, against Jesus P. Disini, any information, lead or document obtained from him pursuant to this agreement.

3. Should the Republic of the Philippines name Herminio T. Disini a defendant in any of the above-referenced matters, or in any resulting arbitration proceeding, or any other proceeding ancillary to said matters, the Republic of the Philippines shall not call Jesus P. Disini to testify as a witness in said matters on any claim brought by the Republic of the Philippines against Herminio T. Disini. Nothing herein shall affect Jesus P. Disini's obligation to provide truthful information or testimony.[5]

At the instance of the Government as the plaintiff in Civil Case No. 0013 entitled *Republic of the Philippines v. Herminio T. Disini, Spouses Ferdinand and Imelda Marcos, and Rodolfo Jacob*,[6] the Sandiganbayan issued a subpoena *duces tecum* and/or *ad testificandum* to compel the petitioner to appear and testify therein.

Instead of appearing on the scheduled date, the petitioner moved to quash the subpoena *duces tecum* and/or *ad testificandum* on March 6, 2007, invoking the Immunity Agreement. The Sandiganbayan ignored the petitioner's motion to quash, because the motion was not set for hearing.

The petitioner amended his motion to quash by setting it for hearing. He reiterated the arguments of his original motion.

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[5] *Id.*, p. 34.

[6] Denominated as an action for reconveyance, reversion, accounting, restitution and damages commenced by the PCGG on July 23, 1987.

The petitioner's failure to comply with the subpoena of the Sandiganbayan prompted PCGG to issue on July 19, 2007 its assailed Resolution No. 2007-031,[7] to wit:

> NOW, THEREFORE, be it RESOLVED, as it is hereby RESOLVED, that the Immunity Agreement dated 16 February 1989 between Mr. Jesus P. Disini and the Republic of the Philippines, be, as it is hereby, REVOKED and NULLIFIED insofar as it prohibits the Republic of the Philippines from presenting Jesus P. Disini in cases brought against Herminio T. Disini in the Philippines.
>
> RESOLVED, FURTHER, that copies of this resolution be furnished to Mr. Jesus P. Disini and the Honorable Sandiganbayan for their guidance.

On August 16, 2007, the Sandiganbayan denied the petitioner's amended motion to quash, holding:

> It is evident that the Agreement dated February 16, 1989 is the only reason that Atty. Jesus Disini refuses to heed the subpoena issued him by the Court. He invokes the binding effect thereof on him, and especially on plaintiff and argues that the latter cannot now renege on its commitment after he had complied with the terms and conditions thereof. However, even by his own admission, the immunity granted to him was not absolute considering that the same agreement carried the qualification regarding Atty. Disini's obligation to provide truthful information or testimony which is not thereby affected. Thus, Section 3 thereof reads as follows:
>
> > 3. Should the Republic of the Philippines name Herminio T. Disini a defendant in any of the above-reference matters, or in any resulting arbitration proceedings, or any other proceeding ancillary to said matters, the Republic of the Philippines shall not call Jesus P. Disini to testify as a witness in said matters on any claim brought by the Republic of the Philippines against Herminio Disini. ***Nothing herein shall affect Jesus Disini's obligation to provide truthful information or testimony.*** (emphasis supplied)
>
> Even assuming that the said foregoing proviso in the immunity agreement prohibits plaintiff from calling on Jesus Disini to testify in any case brought by the Republic against Herminio Disini without

[7] *Supra*, at Note 2.

any qualification, the same however, cannot be invoked nor be relied upon by Atty. Jesus Disini to quash the subpoena herein issued considering that the immunity granted was consummated only in February 1989, or long after the instant case was filed in 1987.Without any provision therein respecting retroactive application or making an exception to the instant case, the agreement cannot be the basis for immunity for cases that had already been filed before this Court. As it is, there is no such provision in the Immunity Agreement, hence, none could also be assumed and the presumption is that it can only apply prospectively to cases explicitly stated therein and not to those cases over which this Court had already acquired jurisdiction.

Moreover, in view of the revocation and nullification by the PCGG of Section 3 of the immunity agreement, which is a power of the PCGG that Atty. Jesus Disini himself recognizes, there is no point of quashing the subpoena issued by the Court for him to testify in this case since he can already be compelled to testify sans any restrictions or qualifications.

WHEREFORE, in view of the foregoing, the Amended Motion to Quash Subpoena filed by Atty. Jesus Disini and all related motions to quash that he filed are hereby denied for lack of merit.

SO ORDERED.[8]

The petitioner sought the reconsideration of the resolution, but the Sandiganbayan denied his motion for reconsideration on October 10, 2007 through the second assailed resolution.[9]

Hence, on December 4, 2007, the petitioner commenced this special civil action, contending that the denial of his motion to quash constituted a clear grave abuse of discretion amounting to an excess or lack of jurisdiction on the part of the Sandiganbayan.

Parties' Positions

The petitioner insists that the Sandiganbayan erroneously interpreted the last sentence of paragraph 3 of the Immunity Agreement to mean that the Government could opt to forego its undertaking not to call him as a witness in connection with

[8] *Rollo*, at pp. 24-25.

[9] *Id.*, at pp. 27-32.

any claim brought by the Government against Herminio; that such interpretation defeated the very essence of paragraph 3 as a reciprocal exchange between him and the Government; and that paragraph 3 should not be read in isolation from the rest of the agreement, but should be construed as referring to his reciprocal obligation to testify truthfully in the cases mentioned in paragraph 1 of the Immunity Agreement.

He argues that PCGG through its Resolution No. 2007-031 could not unilaterally revoke the Immunity Agreement, being a contract mutually entered into between him and the Government; that Resolution No. 2007-031 was void for violating the principle of mutuality of contracts; that the fact that Civil Case No. 0013 was filed prior to the execution of the Immunity Agreement and before the cases enumerated therein had been filed did not exclude Civil Case No. 0013 from coverage in light of the last two sentences of paragraph 1; that paragraph 3 also extended the concession in favor of the petitioner to "any claim brought by the Republic of the Philippines against Herminio T. Disini"; that the Immunity Agreement contemplated the claims already filed against Herminio prior to its execution (including Civil Case No. 0013); that he was further disqualified from testifying in Civil Case No. 0013 regarding matters learned in confidence from Herminio, who was also then his client; that he acceded to paragraph 3 of the Immunity Agreement precisely because he needed to protect the privileged communication made to him by Herminio as his client; and that his employment as a lawyer working for Herminio necessarily included Herminio's availment of his legal knowledge and advice whenever called for.

The Government counters that the Sandiganbayan correctly interpreted the plain meaning of the clear and unambiguous terms of the Immunity Agreement; that PCGG was justified in revoking paragraph 3 of the Immunity Agreement, as it was contrary to public policy; that the Supreme Court has time and again acknowledged that the recovery of ill-gotten wealth is not only a State policy (Executive Order No. 1, Section 2(a)), but also a duty on its part (*Tanchanco v. Sandiganbayan*, 476 SCRA 202 [2005] and *BASECO v. PCGG*, 150 SCRA 181 [1987]); and that the 1987 Constitution (Section 15, Article

XI) even provides that "the right of the State to recover properties unlawfully acquired by public officials or employees, from them or from their nominees, transferees, shall not be barred by prescription, laches or estoppel."

The Government points out that the petitioner himself acknowledged, in his reply dated July 10, 2007[10] filed in the Sandiganbayan, the authority of PCGG to repudiate the Immunity Agreement, stating in paragraph 19 of the reply[11] that only PCGG *en banc* could repudiate it; and that the petitioner was thus estopped from challenging PCGG's authority to nullify paragraph 3 of the Immunity Agreement.

The Government maintains that the Sandiganbayan correctly found the Immunity Agreement to apply prospectively to the cases specifically enumerated therein, in the absence of any express provision giving it retroactive effect.

The Government submits that the petitioner's claim that the attorney-client privilege precluded him from testifying in Civil Case No. 0013 was belied by the admission in his affidavit dated February 22, 1989 that his knowledge of Herminio's transactions was not acquired in his capacity as a lawyer of Herminio but as an executive of Herdis Group Inc., a company co-owned by Herminio and former President Ferdinand Marcos.

In reply, the petitioner insisted that the Immunity Agreement did not violate public policy; that Executive Orders No. 14 and No. 14-A expressly allowed the power to grant immunity to PCGG; that the concession vested in him under the Immunity Agreement did not prevent the Government from prosecuting Herminio in order to recover the ill-gotten wealth of the Marcoses; that the Government already presented several pieces of evidence and witnesses against Herminio in Civil Case No. 0013; that the Government cannot validly revoke the Immunity Agreement after having benefited from petitioner's testimony in several cases in Geneva, Switzerland and in the United States of America; that it is a well-settled rule that a compromise becomes binding

[10] *Id.*, at pp. 70-78.

[11] *Id.*, at p. 76.

upon the parties upon its perfection and has the effect and authority of *res judicata* even if not judicially approved; and that the Constitutional provision preventing the State from being estopped by the acts of its agents applies only to irregular acts of its officials, not to the Immunity Agreement which was freely executed between the parties.

Issue

Can PCGG compel the petitioner to testify against Herminio in Civil Case No. 0013 and in all other cases filed by the Government against him?

Submission

As I made clear at the outset, the petition lacks merit.

A.

PCGG validly issued Resolution No. 2007-031 revoking and nullifying Paragraph 3 of the Immunity Agreement

Section 5 of Executive Order No. 14 vests in PCGG the authority to grant immunity from criminal prosecution, to wit:

> Section 5. The Presidential Commission on Good Government is authorized to grant immunity from criminal prosecution to any person who provides information or testifies in any investigation conducted by such Commission to establish the unlawful manner in which any respondent, defendant or accused has acquired or accumulated the property or properties in question in any case where such information or testimony is necessary to ascertain or prove the latter's guilt or his civil liability. The immunity thereby granted shall be continued to protect the witness who repeats such testimony before the Sandiganbayan when required to do so by the latter or by the Commission.

Aside from its aforementioned statutory authority to grant immunity from criminal prosecution, PCGG has the authority to grant civil immunity to anyone who aids the Government in

its efforts to recover all ill-gotten wealth.[12] In exchange for the immunity from civil or criminal prosecution given by the Government, the grantee should agree to testify and to give up his right to remain silent.[13] Thus, paragraph 2 of the Immunity Agreement granted the petitioner immunity from civil and criminal prosecution in exchange for his undertaking to testify truthfully in the civil and arbitration cases pending before the U.S. District Court and the International Chamber of Commerce Court of Arbitration. The Government respected its undertaking and refrained from prosecuting him.

Now, however, the petitioner is invoking not just his immunity from civil and criminal prosecution, but his immunity from testifying against Herminio pursuant to paragraph 3 of the Immunity Agreement.

It is grossly wrong and unfair to sustain the petitioner.

Firstly: The grant of immunity from testifying against Herminio pursuant to paragraph 3 *contravened* the essential purpose behind PCGG's establishment as explicitly embodied in Executive Order No. 1, thus:

> Section 2. The Commission shall be charged with the task of assisting the President in regard to the following matters:
>
> a) The recovery of all ill-gotten wealth accumulated by former President Ferdinand E. Marcos, his immediate family, relatives, subordinates and close associates, whether located in the Philippines or abroad, including the takeover or sequestration of all business enterprises and entities owned or controlled by them during his administration, directly or through nominees, by taking undue advantage of their public office and/or using their powers, authority influence, connections or relationship.
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[12] *Republic v. Sandiganbayan*, G.R. No. 84895, May 4, 1989, 173 SCRA 72.

[13] Section 5, Executive Order No. 14; *Mapa, Jr. v. Sandiganbayan*, G.R. No. 100295, April 26, 1994, 231 SCRA 783.

The objective of PCGG's granting immunity from civil or criminal prosecution has been to encourage individuals to divulge their knowledge of the unlawful acquisition of Government property without fear of self-incrimination, in order to enable the Government to recover illegally acquired assets as soon as possible. In direct contrast, the immunity granted under paragraph 3 prevented the petitioner from disclosing any knowledge he might have regarding Herminio, a crony of the Marcoses. Considering that his affidavit dated February 22, 1989[14] and his supplemental affidavit dated March 1, 1989[15] revealed that the petitioner had been privy to the various business transactions between Herminio, who had conducted business through Herdis Group, Inc., and former President Marcos, who had owned two-thirds of Herdis Group, Inc., the petitioner's refusal to testify because of paragraph 3 would effectively deprive the Government of the opportunity to successfully prosecute Herminio and his companies in the actions already pending in the Sandiganbayan since 1987 yet.

We must not ignore that Section 15, Article XI of the 1987 Constitution expressly provides: "The right of the State to recover properties unlawfully acquired by public officials or employees from them or from their nominees, or transferees, shall not be barred by prescription, laches or estoppel." In revoking and nullifying paragraph 3, PCGG simply acknowledged paragraph 3's inherent inefficaciousness under this constitutional edict. The petitioner cannot consequently invoke estoppel to prevent PCGG from issuing Resolution No. 2007-031.

Secondly: In upholding the revocation by PCGG of the immunity of the petitioner from testifying against Herminio and his companies, the Sandiganbayan cited *three* grounds in its assailed resolution of August 16, 2007[16] for rejecting the petitioner's motion to quash, namely:

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[14] *Rollo*, at pp. 79-81.

[15] *Id.*, at pp. 82-92.

[16] *Id.*, at pp. 24-25.

(*a*) The petitioner himself had admitted that the immunity thereby granted to him was not absolute due to the qualification prescribing his obligation to provide truthful information or testimony; hence, he could not argue that the Government could not call him as a witness by virtue of his having already complied with the terms and conditions of the Immunity Agreement;

(*b*) Assuming that the immunity was unqualified, the Immunity Agreement, which had been consummated only in February 16, 1989, did not apply retroactively to Civil Action No. 0013 which had been pending since 1987 in the absence of any provision for retroactive application or making any exception. The Immunity Agreement could apply only prospectively to the cases explicitly enumerated therein, not to cases over which the Sandiganbayan had already acquired jurisdiction; and

(*c*) There was no point in quashing the subpoena issued to the petitioner, considering that the petitioner himself recognized the power of PCGG to revoke and nullify paragraph 3 of the Immunity Agreement.

The Sandiganbayan was correct, and should be sustained.

In the first place, even the petitioner conceded that his immunity under paragraph 3 was not absolute, but was subject of the qualification that he should provide truthful information or testimony. As such, PCGG's revocation of the qualified immunity could not be successfully challenged.

Moreover, his own admission barred the petitioner from assailing PCGG's authority to repudiate paragraph 3. He had acknowledged PCGG's authority to repudiate the Immunity Agreement in paragraph 19 of his reply dated July 10, 2007,[17] which he had personally *signed* and *submitted* to the Sandiganbayan,[18] as follows:

x x x

19. The immunity agreement of undersigned having been approved by the PCGG *en banc* in accordance with its rules, only the Commission

[17] *Id.*, at pp. 70-78.

[18] *Id.*, at p. 78.

en banc could repudiate the agreement. The lawyers of plaintiff could not on their own strike down the agreement. xxx[19]

x x x

Lastly, the language and intent of paragraph 3, *viz*:

x x x

3. Should the Republic of the Philippines name Herminio T. Disini a defendant in any of the above-referenced matters, or in any resulting arbitration proceeding, or any other proceeding ancillary to said matters, the Republic of the Philippines shall not call Jesus P. Disini to testify as a witness in said matters on any claim brought by the Republic of the Philippines against Herminio T. Disini. Nothing herein shall affect Jesus P. Disini's obligation to provide truthful information or testimony.[20]

x x x

plainly indicate the *prospective* application of paragraph 3, *that is*, the immunity applied only to cases filed against Herminio *after* February 16, 1989, not to those already pending as of said date.

Thirdly: The petitioner cannot also validly plead that the mutuality of contracts prohibited the revocation of paragraph 3. Although parties to an agreement are free to enter into whatever terms they deem proper, and that entering into a compromise agreement necessarily contemplates mutual concessions and mutual gains to put an end to litigation,[21] it is still indispensable that such terms be not contrary to law, morals, good customs, public order, or public policy.[22] However, paragraph 3 was contrary to the State's policy on the urgent need to recover all the illegally

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[19] *Id.*, at p. 78.

[20] *Id.*, p. 34.

[21] *Philippine Journalists, Inc. v. National Labor Relations Commission*, G.R. No. 166421, September 5, 2006, 501 SCRA 75.

[22] Article 1306, *Civil Code*; *Air Transportation Office (ATO) v. Gopuco, Jr.*, G.R. No.158563, June 30, 2005, 462 SCRA 544; *LL and Company Development and Agro-Industrial Corporation v. Huang Chao Chun*, G.R. No. 142378, March 7, 2002, 378 SCRA 612.

acquired wealth amassed by President Marcos, his immediate family, relatives, and close associates;[23] hence, it was void and inefficacious. Needless to stress, such policy was the reason why paragraph 3 carried the qualification, *viz*:

xxx Nothing herein shall affect Jesus P. Disini's obligation to provide truthful information or testimony.

B.

Attorney-Client privilege did not disqualify petitioner from testifying against Herminio

The petitioner's other contention, that the attorney-client privilege disqualified him from testifying against Herminio, has no merit.

For the attorney-client privilege to apply, the following requisites must be present:

1. Relationship of lawyer and client;
2. Communication made by the client to the attorney, or advice given by the latter to the former;
3. Communication or advice must have been made confidentially.
4. Such communication must have been made in the course of professional employment.[24]

An examination of the petitioner's situation indicates that he did not establish the concurrence of the requisites.

To begin with, the petitioner's contention that his employment necessarily included the rendering of legal advice to Herminio as his employer deserves scant consideration, mainly because it was not substantiated. The relationship between the petitioner and Herminio was one between an employee and his employer;

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[23] *Whereas* clauses of Executive Order No. 1, February 28, 1986; *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government*, G.R. No. 75885, May 27, 1987, 150 SCRA 181.

[24] Sec. 24, Rule 130, *Rules of Court*; 5 Herrera, *Remedial Law* (1999), p. 325.

hence, no lawyer-client relationship existed between them. On the contrary, the petitioner himself admitted in his affidavits dated February 22, 1989 and March 18, 1989 that his personal knowledge of Herminio's business operations had been acquired by virtue of his employment as an executive in Herminio's companies from May 1971 to July 1984.

It is axiomatic that the party asserting the privilege carries the burden of proving that the privilege applies.[25] Thus, the petitioner's mere assertion of the attorney-client privilege was not enough.[26]

That the petitioner was a lawyer did not automatically mean that the communications of Herminio to him (or vice versa) were covered by the attorney-client privilege. The petitioner was a mere employee of Herminio or of his companies, not their retained counsel. A communication is not privileged only because it is made by or to a person who happens to be a lawyer.[27] There are many cases, indeed, in which attorneys are employed in transacting business, not properly professional, and where the business may be transacted by another agent. In such cases, the fact that the agent sustains the character of an attorney does not protect the communications attending the transactions with the privilege; hence, the communications may be testified to by him as by any other agent.[28]

And, secondly, assuming that he then acted as a lawyer of Herminio, the petitioner did not show that the communications between him and Herminio had been made in confidence by a client to a lawyer, or that the communications had been specifically

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[25] *Ramcar, Inc. v. Garcia*, G.R. No. L-16997, April 25, 1962, 4 SCRA 1087, 1088; *U.S. v. Landof*, 591 F.2d 36, 38; 81 Am. Jur. 2d Witnesses § 345.

[26] *Mercado v. Vitriolo*, Adm. Case No. 5108, May 26, 2005, 459 SCRA 1, 12.

[27] *Diversified Industries, Inc. v. Meredith*, 572 F. 2d 596, August 9, 1977.

[28] Wigmore, *Evidence*, McNaughton rev., 1961, p. 572, citing *Hatton v. Robinson*, 1833, 31 Mass. (14 Pick.) 416, 422.

made in the course of a professional relationship between them. The lawyer-client privilege cannot be extended to communications made to a corporate secretary and general counsel where there is no evidence which hat he is wearing when he receives the communications.[29] Moreover, the privilege does not apply where the legal services are so intertwined with the business activities that a clearer distinction between the two is impossible to discern.[30]

It is worth pointing out that evidentiary and testimonial privileges, being exceptions to the general rule, are not lightly created or expansively construed, because they are in derogation of the search for truth. It is appropriate to recognize privilege only to a very limited extent, such that permitting a refusal to testify or excluding relevant evidence has the public good transcending normally the predominant principle of utilizing all rational means for ascertaining truth.[31]

C.
Sandiganbayan and PCGG were not guilty of grave abuse of discretion

The following requisites must concur in order that the petition for *certiorari* may prosper, namely: (*a*) that the writ is directed against a tribunal, a board, or any officer exercising judicial or quasi-judicial functions; (*b*) such tribunal, board, or officer has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction; and (*c*) there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law.[32] *Without jurisdiction* means

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[29] *Bankers Ins. Co. v. Florida Dept. Ins.*, Fla. App. 2000, 755 So. 2D 729, 730.

[30] *Chicago Title Insurance Co. v. Superior Court*, 507, 515, 174, Cal.App.3D 1142.

[31] *In Re Grand Jury Subpoena Duces Tecum*, 112 F. 3d 910, May 2, 1997.

[32] Section 1, Rule 65, 1997 *Rules of Civil Procedure*; *De los Santos v. Court of Appeals,* G.R. No. 169498, December 11, 2008, 573 SCRA 690; *Camacho v. Coresis, Jr.*, G.R. No. 134372, August 22, 2002, 387 SCRA 628.

that the tribunal, board, or officer acted with absolute lack of authority. There is *excess of jurisdiction* when the public respondent 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; otherwise stated, 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.[33]

Certiorari does not lie. The Sandiganbayan committed no grave abuse of discretion in issuing its assailed resolutions dated August 16, 2007 and October 10, 2007, which were correct and in accord with the Constitution and the pertinent law.

ACCORDINGLY, I vote to dismiss the petition for *certiorari* and prohibition for lack of merit.

EN BANC

[G.R. No. 180711. June 22, 2010]

RUDOLFO I. BELUSO, *petitioner, vs.* **COMMISSION ON ELECTIONS and GABRIELA WOMEN'S PARTY,** *respondents.*

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[33] *Republic v. Sandiganbayan,* G.R. No. 129406, March 6, 2006, 484 SCRA 119; *Sarigumba v. Sandiganbayan,* G.R. Nos. 154239-41, February 16, 2005, 451 SCRA 533; *Angara v. Fedman Development Corporation,* G.R. No. 156822, October 18, 2004, 440 SCRA 467; *People v. Court of Appeals,* G.R. No. 144332, June 10, 2004, 431 SCRA 610; *Litton Mills, Inc. v. Galleon Trader, Inc.,* G.R. No. L-40867, July 26, 1988, 163 SCRA 489; *Duero v. Court of Appeals,* G.R. No. 131282, January 4, 2002, 373 SCRA 11.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* ABUSE OF DISCRETION MUST BE PATENT AND GROSS.— A special civil action for *certiorari*, under Rule 65, is an independent action based on the specific grounds therein provided and will lie only if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. A petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist. "Grave abuse of discretion," under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross. Such is not the case here. Nothing in the records of this case supports petitioner's bare assertion that the COMELEC rendered its assailed Resolutions with grave abuse of discretion. Beluso alleged grave abuse of discretion on the part of the COMELEC in perpetually disqualifying him to serve in any canvassing board, yet failed to prove where the abuse existed.

2. ID.; ID.; ID.; WHERE THE REAL ISSUE INVOLVES THE WISDOM OR LEGAL SOUNDNESS OF THE DECISION NOT THE JURISDICTION OF THE COURT TO RENDER SAID DECISION THE SAME IS BEYOND THE PROVINCE OF A PETITION FOR *CERTIORARI* UNDER RULE 65.— The apparent thrust of Beluso's petition is the alleged error on the part of the COMELEC in drawing its conclusions based on its findings and investigation. Thus, in reality, what Beluso was questioning is the COMELEC's appreciation of evidence. At this point, however, it is not this Court's function to re-evaluate the findings of fact of the COMELEC, given its limited scope of its review power, which is properly confined only to issues of jurisdiction or grave abuse of discretion. Moreover, the arguments in the petition and the issues alleged are only possible errors of judgment, questioning the correctness of the COMELEC's rulings. **Where the real issue involves the wisdom or legal soundness of the decision – not the jurisdiction of the court to render said decision – the same**

is beyond the province of a petition for *certiorari* under Rule 65. It is well settled that 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. The supervisory jurisdiction of this Court to issue a *certiorari* writ cannot be exercised in order to review the judgment of the lower court as to its intrinsic correctness, either upon the law or the facts of the case.

APPEARANCES OF COUNSEL

Jose P. Villamor, Jr. for petitioner.
The Solicitor General for public respondent.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a Petition for *Certiorari*[1] under Rule 65 to set aside and annul a portion of the Resolution of the COMELEC dated April 26, 2007[2] and November 8, 2007,[3] which declared petitioner, Rudolfo I. Beluso, perpetually barred from serving in any capacity in any canvassing board of the COMELEC, in relation to Election Offense Case No. 04-117 (*Gabriela Women's Party vs. Atty. Nelly Abao-Lee, et al.*) for being erroneous and issued with grave abuse of discretion amounting to lack or in excess of jurisdiction.

The antecedent facts are as follows:

In 2004, during the canvassing of the party list votes conducted by the National Board of Canvassers (NBOC), GABRIELA Women's Party (GABRIELA) discovered that the provincial certificate of canvass for the Province of Capiz reflected only forty-three (43)

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[1] *Rollo,* pp. 3-16.

[2] *Id.* at 19-27.

[3] *Id.* at 30-32.

votes for their party when it actually garnered two thousand seventy-one (2,071) as shown by the Statement of Votes.

The Chairman of the Provincial Board of Canvassers (PBOC) of Capiz, Atty. Nelly Abao-Lee, however, was quick to admit the mistake and promised to request authority to immediately correct the erroneous entries in the certificate of canvass. Subsequently, in Resolution No. 7158[4] dated May 19, 2004, the PBOC granted said request. Thus, the necessary corrections were made.

Nevertheless, despite the correction, on May 21, 2004, GABRIELA filed a Complaint against Atty. Nelly Abao-Lee, Rudolfo I. Beluso, Elnora A. Barrios, Mary Grace Abagatnan, Sharon Barrientos, Demetrio Forel and Antonio Sobrepeña for violation of Section 27 (b) of Republic Act No. 6646, otherwise known as *The Electoral Reforms Law of 1987*. On May 28, 2004, Director Alioden D. Dalaig of the Law Department issued a Memorandum to Regional Election Director (RED) Victor C. Gaborne directing him to conduct the preliminary investigation of the complaint. On March 21, 2006, the said directive was issued anew to Atty. Tomas S. Valera. The same directive was re-issued to the Acting RED, Dennis L. Agusan, on July 22, 2006, or more than two years after. On March 30, 2006, Atty. Valera issued summons to the respondents.

On April 21, 2006, respondents submitted their respective affidavits. In her Affidavit,[5] Atty. Abao-Lee contended that it was only during the canvassing of the NBOC at the Philippine International Convention Center (PICC) that she was informed of the inaccuracies in the entries in the Certificate of Canvass of Capiz. She claimed that the erroneous entries were made by one of the Board's support personnel and admitted that she merely relied on the entries made by such personnel without scrutinizing the accuracy thereof by comparing the entries in the Certificate of Canvass with those reflected in the Statement of Votes.[6]

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

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

[6] *Id.* at 41.

For their part, petitioner Beluso, the Provincial Prosecutor of Capiz and the Vice-Chairman of the PBOC of Capiz, and Barrios, the Schools' Superintendent of Capiz and Secretary of the PBOC of Capiz, both claimed that the inaccuracies made in the Certificate of Canvass were due to human error as admitted by Forel, one of the tabulators of the PBOC of Capiz.

On the other hand, Abagatnan and Barrientos, both tabulators of the PBOC of Capiz, alleged that due to voluminous work, the tabulators agreed that Forel and Sobrepeña, who were assigned to assist them, will be the ones to record the entries to the Certificate of Canvass based on the actual votes appearing in the tally board. Likewise, both admitted that they signed the Certificate of Canvass without further examination and scrutiny.

For his part, Sobrepeña, in his Affidavit,[7] claimed that he and Forel were designated as assistants of the Tabulator's team during the provincial canvass of the May 10, 2004 National and Local Elections for the Province of Capiz. He and Forel were tasked to record in the Certificate of Canvass the votes garnered by the candidates. He narrated that he and Forel agreed to divide the workload to hasten the recording of votes in the Certificate of Canvass. Sobrepeña claimed that he recorded the entries from the votes for president up to number 28 for Senators, while Forel recorded the entries from number 29 for senators to number 45 of the party-list. Thereafter, he proceeded again with the entries from number 46 for party-list onwards. He maintained that the erroneous entries were made by Forel, as he was the one assigned with the recording of votes for GABRIELA. Sobrepeña asserted that he signed the Statement of Votes in good faith, as he merely relied with the supposed correctness of the entries and never intended to defraud the concerned candidates.[8]

Meanwhile, Forel, in his Affidavit,[9] corroborated the statement of Sobrepeña. He admitted that he was the one who recorded

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

[8] *Id.*

[9] *Id.* at 48-49.

the entries from number 29 of the senatorial candidates up to number 45 of the party-list candidates in the Certificate of Canvass, while the rest of the entries were recorded by Sobrepeña. Forel, likewise, admitted that he made a mistake in recording the votes for GABRIELA. He admitted that he erroneously entered the 43 votes of KALOOB to GABRIELA, instead of 2,071, which is the correct number of votes for the latter. He, however, stressed that the errors were unintentional and not meant to defraud any party concerned.[10]

In a Resolution[11] dated April 26, 2007, the COMELEC dismissed the Complaint for lack of probable cause to charge respondents, including petitioner Beluso. However, it found respondents' errors to be arising from "sheer gross negligence," especially on the part of the three members of the PBOC of Capiz. It, thus, declared respondents to be perpetually barred from serving, in any capacity, in any canvassing board of the COMELEC in any future election. The pertinent portion of the Resolution reads:

> Although the members of the PBOC are allowed to be assisted by their support staff during the canvassing, the responsibility of preparing the certificate of canvass falls exclusively upon the three members thereof. According to Section 231 of the Omnibus Election Code as elaborated in Section 24 (k) of COMELEC Resolution No. 6669, which lays down the general instructions for canvassing in the May 10, 2004 Elections, the Board of Canvassers shall prepare a certificate of canvass, together with the supporting statement of votes. ***The substantial preparation of this document cannot be left to a support staff by letting said staff copy the figures from the statement of votes into the certificate of canvass without the members of the Board personally checking for themselves the accuracy of the data so copied. It is in this regard that the members of the PBOC failed in the performance of their assigned duties***.
>
> This total lack of exercise of oversight functions and supervision by the three principal members of the PBOC over the work of their subordinates in the canvassing body resulted into a haphazard and mindless execution of legally sanctioned procedures. ***Although the***

[10] *Id*.

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

mistake was clearly not intentional – the reckless negligence clearly evident in the method of its commission – the oversight committed by the members of the board in leaving the sensitive task of accomplishing the certificate of canvass to a mere supply officer and an eleventh hour recruit, without double-checking the correctness of the entries made by said supply officer, almost borders on criminal negligence.[12]

On May 11, 2007, Beluso filed a Motion for Partial Reconsideration. He argued that he is not negligent; hence, the penalty of perpetual disqualification from serving in any canvassing board of the COMELEC was too harsh and unreasonable.

On November 8, 2007, COMELEC denied his motion for lack of merit.[13]

Thus, the instant petition for *certiorari.*

Petitioner advances the following arguments:

I

THE HONORABLE COMMISSION ON ELECTIONS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION WHEN IT ERRONEOUSLY FOUND PETITIONER TO BE GROSSLY NEGLIGENT IN THE PERFORMANCE OF HIS DUTY AS A MEMBER OF THE PROVINCIAL BOARD OF CANVASSERS OF CAPIZ.

II

THE HONORABLE COMMISSION ON ELECTIONS COMMITTED GRAVE ABUSE OF DISCRETION WHEN IT ERRONEOUSLY RULED THAT PETITIONER HEREIN BE BARRED FROM SERVING IN ANY CAPACITY IN ANY CANVASSING BOARD OF THIS COMMISSION IN ANY FUTURE ELECTIONS.

The petition lacks merit.

A special civil action for *certiorari,* under Rule 65, is an independent action based on the specific grounds therein provided and will lie only if there is no appeal or any other plain, speedy,

[12] *Id.* at 24-25. (Emphasis supplied.)

[13] *Id.* at 30-32.

and adequate remedy in the ordinary course of law. A petition for *certiorari* will prosper only if grave abuse of discretion is alleged and proved to exist. "Grave abuse of discretion," under Rule 65, has a specific meaning. It is the arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse of discretion must be patent and gross.[14] Such is not the case here.

Nothing in the records of this case supports petitioner's bare assertion that the COMELEC rendered its assailed Resolutions with grave abuse of discretion. Beluso alleged grave abuse of discretion on the part of the COMELEC in perpetually disqualifying him to serve in any canvassing board, yet failed to prove where the abuse existed.

Notably, the apparent thrust of Beluso's petition is the alleged error on the part of the COMELEC in drawing its conclusions based on its findings and investigation. Thus, in reality, what Beluso was questioning is the COMELEC's appreciation of evidence. At this point, however, it is not this Court's function to re-evaluate the findings of fact of the COMELEC, given its limited scope of its review power, which is properly confined only to issues of jurisdiction or grave abuse of discretion.

Moreover, the arguments in the petition and the issues alleged are only possible errors of judgment, questioning the correctness of the COMELEC's rulings. **Where the real issue involves the wisdom or legal soundness of the decision – not the jurisdiction of the court to render said decision – the same is beyond the province of a petition for *certiorari* under Rule 65.**[15]

It is well settled that a writ of *certiorari* may be issued only for the correction of errors of jurisdiction or grave abuse of

[14] *Fajardo v. Court of Appeals*, G.R. No. 157707, October 29, 2008, 570 SCRA 156, 163.

[15] *Id.* at 163. (Emphasis supplied).

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.[16] The supervisory jurisdiction of this Court to issue a *certiorari* writ cannot be exercised in order to review the judgment of the lower court as to its intrinsic correctness, either upon the law or the facts of the case.[17]

In *People v. Court of Appeals*,[18] the Court expounded, thus:

> As observed in *Land Bank of the Philippines v. Court of Appeals, et al.* "the special civil action for *certiorari* is a remedy designed for the correction of errors of jurisdiction and not errors of judgment. The *raison d'etre* for the rule is **when a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being 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. In such a scenario, the administration of justice would not survive. **Hence, where the issue or question involved affects the wisdom or legal soundness of the decision – not the jurisdiction of the court to render said decision – the same is beyond the province of a special civil action for *certiorari*. x x x**[19]

WHEREFORE, the instant petition for *certiorari* is hereby *DISMISSED*.

SO ORDERED.

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

Mendoza, J., on leave.

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[16] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 778 (2004).

[17] *A.F. Sanchez Brokerage, Inc. v. Court of Appeals*, G.R. No. 147079, December 21, 2004, 447 SCRA 427, 436-437; *Angara v. Fedman Development Corporation*, G.R. No. 156822, October 18, 2004, 440 SCRA 467, 480.

[18] G.R. No. 142051, February 24, 2004, 423 SCRA 605.

[19] *Estrera v. Court of Appeals*, G.R. Nos. 154235-36, August 16, 2006, 499 SCRA 86, 94. (Emphasis supplied.)

EN BANC

[G.R. No. 182498. June 22, 2010]

GEN. AVELINO I. RAZON, JR., Chief, Philippine National Police (PNP); Police Chief Superintendent RAUL CASTAÑEDA, Chief, Criminal Investigation and Detection Group (CIDG); Police Senior Superintendent LEONARDO A. ESPINA, Chief, Police Anti-Crime and Emergency Response; and GEN. JOEL R. GOLTIAO, Regional Director of ARMM, PNP, *petitioners*, *vs.* **MARY JEAN B. TAGITIS, herein represented by ATTY. FELIPE P. ARCILLA, JR., Attorney-in-Fact,** *respondent.*

SYLLABUS

REMEDIAL LAW; WRIT OF *AMPARO;* CASE REMANDED TO THE COURT OF APPEALS FOR FURTHER PROCEEDINGS AS DIRECTED IN THE COURT'S DECISION DATED 03, DECEMBER 2009 AND FOR THE APPELLATE COURT TO SUBMIT ITS 1ST QUARTERLY REPORT AND RECOMMENDATIONS AND COPIES BE FURNISHED THE PNP AND PNP-CIDG CHIEFS.— On February 16, 2010, we issued a Resolution, denying the petitioners' motion for reconsideration and directing that the case be remanded to the CA for further proceedings as directed in our Decision of December 3, 2009. On March 17, 2010, our December 3, 2009 Decision became final, and an entry of judgment was accordingly made on May 28, 2010. Considering the foregoing, the Court resolves to **DIRECT** the Court of Appeals to submit to this Court, within ten (10) days from receipt of this Resolution, its 1st quarterly report and recommendations, copy furnished the incumbent PNP and PNP-CIDG Chiefs, and the respondent, as directed in our Decision of December 3, 2009. The PNP and the PNP-CIDG are likewise reminded to faithfully and promptly comply with the directives in our Decision of December 3, 2009.

APPEARANCES OF COUNSEL

Linzag Arcilla and Associates Law Office for private respondent.

R E S O L U T I O N

BRION, *J.*:

In our Decision of December 3, 2009, we referred the present case to the Court of Appeals (*CA*) for appropriate proceedings directed at the monitoring of the PNP and PNP-CIDG investigations, actions and validation of their results with respect to the enforced disappearance of Engr. Morced N. Tagitis. In the same Decision, we also required: (1) the PNP and the PNP-CIDG to present to the CA a plan of action for further investigation, periodically reporting their results to the CA for consideration and action, and (2) the CA to submit to this Court a quarterly report with its recommendations, copy furnished the incumbent PNP and PNP-CIDG Chiefs, as petitioners, and the respondent, with the first report due at the *end of the first quarter* counted from the finality of the Decision.

On February 16, 2010, we issued a Resolution, denying the petitioners' motion for reconsideration and directing that the case be remanded to the CA for further proceedings as directed in our Decision of December 3, 2009.

On March 17, 2010, our December 3, 2009 Decision became final, and an entry of judgment was accordingly made on May 28, 2010.

Considering the foregoing, the Court resolves to *DIRECT* the Court of Appeals to submit to this Court, within ten (10) days from receipt of this Resolution, its 1st quarterly report and recommendations, copy furnished the incumbent PNP and PNP-CIDG Chiefs, and the respondent, as directed in our Decision of December 3, 2009. The PNP and the PNP-CIDG are likewise reminded to faithfully and promptly comply with the directives in our Decision of December 3, 2009.

SO ORDERED.

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

Mendoza, J., on leave.

EN BANC

[G.R. No. 183517. June 22, 2010]

PHILIPPINE INTERNATIONAL TRADING CORPORATION, *petitioner, vs.* **COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; STATUTORY CONSTRUCTION; RULES. — It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, ***i.e.,*** that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment. Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole. Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.

2. ID.; ADMINISTRATIVE LAW; PHILIPPINE INTERNATIONAL TRADING CORPORATION (PITC); SECTION 6, EXECUTIVE ORDER (EO) NO. 756 IN RELATION TO SECTION 28 (b) OF COMMONWEALTH ACT (CA) NO.

186, CONSTRUED; EO 756 WAS NOT MEANT TO BE THE PERMANENT RETIREMENT LAW FOR PITC EMPLOYEES. — As an adjunct to the reorganization mandated under Executive Order No. 756, we find that the foregoing provision cannot be interpreted independent of the purpose or intent of the law. Rather than the permanent retirement law for its employees that petitioner now characterizes it to be, we find that the provision of gratuities equivalent to "one month pay for every year of service computed at highest salary received including all allowances" was clearly meant as an incentive for employees who retire, resign or are separated from service during or as a consequence of the reorganization petitioner's Board of Directors was tasked to implement.

3. ID.; ID.; ID.; ID.; EO 756 CANNOT BE INTERPRETED TO MEAN AS AN EXCEPTION TO THE PROHIBITION AGAINST SEPARATE OR SUPPLEMENTARY INSURANCE RETIREMENT OR PENSION PLANS UNDER CA 186. — In reconciling Section 6 of Executive Order No. 756 with Section 28, Subsection (b) of Commonwealth Act No. 186, as amended, uppermost in the mind of the Court is the fact that the best method of interpretation is that which makes laws consistent with other laws which are to be harmonized rather than having one considered repealed in favor of the other. Time and again, it has been held that every statute must be so interpreted and brought in accord with other laws as to form a uniform system of jurisprudence – *interpretere et concordare legibus est optimus interpretendi*. Thus, if diverse statutes relate to the same thing, they ought to be taken into consideration in construing any one of them, as it is an established rule of law that all acts in *pari materia* are to be taken together, as if they were one law. We find that a temporary and limited application of the more beneficent gratuities provided under Section 6 of Executive Order No. 756 is in accord with the pre-existing and general prohibition against separate or supplementary insurance retirement and/or pension plans under Section 28, Subsection (b) of Commonwealth Act No. 186. In the absence of a manifest and specific intent from which the same may be gleaned, moreover, Section 6 of Executive Order No. 756 cannot be construed as an additional alternative to existing general retirement laws and/or an exception to the prohibition against separate or supplementary insurance retirement or pension plans as aforesaid.

4. REMEDIAL LAW; *CERTIORARI*; GRAVE ABUSE OF DISCRETION, NOT A CASE OF. — In the context of petitions for *certiorari* like the one at bench, grave abuse of discretion is understood to be such capricious and whimsical exercise of jurisdiction as is equivalent to lack of jurisdiction. It is tantamount to an evasion of a positive duty or to virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility. As the Constitutional office tasked with the duty to examine, audit and settle all accounts pertaining to the revenue, and receipts of and expenditures or uses of funds and property, owned or held in trust by or pertaining to the government or any of its subdivisions, respondent committed no grave abuse of discretion in disapproving petitioner's utilization of Section 6 of Executive Order No. 756 in the computation of its employees' retirement benefits.

APPEARANCES OF COUNSEL

The Government Corporate Counsel for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

The inclusion of allowances in the computation of the retirement/separation benefits of the employees of petitioner Philippine International Trading Corporation (PITC) is at issue in this petition for *certiorari* filed pursuant to Rules 64 and 65 of the *1997 Rules of Civil Procedure*, seeking the nullification and setting aside of the adverse rulings dated July 4, 2003 and February 15, 2008 issued by respondent Commission on Audit (COA).

The Facts

Created pursuant to Presidential Decree No. 252 dated July 21, 1973, petitioner is a government-owned and controlled corporation tasked with promoting and developing Philippine

trade in pursuance of national economic development. Subsequent to the repeal of said law with the May 9, 1977 issuance of Presidential Decree No. 1071, otherwise known as the *Revised Charter of the Philippine International Trading Corporation*, then President Ferdinand E. Marcos issued Executive Order No. 756 on December 28, 1981, authorizing the reorganization of petitioner pursuant to his legislative powers to amend charters of government corporations through executive orders in turn issued pursuant to Presidential Decree No. 1416, as amended by Presidential Decree No. 1772. On February 18, 1983, President Marcos issued Executive Order No. 877, authorizing further the reorganization of petitioner for the purpose of accelerating and expanding the country's export concerns.[1]

On December 31, 1983, Eligia Romero, an officer of petitioner, opted to retire under Republic Act No. 1616 and received a total of ₱286,780.00 as gratuity benefits for services rendered from 1955 to 1983. Immediately re-hired on contractual basis, it appears that said employee remained in the service of petitioner until her compulsory retirement on April 27, 2000. In July 1, 1955 to April 27, 2000, net of the ₱286,780.00 gratuity benefits she received in 1983, Ms. Romero filed a July 16, 2001 request, seeking from petitioner payment of retirement differentials on the strength of Section 6 of Executive Order No. 756. Said provision states that "any officer or employee who retires, resigns, or is separated from the service shall be entitled to one month pay for every year of service computed at highest salary received including allowances, in addition to the other benefits provided by law, regardless of any provision of law or regulations to the contrary."[2]

Confronted with the question of whether the computation of Ms. Romero's retirement benefits should include the allowances she had received while under its employ, petitioner sent queries to respondent and the Office of the Government Corporate Counsel regarding the application of Section 6 of Executive Order No. 756. On August 20, 2002, then Government

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[1] *Rollo*, pp. 6-7.

[2] *Id.* at 24-25.

Corporate Counsel Amado D. Valdez issued Opinion No. 197, Series of 2002, espousing a literal interpretation and application of the aforesaid provision. Invoking the principle that retirement laws should be liberally construed and administered in favor of the persons intended to be benefited thereby, said opinion declared that, pursuant to the subject provision, the basis for the computation of the retirement benefits of petitioner's employees should be the highest basic salary received by them, including allowances not integrated into the basic pay.[3]

On the other hand, on July 4, 2003, COA Assistant Commissioner and General Counsel Raquel R. Habitan issued the first assailed ruling, the 6th Indorsement dated July 4, 2003, finding the denial of Ms. Romero's claim for retirement differentials in order. Taking appropriate note of the fact that the Reserve for Retirement Gratuity and Commutation of Leave Credits of petitioner's employees did not include allowances outside of the basic salary, said officer ruled that Executive Order No. 756 was a special law issued only for the specific purpose of reorganizing petitioner corporation. Although it was subsequently adverted to in Executive Order No. 877, Section 6 of Executive Order No. 756 was determined to be intended for employees retired, separated or resigned in connection with petitioner's reorganization and was not meant to be a permanent retirement scheme for its employees.[4]

Elevated by petitioner on appeal before the respondent,[5] the foregoing ruling was affirmed in the second assailed ruling, the Decision No. 2008-023 dated February 15, 2008,[6] which likewise discounted the legal basis for Ms. Romero's claim for retirement differentials. Finding that Section 6 of Executive Order No. 756 was simply an incentive to encourage employees to resign or retire at the height of petitioner's reorganization, said decision went on to make the following pronouncements, to wit:

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

[4] *Id.* at 22-23.

[5] *Id.* at 37-43.

[6] *Id.* at 24-28.

"Moreover, RA No. 4968 prohibits the creation of any insurance retirement plan by any government agency and government-owned or controlled corporation other than the GSIS, *viz*.:

> 'Section 10. Subsection (b) of Section twenty-eight of the same Act, as amended is hereby amended to read as follows:
>
> (b) Hereafter no insurance or retirement plan for officers or employees shall be created by the employer. All supplementary retirement or pension plans heretofore in force in any government office, agency, or instrumentality or corporation owned or controlled by the government, are hereby declared inoperative or abolished: *Provided*, That the rights of those who are already eligible to retire thereunder shall not be affected.'

The Supreme Court explained the rationale of the above provisions in *Avelina B. Conte, et al. vs. Commission on Audit*, G.R. No. 116422, November 4, 1996, thusly:

> 'Said Sec. 28 (b) as amended by RA 4968 in no uncertain terms bars the creation of any insurance or retirement plan – other than the GSIS – for government officers and employees, **in order to prevent the undue and iniquitous proliferation of such plans.** It is beyond cavil that Res. 56 contravenes the said provision of law and is therefore invalid, void and of no effect. To ignore this and rule otherwise would be tantamount to permitting every other government office or agency to put up its own supplementary retirement benefit plan under the guise of such 'financial assistance.' (Emphasis ours)

To hold that Section 6 of E.O. 756 is a retirement law for PTIC employees other than the GSIS law would run counter to the policy of the state to prevent the undue and iniquitous proliferation of retirement plans that would unduly promote the inequality of treatment in the retirement benefits of government employees."[7]

Hence, this petition.

The Issues

Petitioner seeks the nullification and setting aside of the assailed rulings on the following grounds, to wit:

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

A.

RESPONDENT COMMISSION GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE FIRST ASSAILED RULING, OPINING THAT SECTION 6 OF EO 756 WAS NOT MEANT TO BE A PERMANENT RETIREMENT SCHEME OF THE PITC.

B.

RESPONDENT COMMISSION GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE SECOND ASSAILED RULING DENYING PITC'S REQUEST FOR RECONSIDERATION OF THE ABOVE OPINION OF COA GENERAL COUNSEL RAQUEL HABITAN, LIKEWISE HOLDING THAT SECTION 6 of EO 756 WAS NOT MEANT TO BE A PERMANENT SCHEME OF THE PITC.

C.

RESPONDENT COMMISSION GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED RULINGS WHICH ARE CONTRARY TO SETTLED JURISPRUDENCE THAT RETIREMENT LAWS ARE LIBERALLY CONSTRUED AND ADMINISTERED IN FAVOR OF THE PERSONS INTENDED TO BE BENEFITTED AND THAT ALL DOUBTS AS TO THE INTENT OF THE LAW SHOULD BE RESOLVED IN FAVOR OF THE RETIREE TO ACHIEVE ITS HUMANITARIAN PURPOSES.

D.

RESPONDENT COMMISSION GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN RELYING ON SECTION 10 of RA 4968 AS TO THE ALLEGED PROHIBITION AGAINST ANY INSURANCE OR RETIREMENT PLAN OTHER THAN THE GSIS, SAID LAW HAVING BEEN PASSED PRIOR TO THE ISSUANCE OF EO 756. OTHERWISE STATED, SECTION 10 OF RA 4968 IS DEEMED REVISED, AMENDED, SUPERSEDED OR REPEALED BY EO 756 PURSUANT TO THE REPEALING CLAUSE OF SAID EO 756.[8]

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

The Court's Ruling

We find the petition bereft of merit.

It is a rule in statutory construction that every part of the statute must be interpreted with reference to the context, ***i.e.***, that every part of the statute must be considered together with the other parts, and kept subservient to the general intent of the whole enactment.[9] Because the law must not be read in truncated parts, its provisions must be read in relation to the whole law. The statute's clauses and phrases must not, consequently, be taken as detached and isolated expressions, but the whole and every part thereof must be considered in fixing the meaning of any of its parts in order to produce a harmonious whole.[10] Consistent with the fundamentals of statutory construction, all the words in the statute must be taken into consideration in order to ascertain its meaning.[11]

Applying the foregoing principles to the case at bench, we find it well worth emphasizing at the outset that Executive Order No. 756[12] was meant to reorganize petitioner's corporate set-up. While incorporating amendments of petitioner's Revised Charter under Presidential Decree No. 1071 with provisions relating to the subscription of its capital,[13] the establishment of

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[9] *Land Bank of the Philippines v. AMS Farming Corporation*, G.R. No. 174971, October 15, 2008, 569 SCRA 154, 183.

[10] *Mactan-Cebu International Airport Authority v. Urgello,* G.R. No. 162288, April 4, 2007, 520 SCRA 515, 535.

[11] *Smart Communications, Inc. vs. The City of Davao,* G.R. No. 155491, September 16, 2008, 565 SCRA 237, 247-248.

[12] Authorizing the Reorganization of the Philippine International Trading Corporation.

[13] SECTION 1. Subscription to Capital. — The provisions of Section 3 of Presidential Decree No. 1071 otherwise known as "The Revised Charter of the Philippine International Trading Corporation" notwithstanding the forty percent (40%) share in the authorized capital stock of the Corporation allocated for the private sector which is equivalent to 800,00 shares with the total par value of ₱80,000,000 is hereby transferred to and assumed by the National Development Company;

subsidiaries, including joint ventures,[14] the composition[15] and grant of additional powers to its Board of Directors,[16] the

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Likewise, the shares allocated to the Philippine National Bank and the Development Bank of the Philippines as specified in the same Section, which have not been subscribed and paid for amounting to ₱39,000,000 representing 390,000 shares are transferred to and assumed by the National Development Company which shall be fully subscribed and paid-up after the issuance of this Order.

The Budget Ministry is directed to release to the Corporation to carry out its functions the unpaid balance of the share of the National Government amounting to ₱74,000,000.00.

[14] SECTION 2. Subsidiaries. — The Corporation may establish subsidiary companies, including joint ventures, as may be decided by the Board with such participation as it may deem proper and necessary in the performance of its powers and functions, any provisions of law to the contrary notwithstanding. Such subsidiaries created and registered with the Securities and Exchange Commission shall be entitled to all the incentives and privileges granted by law to private enterprise engaged in business activities.

[15] SECTION 3. The Board of Directors. — The Corporation shall be governed by a Board of Directors which shall be composed of the Minister of Trade and Industry as Chairman, the President of the Corporation as Vice-Chairman, and the Director-General of the National Economic and Development Authority, the Minister of Agriculture, the Minister of Natural Resources, Vice-Chairman of the Board of Investments, the General Manager of the National Development Company, a representatives from the Office of the President, the Chairman of the Board of Governors of the Development Bank of the Philippines, the President of the Philippine National Bank, and a representative from the private sector to be appointed by the President, as members.

The members of the Board may, whenever unable to attend its meetings, be represented by their duly designated representatives who shall have the same powers, duties and privileges in those meetings as the members they represent.

[16] SECTION 4. Powers of the Board. — In addition to the powers granted under Presidential Decree No. 1071, any provision of law, rule or regulation to contrary notwithstanding, the Board shall have the following powers:

1) To reorganize the structure of the Corporation, in accordance with its expanded role in the development of Philippine trade, with such officers and employees as may be needed and determine their competitive salaries and reasonable allowances and other benefits to effectively carry out its powers and functions.

appointment of its President,[17] the grant of incentive scheme to its officers and employees[18] as well as its authority to deputize commercial attaches[19] and to grant franchises to operate Philippine trade houses abroad,[20] Section 4 (1) of Executive Order No.

2) To organize an Executive Committee within their ranks, to decide on urgent matters subject to the confirmation of the Board in its proper meetings or, pending such board meetings, to make corporate decisions as needed by referendum or referral to individual members of the Board to be implemented if concurred in by the majority of the required quorum.

3) To determine reasonable rates of per diems and allowances for its members, for their travel and those of its officers and employees, local or foreign, as well as the reasonable remuneration for overtime services and other official business as may be required by the exigencies of this service.

[17] SECTION 5. The President of the Corporation. — The President of the Corporation shall be appointed by the President of the Philippines.

[18] SECTION 7. Incentive Scheme. — The Corporation is hereby authorized to grant incentives to its officers and employees and other persons deputized, detailed or assigned to serve it which shall be drawn from gross income and commissions from marketing operations and other income but excluding income from money market placements; Provided, however, That the total amount of the incentives granted in any one year shall not exceed five percent (5%) of said income from marketing operations and other income, excluding those from money market placements, during the particular year; and Provided, finally, That the distribution thereof shall be in such manner and/or amounts as may be approved by the Board.

[19] SECTION 8. Deputization of Commercial Attaches. — The Corporation, in coordination with the Ministry of Trade and Industry, is hereby authorized to deputize the Commercial Attaches to act as its representatives in their respective areas of assignments to, among others, initials and/or pursue trade opportunities, follow-up on pending business activities including transactional activities and keep the Corporation informed of all opportunities and developments that will enhance the establishment of Philippine presence in that market and any other activity as may be authorized by the Ministry of Trade and Industry. For this purpose, said attaches shall be directed by the Corporation and be provided with appropriate support to carry out the assignment.

Such deputization shall be implemented in accordance with the proper guidelines jointly adopted by the Corporation and the Ministry of Trade and Industry for the different areas of assignment.

[20] SECTION 9. Franchise for Philippine Trade House. — The authority to grant franchises to operate and maintain Philippine Trade Houses abroad is hereby vested in the Corporation. For this purpose, the Corporation shall determine the guidelines for the establishment and operation of said trade houses.

756 specifically authorized petitioner's Board of Directors to "reorganize the structure of the Corporation, in accordance with its expanded role in the development of Philippine trade, with such officers and employees as may be needed and determine their competitive salaries and reasonable allowances and other benefits to effectively carry out its powers and functions." For this purpose, Section 6 of the same law provides as follows:

> SECTION 6. Exemption from OCPC. — In recognition of the special nature of its operations, the Corporation shall continue to be exempt from the application of the rules and regulations of the Office of the Compensation and Position Classification or any other similar agencies that may be established hereafter as provided under Presidential Decree No. 1071. Likewise, *any officer or employee who retires, resigns, or is separated from the service shall be entitled to one month pay for every year of service computed at highest salary received including all allowances, in addition to the other benefits provided by law, regardless of any provision of law or regulations to the contrary*; Provided, That the employee shall have served in the Corporation continuously for at least two years: Provided, further, That in case of separated employees, the separation or dismissal is not due to conviction for any offense the penalty for which includes forfeiture of benefits: and Provided, finally, That in the commutation of leave credits earned, the employees who resigned, retired or is separated shall be entitled to the full payment therefor computed with all the allowances then being enjoyed at the time of resignation, retirement of separation regardless of any restriction or limitation provided for in other laws, rules or regulations. (Italics supplied)

As an adjunct to the reorganization mandated under Executive Order No. 756, we find that the foregoing provision cannot be interpreted independent of the purpose or intent of the law. Rather than the permanent retirement law for its employees that petitioner now characterizes it to be, we find that the provision of gratuities equivalent to "one month pay for every year of service computed at highest salary received including all allowances" was clearly meant as an incentive for employees who retire, resign or are separated from service during or as a consequence of the reorganization petitioner's Board of Directors was tasked to implement. As a temporary measure, it cannot

be interpreted as an exception to the general prohibition against separate or supplementary insurance and/or retirement or pension plans under Section 28, Subsection (b) of Commonwealth Act No. 186,[21] amended. Pursuant to Section 10 of Republic Act No. 4968[22] which was approved on June 17, 1967, said latter provision was amended to read as follows:

> Section 10. Subsection (b) of Section twenty-eight of the same Act, as amended is hereby further amended to read as follows:
>
> (b) Hereafter no insurance or retirement plan for officers or employees shall be created by any employer. All supplementary retirement or pension plans heretofore in force in any government office, agency, or instrumentality or corporation owned or controlled by the government, are hereby declared inoperative or abolished: Provided, That the rights of those who are already eligible to retire thereunder shall not be affected."

In reconciling Section 6 of Executive Order No. 756 with Section 28, Subsection (b) of Commonwealth Act No. 186,[23] as amended, uppermost in the mind of the Court is the fact that the best method of interpretation is that which makes laws consistent with other laws which are to be harmonized rather than having one considered repealed in favor of the other.[24] Time and again, it has been held that every statute must be so interpreted and brought in accord with other laws as to form a uniform system of jurisprudence – *interpretere et concordare legibus est optimus interpretendi*.[25] Thus, if diverse statutes relate to the same thing, they ought to be taken into consideration in construing any one of them, as it is an established rule of law that all acts in *pari materia* are to be taken together, as if they were one law.[26] We find that a temporary and limited

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[21] The Government Service Insurance Act.

[22] An Act Amending Further Commonwealth Act Numbered One Hundred Eighty-Six, As Amended.

[23] The Government Service Insurance Act.

[24] *Akbayan-Youth v. Commission on Elections*, 407 Phil. 618, 639 (2001).

[25] *City Warden of the Manila City Jail vs. Estrella*, 416 Phil. 634, 656 (2001).

[26] *Vda. de Urbano vs. Government Service Insurance System*, 419 Phil.

application of the more beneficent gratuities provided under Section 6 of Executive Order No. 756 is in accord with the pre-existing and general prohibition against separate or supplementary insurance retirement and/or pension plans under Section 28, Subsection (b) of Commonwealth Act No. 186.

In the absence of a manifest and specific intent from which the same may be gleaned, moreover, Section 6 of Executive Order No. 756 cannot be construed as an additional alternative to existing general retirement laws and/or an exception to the prohibition against separate or supplementary insurance retirement or pension plans as aforesaid. Aside from the fact that a meaning that does not appear nor is intended or reflected in the very language of the statute cannot be placed therein by construction,[27] petitioner would likewise do well to remember that repeal of laws should be made clear and express. Repeals by implication are not favored as laws are presumed to be passed with deliberation and full knowledge of all laws existing on the subject,[28] the congruent application of which the courts must generally presume.[29] For this reason, it has been held that the failure to add a specific repealing clause particularly mentioning the statute to be repealed indicates that the intent was not to repeal any existing law on the matter, unless an irreconcilable inconsistency and repugnancy exists in the terms of the new and old laws.[30]

The dearth of merit in petitioner's position is rendered even more evident when it is borne in mind that Executive Order No. 756 was subsequently repealed by Executive Order No. 877 which was issued on February 18, 1983 to hasten the reorganization of petitioner, in light of changing circumstances

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948, 969-970 (2001).

[27] *Government Service and Insurance System v. Commission on Audit*, 484 Phil. 507, 517 (2004).

[28] *Recana, Jr. v. Court of Appeals*, 402 Phil. 26, 35 (2001).

[29] *Republic v. Marcopper Mining Corporation*, 390 Phil. 708, 730 (2000).

[30] *Commission on Audit of the Province of Cebu v. Province of Cebu*, 422 Phil. 519, 529 (2001).

and developments in the world market. For purposes of clarity, the full text of Executive Order No 877 is reproduced hereunder, *viz.*:

"EXECUTIVE ORDER NO. 877
AUTHORIZING THE REORGANIZATION OF THE PHILIPPINE INTERNATIONAL TRADING CORPORATION CREATED UNDER PRESIDENTIAL DECREE NO. 1071, AS AMENDED

WHEREAS, it is the declared policy of the New Republic to pursue national development with renewed dedication and determination;

WHEREAS, there is a need to position and gear up the country's export marketing resources in anticipation of a recovery in the world economy;

WHEREAS, the Philippine International Trading Corporation, hereinafter referred to as the Corporation, is in the vanguard of marketing Philippine exports worldwide;

WHEREAS, in order to accelerate and expand its exports, there is a need to upgrade the management and marketing expertise of the Corporation consistent with the requirements of international marketing;

WHEREAS, in the light of the foregoing, the reorganization of the Corporation becomes imperative;

WHEREAS, under Presidential Decree No. 1416, as amended, the President is empowered to undertake such organizational changes as may be necessary in the light of changing circumstances and development;

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution, and the authority vested on me by Presidential Decree No. 1416, as amended, do hereby order and direct:

1. Reorganization. — The Minister of Trade and Industry is hereby designated Chief Executive Officer of the Corporation with full powers to restructure and reorganize the Corporation and to determine or fix its staffing pattern, compensation structure and related organizational requirements. *The Chairman shall complete such restructuring and reorganization within six (6) months from the date of this Executive Order.* All personnel of the Corporation who

are not reappointed by the Chairman under the new reorganized structure of the Corporation shall be deemed laid off; provided, that personnel so laid off shall be entitled to the benefits accruing to separated employees under Executive Order No. 756 amending the Revised Chapter of the Corporation.

2. Functions of Chairman. — The Chairman of the Corporation shall have the following functions and powers:

a. Exercise all the powers incident to the functions of a Chief Executive Officer, including supervision and control over all personnel of the Corporation;

b. Review, develop, supervise and direct the export marketing thrusts and strategy of the Corporation;

c. Upon recommendation of the President of the Corporation, appoint personnel of the Corporation in executive and senior management positions;

d. Call meetings of the Board of Directors and of the Executive Committee of the Corporation.

3. Personnel Recruitment and Other Services. — In recognition of the special nature of its operation, the Corporation shall, in recruiting personnel and in availing of outside technical services, continue to be exempt from OCPC rules and regulations pursuant to Section 6 of Executive Order No. 756 and Section 28 of Presidential Decree No. 1071. In addition, the provision of Section 7 of Executive Order No. 756 is hereby reaffirmed.

4. Repealing Clause. — *All provisions* of Presidential Decree No. 1071 and *Executive Order No. 756*, as well as of other laws, decrees, executive orders or issuances, or parts thereof, *that are in conflict with this Executive Order, are hereby repealed or modified accordingly*.

5. Effectivity. — This Executive Order shall take effect immediately.

DONE in the City of Manila, this 18th day of February, in the year of Our Lord, Nineteen Hundred and Eighty-Three." (Italics supplied)

Specifically mandated to be accomplished within the limited timeframe of six months from the issuance of the law, the reorganization under Executive Order No. 877 clearly supplanted that which was provided under Executive Order No. 756. Nowhere is this more evident than Section 4 of said latter law which provides that, "All provisions of Presidential Decree No. 1071 and Executive Order No. 756, as well as of other laws, decrees, executive orders or issuances, or parts thereof that are in conflict with this Executive Order, are hereby repealed or modified accordingly." In utilizing the computation of the benefits provided under Section 6 of Executive Order No. 756 for employees considered laid off for not being reappointed under petitioner's new reorganized structure, Executive Order No. 877 was correctly interpreted by respondent to evince an intent not to extend said gratuity beyond the six-month period within which the reorganization is to be accomplished.

In the case of *Conte v. Commission on Audit*,[31] this Court ruled that the prohibition against separate or supplementary insurance and/or retirement plan under Section 28, Subsection (b) of Commonwealth Act No. 186 was meant to prevent the undue and iniquitous proliferation of such plans in different government offices. Both before the issuance and after the effectivity of Executive Order Nos. 756 and 877, petitioner's employees were governed by and availed of the same retirement laws applicable to other government employees in view of the absence of a specific provision thereon under Presidential Decree No. 252,[32] its organic law, and Presidential Decree No. 1071, otherwise known as the *Revised Charter of the PITC*. As appropriately pointed out by respondent, petitioner's observance of said general retirement laws may be gleaned from the fact that the Reserve for Retirement Gratuity and Commutation of Leave Credits for its employees were based only on their basic salary and did not include allowances they received. No less than Eligia Romero, petitioner's employee whose claim for

[31] 332 Phil. 20 (1996).

[32] Authorizing the Creation of a Philippine International Trading Corporation Appropriating Funds Therefor And For Other Purposes.

retirement differentials triggered the instant inquiry, was granted benefits under Republic Act No. 1616 upon her retirement on December 31, 1983.

It doesn't help petitioner's cause any that Section 6 of Executive Order No. 756, in relation to Section 3 of Executive Order No. 877, was further amended by Republic Act No. 6758,[33] otherwise known as the *Compensation and Classification Act of 1989*. Mandated under Article IX B, Section 5[34] of the Constitution,[35] Section 4[36] of Republic Act No. 6758 specifically extends its coverage to government owned and controlled corporations like petitioner. With this Court's ruling in *Philippine International Trading Corporation v. Commission on Audit*[37] to the effect that petitioner is included in the coverage of Republic Act No. 6758, it is evidently no longer exempted from OCPC

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[33] An Act Prescribing A Revised Compensation and Classification System In The Government And For Other Purposes

[34] Sec. 5. The Congress shall provide for the standardization of compensation of government officials and employees, including those in government-owned or controlled corporations with original charters, taking into account the nature of the responsibilities pertaining to, and the qualifications required for their positions.

[35] *Valdez vs. Government Service Insurance System,* G.R. No. 146175, June 30, 2008, 556 SCRA 580, 593.

[36] SEC. 4. Coverage. — The Compensation and Position Classification System herein provided shall apply to all positions, appointive or elective, on full or part-time basis, now existing or hereafter created in the government, including government-owned or controlled corporations and government financial institutions.

The term "government" refers to the Executive, the Legislative and the Judicial Branches and the Constitutional Commissions and shall include all, but shall not be limited to, departments, bureaus, offices, boards, commissions, courts, tribunals, councils, authorities, administrations, centers, institutes, state colleges and universities, local government units, and the armed forces. The term "government-owned or controlled corporations and financial institutions" shall include all corporations and financial institutions owned or controlled by the National Government, whether such corporations and financial institutions perform governmental or proprietary functions.

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

rules and regulations, in keeping with said law's intent to do away with multiple allowances and other incentive packages as well as the resultant differences in compensation among government personnel.

In the context of petitions for *certiorari* like the one at bench, grave abuse of discretion is understood to be such capricious and whimsical exercise of jurisdiction as is equivalent to lack of jurisdiction.[38] It is tantamount to an evasion of a positive duty or to virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as when the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility.[39] As the Constitutional office tasked with the duty to examine, audit and settle all accounts pertaining to the revenue, and receipts of and expenditures or uses of funds and property, owned or held in trust by or pertaining to the government or any of its subdivisions,[40] respondent committed no grave abuse of discretion in disapproving petitioner's utilization of Section 6 of Executive Order No. 756 in the computation of its employees' retirement benefits.

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

SO ORDERED.

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

Carpio, J., no part. Close relative to employee concerned.

Mendoza, J., on leave.

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[38] *Nepomuceno vs. Court of Appeals,* 363 Phil. 304, 308 (1999).

[39] *J.L. Bernardo Construction vs. Court of Appeals,* 381 Phil. 25, 36 (2000).

[40] *Belicena v. Secretary of Finance,* 419 Phil. 792, 799 (2001).

EN BANC

[G.R. No. 183711. June 22, 2010]

EDITA T. BURGOS, *petitioner, vs.* **PRESIDENT GLORIA MACAPAGAL-ARROYO, GEN. HERMOGENES ESPERON, JR., LT. GEN. ROMEO P. TOLENTINO, MAJ. GEN. JUANITO GOMEZ, MAJ. GEN. DELFIN BANGIT, LT. COL. NOEL CLEMENT, LT. COL. MELQUIADES FELICIANO, and DIRECTOR GENERAL OSCAR CALDERON,** *respondents*.

[G.R. No. 183712. June 22, 2010]

EDITA T. BURGOS, *petitioner, vs.* **PRESIDENT GLORIA MACAPAGAL-ARROYO, GEN. HERMOGENES ESPERON, JR., LT. GEN. ROMEO P. TOLENTINO, MAJ. GEN. JUANITO GOMEZ, LT. COL. MELQUIADES FELICIANO, and LT. COL. NOEL CLEMENT,** *respondents.*

[G.R. No. 183713. June 22, 2010]

EDITA T. BURGOS, *petitioner, vs.* **CHIEF OF STAFF OF THE ARMED FORCES OF THE PHILIPPINES; GEN. HERMOGENES ESPERON, JR.; Commanding General of the Philippine Army, LT. GEN. ALEXANDER YANO; and Chief of the Philippine National Police, DIRECTOR GENERAL AVELINO RAZON, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULE ON THE WRIT OF *AMPARO*; FAILURE OF PNP AND AFP TO EXERCISE THE REQUIRED EXTRAORDINARY DILIGENCE IN THE INVESTIGATION.— [W]e conclude that the PNP and the AFP have so far failed to conduct an exhaustive and meaningful investigation into the disappearance of Jonas Burgos, and to exercise the extraordinary diligence (in the performance of their duties) that the Rule on

the Writ of *Amparo* requires. Because of these investigative shortcomings, we cannot rule on the case until a more meaningful investigation, using extraordinary diligence, is undertaken.

2. ID.; ID.; ID.; CIRCUMSTANCES SHOWING SIGNIFICANT LAPSES IN THE HANDLING OF THE INVESTIGATION. — [W]e note that there are very significant lapses in the handling of the investigation — among them the PNP-CIDG's failure to identify the cartographic sketches of two (one male and one female) of the five abductors of Jonas based on their interview of eyewitnesses to the abduction. x x x No search and certification were ever made on whether these persons were AFP personnel or in other branches of the service, such as the Philippine Air Force. x x x We note, too, that no independent investigation appeared to have been made by the PNP-CIDG to inquire into the veracity of Lipio's and Manuel's claims that Jonas was abducted by x x x the CPP/NPA guerilla unit RYG.

3. ID.; ID.; ID.; REFERRAL OF THE CASE TO THE COMMISSION ON HUMAN RIGHTS FOR FURTHER INVESTIGATION. — While significant leads have been provided to investigators, the investigations by the PNP-CIDG, the AFP Provost Marshal, and even the Commission on Human Rights (*CHR*) have been less than complete. The PNP-CIDG's investigation particularly leaves much to be desired in terms of the extraordinary diligence that the Rule on the Writ of *Amparo* requires. For this reason, we resolve to refer the present case to the CHR as *the Court's directly commissioned agency tasked with the continuation of the investigation of the Burgos abduction and the gathering of evidence, with the obligation to report its factual findings and recommendations to this Court.* We take into consideration in this regard that the CHR is a specialized and independent agency created and empowered by the Constitution to investigate all forms of human rights violations involving civil and political rights and to provide appropriate legal measures for the protection of human rights of all persons within the Philippines.

APPEARANCES OF COUNSEL

Pacifico A. Agabin and *Fernandez & Kasilag-Villanueva & Roberto M.J. Lara* for petitioner.
The Solicitor General for respondents.

R E S O L U T I O N

BRION, *J.*:

On July 17, 2008, the Court of Appeals (*CA*) issued a decision[1] in the consolidated petitions for the Issuance of the Writ of *Habeas Corpus*,[2] for Contempt[3] and for the Issuance of a Writ of *Amparo*[4] filed by petitioner Edita T. Burgos on behalf of her son Jonas Joseph T. Burgos, who was *forcibly taken* and *abducted* by a group of four men and by a woman from the extension portion of Hapag Kainan Restaurant, located at the ground floor of Ever Gotesco Mall, Commonwealth Avenue, Quezon City, on April 28, 2007. This CA decision[5] dismissed

[1] *Rollo*, pp. 71-119.

[2] CA-G.R. SP No. 99839.

[3] CA-G.R. SP No. 100230.

[4] CA-G.R. SP No. 00008-WA.

[5] The dispositive portion of the CA decision reads:

WHEREFORE, based on all of the foregoing premises, judgment is hereby rendered as follows:

1. The Petition for *Habeas Corpus* in CA-G.R. SP No. 99839 and the Petition for Contempt in CA-G.R. SP No. 100230 are both **DISMISSED**.

2. The Petition for *Amparo* in CA-G.R. SP No. 00008-WA is PARTIALLY GRANTED. The privilege of the writ of *amparo* is granted as hereunder specified, *viz*:

1. Respondents Lt. Gen. Alexander Yano and Dir. Gen. Avelino Razon, Jr., are hereby **ORDERED** to make available, and provide copies to petitioner, all documents and records in their possession relevant to the case of Jonas Joseph Burgos, subject to reasonable regulations consistent with the Constitution and existing laws;

2. Respondent Commission on Human Rights, through its Chairperson, is DIRECTED to furnish petitioner documents not yet on file with this Court, pursuant to its undertaking before this Court during the hearing held on January 21, 2008;

the petitioner's petition for the Issuance of the Writ of *Habeas Corpus*; denied the petitioner's motion to declare the respondents in contempt; and partially granted the privilege of the Writ of *Amparo* in favor of the petitioner.

The Antecedents

The established facts, as found by the CA, are summarized below:[6]

The established facts show that at around one o'clock in the afternoon of April 28, 2007, Jonas Joseph T. Burgos – a farmer advocate and a member of *Kilusang Magbubukid sa Bulacan* (a chapter of the militant peasant organization *Kilusang Magbubukid ng Pilipinas*) – was forcibly taken and abducted by a group of four (4) men and a woman from the extension portion of Hapag Kainan Restaurant, located at the ground floor of Ever Gotesco Mall, Commonwealth Avenue, Quezon City. On his way out of the restaurant, Jonas told the manager, "*Ma'am aktibista lang po ako*!" When a security guard tried to intervene, after he noticed that the group was forcibly dragging a male person out of the restaurant, he was told, "*Pare, pulis*!" The guard then backed off but was able to see that Jonas was

3. Respondent Dir. Gen. Avelino Razon, Jr. is hereby **DIRECTED** to continue with, and conduct, a full and thorough investigation of the case of Jonas Joseph Burgos and to cause the immediate filing of the appropriate charges against all those who may be found responsible therefor with the Department of Justice;

4. Respondent Lt. Gen. Alexander Yano is likewise hereby **DIRECTED** to conduct a thorough investigation of the circumstances surrounding the loss of license plate no. TAB 194 and the possible involvement of any AFP personnel in the alleged abduction of Jonas Joseph Burgos;

5. Respondents Lt. Gen. Yano and Dir. Gen. Razon are hereby **REQUIRED** to submit a compliance report to this Court, copy furnished the petitioner, within ten (10) days after completion of their respective organization.

Petitioner's Motion to Declare Respondents in Contempt is **DENIED** admission and ordered expunged from the records of this case.

Respondents' Manifestation and Motion dated July 1, 2008 is **NOTED**.

SO ORDERED.

[6] *Rollo,* pp. 96-97.

forced into the rear portion of a plain maroon colored Toyota Revo with plate number TAB 194. The guard then noted the plate number and reported the incident to his superiors as well as to the police on duty in the said mall.

On April 30, 2007, the petitioner held a press conference and announced that her son Jonas was missing. That same day, the petitioner sought confirmation from the guard if the person abducted was her son Jonas. Upon subsequent police investigation and LTO verification, it was discovered that plate number TAB 194 was registered to a 1991 Isuzu XLT vehicle owned by a certain Mauro B. Mudlong. It was also later confirmed by employees of the Department of Environment and Natural Resources (*DENR*) that Mudlong was arrested and his 1991 Isuzu XLT vehicle was seized on June 24, 2006 by Cpl. Castro Bugalan and Pfc. Jose Villeña of the 56th Infantry Battalion (*IB*) of the Philippine Army for transporting timber without permit. As agreed upon by the DENR employees and officers of the 56th IB, the vehicle with the license plate no. TAB 194 was impounded in the 56th IB headquarters whose commanding officer at that time was Lt. Col. Noel Clement.

The established facts also show that Lt. Col. Clement and the soldiers of the 56th IB went on retraining at the Headquarters of the First Scout Rangers Regiment (*Camp Tecson*) in *Brgy*. Tartaro, San Miguel, Bulacan starting November 28, 2006. A "left-behind force" or a squad remained in the camp of the 56th IB to secure the premises and equipment as it awaited the arrival of the 69th IB, headed by Lt. Col. Edison Caga, which took over the 56th IB's area of responsibility for the duration of the retraining. The 69th IB arrived at Camp Tecson on December 1, 2006, and remained there until March 7, 2007, when the 56th IB returned. There was no formal turnover or inventory of equipment and vehicles when the 69th IB arrived on December 1, 2006.

Meanwhile, on January 17, 2007, Lt. Col. Melquiades Feliciano took command of the 56th IB from Lt. Col. Clement. The actual turnover of command took place at Camp Tecson where the 56th IB was retraining. At the time Jonas was abducted on April

28, 2007, Lt. Col. Feliciano was the 56th IB's commanding officer. Earlier, on March 23, 2007, 2nd Lt. Dick A. Abletes, a member of the 56th IB, was caught on video talking to two persons, a male and a female, at McDonald's Bocaue. In the video, he was seen handing a document to the two persons. On March 26, 2007, 2nd Lt. Abletes was arrested and charges were soon filed against him with the Judge Advocate General for violations of Articles 82, 96 and 97 of the Articles of War.

Prior to Jonas' abduction, Mudlong's 1991 Isuzu XLT vehicle remained impounded at the 56th IB's Headquarters. In May 2007, right after Jonas' abduction was made public, it was discovered that plate number TAB 194 of this 1991 Isuzu XLT vehicle was missing, and the engine and other spare parts were "cannibalized."

On direct examination, the petitioner testified before the CA that the police was able to generate cartographic sketches of two (one male and one female) of the abductors of Jonas based on its interview of eyewitnesses.[7] The petitioner narrated further that these cartographic sketches were identified by State Prosecutor Emmanuel Velasco of the Department of Justice (*DOJ*); that when she went to see State Prosecutor Velasco personally, he gave her "five names" who were allegedly involved in the abduction of Jonas (namely T/Sgt. Jason Roxas, Cpl. Joana Francisco, M/Sgt. Aron Arroyo, and 1st Lt. Jaime Mendaros);[8] and that the information from State Prosecutor

[7] TSN, January 21, 2008, p. 21.

[8] *Id.* at 21-22. In support of her petition for the Writ of *Amparo*, the petitioner attached a copy of the Newsbreak Article by Glenda M. Gloria dated December 10, 2007 which alleged among others:

In his July 9, 2007 order to the National Bureau of Investigation, Velasco named three alleged ISAFP agents, including a woman, who allegedly took part in the abduction. The military has said that none of the names were on its roster, although an eyewitness account indeed points to one woman as part of the team. Incidentally, ISAFP has two key female agents.

Citing information from contacts of the Burgos family, Velasco also said that two other vehicles served as backups to the Toyota Revo that drove Jonas out of the mall: a maroon Lancer with plate number WAM 155 and a Toyota Altis with plate number XBX 881. The latter turned out to be a staff

Velasco's sources corroborated the same information she received earlier from her own sources.[9] The petitioner also testified that nothing came out of the information given by State Prosecutor Velasco because he was "pulled out from the investigation by the DOJ Secretary,"[10] and that the police, particularly P/Supt. Jonnel C. Estomo, failed to investigate and act upon these leads.[11]

On August 30, 2007, P/Supt. Estomo (the lead investigator in the investigation conducted by the Philippine National Police-Criminal Investigation and Detection Group [*PNP-CIDG*]) testified before the CA that he did not investigate or look into the identities of the cartographic sketches of the two abductors provided by the PNP Criminal Investigation Unit, Quezon City.[12] P/Supt. Estomo testified further that he showed the photos of Cpl. Bugalan and Pfc.Villeña to witness Larry Marquez for

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car of General Tolentino, Army chief at the time, prompting him to raise a howl over what he claimed as planted information designed to discredit him.

Velasco has since been sacked from the probe, and his order to the NBI is now gathering dust. [See Annex "B" of the petitioner's Petition for Review on *Certiorari* dated July 30, 2008; *rollo*, p. 125.]

According to newspaper reports, State Prosecutor Velasco issued an Order asking the NBI to investigate T/Sgt. Jason Roxas (PA), Cpl. Maria Joana Francisco (PAF), M/Sgt. Aron Arroyo (PAF), and an *alias* T.L., all reportedly assigned with Military Intelligence Group 15 of the Isafp. Also ordered investigated were Lt. Col. Noel Clement, former commander of the 56th IB, and Army 1st Lt. Jaime Mendaros, reportedly assigned with the 56th IB. See Lira Dalagin-Fernandez, *Gonzalez Eyes Relief of Velasco from Burgos Case*, Philippine Daily Inquirer, (11 July 2007), available at http://newsinfo.inquirer.net/topstories/topstories/view/2007071176029/Gonzalez_eyes_relief_of_Velasco_from_Burgos_case, (last visited on June 7, 2010); see also Thea Alberto, *DoJ, Usig To Probe Patterns In "Erap 5," Burgos Abductions*, Philippine Daily Inquirer, (July 11, 2007), available at http://newsinfo.inquirer.net/breakingnews/nation/view/2007071176084/DoJ%2C_Usig_to_probe_patterns_in_%91Erap_5%2C%92_Burgos_abductions (last visited on June 7, 2010).

[9] *Supra* note 7, at 24.

[10] *Ibid*.

[11] *Id.* at 21.

[12] TSN, August 30, 2007, p. 119.

identification but failed to show any photos of the other officers and men of the 56th IB.[13] Finally, P/Supt. Estomo also testified that he did not propound any clarificatory questions regarding the disappearance of Jonas Burgos to Lt. Cols. Feliciano, Clement, and Caga of the 56th IB who merely voluntarily submitted their statements.[14]

On August 29, 2007, the PNP-CIDG presented Emerito Lipio @ KA TIBO/KA CRIS, Marlon D. Manuel @ KA CARLO, and Melissa Concepcion Reyes @ KA LISA/RAMIL to support the theory that elements of the New People's Army (*NPA*) perpetrated the abduction of Jonas.[15] In his Sworn Statement, Lipio admitted that he is a member of the Communist Party of the Philippines (*CPP*)/NPA and that the NPA was behind the abduction of Jonas. Lipio revealed that Jonas is known as @KA RAMON in the communist movement. He claimed further that he and @KA RAMON belonged to the Bulacan Party Committee, assigned to the White Area Committee doing intelligence work for the movement under the leadership of Delfin de Guzman @ KA BASTE, and that @KA RAMON was their political instructor and head of the intelligence unit in the province.[16]

Sometime early April of 2007, Lipio was present in a meeting between @KA BASTE and @KA RAMON. At this meeting, the two had a heated argument. For this reason, @KA BASTE instructed Lipio to place @KA RAMON under surveillance as they suspected him of pilfering funds from the party and of acting as a military agent.[17]

Lipio further averred that upon instruction of @KA BASTE, he and a certain @KA CARLO proceeded to Ever Gotesco Mall on April 28, 2007 to monitor the reported meeting between @KA RAMON and other party members. At one o'clock in

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

[14] *Id.* at 132.

[15] CA *rollo*, pp. 424-427.

[16] *Id.* at 407-412.

[17] *Ibid.*

the afternoon, Lipio and @KA CARLO (who stationed themselves near the entrance/exit of the mall) saw a man, who they recognized as @KA RAMON, forcibly taken by four men, brought outside of the mall, and shoved inside a Toyota Revo. Lipio further alleged that he recognized two of the abductors as "@KA DANTE" and "@KA ENSO" who he claims to be members of the CPP/NPA's guerilla unit (RYG).[18]

In his Sworn Statement, Manuel affirmed and substantiated Lipio's statement that @KA RAMON and Jonas are one and the same person and that he is a member of the communist movement in Bulacan. Manuel also corroborated Lipio's statement regarding the circumstances of the abduction of @KA RAMON at Ever Gotesco Mall on April 28, 2007; he confirmed that he and @ KA TIBO witnessed the abduction.[19]

Reyes, a rebel-returnee, provided in her Sworn Statement additional material information regarding the disappearance of Jonas. Reyes alleged that she was supposed to meet with @KA RAMON and another comrade in the movement (whom she identified as @KA JO) to discuss the possibility of arranging a meeting with a contact in the military. She averred that she met @KA JO at about 11:30 a.m. at the Baliaug Transit Terminal, Cubao enroute to Ever Gotesco mall where they would meet with a certain @KA RAMON. Reyes further narrated that they arrived about noon at Ever Gotesco mall; @KA JO left her at McDonald's and told her to wait while he went to look for @KA RAMON. After an hour, @KA JO arrived without @KA RAMON and told Reyes to go home and just keep in touch through text messaging. Reyes alleged further that she has not heard from @KA JO since.[20]

The CA Findings

In its July 17, 2008 decision, the CA found that the evidence the petitioner presented failed to establish her claimed direct connection between the abductors of Jonas and the military.

[18] *Ibid.*

[19] *Id.* at 413-419.

[20] *Id.* at 420-422.

The CA noted that the evidence does not show how license plate number TAB 194 (supposedly attached to the 1991 Isuzu XLT vehicle impounded at the 56th IB Headquarters) came to be attached to the getaway Toyota Revo on April 28, 2007, and whether the two license plates are one and the same at all. The CA emphasized that the evidence does not indicate whether the abductors are members of the military or the police or are civilians; if they are civilians, whether they acted on their own or were following orders, and in the latter case, from whom.

The CA also found that the investigations by the Armed Forces of the Philippines (*AFP*) and the PNP "leave much to be desired as they did not fully exert their effort to unearth the truth and to bring the real culprits before the bar of justice."[21] The CA held that since the petitioner has established that the vehicle used in the abduction was linked to a vehicle (with license plate number TAB 194) impounded at the headquarters of the 56th IB, it became the burden of the AFP to exercise extraordinary diligence to determine the why and the wherefore of the loss of the license plate in their custody and its appearance in a vehicle (a maroon Toyota Revo) used in Jonas' abduction. The CA also ruled that the AFP has the burden of "connect[ing] certain loose ends"[22] regarding the identity of @Ka Ramon (as referred to by the petitioner's witnesses) and the allegation that @Ka Ramon is indeed Jonas in the "Order of Battle."

As for the PNP-CIDG, the CA branded its investigation as "rather shallow" and "conducted haphazardly." The CA took note that P/Supt. Estomo's investigation merely delved into the *administrative liability* of Lt. Col. Clement, Lt. Col. Feliciano and Lt. Col. Caga of the 56th IB, and failed to consider them as suspects in the abduction of Jonas. The CA emphasized that the PNP-CIDG's investigation should focus on the criminal aspect of the present case pursuant to Section 24 of Republic Act No. 6975, which mandates the PNP to "investigate and prevent crimes, effect the arrest of criminal offenders, bring offenders to justice and assist in their prosecution."

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[21] *Id.* at 108.

[22] *Id.* at 110.

The CA also found P/Supt. Estomo's recommendation that appropriate charges be filed against Mauro Mudlong (registered owner of the impounded 1991 Isuzu XLT vehicle with plate license no. TAB 194) to be without any factual basis since no evidence was presented to connect the latter to the loss of the license plate as well as to the abduction of Jonas. The CA stressed that it could not find any valid reason why Mudlong should be treated any differently from the three 56th IB colonels whom the PNP-CIDG did not consider as suspects despite the established fact that license plate no. TAB 194 was lost while in their custody.

On the PNP-CIDG's new information from Lipio who claimed to have seen Jonas being abducted by a certain @KA DANTE and @KA ENSO of the CPP/NPA guerilla unit RYG, and on Marlon Manuel, who corroborated Lipio's statements, the CA held that steps should be taken by the PNP-CIDG to verify the veracity of these statements. Notwithstanding the new information, the CA noted that the PNP-CIDG should not discount the possible involvement of members of the AFP. Thus, the CA concluded that the PNP must exert extraordinary diligence in following all possible leads to resolve the crime committed against Jonas. Finally, the CA noted — based on the Certification issued by the Assistant Chief State Prosecutor, DOJ dated March 5, 2008 — that no case has been referred by the PNP to the DOJ for preliminary investigation in relation to the abduction and disappearance of Jonas. This is contrary to PNP's manifest representation that it had already forwarded all pertinent and relevant documents to the DOJ for the filing of appropriate charges against the suspects (*i.e.*, @KA DANTE and @KA ENSO).

The CA also held that the petitions for *habeas corpus* and contempt as against President Gloria Macapagal-Arroyo must be dropped since she enjoys the privilege of immunity from suit. The CA ruled that the President's immunity from suit is a settled doctrine citing *David v. Arroyo*.[23]

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[23] G.R. Nos. 171396, 171409, 171485, 171483, 171400, 171489, and 171424, May 3, 2006, 489 SCRA 160.

Our Ruling

Considering the findings of the CA and our review of the records of the present case, we conclude that the PNP and the AFP have so far failed to conduct an exhaustive and meaningful investigation into the disappearance of Jonas Burgos, and to exercise the extraordinary diligence (in the performance of their duties) that the Rule on the Writ of *Amparo* requires. Because of these investigative shortcomings, we cannot rule on the case until a more meaningful investigation, using extraordinary diligence, is undertaken.

From the records, we note that there are very significant lapses in the handling of the investigation — among them the PNP-CIDG's failure to identify the cartographic sketches of two (one male and one female) of the five abductors of Jonas based on their interview of eyewitnesses to the abduction. This lapse is based on the information provided to the petitioner by no less than State Prosecutor Emmanuel Velasco of the DOJ who identified the persons who were possibly involved in the abduction, namely: T/Sgt. Jason Roxas (Philippine Army), Cpl. Maria Joana Francisco (Philippine Air Force), M/Sgt. Aron Arroyo (Philippine Air Force), and an *alias* T.L., all reportedly assigned with Military Intelligence Group 15 of Intelligence Service of the AFP.[24] No search and certification were ever made on whether these persons were AFP personnel or in other branches of the service, such as the Philippine Air Force. As testified to by the petitioner, *no significant follow through was also made by the PNP-CIDG in ascertaining the identities of the cartographic sketches of two of the abductors despite the evidentiary leads provided by State Prosecutor Velasco of the DOJ.* Notably, the PNP-CIDG, as the lead investigating agency in the present case, did not appear to have lifted a finger to pursue these aspects of the case.

We note, too, that no independent investigation appeared to have been made by the PNP-CIDG to inquire into the veracity of Lipio's and Manuel's claims that Jonas was abducted by a

[24] *Supra* note 10.

certain @KA DANTE and a certain @KA ENSO of the CPP/NPA guerilla unit RYG. The records do not indicate whether the PNP-CIDG conducted a follow-up investigation to determine the identities and whereabouts of @KA Dante and @KA ENSO. These omissions were aggravated by the CA finding that the PNP has yet to refer any case for preliminary investigation to the DOJ despite its representation before the CA that it had forwarded all pertinent and relevant documents to the DOJ for the filing of appropriate charges against @KA DANTE and @KA ENSO.

Based on these considerations, we conclude that further investigation and monitoring should be undertaken. While significant leads have been provided to investigators, the investigations by the PNP-CIDG, the AFP Provost Marshal, and even the Commission on Human Rights (*CHR*) have been less than complete. The PNP-CIDG's investigation particularly leaves much to be desired in terms of the extraordinary diligence that the Rule on the Writ of *Amparo* requires. For this reason, we resolve to refer the present case to the CHR as *the Court's directly commissioned agency tasked with the continuation of the investigation of the Burgos abduction and the gathering of evidence, with the obligation to report its factual findings and recommendations to this Court.* We take into consideration in this regard that the CHR is a specialized and independent agency created and empowered by the Constitution to investigate all forms of human rights violations involving civil and political rights and to provide appropriate legal measures for the protection of human rights of all persons within the Philippines.[25]

Under this mandate, the CHR is tasked to conduct appropriate investigative proceedings, including field investigations – acting as the Court's directly commissioned agency for purposes of the Rule on the Writ of *Amparo* – with the tasks of: (a) ascertaining the identities of the persons appearing in the cartographic sketches of the two alleged abductors as well as their whereabouts; (b) determining based on records, past and present, the identities and locations of the persons identified by State Prosecutor Velasco

[25] CONSTITUTION, Article XIII, Section 18.

alleged to be involved in the abduction of Jonas, namely: T/Sgt. Jason Roxas (Philippine Army); Cpl. Maria Joana Francisco (Philippine Air Force), M/Sgt. Aron Arroyo (Philippine Air Force), and an *alias* T.L., all reportedly assigned with Military Intelligence Group 15 of Intelligence Service of the AFP; further proceedings and investigations, as may be necessary, should be made to pursue the lead allegedly provided by State Prosecutor Velasco on the identities of the possible abductors; (c) inquiring into the veracity of Lipio's and Manuel's claims that Jonas was abducted by a certain @KA DANTE and @KA ENSO of the CPP/NPA guerilla unit RYG; (d) determining based on records, past and present, as well as further investigation, the identities and whereabouts of @KA DANTE and @KA ENSO; and (e) undertaking all measures, in the investigation of the Burgos abduction that may be necessary to live up to the extraordinary measures we require in addressing an enforced disappearance under the Rule on the Writ of *Amparo*.

WHEREFORE, in the interest of justice and for the foregoing reasons, the Court *RESOLVES* to:

(1) *DIRECT* the Commission on Human Rights to conduct appropriate investigative proceedings, including field investigations – acting as the Court's directly commissioned agency for purposes of the Rule on the Writ of *Amparo* — with the tasks of: (a) ascertaining the identities of the cartographic sketches of two of the abductors as well as their whereabouts; (b) determining based on records, past and present, the identities and locations of the persons identified by State Prosecutor Velasco alleged to be involved in the abduction of Jonas namely: T/Sgt. Jason Roxas (Philippine Army), Cpl. Maria Joana Francisco (Philippine Air Force), M/Sgt. Aron Arroyo (Philippine Air Force), and an *alias* T.L., all reportedly assigned with Military Intelligence Group 15 of Intelligence Service of the Armed Forces of the Philippines; further proceedings and investigations, as may be necessary, should be made to pursue the lead allegedly provided by State Prosecutor Velasco on the identities of the possible abductors; (c) inquiring into the veracity of Lipio's and Manuel's claims that Jonas was abducted by a certain @KA DANTE and @KA ENSO of the CPP/NPA guerilla unit RYG; (d)

determining based on records, past and present, as well as further investigation, the identities and whereabouts of @KA DANTE and @KA ENSO; and (e) undertaking all measures, in the investigation of the Burgos abduction, that may be necessary to live up to the extraordinary measures we require in addressing an enforced disappearance under the Rule on the Writ of *Amparo*;

(2) *REQUIRE* the *incumbent* Chiefs of the Armed Forces of the Philippines and the Philippine National Police to make available and to provide copies, to the Commission on Human Rights, of all documents and records in their possession and as the Commission on Human Rights may require, relevant to the case of Jonas Joseph T. Burgos, subject to reasonable regulations consistent with the Constitution and existing laws;

(3) *DIRECT* the PNP-CIDG and its incumbent Chief to submit to the Commission on Human Rights the records and results of the investigation the PNP-CIDG claimed to have forwarded to the Department of Justice, which were not included in their previous submissions to the Commission on Human Rights, including such records as the Commission on Human Rights may require, pursuant to the authority granted under this Resolution;

(4) Further *DIRECT* the PNP-CIDG to provide direct investigative assistance to the Commission on Human Rights as it may require, pursuant to the authority granted under this Resolution;

(5) *AUTHORIZE* the Commission on Human Rights to conduct a comprehensive and exhaustive investigation that extends to all aspects of the case (not limited to the specific directives as outlined above), as the extraordinary measures the case may require under the Rule on the Writ of *Amparo*; and

(6) *REQUIRE* the Commission on Human Rights to submit to this Court a Report with its recommendations, copy furnished the petitioner, the incumbent Chiefs of the AFP, the PNP and the PNP-CIDG, and all the respondents, within ninety (90) days from receipt of this Resolution.

In light of the retirement of Lt. General Alexander Yano and the reassignment of the other respondents who have all been impleaded in their official capacities, all subsequent resolutions and actions from this Court shall *also be served* on, and be directly enforceable by, the incumbents of the impleaded offices/units whose official action is necessary. The *present respondents* shall continue to be personally impleaded for purposes of the responsibilities and accountabilities they may have incurred during their incumbencies.

The dismissal of the petitions for Contempt and for the Issuance of a Writ of *Amparo* with respect to President Gloria Macapagal-Arroyo is hereby *AFFIRMED*.

SO ORDERED.

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

Mendoza, J., on leave.

EN BANC

[G.R. No. 187231. June 22, 2010]

MINERVA GOMEZ-CASTILLO, *petitioner, vs.* **COMMISSION ON ELECTIONS and STRIKE B. REVILLA,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; JURISDICTION AND RULE ON VENUE IN ELECTION CONTESTS INVOLVING MUNICIPAL OFFICIALS, EXPLAINED; *BATAS PAMBANSA BLG.* 881 (OMNIBUS ELECTION CODE) IN RELATION TO A.M. NO. 07-4-15-SC, CONSTRUED AND APPLIED. — The

jurisdiction over election contests involving elective municipal officials has been vested in the RTC by Section 251, *Batas Pambansa Blg*. 881 (*Omnibus Election Code*). On the other hand, A.M. No. 07-4-15-SC, by specifying the proper venue where such cases may be filed and heard, only spelled out the manner by which an RTC with jurisdiction exercises such jurisdiction. Like other rules on venue, A.M. No. 07-4-15-SC was designed to ensure a just and orderly administration of justice, and is permissive, because it was enacted to ensure the exclusive and speedy disposition of election protests and petitions for *quo warranto* involving elective municipal officials. Castillo's filing her protest in the RTC in Bacoor, Cavite amounted only to a wrong choice of venue. Hence, the dismissal of the protest by Branch 19 constituted plain error, considering that her wrong choice did not affect the jurisdiction of the RTC. What Branch 19 should have done under the circumstances was to transfer the protest to Branch 22 of the RTC in Imus, Cavite, which was the proper venue. Such transfer was proper, whether she as the protestant sought it or not, given that the determination of the will of the electorate of Bacoor, Cavite according to the process set forth by law was of the highest concern of our institutions, particularly of the courts.

2. ID.; ID.; COMELEC RULES OF PROCEDURE; EFFECT OF TARDY APPEAL IN ELECTION CONTESTS. — The period of appeal and the perfection of appeal are not mere technicalities to be so lightly regarded, for they are essential to the finality of judgments, a notion underlying the stability of our judicial system. A greater reason to adhere to this notion exists herein, for the short period of five days as the period to appeal recognizes the essentiality of time in election protests, in order that the will of the electorate is ascertained as soon as possible so that the winning candidate is not deprived of the right to assume office, and so that any doubt that can cloud the incumbency of the truly deserving winning candidate is quickly removed. Contrary to Castillo's posture, we cannot also presume the timeliness of her appeal from the fact that the RTC gave due course to her appeal by its elevating the protest to the COMELEC. The presumption of timeliness would not arise if her appeal was actually tardy. It is not trite to observe, finally, that Castillo's tardy appeal resulted in the finality of the RTC's dismissal even before January 30, 2002. This result provides

an additional reason to warrant the assailed actions of the COMELEC in dismissing her appeal.

APPEARANCES OF COUNSEL

Sayuno Mendoza & San Jose Law Offices for petitioner.
George Erwin M. Garcia for private respondent.

D E C I S I O N

BERSAMIN, *J.*:

Petitioner Minerva Gomez-Castillo (Castillo) hereby seeks to nullify the orders dated January 30, 2009 and March 11, 2009[1] issued in EAC No. A-01-2009 by the Commission on Elections (COMELEC).

Antecedents

Castillo and respondent Strike P. Revilla ran for Municipal Mayor of Bacoor, Cavite during the May 14, 2007 local elections. After the Municipal Board of Canvassers proclaimed Revilla as the elected Municipal Mayor of Bacoor, Cavite, Castillo filed an Election Protest *Ad Cautelam*[2] in the Regional Trial Court (RTC) in Bacoor, Cavite, which was eventually raffled to Branch 19.

Through his Answer, Revilla sought the dismissal of the election protest, alleging that it was filed in the wrong Branch of the RTC. He pointed out that Supreme Court Administrative Order (SCAO) No. 54-2007 designated Branch 22 of the RTC in Imus, Cavite and Branch 88 of the RTC in Cavite City to

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[1] Both issued by then Presiding Commissioner Rene V. Sarmiento; Commissioner Leonardo L. Leonida; and Commissioner Armando C. Velasco; record, pp. 23 and 37.

[2] The protest was designated "*ad cautelam*" because it was filed during the pendency of Castillo's Petition to Declare Failure of Elections before the COMELEC, which was dismissed by the Commission shortly after the filing of the election protest. All these can clearly be gleaned from the third paragraph of the RTC Bacoor's Order dated November 21, 2008, Record, p. 16.

hear, try and decide election contests involving municipal officials in Cavite; and that contrary to SCAO No. 54-2007, Castillo filed his protest in the RTC in Bacoor, Cavite, which was not the proper court.

On November 21, 2008, Branch 19 dismissed Castillo's election protest for being violative of SCAO No. 54-2007.

On December 23, 2008, Castillo presented a *notice of appeal*.[3] Thereupon, the RTC ordered that the complete records of the protest be forwarded to the Election Contests Adjudication Department (ECAD) of the COMELEC.[4]

The First Division of the COMELEC dismissed the appeal for being brought beyond the five-day reglementary period, noting that although Castillo had received the November 21, 2008 order of the RTC on December 15 , 2008, she filed her *notice of appeal* on December 23, 2008, a day too late to appeal, to wit:

> Pursuant to Section 3, Rule 22 of the COMELEC Rules of Procedure which requires the appellant to file her notice of appeal "within five (5) days after promulgation of the decision of the court xxx" and considering further that jurisprudence holds that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but JURISDICTIONAL, this Commission, First Division, RESOLVES to DISMISS the instant appeal for appellant's failure to file her Notice of Appeal within the five (5) day reglementary period.
>
> SO ORDERED.[5]

Castillo moved for the reconsideration of the dismissal of her appeal, but the COMELEC denied the motion because she did not pay the motion fees required under Sec. 7(f), Rule 40 of the COMELEC Rules of Procedure, as amended by COMELEC Resolution No. 02-0130, *viz:*

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[3] Record, p. 1.

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

[5] *Id.*, p. 28.

The "Motion for Reconsideration" filed by protestant-appellant Minerva G. Castillo, thru registered mail on 13 February 2009 and received by this Commission on 4 March 2009, seeking reconsideration of the Commission's (First Division) Order dated 30 January 2009, is hereby DENIED for failure of the movant to pay the necessary motion fees under Sec. 7(f), Rule 40 of the Comelec Rules of Procedure[6] as amended by Comelec Resolution no. 02-0130.[7]

Castillo has brought the present recourse, contending that the COMELEC's orders dismissing her appeal and denying her *motion for reconsideration* were issued with grave abuse of discretion amounting to lack or excess of jurisdiction.

Parties' Arguments

Castillo insists that her *notice of appeal* was seasonably filed; otherwise, the RTC would not have given due course to his appeal; that Section 3, Rule 22 of the COMELEC Rules of Procedure, cited in the assailed order dated January 30, 2009, did not apply to her case, because Section 2 of Rule I of the COMELEC Rules of Procedure provides that:

> Sec. 2. *Applicability*. — These rules, except Part VI, shall apply to all actions and proceedings brought before the Commission. Part VI shall apply to election contests and *Quo Warranto* cases cognizable by courts of general jurisdiction.

that the COMELEC Rules of Procedure applied only to actions and proceedings brought before the COMELEC, not to actions or proceedings originating in courts of general jurisdiction; that even assuming that the appeal was belatedly filed, the rules on election contests should be liberally construed to the end that mere technical objections would not defeat the will of the people

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[6] xxx *Legal fees*. — The following legal fees shall be charged and collected:

x x x x x x x x x

(1) For filing of a motion for reconsideration on a decision, order or resolution . . . . . ₱[500.00]

x x x x x x x x x

[7] Record, p. 37.

in the choice of public officers; that the Court relaxed on numerous occasions the application of the rules in order to give due course to belated appeals upon strong and compelling reasons; that an electoral contest like hers was imbued with public interest, because it involved the paramount need to clarify the real choice of the electorate; that Section 4 of Rule I of the COMELEC Rules of Procedure even allows the COMELEC to suspend its own rules of procedure in order to obtain a speedy disposition of all matters pending before the COMELEC; and that the COMELEC should not have dismissed her *motion for reconsideration* for her mere failure to pay the corresponding filing fee, but should have considered the soundness of her argument to the effect that SCAO No. 54-2007 continued to vest jurisdiction to try and decide election contest involving elective municipal officials in the RTC as a whole, rendering the designation of the RTC branches to handle election protests akin to a designation of venue.

Castillo further insists that Section 12 of Rule 2 of the COMELEC Rules of Procedure provides that assignment of cases to the specially designated courts should be done exclusively by raffle conducted by the executive judge or by the judges designated by the Supreme Court; and that her protest was thus duly raffled to the RTC in Bacoor, Cavite, considering that SCAO 54-2007 should be construed as a permissive rule that cannot supersede the general rule that jurisdiction over election contests is vested in the RTC.

In his *comment*,[8] Revilla submits that the COMELEC correctly dismissed Castillo's appeal for being filed beyond the five-day reglementary period prescribed in Section 3 of Rule 22 of the COMELEC Rules of Procedure, thus:

> Section 3. *Notice of Appeal*. — Within five (5) days after promulgation of the decision of the court, the aggrieved party may filed with said court a notice of appeal, and serve a copy thereof upon the attorney of record of the adverse party.

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[8] *Rollo*, pp. 41-49.

that A.M. No. 07-4-15-SC, otherwise known as *The Rules of Procedure in Election Contests Involving Elective Municipal and Barangay Officials*, clearly and categorically directed:

> Section 8. *Appeal*. — An aggrieved party may appeal the decision to the Commission on Elections, within five days after promulgation, by filing a notice of appeal with the court that rendered the decision, with copy served on the adverse counsel or party if not represented by counsel.

that the period for filing an appeal is not a mere technicality of law or procedure and the right to appeal is merely a statutory privilege that may be exercised only in the manner prescribed by the law; that the *notice of appeal*, even on the assumption that it was filed on time, still remained futile due to the petitioner's failure to pay the corresponding fee for the *motion for reconsideration*; that the failure to pay the filing fee rendered the *motion for reconsideration* a mere scrap of paper, because it prevented the COMELEC from acquiring jurisdiction over the protest; and that the COMELEC could not be faulted for applying its procedural rules to achieve a just and expeditious determination of every proceeding brought before it.

Issues

Does Section 13 of Rule 2 of A.M. No. 07-4-15-SC designate the RTC Branch that has jurisdiction over an election contest, or does it merely designate the proper *venue* for filing?

In case the RTC was incorrect, is the error enough to warrant the reversal of its order of dismissal despite its having attained finality?

Ruling

The petition has no merit.

A
Error of Petitioner in filing the protest in RTC in Bacoor, not jurisdictional

It is well-settled that jurisdiction is conferred by law. As such, jurisdiction cannot be fixed by the will of the parties; nor

be acquired through waiver nor enlarged by the omission of the parties; nor conferred by any acquiescence of the court. The allocation of jurisdiction is vested in Congress, and cannot be delegated to another office or agency of the Government.

The *Rules of Court* does not define jurisdictional boundaries of the courts. In promulgating the *Rules of Court*, the Supreme Court is circumscribed by the zone properly denominated as the promulgation of rules concerning pleading, practice, and procedure in all courts;[9] consequently, the *Rules of Court* can only determine the means, ways or manner in which said jurisdiction, as fixed by the Constitution and acts of Congress, shall be exercised. The *Rules of Court* yields to the substantive law in determining jurisdiction.[10]

The jurisdiction over election contests involving elective municipal officials has been vested in the RTC by Section 251, *Batas Pambansa Blg*. 881 (*Omnibus Election Code*).[11] On the other hand, A.M. No. 07-4-15-SC, by specifying the proper venue where such cases may be filed and heard, only spelled out the manner by which an RTC with jurisdiction exercises such jurisdiction. Like other rules on venue, A.M. No. 07-4-15-SC was designed to ensure a just and orderly administration of justice,[12] and is permissive, because it was enacted to ensure the exclusive and speedy disposition of election protests and petitions for *quo warranto* involving elective municipal officials.[13]

Castillo's filing her protest in the RTC in Bacoor, Cavite amounted only to a wrong choice of venue. Hence, the dismissal

[9] Section 5 (5), Article VIII, 1987 Constitution.

[10] *De Jesus v. Garcia*, G.R. No. L-26816, February 28, 1967, 19 SCRA 554, 558.

[11] Sec. 251. *Election contests for municipal offices.*—A sworn petition contesting the election of a municipal officer shall be filed with the proper regional trial court by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after proclamation of the results of the election.

[12] *Esuerte v. Court of Appeals*, G.R. No. 53485, February 6, 1991, 193 SCRA 541, 544.

[13] A.M. No. 07-4-15-SC, paragraph 6, Whereas clauses.

of the protest by Branch 19 constituted plain error, considering that her wrong choice did not affect the jurisdiction of the RTC. What Branch 19 should have done under the circumstances was to transfer the protest to Branch 22 of the RTC in Imus, Cavite, which was the proper venue. Such transfer was proper, whether she as the protestant sought it or not, given that the determination of the will of the electorate of Bacoor, Cavite according to the process set forth by law was of the highest concern of our institutions, particularly of the courts.

B

Castillo's tardy appeal should be dismissed

Section 8 of A.M. No. 07-4-15-SC provides that:

> Section 8. *Appeal.* — An aggrieved party may appeal the decision to the Commission on Elections **within five days after promulgation** by filing a notice of appeal with the court that rendered the decision with copy served on the adverse counsel or party if not represented by counsel.

Although Castillo had received the November 21, 2008 order of the RTC on December 15, 2008, she filed her *notice of appeal* only on December 23, 2008, or eight days after her receipt of the decision. Her appeal was properly dismissed for being too late under the aforequoted rule of the COMELEC.

Castillo now insists that her appeal should not be dismissed, because she claims that the five-day reglementary period was a mere technicality, implying that such period was but a trivial guideline to be ignored or brushed aside at will.

Castillo's insistence is unacceptable. The period of appeal and the perfection of appeal are not mere technicalities to be so lightly regarded, for they are essential to the finality of judgments, a notion underlying the stability of our judicial system.[14] A greater reason to adhere to this notion exists herein,

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[14] *E.g., National Power Corporation v. Spouses Laohoo,* G.R. No. 151973, July 23, 2009, where the Court states:

> [T]he non-perfection of [an] appeal on time is not a *mere technicality.* Besides, to grant the petitioner's plea for the relaxation of the rule on technicality would disturb a well-entrenched ruling that could make uncertain when a

for the short period of five days as the period to appeal recognizes the essentiality of time in election protests, in order that the will of the electorate is ascertained as soon as possible so that the winning candidate is not deprived of the right to assume office, and so that any doubt that can cloud the incumbency of the truly deserving winning candidate is quickly removed.

Contrary to Castillo's posture, we cannot also presume the timeliness of her appeal from the fact that the RTC gave due course to her appeal by its elevating the protest to the COMELEC. The presumption of timeliness would not arise if her appeal was actually tardy.

It is not trite to observe, finally, that Castillo's tardy appeal resulted in the finality of the RTC's dismissal even before January 30, 2002. This result provides an additional reason to warrant the assailed actions of the COMELEC in dismissing her appeal. Accordingly, the Court finds that the COMELEC's assailed actions were appropriate and lawful, not tainted by either arbitrariness or whimsicality.

WHEREFORE, the petition is dismissed for lack of merit.

SO ORDERED.

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

Mendoza, J., on leave.

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judgment attains finality, leaving the same to depend upon the resourcefulness of a party in concocting implausible excuses to justify an unwarranted departure from the time-honored policy of the law that the period for the perfection of an appeal is mandatory and jurisdictional.

EN BANC

[A.M. No. P-08-2535. June 23, 2010]
(Formerly A.M. OCA IPI No. 04-2022-P and A.M. No. 04-434-RTC)

OFFICE OF THE COURT ADMINISTRATOR, *complainant, vs.* **FLORENCIO M. REYES,**[1] **Officer-in-Charge, and RENE DE GUZMAN, Clerk, Regional Trial Court, Branch 31, Guimba, Nueva Ecija,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT PERSONNEL; CONTUMACIOUS DISRESPECT OF THE COURT'S DIRECTIVES CONSTITUTES GROSS MISCONDUCT. — As correctly observed by the OCA, De Guzman has shown his propensity to defy the directives of this Court. However, at this juncture, we are no longer wont to countenance such disrespectful behavior. As we have categorically declared in *Office of the Court Administrator v. Clerk of Court Fe P. Ganzan, MCTC, Jasaan, Claveria, Misamis Oriental*: x x x A resolution of the Supreme Court should not be construed as a mere request, and should be complied with promptly and completely. Such failure to comply betrays, not only a recalcitrant streak in character, but also disrespect for the lawful order and directive of the Court. x x x [W]e agree with the OCA that by his repeated and contumacious conduct of disrespecting the Court's directives, De Guzman is guilty of gross misconduct and has already forfeited his privilege of being an employee of the Court.

2. ID.; ID.; ID.; UNDISPUTED CHEMISTRY REPORT FINDING AN EMPLOYEE POSITIVE FOR USE OF DANGEROUS DRUGS CONSTITUTES SUBSTANTIAL EVIDENCE IN AN

[1] Although included in the case title as one of the respondents, it should be emphasized the Florencio M. Reyes had already been exonerated relative to the administrative charge of inefficiency in the transmittal of the records of Criminal Case No. 1144-G. Hence, the present administrative case pertains only to respondent Rene de Guzman.

ADMINISTRATIVE CASE. — In the instant administrative matter, De Guzman never challenged the authenticity of the Chemistry Report of the Nueva Ecija Provincial Crime Laboratory Office. Likewise, the finding that De Guzman was found positive for use of *marijuana* and *shabu* remains unrebutted. De Guzman's general denial that he is not a drug user cannot prevail over this compelling evidence. The foregoing constitutes more than substantial evidence that De Guzman was indeed found positive for use of dangerous drugs.

3. ID.; ID.; ID.; THE COURT ENJOINS COURT PERSONNEL TO ADHERE STRICTLY TO THE LAWS LIKE R.A. 9165 WHICH PROHIBITS THE USE OF DANGEROUS DRUGS; REASON. — This Court is a temple of justice. Its basic duty and responsibility is the dispensation of justice. As dispensers of justice, all members and employees of the Judiciary are expected to adhere strictly to the laws of the land, one of which is Republic Act No. 9165 which prohibits the use of dangerous drugs. The Court has adhered to the policy of safeguarding the welfare, efficiency, and well-being not only of all the court personnel, but also that of the general public whom it serves. The Court will not allow its front-line representatives, like De Guzman, to put at risk the integrity of the whole judiciary.

4. ID.; CONSTITUTIONAL LAW; JUDICIARY; SUPREME COURT; ADMINISTRATIVE SUPERVISION OVER COURTS AND COURT PERSONNEL; A LEGISLATIVE POLICY CANNOT LIMIT THE COURT'S POWER TO IMPOSE DISCIPLINARY ACTIONS AGAINST ERRING COURT PERSONNEL OR THE COURT'S POWER TO PRESERVE AND MAINTAIN THE JUDICIARY'S HONOR AND INTEGRITY. — [T]he legislative policy as embodied in Republic Act No. 9165 in deterring dangerous drug use by resort to sustainable programs of rehabilitation and treatment must be considered in light of this Court's constitutional power of administrative supervision over courts and court personnel. The legislative power imposing policies through laws is not unlimited and is subject to the substantive and constitutional limitations that set parameters both in the exercise of the power itself and the allowable subjects of legislation. As such, it cannot limit the Court's power to impose disciplinary actions against erring justices, judges and court personnel. Neither should such policy be used to restrict the Court's power to preserve and maintain the Judiciary's honor,

dignity and integrity and public confidence that can only be achieved by imposing strict and rigid standards of decency and propriety governing the conduct of justices, judges and court employees.

D E C I S I O N

PER CURIAM:[*]

This complaint for gross misconduct against Rene de Guzman (De Guzman), Clerk, Regional Trial Court (RTC) of Guimba, Nueva Ecija, Branch 31, is an offshoot of the complaint filed by Atty. Hugo B. Sansano, Jr. (Atty. Sansano) relative to the alleged incompetence/inefficiency of the RTC of Guimba, Nueva Ecija, Branch 31, in the transmittal of the records of Criminal Case No. 1144-G[2] to the Court of Appeals.

In our Resolution dated September 17, 2007, we adopted the findings and recommendation of the Office of the Court Administrator (OCA) declaring as closed and terminated the administrative matter relative to the delay in the transmittal of the records of Criminal Case No. 1144-G, and exonerating De Guzman and Florencio M. Reyes (Reyes), the Officer-in-Charge of the RTC of Guimba, Nueva Ecija, Branch 31.

However, in the same Resolution, we also required De Guzman to comment on the allegation that he is using illegal drugs and had been manifesting irrational and queer behavior while at work. According to Reyes, De Guzman's manifestations of absurd behavior prompted Judge Napoleon R. Sta. Romana (Judge Sta. Romana) to request the Philippine National Police Crime Laboratory to perform a drug test on De Guzman. As alleged by Reyes:

x x x Mr. Rene de Guzman, the Docket Clerk, was [in] charge of the preparation and transmission of the records on appeal x x x. Nonetheless, x x x Judge Sta. Romana would x x x often x x x [remind

[*] Two Justices dissented while two other Justices took no part pursuant to the Rules on Inhibition. One Justice concurred with his own separate view.

[2] *People v. Romeo Manangan.*

him] about the transmittal of records of the appealed cases [for more than] a dozen times, even personally confronting Mr. Rene de Guzman about the matter, x x x though unsuccessfully x x x. Mr. De Guzman would just x x x dismiss the subject in ridicule and with the empty assurance that the task is as good as finished and what x x x need[s] to be done [is] simply retyping of the corrected indices or the like and that he would submit the same in [no] time at all. This was after a number of weeks from March 26, 2003 after Mr. De Guzman made the undersigned sign the transmittal of *PP v. Manangan* which he allegedly did not transmit before owing to some minor corrections in the indexing. All too often, (it seems to have been customary on his part, for this he would do to other pressing assignment) he would come to the office the next day, jubilant that the problem has been solved at last! But to no avail. This attitude seemingly bordering on the irrational if not to say that a sense of responsibility is utterly lacking may have given cue for Judge Sta. Romana to have Mr. De Guzman undergo a drug test x x x.[3]

That Mr. De Guzman could brush aside even the personal importuning by the judge is a fete no other of our co-employees dare emulate. On the contrary, everybody is apprehensive for his well being and in his behalf. x x x

On May 24, 2004, Judge Sta. Romana requested the Nueva Ecija Provincial Crime Laboratory Office to conduct a drug test on De Guzman. On May 26, 2004, De Guzman underwent a qualitative examination the results of which yielded positive for Tetrahydrocannabinol metabolites (*marijuana*) and Methamphetamine (*shabu*), both dangerous drugs.

In our Resolution of September 17, 2007, we required De Guzman to submit his comment on the charge of misconduct relative to the alleged use of prohibited drugs within 10 days from notice. Notwithstanding the Court's directive, De Guzman failed to file his Comment. Thus, on January 23, 2008, we directed De Guzman to show cause why he should not be held in contempt for failure to comply with the September 17, 2007 Resolution. At the same time, we resolved to require him to submit his comment within 10 days from notice.

De Guzman complied with our directive only on March 12, 2008. In his letter, De Guzman claimed that he failed to comply

[3] Undated letter of Florencio M. Reyes, p. 2.

with the Court's directive because he lost his copy of the September 17, 2007 Resolution.

Treating De Guzman's letter as his Comment, we referred the same to the OCA for evaluation, report and recommendation. The OCA submitted its Report and Recommendation on July 23, 2008 which reads in part:

x x x x x x x x x

Noticeably, respondent de Guzman did not challenge the authenticity and validity of the chemistry report of the Nueva Ecija Provincial Crime Laboratory Office which found him positive for "marijuana" and "shabu". He did not also promptly submit another test report or other document to controvert the drug test report. His plain refutation of the charge and his willingness to submit himself now to a drug test are token attempts at candor and assertion of innocence. These perfunctory attempts cannot prevail over the solitary yet compelling evidence of misconduct for use of prohibited drugs.

Relative to respondent's delay in filing his comment to the charge of misconduct, his claim that he "*lost and misplaced (his) copy of said resolution, and for that (he) almost forgot about it*" is neither a valid reason nor an excuse for the delay in complying with the order of the Court. His flippant attitude towards the repeated orders of the Court to explain his conduct does not merit consideration and justification for delay.

It is settled that respondent's "indifference to [the resolutions] requiring him to comment on the accusation(s) in the complaint thoroughly and substantially is gross misconduct, and may even be considered as outright disrespect to the Court." After all, a resolution of the Supreme Court is not a mere request and should be complied with promptly and completely. Such failure to comply accordingly betrays not only a recalcitrant streak in character, but has likewise been considered as an utter lack of interest to remain with, if not contempt of the judicial system.

It should be mentioned that this is not the first instance that respondent is ordered to account for his failure to comply with a court order. Earlier, he was required to explain to the Court his failure to promptly submit a copy of the affidavit of retired court stenographer Jorge Caoile and to show cause why he should not be

administratively dealt with for his failure to comply with a show cause order.

For failure to overcome the charge of use of prohibited drugs and to satisfactorily explain his failure to submit promptly his compliance to the Court's show cause order, respondent may be held guilty of two counts of gross misconduct.

The OCA thus submitted the following recommendations for consideration of the Court *viz*:

1. The instant matter be **RE-DOCKETED** as a regular administrative case; and

2. Respondent Rene de Guzman be found guilty of gross misconduct and accordingly be **DISMISSED** from the service effective immediately with forfeiture of all benefits except accrued leave credits, with prejudice to his re-employment in any branch or instrumentality of the government, including government-owned or controlled agencies, corporations and financial institutions.[4]

On August 27, 2008, we required De Guzman to manifest within 10 days from receipt whether he is willing to submit the case for resolution on the basis of the pleadings/records already filed and submitted. As before, De Guzman simply ignored our directive. Consequently, on September 28, 2009, we deemed waived the filing of De Guzman's manifestation.

Our Ruling

We adopt the findings and recommendation of the OCA.

We note that De Guzman is adept at ignoring the Court's directives. In his letter-explanation in the administrative matter relative to the delay in the transmittal of the records of Criminal Case No. 1144-G, he requested for a period of 10 days or until November 15, 2004 within which to submit the Affidavit of George Caoile (Caoile), the retired Stenographer, as part of his comment. However, despite the lapse of five months, De Guzman still failed to submit Caoile's affidavit. Subsequently, we furnished him with a copy of the April 18, 2005 Resolution wherein we mentioned that we are awaiting

[4] Report and Recommendation dated July 23, 2008, p. 3.

his submission of the affidavit of Caoile which shall be considered as part of his (De Guzman's) comment.

Nine months from the time he undertook to submit the affidavit of Caoile, De Guzman has yet to comply with his undertaking. Thus, on August 10, 2005, we required De Guzman to show cause why he should not be disciplinarily dealt with or held in contempt for such failure.

Unfortunately, De Guzman merely ignored our show cause order. Consequently, on November 20, 2006, we imposed upon him a fine of ₱1,000.00. Finally, on January 24, 2007, or after the lapse of one year and two months, De Guzman submitted the affidavit of Caoile.

Similarly, we also required De Guzman to file his comment within 10 days from notice as regards the allegation that he was using prohibited drugs. However, he again ignored our directive as contained in the Resolution of September 17, 2007. Thus, on January 23, 2008, we required him to show cause why he should not be held in contempt for such failure. By way of explanation, De Guzman submitted a letter dated March 12, 2008 wherein he claimed that he failed to file his comment on the charge of misconduct because he allegedly lost his copy of the said September 17, 2007 Resolution.

Finally, on August 27, 2008, we required De Guzman to manifest whether he is willing to submit the case for resolution based on the pleadings submitted. As before, he failed to comply with the same.

As correctly observed by the OCA, De Guzman has shown his propensity to defy the directives of this Court.[5] However, at this juncture, we are no longer wont to countenance such disrespectful behavior. As we have categorically declared in *Office of the Court Administrator v. Clerk of Court Fe P. Ganzan, MCTC, Jasaan, Claveria, Misamis Oriental*:[6]

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[5] *Id.* at 2-3.

[6] A.M. No. P-05-2046, September 17, 2009.

x x x A resolution of the Supreme Court should not be construed as a mere request, and should be complied with promptly and completely. Such failure to comply betrays, not only a recalcitrant streak in character, but also disrespect for the lawful order and directive of the Court. Furthermore, this contumacious conduct of refusing to abide by the lawful directives issued by the Court has likewise been considered as an utter lack of interest to remain with, if not contempt of, the system. Ganzan's transgression is highlighted even more by the fact that she is an employee of the Judiciary, who, more than an ordinary citizen, should be aware of her duty to obey the orders and processes of the Supreme Court without delay. x x x

Anent the use of illegal drugs, we have upheld in *Social Justice Society (SJS) v. Dangerous Drugs Board*[7] the validity and constitutionality of the mandatory but random drug testing of officers and employees of both **public** and private offices. As regards public officers and employees, we specifically held that:

Like their counterparts in the private sector, government officials and employees also labor under reasonable supervision and restrictions imposed by the Civil Service law and other laws on public officers, all enacted to promote a high standard of ethics in the public service. And if RA 9165 passes the norm of reasonableness for private employees, the more reason that it should pass the test for **civil servants, who, by constitutional demand, are required to be accountable at all times to the people and to serve them with utmost responsibility and efficiency**.[8]

Parenthetically, in A.M. No. 06-1-01-SC[9] dated January 17, 2006, the Court has adopted *guidelines* for a program to deter the use of dangerous drugs and institute preventive measures against drug abuse for the purpose of eliminating the hazards of drug abuse in the Judiciary, particularly in the first and second level courts. The objectives of the said program are as follows:

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[7] G.R. Nos. 157870, 158633, and 161658, November 3, 2008, 570 SCRA 410, 430.

[8] *Id*. at 435. Emphasis supplied.

[9] *Re*: Draft Administrative Circular on the Guidelines for the Implementation of the Drug Prevention Program for the First and Second Level Courts.

1. To detect the use of dangerous drugs among lower court employees, impose disciplinary sanctions, and provide administrative remedies in cases where an employee is found positive for dangerous drug use.

2. To discourage the use and abuse of dangerous drugs among first and second level court employees and enhance awareness of their adverse effects by information dissemination and periodic random drug testing.

3. To institute other measures that address the menace of drug abuse within the personnel of the Judiciary.

In the instant administrative matter, De Guzman never challenged the authenticity of the Chemistry Report of the Nueva Ecija Provincial Crime Laboratory Office. Likewise, the finding that De Guzman was found positive for use of *marijuana* and *shabu* remains unrebutted. De Guzman's general denial that he is not a drug user cannot prevail over this compelling evidence.

The foregoing constitutes more than substantial evidence that De Guzman was indeed found positive for use of dangerous drugs. In *Dadulo v. Court of Appeals*,[10] we held that "(a)dministrative proceedings are governed by the 'substantial evidence rule.' Otherwise stated, a finding of guilt in an administrative case would have to be sustained for as long as it is supported by substantial evidence that the respondent has committed acts stated in the complaint. Substantial evidence is more than a mere scintilla of evidence. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion, even if other minds equally reasonable might conceivably opine otherwise."[11]

This Court is a temple of justice. Its basic duty and responsibility is the dispensation of justice. As dispensers of justice, all members and employees of the Judiciary are expected to adhere strictly to the laws of the land, one of which

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[10] G.R. No. 175451, April 13, 2007, 521 SCRA 357.

[11] *Id.* at 362.

is Republic Act No. 9165[12] which prohibits the use of dangerous drugs.[13]

The Court has adhered to the policy of safeguarding the welfare, efficiency, and well-being not only of all the court personnel, but also that of the general public whom it serves. The Court will not allow its front-line representatives, like De Guzman, to put at risk the integrity of the whole judiciary. As we held in *Baron v. Anacan*,[14] "(t)he image of a court of justice is mirrored in the conduct, official and otherwise, of the personnel who work thereat. Thus, the conduct of a person serving the judiciary must, at all times, be characterized by propriety and decorum and above all else, be above suspicion so as to earn and keep the respect of the public for the judiciary. The Court would never countenance any conduct, act or omission on the part of all those in the administration of justice, which will violate the norm of public accountability and diminish or even just tend to diminish the faith of the people in the judiciary."

Article XI of the Constitution mandates that:

SECTION 1. Public office is a public trust. Public officers and employees must at all times be accountable to the people and serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives.

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[12] The Comprehensive Dangerous Drugs Act of 2002.

[13] Section 15 of Republic Act No. 9165 provides:

SEC. 15. *Use of Dangerous Drugs.* – A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test, shall be imposed a penalty of a minimum of six (6) months rehabilitation in a government center for the first offense, subject to the provisions of Article VIII of this Act. If apprehended using any dangerous drug for the second time, he/she shall suffer the penalty of imprisonment ranging from six (6) years and one (1) day to twelve (12) years and a fine ranging from Fifty thousand pesos (₱50,000.00) to Two hundred thousand pesos (₱200,000.00): *Provided*, That this Section shall not be applicable where a person tested is also found to have in his/her possession such quantity of any dangerous drug provided for under Section 11 of this Act, in which case, the provisions stated therein shall apply.

[14] A.M. No. P-04-1816, June 20, 2006, 491 SCRA 313, 315.

De Guzman's use of prohibited drugs has greatly affected his efficiency in the performance of his functions. De Guzman did not refute the observation of his superior, Judge Sta. Romana, that as a criminal docket court clerk, he (De Guzman) was totally inept and incompetent. Hence, to get across his displeasure and dissatisfaction with his job performance, Judge Sta. Romana gave De Guzman an unsatisfactory rating.

Moreover, De Guzman's efficiency as a custodian of court records is also totally wanting. As early as May 12, 2004, Judge Sta. Romana issued a Memorandum addressed to De Guzman relative to the "sleeping cases" inside the latter's drawer. It would appear that several cases have not been proceeded upon because De Guzman hid the records of the same inside his drawer. The text of the said Memorandum reads:

> An examination of the records found in your drawer reveal that the following cases have not moved because you have not brought the same to the attention of the Presiding Judge, to wit:
>
> 1. Crim. Case No. 1849-C, *PP v. Ruben Villanueva* – Order of transmittal to the Office of the Provincial Prosecutor of Nueva Ecija dated August 6, 2003 to resolve the Motion for Reconsideration.
>
>   Resolution of the Provincial Prosecutor dated September 23, 2003 denying the Motion for Reconsideration and transmitting the records to the RTC, Br. 31, Guimba, Nueva Ecija received by this court on September 24, 2003;
>
> 2. Crim. Case No. 1993-G, *PP vs. JOJO SUPNET* – Information dated October 14, 2002 received by this Court on November 18, 2002;
>
> 3. Crim. Case No. 2013-G, *PP vs. Brgy. Capt. BAYANI CAMIS* – Information dated September 23, 2002 received by this court on January 24, 2003;
>
> 4. Crim. Case No. 2007-G, *PP vs. Armando Marcos* – Information dated June 23, 2002; Records received on January 2, 2003.
>
> The Presiding Judge caused the issuance of finding of probable causes and the corresponding Warrants of Arrest. You are hereby

ordered to assist the OIC/Clerk of Court in sending forthwith the Warrants of Arrest to the proper agencies for implementation.

In the same vein, Reyes also put forth the absurd behavioral manifestations of De Guzman. According to Reyes, Judge Sta. Romana would always remind De Guzman to prepare and transmit the complete records of the appealed cases. However, De Guzman would only make empty assurances to perform his task. Notwithstanding the reminders of his superiors, De Guzman would still fail to transmit the records. Instead, he would report the next day and jubilantly declare that the problem has been solved at last.

In fine, we agree with the OCA that by his repeated and contumacious conduct of disrespecting the Court's directives, De Guzman is guilty of gross misconduct and has already forfeited his privilege of being an employee of the Court. Likewise, we can no longer countenance his manifestations of queer behavior, bordering on absurd, irrational and irresponsible, because it has greatly affected his job performance and efficiency. By using prohibited drugs, and being a front-line representative of the Judiciary, De Guzman has exposed to risk the very institution which he serves. It is only by weeding out the likes of De Guzman from the ranks that we would be able to preserve the integrity of this institution.

Two justices disagree with the majority opinion. They opine that the Court's action in this case contravenes an express public policy, *i.e.*, "imprisonment for drug dealers and pushers, rehabilitation for their victims." They also posit that De Guzman's failure to properly perform his duties and promptly respond to Court orders precisely springs from his drug addiction that requires rehabilitation. Finally, they state that the Court's real strength is not in its righteousness but in its willingness to understand that men are not perfect and that there is a time to punish and a time to give a chance for contrition and change.

However, the legislative policy as embodied in Republic Act No. 9165 in deterring dangerous drug use by resort to sustainable programs of rehabilitation and treatment must be considered in light of this Court's constitutional power of administrative supervision

over courts and court personnel. The legislative power imposing policies through laws is not unlimited and is subject to the substantive and constitutional limitations that set parameters both in the exercise of the power itself and the allowable subjects of legislation.[15] As such, it cannot limit the Court's power to impose disciplinary actions against erring justices, judges and court personnel. Neither should such policy be used to restrict the Court's power to preserve and maintain the Judiciary's honor, dignity and integrity and public confidence that can only be achieved by imposing strict and rigid standards of decency and propriety governing the conduct of justices, judges and court employees.

Likewise, we cannot subscribe to the idea that De Guzman's irrational behavior stems solely from his being a drug user. Such queer behavior can be attributed to several factors. However, it cannot by any measure be categorically stated at this point that it can be attributed solely to his being a drug user.

Finally, it must be emphasized at this juncture that De Guzman's dismissal is not grounded only on his being a drug user. His outright dismissal from the service is likewise anchored on his contumacious and repeated acts of not heeding the directives of this Court. As we have already stated, such attitude betrays not only a recalcitrant streak of character, but also disrespect for the lawful orders and directives of the Court.

ACCORDINGLY, Rene de Guzman, Clerk, Regional Trial Court of Guimba, Nueva Ecija, Branch 31, is hereby *DISMISSED* from the service with forfeiture of all retirement benefits, except accrued leave credits, and disqualification from reinstatement or appointment to any public office, including government-owned or controlled corporations.

SO ORDERED.

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

Mendoza, J., on leave.

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[15] *Social Justice Society v. Dangerous Drugs Board, supra* note 7 at 423.

FIRST DIVISION

[G.R. No. 160841. June 23, 2010]

LEY CONSTRUCTION & DEVELOPMENT CORPORATION, LC BUILDERS & DEVELOPERS, INC., METRO CONTAINER CORPORATION, MANUEL T. LEY, and JANET C. LEY, *petitioners, vs.* **PHILIPPINE COMMERCIAL & INTERNATIONAL BANK, *EX-OFFICIO* SHERIFF OF THE REGIONAL TRIAL COURT OF VALENZUELA, METRO MANILA, and CLERK OF COURT and *EX-OFFICIO* SHERIFF OF THE REGIONAL TRIAL COURT OF PASIG, METRO MANILA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*, TWO ASPECTS OF. — Jurisprudence expounds that the concept of *res judicata* embraces two aspects. The first, known as "bar by prior judgment," or "estoppel by verdict," is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. The second, known as "conclusiveness of judgment," otherwise known as the rule of *auter action pendent*, ordains that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action.

2. ID.; ID.; ID.; BAR BY PRIOR JUDGMENT; ELEMENTS. — The bar by prior judgment requires the following elements to be present for it to operate: (1) A former final judgment that was rendered on the merits; (2) The court in the former judgment had jurisdiction over the subject matter and the parties; and, (3) Identity of parties, subject matter and cause of action between the first and second actions.

3. ID.; ID.; ID.; CONCLUSIVENESS OF JUDGMENT, EXPLAINED; ELEMENTS. — [T]he elements of conclusiveness of judgment are: 1. Identity of parties; and 2. Subject matter in the first and second cases. Conclusiveness of judgment does not require identity of the causes of action for it to work. If a particular

point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second. Hence, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action. Conclusiveness of judgment proscribes the relitigation in a second case of a fact or question already settled in a previous case. The second case, however, may still proceed provided that it will no longer touch on the same fact or question adjudged in the first case. Conclusiveness of judgment requires only the identity of issues and parties, but not of causes of action.

4. ID.; ID.; ID.; CONCEPT OF CONCLUSIVENESS OF JUDGMENT, APPLIED.— The instant petition is denied on the ground of *res judicata* under the concept of conclusiveness of judgment. The presence of the first element is not disputed considering that the parties in G.R. No. 114951 and in this case are the same. Also attendant is the last element, identity of the subject matter or the issue. x x x The instant petition exactly ventures into the same issue, whether Civil Case No. 91-2495 is dismissible, albeit based on a different ground, that is, failure of the petitioners to prosecute the case. There is, therefore, no point in resolving the various issues raised by petitioners in this case, since it will effectively reopen G.R. No. 114951, on which a final judgment has already been decreed, rendering it closed. To do so would set a bad precedent, leaving the door wide open for dissatisfied parties to relitigate unfavorable decisions to no end.

APPEARANCES OF COUNSEL

Quisumbing Torres for petitioners.
Divina Matibag Magturo Banzon Buenaventura & Yusi for PCIB.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This instant Petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeks to reverse the Decision[1] of the Court of Appeals dated April 11, 2003, dismissing petitioners' appeal from the Makati City Regional Trial Court (RTC) Order[2] dated July 28, 1994. The Court of Appeals dismissed the appeal on the ground that the notice of appeal was filed beyond the reglementary period.

The pertinent facts about the case follow.

From 1986 to 1990, petitioners Ley Construction and Development Corporation, LC Builders & Developers, Inc., Metro Container Corporation, Manuel T. Ley and Janet C. Ley secured 52 loans from the Philippine Commercial International Bank (PCIB, now Equitable PCIBank).[3] As collateral for said loans, petitioners executed real estate mortgages over several of their properties and chattel mortgages over their equipment and machinery.[4]

As the debts became due, PCIB made repeated demands for the borrowers to pay. Petitioners were able to pay some of their obligations, but 18 of the 52 loans remained unpaid.[5]

Thus, on August 16, 1991, PCIB filed separate requests for extrajudicial foreclosure with the sheriffs of Pasig City RTC and Valenzuela City RTC.[6] The sheriff of Valenzuela City RTC set the auction sale of personal properties on September 16,

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[1] Penned by Associate Justice Conrado M. Vasquez, Jr. with Associate Justices Mercedes Gozo-Dadole and Rosemari D. Carandang, concurring; *rollo*, pp. 7-14.

[2] CA *rollo*, p. 140.

[3] *Rollo*, pp. 8 and 487.

[4] *Id.* at 487.

[5] *Id.* at 8.

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

1991, and the real property on October 3, 1991. The sheriff of Pasig City RTC set the public auction on September 24, 1991.

To forestall the scheduled auction sales, petitioners, on September 10, 1991, filed a Complaint[7] for injunction and damages with a prayer for the issuance of a temporary restraining order (TRO) before the Makati City RTC. One of the causes of action proffered was that PCIB had agreed to the extensions of the due date of the loans.[8] The Complaint for injunction and damages, docketed as Civil Case No. 91-2495, was aimed at enjoining the respective sheriffs of the Pasig City RTC and the Valenzuela City RTC from conducting the already scheduled foreclosure sales and any other sale of their mortgaged properties. The complaint also sought the restructuring of petitioners' debts.[9]

PCIB filed a motion to dismiss the complaint for injunction and damages (Civil Case No. 91-2495) before the Makati City RTC on the ground that it did not agree to petitioners' request for extra time to make good their obligations.

In an Order dated October 16, 1991, the Makati City RTC issued a preliminary injunction, enjoining the conduct of the scheduled auction sales and denying PCIB's motion to dismiss.[10]

On November 20, 1991, PCIB filed a motion for reconsideration.[11]

On December 9, 1991, PCIB filed an Urgent Motion to Lift Writ of Preliminary Injuction, which was opposed by petitioners.[12]

The Makati City RTC, in an Order dated February 26, 1992, denied PCIB's motion for reconsideration of the Order dated October 16, 1991.[13] Although PCIB questioned the said Order

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[7] *Id.* at 77-109.

[8] *Id.* at 86.

[9] *Id.* at 106-107.

[10] *Id.* at 8.

[11] CA *rollo,* p. 120.

[12] *Id.*

[13] *Id.* at 121.

with the Court of Appeals, it did not pursue the incident further after the latter court rendered an adverse ruling.

On February 1, 1993, PCIB filed an Answer to the complaint for injunction and damages.

A significant development of the injunction case happened on February 23, 1993, when the Makati City RTC granted PCIB's *Second Motion to Lift Writ of Preliminary Injunction* on the ground that said motion was unopposed.[14]

The February 23, 1993 Order of the Makati City RTC, which had lifted the preliminary injunction on the scheduled foreclosure sales, prompted PCIB to immediately cause the scheduling of the sheriff's extrajudicial foreclosure sales of the mortgaged properties in Mandaluyong City and Valenzuela City on March 30, 1993. The auction sale of the mortgaged chattels in Valenzuela City was scheduled on March 18, 1993.

The February 23, 1993 Order was opposed by petitioners, as they filed on March 30, 1993 an *Emergency Motion for Reconsideration of the Order dated February 23, 1993 and to Expand Writ of Preliminary Injunction with Application for Temporary Restraining Order*.

The Emergency Motion for Reconsideration was not the only remedy resorted to by petitioners to thwart the effect of the February 23, 1993 Order. Petitioners similarly filed two separate complaints in another venue. The first, filed with the Manila RTC, Branch 34, on March 17, 1993, docketed as Civil Case No. 93-65135, was a Complaint for Injunction and Damages with prayer for TRO against PCIB and the sheriff of Valenzuela City RTC enjoining them from proceeding with the auction sale scheduled on March 18, 1993. The second, also a complaint for Injunction with the Manila RTC, Branch 54, was filed on May 3, 1993 and docketed as Civil Case No. 93-65757, directed against the conduct of the auction sale of the Valenzuela City properties. Civil Case No. 93-65135 was subsequently dismissed based on the pendency of Civil Case No. 91-2495, while Civil

[14] *Id.* at 42 and 122.

Case No. 93-65757 was dismissed because petitioners engaged in forum shopping.

The issue over the validity of the February 23, 1993 Order of the Makati City RTC eventually reached the Court of Appeals on June 10, 1993, upon petitioners' filing of a petition for *certiorari* and *mandamus* assailing the said order. Petitioners argued that the February 23, 1993 Order, which granted *ex parte* the Second Motion for the Lifting of Preliminary Injunction, denied them the right to due process as they were deprived their chance to be heard on said motion considering that the service of the copy of the motion was not given to their counsel of record. On the allegation that they were guilty of forum shopping, petitioners countered that the causes of actions in the complaints filed with the Manila RTC were different from each other and vary as well from the cause of action with the injunction case (Civil Case No. 91-2495) pending with the Makati City RTC.

The Court of Appeals ruled in favor of petitioners and declared the February 23, 1993 Order null and void in its decision dated August 13, 1993.

On May 2, 1994, PCIB elevated the Court of Appeals' decision to this Court, the case was docketed as G.R. No. 114951.[15]

The instant controversy came to fore when, during the pendency of G.R. No. 114951, the Makati City RTC rendered the questioned Order dated July 28, 1994, dismissing Civil Case No. 91-2495, on the ground of failure to prosecute. The pertinent portion of the Order reads:

> It appearing that this case was instituted way back on September 10, 1991 and that since then until the present time, plaintiffs have not taken proper steps for the early disposition of this case, the Court hereby dismisses this case for failure to prosecute.[16]

On September 12, 1994, petitioners filed a motion for reconsideration of the foregoing Order. Petitioners contended

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[15] *Philippine Commercial International Bank v. Court of Appeals*, 454 Phil. 338 (2003).

[16] CA *rollo*, p. 140.

that the RTC committed reversible error in dismissing the complaint on the ground of failure to prosecute.[17] Petitioners insisted that to constitute "failure to prosecute," there must be an unwillingness or lack of interest in prosecuting the action. According to petitioners, there was no failure to prosecute on their part since they had actively pursued their cause and had fought tooth and nail throughout the injunction proceedings at the trial court level all the way up to this Court. Besides, petitioners argued, length of time alone is not a gauge in the staleness of the claim, but such delay can only be appreciated if the same reasonably justifies the belief that the action had been abandoned, which was not the case here since petitioners had pursued their action up until the RTC rendered the questioned order. Petitioners likewise invoked liberal construction of the rules in order to promote justice. Petitioners attempted to justify the delay of the main case on account of the pendency of G.R. No. 114951.

The said motion was denied in an Order dated August 22, 2001.

On September 13, 2001, petitioners received the August 22, 2001 Order denying their motion for reconsideration.

On September 20, 2001, six days late, petitioners filed a notice of appeal.[18]

When the case had reached the Court of Appeals, the appellate court, without dealing on the merits, dismissed the same on the ground that petitioners' appeal was filed beyond the 15-day reglementary period, thereby rendering the appealed decision of the RTC final. The pertinent portion of the assailed decision reads:

IN VIEW OF ALL THE FOREGOING, the instant appeal is ordered DISMISSED. No cost.[19]

In a parallel proceeding, on July 18, 2003, this Court rendered a decision in G.R. No. 114951 dismissing Civil Case No. 91-

[17] *Rollo*, pp. 309-351.

[18] *Id.* at 307-308.

[19] *Id.* at 13.

2495 with prejudice on the grounds of forum shopping and violation of judicial stability by filing another case in a different court and venue, *i.e.*, in Civil Case Nos. 93-65135 and 93-65757 in Manila, despite the pendency of Civil Case No. 91-2495, and with the objective of defeating the February 23, 1993 Order in the latter case. The Court also ruled that petitioners therein were accorded their right to due process, since they were served with a copy of the PCIB's Second Motion to Lift Writ of Preliminary Injunction. G.R. No. 114951 became final and executory on February 23, 2004.

Reverting to the instant proceedings, petitioners, in their Manifestation[20] dated March 5, 2004, enunciated the fact that this Court had rendered a decision in G.R. No. 114951, dismissing Civil Case No. 91-2495. Petitioners, however, averred that while the proceedings in G.R. No. 114951 and the instant petition both originated from Civil Case No. 91-2495, the issues raised in the two cases are different. It is petitioners' conviction that the issue in G.R. No. 114951 is the propriety of the trial court's Order dated February 23, 1993, a mere incident of Civil Case No. 91-2495, while the issue in the instant petition is the propriety of the trial court's Order dated July 28, 1994, dismissing the main case, Civil Case No. 91-2495.

In their Memorandum, petitioners stress that the six-day delay in filing their notice of appeal is a mere slight negligence and an excusable one, since they lost track of the case occasioned by the Makati City RTC's seven-year inaction before it resolved their motion for reconsideration of the Order dated July 28, 1994. Petitioners then likened their situation to that of the petitioner in *Trans International v. Court of Appeals*,[21] where the Court allegedly held that a delay in the perfection of appeal does not warrant a dismissal.[22] They also reiterated their contention that they could not have been guilty of failure to prosecute their case, since they had been actively participating in the proceedings of the same.

[20] *Id.* at 444-449.

[21] G.R. No. 128421, January 26, 1998, 285 SCRA 49.

[22] *Rollo,* p. 538.

PCIB counters that the instant petition, which is intended to revive Civil Case No. 91-2495, has been rendered moot by the earlier dismissal of the same in G.R. No. 114951. It further argues that the fact that the RTC resolved petitioners' motion for reconsideration after seven years is not a valid and excusable ground for them not to file their notice of appeal on time.

We deny the petition.

The rule is that when material facts or questions, which were in issue in a former action and were admitted or judicially determined, are conclusively settled by a judgment rendered therein, such facts or questions become *res judicata* and may not again be litigated in a subsequent action between the same parties or their privies regardless of the form of the latter.[23]

Jurisprudence expounds that the concept of *res judicata* embraces two aspects.[24] The first, known as "bar by prior judgment," or "estoppel by verdict," is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action.[25] The second, known as "conclusiveness of judgment," otherwise known as the rule of *auter action pendent*, ordains that issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties involving a different cause of action.[26] The bar by prior judgment requires the following elements to be present for it to operate:

(1) A former final judgment that was rendered on the merits;

(2) The court in the former judgment had jurisdiction over the subject matter and the parties; and,

(3) Identity of parties, subject matter and cause of action between the first and second actions.[27]

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[23] *Carlet v. Court of Appeals*, 341 Phil. 99, 108 (1997).

[24] *Presidential Commission on Good Government v. Sandiganbayan*, G.R. No. 157592, October 17, 2008, 569 SCRA 360, 372.

[25] *Id*.

[26] *Id*.

[27] *Alcantara v. Department of Environment and Natural Resources*,

In contrast, the elements of conclusiveness of judgment are:

1. Identity of parties; and

2. Subject matter in the first and second cases.[28]

Conclusiveness of judgment does not require identity of the causes of action for it to work. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit; but the adjudication of an issue in the first case is not conclusive of an entirely different and distinct issue arising in the second.[29] Hence, facts and issues actually and directly resolved in a former suit cannot again be raised in any future case between the same parties, even if the latter suit may involve a different claim or cause of action.

Conclusiveness of judgment proscribes the relitigation in a second case of a fact or question already settled in a previous case. The second case, however, may still proceed provided that it will no longer touch on the same fact or question adjudged in the first case. Conclusiveness of judgment requires only the identity of issues and parties, but not of causes of action.

The instant petition is denied on the ground of *res judicata* under the concept of conclusiveness of judgment.

The presence of the first element is not disputed considering that the parties in G.R. No. 114951 and in this case are the same. Also attendant is the last element, identity of the subject matter or the issue. At first blush though, it may appear, as petitioners have argued, that the subject of G.R. No. 114951 is the Makati City RTC Order dated February 23, 1993 granting PCIB's Second Motion to Lift Writ of Preliminary Injunction, whereas the instant recourse assails the July 28, 1994 Order of the same court dismissing Civil Case No. 91-2495 for failure

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G.R. No. 161881, July 31, 2008, 560 SCRA 753, 771.

[28] *Id*.

[29] *Id.* at 771-772.

to prosecute. A closer look, however, discloses that while at its inception G.R. No. 114951 initially dealt with the propriety of the February 23, 1993 Order of the Makati City RTC, later progress of the case, such as the filing of petitioners of two separate complaints in the Manila RTC essentially directed at the said order of the Makati trial court, shaped the case into a different form. The subject of the case veered away from its original issue — the validity of the February 23, 1993 Order. This time, the core issue emerged whether petitioners were guilty of forum shopping so as to make Civil Case No. 91-2495 dismissible on that ground. Simply stated, the issue in G.R. No. 114951 is whether Civil Case No. 91-2495 is dismissible. After judicious perusal, this Court in that case eventually found petitioners guilty of forum shopping and, thus, dismissed with prejudice Civil Case No. 91-2495. The Court thus decreed:

> IN LIGHT OF ALL THE FOREGOING, the petition is GRANTED. The decision of the Court of Appeals in CA-G.R. SP No. 31251 is REVERSED AND SET ASIDE. The complaint of the private respondents in Civil Case No. 91-2495 is DISMISSED WITH PREJUDICE.[30]

The instant petition exactly ventures into the same issue, whether Civil Case No. 91-2495 is dismissible, albeit based on a different ground, that is, failure of the petitioners to prosecute the case.

There is, therefore, no point in resolving the various issues raised by petitioners in this case, since it will effectively reopen G.R. No. 114951, on which a final judgment has already been decreed, rendering it closed. To do so would set a bad precedent, leaving the door wide open for dissatisfied parties to relitigate unfavorable decisions to no end.[31] Without a doubt, this is completely inimical to the orderly and efficient administration of justice.[32]

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[30] *Philippine Commercial International Bank v. Court of Appeals*, *supra* note 15 at 371.

[31] *Lee v. Regional Trial Court of Quezon City, Br. 85*, 467 Phil. 997, 1013 (2004).

[32] *Id*.

WHEREFORE, premises considered, the instant petition is hereby *DENIED*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Del Castillo, and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 172820. June 23, 2010]

DULCE PAMINTUAN, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; *ESTAFA* UNDER PARAGRAPH 1(b), ARTICLE 315 OF THE REVISED PENAL CODE; ELEMENTS. — The elements of *estafa* under this provision are: (1) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (2) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (3) the misappropriation, conversion or denial is to the prejudice of another; and (4) demand by the offended party that the offender return the money or property received.

2. ID.; ID.; ESSENCE. — The essence of this kind of *estafa* is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made. The words "convert" and "misappropriate" connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every

attempt to dispose of the property of another without right. In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.

3. ID.; ID.; ELEMENTS, PROVEN IN CASE AT BAR. — The prosecution proved the first element of the crime through the testimony of Jeremias who related that he gave the petitioner the diamond ring for sale on commission basis. The unequivocal terms of the *Katibayan* corroborated Jeremias' testimony and showed the fiduciary relationship between the two parties as principal and agent, where the petitioner was entrusted with the diamond ring under the specific authority to sell it within three days from its receipt and to return it if it remains unsold within that period. x x x The second element – the misappropriation of the diamond ring – was proven by Jeremias' testimony that the petitioner failed to return the diamond ring after the lapse of the agreed period or afterwards, despite the clear terms of the *Katibayan*. He further testified that the petitioner could not return the ring because she had pawned it. She strangely did not respond to this allegation. This silence, coupled with her undeniable failure to return the diamond ring, immeasurably strengthened the element of misappropriation. Her silence assumes great significance since the pawning of the diamond ring was a clear violation of the *Katibayan* which only gave her the authority to sell on commission or to return the ring. Acting beyond the mandate of this agency is the conversion or misappropriation that the crime of *estafa* punishes. x x x The prosecution proved the third and fourth elements through evidence of demands and the continued failure to return the ring or its value for seven years (1996 to 2003) despite demand. x x x The basis of the *estafa* charge is the failure to return the ring or to pay for its value in cash within the period stipulated in the *Katibayan.* We do not find it disputed that the ring was never returned despite demands. The value of the ring was not also made available to Jeremias until seven years after its delivery to the petitioner. When she failed at the first instance (and in fact she continuously failed), despite demands, to return at least the value of the ring, the crime of *estafa* was consummated.

4. ID.; ID.; PENALTY; NO AWARD OF CIVIL LIABILITY. — [T]he penalty of four (4) years and two (2) months of *prision correccional*, as minimum term, to twenty (20) years of *reclusion temporal*, as maximum term, is correct. The RTC and the CA were correct in not awarding civil liability since the execution of the mortgage deed satisfied the value of the unreturned diamond ring.

5. REMEDIAL LAW; EVIDENCE; PAROL EVIDENCE RULE, APPLIED. — Under the circumstances, the best evidence to ascertain the nature of the parties' diamond ring transaction is the *Katibayan* which is the written evidence of their agreement that should be deemed to contain all the terms they agreed upon. Under the parol evidence rule, no additional or contradictory terms to this written agreement can be admitted to show that, at or before the signing of the document, other or different terms were orally agreed upon by the parties. Thus, the terms of the *Katibayan* should be the prevailing terms of the transaction between the parties, not any oral or side agreement the petitioner alleged.

APPEARANCES OF COUNSEL

Padlan Sutton and Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

We review in this **Rule 45 petition** the decision[1] and the resolution[2] of the Court of Appeals (*CA*) that totally affirmed the decision[3] of the Regional Trial Court (*RTC*), Branch 2, Batangas City in Criminal Case No. 11002.

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[1] Dated January 12, 2006; penned by CA Presiding Justice Conrado M. Vasquez, Jr., and concurred in by CA Associate Justice (now Supreme Court Associate Justice) Mariano C. del Castillo and CA Associate Justice Magdangal M. de Leon; *rollo*, pp. 33-39.

[2] Dated May 19, 2006; *id.* at 43-44.

[3] Dated July 21, 2004; *id.* at 60-66. Penned by Judge (now CA Associate Justice) Mario V. Lopez.

The RTC found **Dulce Pamintuan** (*petitioner*) guilty beyond reasonable doubt of the crime of *estafa*, penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended, and sentenced her to imprisonment of four (4) years and two (2) months of *prision correccional*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum.

The Information charging the petitioner with *estafa*, as defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended, reads:

> That on or about February 16, 1996 at Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, after having received in trust and on commission from one Jeremias Victoria a diamond ring worth SEVEN HUNDRED SIXTY FIVE THOUSAND (₱765,000.00) PESOS, Philippine Currency, with the understanding and agreement that the same shall be sold by her on cash basis at a price not less than its value and that the overprice, if any, shall be her commission and the proceeds of the sale shall be remitted to Jeremias Victoria immediately upon sale thereof, and if unsold, said diamond ring will be returned to Jeremias Victoria within a period of three (3) days from the date of receipt, but said accused, far from complying with her obligation to return the unsold diamond ring, with grave abuse of confidence, with intent to defraud, did then and there willfully, unlawfully and feloniously convert and misappropriate the same to her own personal use and benefit and despite demands made upon her to return the said jewelry, she failed and refused to do so, to the damage and prejudice of Jeremias Victoria in the aforementioned amount of ₱765,000.00, Philippine Currency.
>
> CONTRARY TO LAW.[4]

The petitioner pleaded not guilty to the charge; trial on the merits followed.

The Prosecution Evidence

The prosecution presented two witnesses – Jeremias Victoria and Aurora C. Realon – to establish its case. Jeremias testified that on February 16, 1996, the petitioner received from him a diamond ring worth ₱765,000.00 on the condition that it would

[4] *Id.* at 60.

be sold on commission basis. At the time she received the ring, the petitioner signed a document entitled *Katibayan*,[5] authorizing the sale of the ring under the following express conditions: the petitioner was to sell the ring for cash and with an overprice as her profit, and remit the full payment to Jeremias; she would not entrust the ring to anybody; and if unsold within three days, she must return the ring, or pay for it in cash.[6]

The petitioner failed to remit payment for the diamond ring despite the lapse of the agreed period. Neither did she return the diamond ring. Subsequently, Jeremias, through his lawyer, sent two (2) formal demand letters[7] for the petitioner to comply with her obligations under the *Katibayan*. The demand letters went unheeded. Thus, the petitioner failed to comply with her obligations to Jeremias.[8]

As *rebuttal* evidence, Jeremias claimed that the petitioner failed to return the diamond ring because she pawned it. Jeremias also denied that he received any jewelry from the petitioner in exchange for the diamond ring.[9]

The Defense Evidence

The petitioner testified in her behalf and admitted that she received the diamond ring from Jeremias in exchange for seven (7) pieces of jewelry valued at ₱350,000.00 that she also then

[5] Exhibit "A"; *id.* at 76.

[6] Exhibit "A-2"; *id.* at 76; The pertinent portion of the *Katibayan* provides: *"KABUUANG HALAGA ₱765,000.00 (Seven Hundred Sixty Five Thousand Pesos Only) nasa mabuting kalagayan upang ipagbili ng KALIWAAN lamang sa loob ng 3 araw mula ng aking pagkalagda; kung hindi ko maipagbili ay isasauli ko ang lahat ng alahas sa loob ng taning na panahong nakatala sa itaas; kung maipagbili ko naman ay dagli [kong] isusulit at ibibigay ang buong pinagbilhan sa may-ari ng mga alahas. Ang aking gantimpala ay ang mapapahigit na halaga sa nakatakdang halaga sa itaas ng bawat alahas; HINDI AKO pinahihintulutang ipa-utang o ibigay na hulugan ang alin mang alahas; ilalagak, ipagkakatiwala, ipahihiram, isasangla o ipananagot kahit sa anong paraan ang alin mang alahas sa ibang tao o tao.*"

[7] *Supra* note 3, at 61.

[8] *Ibid.*

[9] *Id.* at 62.

delivered to Jeremias for cleaning and eventual sale. The petitioner likewise stated that the delivery of the seven pieces of jewelry was evidenced by a receipt that Jeremias signed,[10] and that she subsequently tried to return the diamond ring but he refused to accept it. Although the petitioner acknowledged signing the *Katibayan*, she claimed that Jeremias entrusted the diamond ring to her before he left for abroad, and that she only heard from him again after the criminal case had been filed against her. The petitioner likewise claimed that she tried to return the diamond ring during the preliminary investigation of the case, but Jeremias refused to accept it.

As s*ur-rebuttal* evidence, the petitioner presented a Deed of Real Estate Mortgage dated August 25, 2003 (*mortgage deed*),[11] executed by Danilo Pamintuan, the petitioner's husband. According to the terms of the mortgage deed, Danilo admitted that Jeremias had entrusted the diamond ring to him on February 16, 1996, not to the petitioner, and that the mortgage deed was constituted in consideration of Danilo's promise to return the diamond ring to Jeremias.

The RTC's Ruling

The RTC found the petitioner guilty beyond reasonable doubt of *estafa*.[12] It also found that the defense failed to refute the prosecution evidence establishing all the elements of the crime charged. The RTC ruled, too, that the mortgage deed only served as proof of the restitution of or reparation for the value of the diamond ring and thus addressed only the petitioner's civil liability, not her criminal liability. The dispositive portion of the RTC decision reads:

> WHEREFORE, finding the accused **DULCE PAMINTUAN** guilty beyond reasonable doubt for the crime of estafa, defined and penalized under Article 315, par. 1 (b) of the Revised Penal Code, without modifying circumstances, she is hereby sentenced to suffer the

[10] Exhibit "1"; Records, p. 163; II Folder of Exhibits, p. 3.

[11] *Rollo*, pp. 77-78.

[12] *Supra* note 3.

indeterminate penalty of four (4) years and two (2) months of *prision correccional* as minimum to twenty (20) years of *reclusion temporal* as maximum.

Considering that there is already a settlement as to the payment of the civil liability, as embodied in the Real Estate Mortgage executed by the parties, this Court hereby refrains to pronounce the corresponding civil indemnity.

SO ORDERED.

The petitioner appealed to the CA.

The CA Ruling

The CA agreed with the RTC that the petitioner was guilty beyond reasonable doubt of *estafa* and thus dismissed the petitioner's appeal.[13] The CA ruled that the prosecution evidence showed that Jeremias entrusted possession of the diamond ring to the petitioner, not to her husband. The CA observed that the prosecution duly proved the petitioner's misappropriation by showing that she failed to return the diamond ring upon demand. That misappropriation took place was strengthened when the petitioner failed to refute Jeremias' allegation that she pawned the diamond ring – an act that ran counter to the terms of her agency under the *Katibayan*.

The petitioner moved to reconsider the CA decision, arguing that the CA disregarded the legal significance of the mortgage deed, and filed the present petition after the CA denied her motion.

The Issues

The petitioner raises the following issues:

1. whether the CA correctly disregarded the effect of the mortgage deed on her criminal liability; and
2. whether the elements of the crime of *estafa* under Article 315, paragraph 1(b) of the Revised Penal Code, as amended, were duly proven beyond reasonable doubt.

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[13] *Supra* note 1, at 7.

The petitioner asserts that the terms of the mortgage deed negated the element of misappropriation, and the RTC and the CA did not at all consider these when they convicted her. At the same time, she disputes the terms of the *Katibayan*, as its stipulations, written in fine print, did not truly disclose the real nature of the transaction between her and Jeremias. She also claims that she became the owner of the diamond ring after it was turned over to her. The petitioner further insists that she signed the *Katibayan* without taking heed of its terms because she trusted Jeremias.

The Court's Ruling

We find the petition unmeritorious.

The issues raised by the petitioner are essentially encapsulated by the second issue outlined above – *i.e.*, whether the crime of *estafa* has been sufficiently established; the first issue relating to the mortgage deed is a matter of defense that should be considered in resolving the second issue.

Article 315, paragraph 1(b) of the Revised Penal Code, as amended, under which the petitioner was charged and prosecuted, states:

> Art. 315. *Swindling (estafa).* — Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
>
> *1st.* The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be[.]
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> x x x x x x x x x
>
> 1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property[.]

The elements of *estafa* under this provision are: (1) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (2) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (3) the misappropriation, conversion or denial is to the prejudice of another; and (4) demand by the offended party that the offender return the money or property received.[14]

The essence of this kind of *estafa* is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made.[15] The words "convert" and "misappropriate" connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon.[16] To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right.[17] In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.[18]

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[14] *Perez v. People*, G.R. No. 150443, January 20, 2006, 479 SCRA 209, 218-219.

[15] *Serona v. Court of Appeals*, 440 Phil. 508, 518 (2002).

[16] *Ibid.*

[17] *Ibid.*

[18] *U.S. v. Rosario de Guzman*, 1 Phil. 138, 139 (1902).

In this case, the petitioner asserts that the prosecution failed to sufficiently prove the first and second elements of the crime. The petitioner also asserts that these elements were negated by her testimony and by the mortgage deed that showed she received the diamond ring as owner, and not as an agent. The petitioner argues that she could not have misappropriated or converted the diamond ring precisely because she was its owner.

The First Element: Receipt of Goods in Trust

The prosecution proved the first element of the crime through the testimony of Jeremias who related that he gave the petitioner the diamond ring for sale on commission basis. The unequivocal terms of the *Katibayan* corroborated Jeremias' testimony and showed the fiduciary relationship between the two parties as principal and agent, where the petitioner was entrusted with the diamond ring under the specific authority to sell it within three days from its receipt and to return it if it remains unsold within that period.

Significantly, the petitioner admitted the fiduciary relationship between herself and Jeremias – an aspect of the case that the RTC and the CA duly noted through the finding that the petitioner admitted receiving the diamond ring from Jeremias to be sold on commission basis.[19]

Against the prosecution's case, the defense submitted its own evidence and varying theories that unfortunately suffered from serious contradictions.

First, at the earliest stages of the trial proper, the petitioner categorically admitted on the witness stand that she received the diamond ring in order to sell it on commission basis. Immediately after, she testified that she gave several pieces of jewelry (evidenced by a receipt) to Jeremias in exchange for the diamond ring. As the RTC noted, however, the written receipt of the pieces of jewelry did not support the theory that they had been given by way of exchange for the diamond ring. The RTC observed:

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[19] *Supra* note 3, at 63; *supra* note 1, at 37.

[T]here is nothing in the document to show that it was received, nor it was given to the private complainant in exchange of the latter's ring. There is not even, in the said list, any valuation or costing of each [jewelry] x x x What is contained in the list are the words "for cleaning" which purports no other meaning that would favor the cause of the accused.[20]

Second, the defense next attacked the identity of the recipient of the diamond ring. As *sur-rebuttal*, the petitioner presented the mortgage deed to show that the diamond ring was entrusted to her husband, Danilo, and not to her. This mortgage deed, however, was executed only on August 25, 2003, or long after the ring was delivered on February 16, 1996, together with the *Katibayan* that the petitioner duly signed. It likewise contradicted the petitioner's earlier admission that she took delivery of the diamond ring. Not surprisingly, the lower courts did not give the submitted deed any evidentiary value.

Lastly, the defense propounded the theory that the petitioner and her husband jointly owned the diamond ring, citing the mortgage deed as proof and basis of this claim. Both the RTC and the CA recognized the theory as unmeritorious given the clear terms of the mortgage deed. These terms did not speak of the petitioner or Danilo's ownership of the ring, merely of Danilo's intended return of the ring. The mortgage deed reads:

[T]he MORTGAGOR [DANILO PAMINTUAN], for and in consideration of my promise to return within thirty (30) days from today to JERRY VICTORIA, Filipino citizen, of legal age, married and a resident of San Isidro Village, Batangas City, hereinafter referred to as the MORTGAGEE, the jewelry subject matter of Criminal Case No. 11002, in the same order and condition when it was entrusted to me by the MORTGAGEE on February 16, 1996, hereby convey by way of first mortgage unto the said MORTGAGEE x x x [.][21]

The Second Element: The Misappropriation

The second element – the misappropriation of the diamond ring – was proven by Jeremias' testimony that the petitioner

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[20] *Supra* note 3, at 64.

[21] *Id.* at 65.

failed to return the diamond ring after the lapse of the agreed period or afterwards, despite the clear terms of the *Katibayan*. He further testified that the petitioner could not return the ring because she had pawned it. She strangely did not respond to this allegation. This silence, coupled with her undeniable failure to return the diamond ring, immeasurably strengthened the element of misappropriation. Her silence assumes great significance since the pawning of the diamond ring was a clear violation of the *Katibayan* which only gave her the authority to sell on commission or to return the ring. Acting beyond the mandate of this agency is the conversion or misappropriation that the crime of *estafa* punishes.

Third and Fourth Elements: Prejudice and Demand

The prosecution proved the third and fourth elements through evidence of demands and the continued failure to return the ring or its value for seven years (1996 to 2003) despite demand. Based on the records, the return of the value of the ring came only in 2003 after the execution of the mortgage deed that, strangely, while marked as Exh. "4", was never offered in evidence and is thus technically not an evidence we can appreciate.[22] The demand letters, on the other hand, were never disputed and thus clearly showed the failure to return the ring or its value. In fact, even if the mortgage deed were to be given evidentiary value, it can only stand as evidence of the return of the value of the ring in 2003, not of anything else.

The basis of the *estafa* charge is the failure to return the ring or to pay for its value in cash within the period stipulated in the *Katibayan*. We do not find it disputed that the ring was never returned despite demands. The value of the ring was not also made available to Jeremias until seven years after its delivery to the petitioner. When she failed at the first instance (and in fact she continuously failed), despite demands, to return at least the value of the ring, the crime of *estafa* was consummated. The return after seven years of its value only addressed the civil liability that the consummated crime of *estafa*

[22] *Supra* note 2, at 44.

carried with it, as the RTC and the CA correctly stated in their decisions.

If only to address the petitioner's issue regarding the legal significance of the un-offered mortgage deed, we observe that it could not have raised any reasonable doubt about the nature of the transaction between the parties. Under the circumstances, the best evidence to ascertain the nature of the parties' diamond ring transaction is the *Katibayan* which is the written evidence of their agreement that should be deemed to contain all the terms they agreed upon.[23] Under the parol evidence rule, no additional or contradictory terms to this written agreement can be admitted to show that, at or before the signing of the document, other or different terms were orally agreed upon by the parties.[24] Thus, the terms of the *Katibayan* should be the prevailing terms of the transaction between the parties, not any oral or side agreement the petitioner alleged. We consider, too, in this regard that the post-*Katibayan* acts of the parties strengthened, rather than negated, the *Katibayan* terms, particularly the petitioner's obligation to return the diamond ring; otherwise, she would not have attempted to return the value of the ring when the criminal complaint was filed against her, nor secured the execution of the mortgage deed, had no such obligation existed.

Viewed in their totality, we hold that the prosecution presented proof beyond reasonable doubt of the petitioner's guilt, and both the RTC and the CA did not err in their conclusions. The prosecution evidence was clear and categorical, and systematically established every element of the crime; the defense evidence, on the other hand, glaringly suffered from contradictions, changes of theories, and deficiencies that placed its merit in great doubt.

The Penalty

The decisive factor in determining the criminal and civil liability for the crime of *estafa* depends on the value of the thing or the amount defrauded. In this case, the established evidence showed that the value of the diamond ring is ₱765,000.00. The first

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

[24] *Sps. Agbada v. Inter-Urban Developers, Inc.*, 438 Phil. 168, 192 (2002).

paragraph of Article 315 provides the appropriate penalty if the value of the thing or the amount defrauded exceeds ₱22,000.00, as follows:

> *1st.* The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years.

With the given penalty range pegged at the maximum of *prision mayor* in its minimum period and an additional one year for every ₱10,000.00 in excess of ₱22,000.00, the maximum imposable penalty shall exceed twenty years when computed, twenty years of imprisonment should be imposed as maximum.

The minimum of the imposable penalty depends on the application of the Indeterminate Sentence Law pursuant to which the maximum term is "that which, in view of the attending circumstances, could be properly imposed" under the Revised Penal Code, and the minimum shall be "within the range of the penalty next lower to that prescribed" for the offense. The penalty next lower should be based on the penalty prescribed by the Code for the offense, without first considering any modifying circumstance attendant to the commission of the crime. The determination of the minimum penalty is left by law to the sound discretion of the court and it can be anywhere within the range of the penalty next lower without any reference to the periods into which it might be subdivided. The modifying circumstances are considered only in the imposition of the maximum term of the indeterminate sentence.

Since the penalty prescribed by law for the crime of *estafa* is *prision correccional* maximum to *prision mayor* minimum, the penalty next lower would then be *prision correccional* minimum to medium. Thus, the minimum term of the indeterminate sentence should be anywhere within six (6) months and one (1) day to four (4) years and two (2) months, while the maximum term of the indeterminate sentence should at least

be six (6) years and one (1) day because the amounts involved exceeded ₱22,000.00, plus an additional one (1) year for each additional ₱10,000.00.[25]

Under these norms, the penalty of four (4) years and two (2) months of *prision correccional*, as minimum term, to twenty (20) years of *reclusion temporal*, as maximum term, is correct. The RTC and the CA were correct in not awarding civil liability since the execution of the mortgage deed satisfied the value of the unreturned diamond ring.

WHEREFORE, we hereby *DENY* the petition for lack of merit, and consequently *AFFIRM* the decision dated January 12, 2006 and the resolution dated May 19, 2006 of the Court of Appeals in CA-G.R. CR No. 28785, finding petitioner Dulce Pamintuan guilty beyond reasonable doubt of the crime of *estafa,* defined and penalized under Article 315, paragraph 1(b) of the Revised Penal Code, as amended. No costs.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Abad,[*] and *Villarama, Jr.,* concur.

THIRD DIVISION

[G.R. No. 178411. June 23, 2010]

OFFICE OF THE CITY MAYOR OF PARAÑAQUE CITY, OFFICE OF THE CITY ADMINISTRATOR OF PARAÑAQUE CITY, OFFICE OF THE CITY

[25] See People vs. *Temporado*, G.R. No. 173473, December 17, 2008, 574 SCRA 258, 301-304, and the seminal case of *People v. Gabres*, 335 Phil. 242, 256-257 (1997).

[*] Designated additional Member of the Third Division, in view of the retirement of former Chief Justice Reynato S. Puno, per Special Order No. 843 dated May 17, 2010.

ENGINEER OF PARAÑAQUE CITY, OFFICE OF THE CITY PLANNING AND DEVELOPMENT COORDINATOR, OFFICE OF THE BARANGAY CAPTAIN AND SANGGUNIANG PAMBARANGAY OF BARANGAY VITALEZ, PARAÑAQUE CITY, TERESITA A. GATCHALIAN, ENRICO R. ESGUERRA, ERNESTO T. PRACALE, JR., MANUEL M. ARGOTE, CONRADO M. CANLAS, JOSEPHINE S. DAUIGOY, ALLAN L. GONZALES, ESTER C. ASEHAN, MANUEL A. FUENTES, and MYRNA P. ROSALES, *petitioners, vs.* **MARIO D. EBIO AND HIS CHILDREN/HEIRS namely, ARTURO V. EBIO, EDUARDO V. EBIO, RENATO V. EBIO, LOURDES E. MAGTANGOB, MILA V. EBIO, and ARNEL V. EBIO,** *respondents.*

SYLLABUS

1. CIVIL LAW; OWNERSHIP; ACCRETIONS; ALLUVIAL DEPOSITS ALONG THE BANKS OF A CREEK DO NOT FORM PART OF THE PUBLIC DOMAIN, IT AUTOMATICALLY BELONGS TO THE OWNER OF THE LAND TO WHICH IT MAY HAVE BEEN ADDED. — It is an uncontested fact that the subject land was formed from the alluvial deposits that have gradually settled along the banks of the Cut-cut creek. This being the case, the law that governs ownership over the accreted portion is Article 84 of the Spanish Law of Water of 1986, which remains in effect, in relation to Article 457 of the Civil Code. x x x It is therefore explicit from the foregoing provisions that alluvial deposits along the banks of a creek do not form part of the public domain as the alluvial property automatically belongs to the owner of the estate to which it may have been added. The only restriction provided for by law is that the owner of the adjoining property must register the same under the Torrens system; otherwise, the alluvial property may be subject to acquisition through prescription by third persons. x x x [W]hile it is true that a creek is a property of public dominion, the land which is formed by the gradual and imperceptible accumulation of sediments along its banks does not form part of the public domain by clear provision of law.

2. REMEDIAL LAW; PARTIES; INDISPENSABLE PARTY AND NECESSARY PARTY, DISTINGUISHED. — [A]n indispensable

party is one whose interest in the controversy is such that a final decree would necessarily affect his/her right, so that the court cannot proceed without their presence. In contrast, a necessary party is one whose presence in the proceedings is necessary to adjudicate the whole controversy but whose interest is separable such that a final decree can be made in their absence without affecting them.

3. ID.; ID.; ID.; WHERE THE STATE IS NEITHER A NECESSARY NOR AN INDISPENSABLE PARTY. — In the instant case, the action for prohibition seeks to enjoin the city government of Parañaque from proceeding with its implementation of the road construction project. The State is neither a necessary nor an indispensable party to an action where no positive act shall be required from it or where no obligation shall be imposed upon it, such as in the case at bar. Neither would it be an indispensable party if none of its properties shall be divested nor any of its rights infringed.

4. ID.; SPECIAL CIVIL ACTIONS; INJUNCTION; NATURE OF THE RIGHT THAT A PARTY MUST HAVE BEFORE HE CAN AVAIL OF AN INJUNCTIVE RELIEF; CASE AT BAR. — We also find that the character of possession and ownership by the respondents over the contested land entitles them to the avails of the action. A right *in esse* means a clear and unmistakable right. A party seeking to avail of an injunctive relief must prove that he or she possesses a right *in esse* or one that is actual or existing. It should not be contingent, abstract, or future rights, or one which may never arise. x x x [R]espondents are deemed to have acquired ownership over the subject property through prescription. Respondents can assert such right despite the fact that they have yet to register their title over the said lot. It must be remembered that the purpose of land registration is not the acquisition of lands, but only the registration of title which the applicant already possessed over the land. Registration was never intended as a means of acquiring ownership. A decree of registration merely confirms, but does not confer, ownership.

APPEARANCES OF COUNSEL

Jose J. Torrefranca for petitioners.
Norberto C. Caparas, Jr. for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, assailing the January 31, 2007 Decision[1] and June 8, 2007 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 91350 allegedly for being contrary to law and jurisprudence. The CA had reversed the Order[3] of the Regional Trial Court (RTC) of Parañaque City, Branch 196, issued on April 29, 2005 in Civil Case No. 05-0155.

Below are the facts.

Respondents claim that they are the absolute owners of a parcel of land consisting of 406 square meters, more or less, located at 9781 Vitalez Compound in Barangay Vitalez, Parañaque City and covered by Tax Declaration Nos. 01027 and 01472 in the name of respondent Mario D. Ebio. Said land was an accretion of Cut-cut creek. Respondents assert that the original occupant and possessor of the said parcel of land was their great grandfather, Jose Vitalez. Sometime in 1930, Jose gave the land to his son, Pedro Vitalez. From then on, Pedro continuously and exclusively occupied and possessed the said lot. In 1966, after executing an affidavit declaring possession and occupancy,[4] Pedro was able to obtain a tax declaration over the said property in his name.[5] Since then, respondents have been religiously paying real property taxes for the said property.[6]

Meanwhile, in 1961, respondent Mario Ebio married Pedro's daughter, Zenaida. Upon Pedro's advice, the couple established

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[1] *Rollo*, pp. 21-29. Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr. concurring.

[2] *Id.* at 31.

[3] *Id.* at 119-121.

[4] *Id.* at 52.

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

[6] *Id.* at 26.

their home on the said lot. In April 1964 and in October 1971, Mario Ebio secured building permits from the Parañaque municipal office for the construction of their house within the said compound.[7] On April 21, 1987, Pedro executed a notarized Transfer of Rights[8] ceding his claim over the entire parcel of land in favor of Mario Ebio. Subsequently, the tax declarations under Pedro's name were cancelled and new ones were issued in Mario Ebio's name.[9]

On March 30, 1999, the Office of the *Sangguniang Barangay* of Vitalez passed Resolution No. 08, series of 1999[10] seeking assistance from the City Government of Parañaque for the construction of an access road along Cut-cut Creek located in the said *barangay*. The proposed road, projected to be eight (8) meters wide and sixty (60) meters long, will run from Urma Drive to the main road of Vitalez Compound[11] traversing the lot occupied by the respondents. When the city government advised all the affected residents to vacate the said area, respondents immediately registered their opposition thereto. As a result, the road project was temporarily suspended.[12]

In January 2003, however, respondents were surprised when several officials from the *barangay* and the city planning office proceeded to cut eight (8) coconut trees planted on the said lot. Respondents filed letter-complaints before the Regional Director of the Bureau of Lands, the Department of Interior and Local Government and the Office of the Vice Mayor.[13] On June 29, 2003, the *Sangguniang Barangay* of Vitalez held a meeting to discuss the construction of the proposed road. In the said meeting, respondents asserted their opposition to the proposed

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[7] *Id.* at 56-58.

[8] *Id.* at 90.

[9] *Id.* at 22.

[10] *Id.* at 91-94.

[11] *Id.* at 92.

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

[13] *Id.* at 37-38.

project and their claim of ownership over the affected property.[14] On November 14, 2003, respondents attended another meeting with officials from the city government, but no definite agreement was reached by and among the parties.[15]

On March 28, 2005, City Administrator Noli Aldip sent a letter to the respondents ordering them to vacate the area within the next thirty (30) days, or be physically evicted from the said property.[16] Respondents sent a letter to the Office of the City Administrator asserting, in sum, their claim over the subject property and expressing intent for a further dialogue.[17] The request remained unheeded.

Threatened of being evicted, respondents went to the RTC of Parañaque City on April 21, 2005 and applied for a writ of preliminary injunction against petitioners.[18] In the course of the proceedings, respondents admitted before the trial court that they have a pending application for the issuance of a sales patent before the Department of Environment and Natural Resources (DENR).[19]

On April 29, 2005, the RTC issued an Order[20] denying the petition for lack of merit. The trial court reasoned that respondents were not able to prove successfully that they have an established right to the property since they have not instituted an action for confirmation of title and their application for sales patent has not yet been granted. Additionally, they failed to implead the Republic of the Philippines, which is an indispensable party.

Respondents moved for reconsideration, but the same was denied.[21]

[14] *Id.* at 107-112.

[15] *Id.* at 39.

[16] *Id.* at 116.

[17] *Id.* at 117-118.

[18] *Id.* at 32-51.

[19] *Id.* at 119.

[20] *Supra* note 3.

[21] *Id.* at 136.

Aggrieved, respondents elevated the matter to the Court of Appeals. On January 31, 2007, the Court of Appeals issued its Decision in favor of the respondents. According to the Court of Appeals—

> The issue ultimately boils down to the question of ownership of the lands adjoining Cutcut Creek particularly Road Lot No. 8 (hereinafter RL 8) and the accreted portion beside RL 8.
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> The evidentiary records of the instant case, shows that RL 8 containing an area of 291 square meters is owned by Guaranteed Homes, Inc. covered by TCT No. S-62176. The same RL 8 appears to have been donated by the Guaranteed Homes to the City Government of Parañaque on 22 March 1966 and which was accepted by the then Mayor FLORENCIO BERNABE on 5 April 1966. There is no evidence however, when RL 8 has been intended as a road lot.
>
> On the other hand, the evidentiary records reveal that PEDRO VITALEZ possessed the accreted property since 1930 per his Affidavit dated 21 March 1966 for the purpose of declaring the said property for taxation purposes. The property then became the subject of Tax Declaration No. 20134 beginning the year 1967 and the real property taxes therefor had been paid for the years 1966, 1967, 1968, 1969, 1970, 1972, 1973, 1974, 1978, 1980, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, and 2004. Sometime in 1964 and 1971, construction permits were issued in favor of Appellant MARIO EBIO for the subject property. On 21 April 1987, PEDRO VITALEZ transferred his rights in the accreted property to MARIO EBIO and his successors-in-interest.
>
> Applying [Article 457 of the Civil Code considering] the foregoing documentary evidence, it could be concluded that Guaranteed Homes is the owner of the accreted property considering its ownership of the adjoining RL 8 to which the accretion attached. However, this is without the application of the provisions of the Civil Code on acquisitive prescription which is likewise applicable in the instant case.
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> x x x x x x x x x
>
> The subject of acquisitive prescription in the instant case is the accreted portion which [was] **duly proven** by the Appellants. It is clear that since 1930, Appellants together with their predecessor-in-interest, PEDRO VITALEZ[,] have been in exclusive possession

of the subject property and starting 1964 had introduced improvements thereon as evidenced by their construction permits. Thus, even by extraordinary acquisitive prescription[,] Appellants have acquired ownership of the property in question since 1930 even if the adjoining RL 8 was subsequently registered in the name of Guaranteed Homes. x x x.

x x x x x x x x x

Further, it was only in 1978 that Guaranteed Homes was able to have RL 8 registered in its name, which is almost fifty years from the time PEDRO VITALEZ occupied the adjoining accreted property in 1930. x x x.

x x x x x x x x x

We likewise note the continuous payment of real property taxes of Appellants which bolster their right over the subject property. x x x.

x x x x x x x x x

In sum, We are fully convinced and so hold that the Appellants [have] amply proven their right over the property in question.

WHEREFORE, premises considered, the instant appeal is hereby **GRANTED**. The challenged Order of the court *a quo* is **REVERSED** and **SET ASIDE**.

SO ORDERED.[22]

On June 8, 2007, the appellate court denied petitioners' motion for reconsideration. Hence, this petition raising the following assignment of errors:

I. WHETHER OR NOT THE DECISION AND RESOLUTION OF THE HONORABLE COURT OF APPEALS THAT RESPONDENTS HAVE A RIGHT *IN ESSE* IS IN ACCORD WITH THE LAW AND ESTABLISHED JURISPRUDENCE[;]

II. WHETHER OR NOT THE DECISION AND RESOLUTION OF THE HONORABLE COURT OF APPEALS THAT THE SUBJECT LOT IS AVAILABLE FOR ACQUISITIVE PRESCRIPTION IS IN ACCORD WITH THE LAW AND ESTABLISHED JURISPRUDENCE[;] AND

[22] *Id.* at 25-29. Emphasis supplied.

III. WHETHER OR NOT THE STATE IS AN INDISPENSABLE PARTY TO THE COMPLAINT … FILED BY RESPONDENTS IN THE LOWER COURT.[23]

The issues may be narrowed down into two (2): procedurally, whether the State is an indispensable party to respondents' action for prohibitory injunction; and substantively, whether the character of respondents' possession and occupation of the subject property entitles them to avail of the relief of prohibitory injunction.

The petition is without merit.

An action for injunction is brought specifically to restrain or command the performance of an act.[24] It is distinct from the ancillary remedy of preliminary injunction, which cannot exist except only as part or as an incident to an independent action or proceeding. Moreover, in an action for injunction, the auxiliary remedy of a preliminary prohibitory or mandatory injunction may issue.[25]

In the case at bar, respondents filed an action for injunction to prevent the local government of Parañaque City from proceeding with the construction of an access road that will traverse through a parcel of land which they claim is owned by them by virtue of acquisitive prescription.

Petitioners, however, argue that since the creek, being a tributary of the river, is classified as part of the public domain, any land that may have formed along its banks through time should also be considered as part of the public domain. And respondents should have included the State as it is an indispensable party to the action.

We do not agree.

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[23] *Id.* at 12-13.

[24] *Manila Banking Corporation v. Court of Appeals*, G.R. No. L-45961, July 3, 1990, 187 SCRA 138, 144-145.

[25] *Id.* at 145.

It is an uncontested fact that the subject land was formed from the alluvial deposits that have gradually settled along the banks of Cut-cut creek. This being the case, the law that governs ownership over the accreted portion is Article 84 of the Spanish Law of Waters of 1866, which remains in effect,[26] in relation to Article 457 of the Civil Code.

Article 84 of the Spanish Law of Waters of 1866 specifically covers ownership over alluvial deposits along the banks of a creek. It reads:

> ART. 84. Accretions deposited gradually upon lands contiguous to creeks, streams, rivers, and lakes, by accessions or sediments from the waters thereof, belong to the owners of such lands.[27]

Interestingly, Article 457 of the Civil Code states:

> Art. 457. To the owners of lands adjoining the banks of rivers belong the accretion which they gradually receive from the effects of the current of the waters.

It is therefore explicit from the foregoing provisions that alluvial deposits along the banks of a creek do not form part of the public domain as the alluvial property automatically belongs to the owner of the estate to which it may have been added. The only restriction provided for by law is that the owner of the adjoining property must register the same under the Torrens system; otherwise, the alluvial property may be subject to acquisition through prescription by third persons.[28]

In contrast, properties of public dominion cannot be acquired by prescription. No matter how long the possession of the properties has been, there can be no prescription against the State regarding

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[26] See *Heirs of Emiliano Navarro v. Intermediate Appellate Court*, G.R. No. 68166, February 12, 1997, 268 SCRA 74.

[27] As cited in *Government of the P.I. v. Colegio de San Jose*, 53 Phil. 423, 430 (1929).

[28] *Grande v. Court of Appeals*, No. L-17652, June 30, 1962, 5 SCRA 524, 530-531.

property of public domain.[29] Even a city or municipality cannot acquire them by prescription as against the State.[30]

Hence, while it is true that a creek is a property of public dominion,[31] the land which is formed by the gradual and imperceptible accumulation of sediments along its banks does not form part of the public domain by clear provision of law.

Moreover, an indispensable party is one whose interest in the controversy is such that a final decree would necessarily affect his/her right, so that the court cannot proceed without their presence.[32] In contrast, a necessary party is one whose presence in the proceedings is necessary to adjudicate the whole controversy but whose interest is separable such that a final decree can be made in their absence without affecting them.[33]

In the instant case, the action for prohibition seeks to enjoin the city government of Parañaque from proceeding with its implementation of the road construction project. The State is neither a necessary nor an indispensable party to an action where no positive act shall be required from it or where no obligation shall be imposed upon it, such as in the case at bar. Neither would it be an indispensable party if none of its properties shall be divested nor any of its rights infringed.

We also find that the character of possession and ownership by the respondents over the contested land entitles them to the avails of the action.

A right *in esse* means a clear and unmistakable right.[34] A party seeking to avail of an injunctive relief must prove that he

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[29] *Meneses v. El Commonwealth De Filipinas*, 69 Phil. 647, 650 (1940).

[30] See *City of Manila v. Insular Government*, 10 Phil. 327, 338 (1908).

[31] *Maneclang v. Intermediate Appellate Court*, No. 66575, September 30, 1986, 144 SCRA 553, 556.

[32] Regalado, Vol. I, *Remedial Law Compendium*, 9th edition, p. 91.

[33] *Id.*

[34] *Philippine Leisure and Retirement Authority v. Court of Appeals*, G.R. No. 156303, December 19, 2007, 541 SCRA 85, 100.

or she possesses a right *in esse* or one that is actual or existing.[35] It should not be contingent, abstract, or future rights, or one which may never arise.[36]

In the case at bar, respondents assert that their predecessor-in-interest, Pedro Vitalez, had occupied and possessed the subject lot as early as 1930. In 1964, respondent Mario Ebio secured a permit from the local government of Parañaque for the construction of their family dwelling on the said lot. In 1966, Pedro executed an affidavit of possession and occupancy allowing him to declare the property in his name for taxation purposes. Curiously, it was also in 1966 when Guaranteed Homes, Inc., the registered owner of Road Lot No. 8 (RL 8) which adjoins the land occupied by the respondents, donated RL 8 to the local government of Parañaque.

From these findings of fact by both the trial court and the Court of Appeals, only one conclusion can be made: that for more than thirty (30) years, neither Guaranteed Homes, Inc. nor the local government of Parañaque in its corporate or private capacity sought to register the accreted portion. Undoubtedly, respondents are deemed to have acquired ownership over the subject property through prescription. Respondents can assert such right despite the fact that they have yet to register their title over the said lot. It must be remembered that the purpose of land registration is not the acquisition of lands, but only the registration of title which the applicant already possessed over the land. Registration was never intended as a means of acquiring ownership.[37] A decree of registration merely confirms, but does not confer, ownership.[38]

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[35] *Duvaz Corporation v. Export and Industry Bank*, G.R. No. 163011, June 7, 2007, 523 SCRA 405, 413.

[36] *Id.* at 415.

[37] *Republic v. Court of Appeals*, Nos. L-43105 & L-43190, August 31, 1984, 131 SCRA 532, 539.

[38] *Lopez v. Esquivel, Jr.*, G.R. No. 168734, April 24, 2009, 586 SCRA 545, 562; and *Republic v. Court of Appeals*, G.R. No. 108998, August 24, 1994, 235 SCRA 567, 576.

Did the filing of a sales patent application by the respondents, which remains pending before the DENR, estop them from filing an injunction suit?

We answer in the negative.

Confirmation of an imperfect title over a parcel of land may be done either through judicial proceedings or through administrative process. In the instant case, respondents admitted that they opted to confirm their title over the property administratively by filing an application for sales patent.

Respondents' application for sales patent, however, should not be used to prejudice or derogate what may be deemed as their vested right over the subject property. The sales patent application should instead be considered as a mere superfluity particularly since ownership over the land, which they seek to buy from the State, is already vested upon them by virtue of acquisitive prescription. Moreover, the State does not have any authority to convey a property through the issuance of a grant or a patent if the land is no longer a public land.[39]

Nemo dat quod dat non habet. No one can give what he does not have. Such principle is equally applicable even against a sovereign entity that is the State.

WHEREFORE, the petition is *DENIED* for lack of merit. The January 31, 2007 Decision, as well as the July 8, 2007 Resolution, of the Court of Appeals in CA-G.R. SP No. 91350 are hereby *AFFIRMED*.

With costs against petitioners.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Abad*,[*] *JJ.*, concur.

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[39] *De Guzman v. Agbagala*, G.R. No. 163566, February 19, 2008, 546 SCRA 278, 286.

[*] Additional member per Special Order No. 843.

THIRD DIVISION

[G.R. No. 181274. June 23, 2010]

PHILIPPINE ECONOMIC ZONE AUTHORITY, represented herein by DIRECTOR GENERAL LILIA B. DE LIMA, *petitioner*, *vs.* **JOSEPH JUDE CARANTES, ROSE CARANTES, and all the other HEIRS OF MAXIMINO CARANTES,** *respondents*.

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; INJUNCTION; NATURE AND REQUISITES. — Injunction is a judicial writ, process or proceeding whereby a party is directed either to do a particular act, in which case it is called a mandatory injunction or to refrain from doing a particular act, in which case it is called a prohibitory injunction. As a main action, injunction seeks to permanently enjoin the defendant through a final injunction issued by the court and contained in the judgment. x x x Two (2) requisites must concur for injunction to issue: (1) there must be a right to be protected and (2) the acts against which the injunction is to be directed are violative of said right. Particularly, in actions involving realty, preliminary injunction will lie only after the plaintiff has fully established his title or right thereto by a proper action for the purpose. To authorize a temporary injunction, the complainant must make out at least a *prima facie* showing of a right to the final relief. Preliminary injunction will not issue to protect a right not *in esse*. These principles are equally relevant to actions seeking permanent injunction.

2. CIVIL LAW; PUBLIC LANDS; ANCESTRAL LAND CLAIMANTS HAVE NO RIGHT TO BUILD PERMANENT STRUCTURES ON ANCESTRAL LANDS. — Respondents being holders of a mere CALC, their right to possess the subject land is limited to occupation in relation to cultivation. Unlike No. 1, Par. 1, Section 1, Article VII of the same DENR DAO, which expressly allows ancestral domain claimants to reside peacefully within the domain, nothing in Section 2 grants ancestral land claimants a similar right, much less the right to build permanent structures on ancestral lands – an act of ownership that pertains to one

(1) who has a recognized right by virtue of a Certificate of Ancestral Land Title.

3. POLITICAL LAW; ADMINISTRATIVE LAW; PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA); HAS AUTHORITY TO ISSUE BUILDING PERMIT AND THE COMPLEMENTARY FENCING PERMIT ON ANCESTRAL LANDS WITHIN THE AREAS OWNED OR ADMINISTERED BY IT. — By specific provision of law, it is PEZA, through its building officials, which has authority to issue building permits for the construction of structures within the areas owned or administered by it, whether on public or private lands. Corollary to this, PEZA, through its director general may require owners of structures built without said permit to remove such structures within sixty (60) days. Otherwise, PEZA may summarily remove them at the expense of the owner of the houses, buildings or structures. x x x Considering, however, that in this case, a fencing permit is issued complementary to a building permit and that within the premises of PEZA, it is the Authority that may properly issue a building permit, it is only fitting that fencing permits be issued by the Authority.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Calpito Law Office for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

This petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, seeks to reverse and set aside the Decision[1] dated October 26, 2007 of the Court of Appeals (CA) in CA-G.R. CV No. 73230. The Court of Appeals had affirmed the Order[2] dated October 2, 2001 of the Regional

[1] *Rollo*, pp. 34-42. Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Jose C. Mendoza (now a member of this Court) and Myrna Dimaranan Vidal, concurring.

[2] CA *rollo*, pp. 54-61. Penned by Judge Antonio M. Esteves.

Trial Court (RTC), Branch 5, Baguio City in Civil Case No. 4339-R, granting the respondents' Petition[3] for injunction.

The facts are gathered from the records of the case.

Respondents Joseph Jude Carantes, Rose Carantes and the heirs of Maximino Carantes are in possession of a 30,368-square meter parcel of land located in Loakan Road, Baguio City. On June 20, 1997, they obtained Certificate of Ancestral Land Claim (CALC) No. CAR-CALC-022[4] over the land from the Department of Environment and Natural Resources (DENR). On the strength of said CALC, respondents secured a building permit[5] and a fencing permit[6] from the Building Official of Baguio City, Teodoro G. Barrozo. Before long, they fenced the premises and began constructing a residential building thereon.

Soon, respondents received a letter[7] dated February 9, 1999 from Digna D. Torres, the Zone Administrator of the Philippine Economic Zone Authority (PEZA), informing them that the house they built had overlapped PEZA's territorial boundary. Torres advised respondents to demolish the same within sixty (60) days from notice. Otherwise, PEZA would undertake its demolition at respondents' expense.

Without answering PEZA's letter, respondents filed a petition for injunction, with prayer for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction before the RTC of Baguio City. By Order[8] dated April 8, 1999, the RTC of Baguio City issued a TRO, which enjoined PEZA to cease and desist from threatening respondents with the demolition of their house before respondents' prayer for a writ of preliminary injunction can be heard. On September 19, 2001, the RTC

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[3] Records, pp. 1-4.

[4] *Rollo*, pp. 168-172.

[5] Records, p. 10.

[6] *Id.* at 9.

[7] *Id.* at 11.

[8] *Id.* at 19-20.

likewise issued an Order,[9] which directed the parties to maintain the *status quo* pending resolution of the case.

On October 2, 2001, the RTC granted respondents' petition and ordered the issuance of a writ of injunction against PEZA, thus:

> WHEREFORE, the petition is herein **GRANTED** and a writ of injunction is hereby issued enjoining the respondents, their agents, representatives or anybody acting in their behalf from dispossessing, notifying or disturbing in any [manner] the peaceful possession and occupation of the land by the petitioners.
>
> SO ORDERED.[10]

The trial court ruled that respondents are entitled to possess, occupy and cultivate the subject lots on the basis of their CALC. The court *a quo* explained that by the very definition of an ancestral land under Republic Act (R.A.) No. 8371[11] or the Indigenous Peoples Rights Act of 1997, said lots have been segregated from lands of the public domain. As such, the rights of respondents to the land are already vested in them and cannot be disturbed by Proclamation No. 1825,[12] which included said land within the export processing zone of Baguio City.

On appeal, the CA affirmed the RTC ruling. In the assailed Decision dated October 26, 2007, the appellate court echoed the trial court's declaration that the subject lots have been set aside from the lands of the public domain.

On February 1, 2008, the Office of the Solicitor General (OSG), as counsel for petitioner PEZA, filed a Motion to

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[9] *Id.* at 237.

[10] CA *rollo*, p. 61.

[11] AN ACT TO RECOGNIZE, PROTECT AND PROMOTE THE RIGHTS OF INDIGENOUS CULTURAL COMMUNITIES/INDIGENOUS PEOPLES, CREATING A NATIONAL COMMISSION ON INDIGENOUS PEOPLE, ESTABLISHING IMPLEMENTING MECHANISMS, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES.

[12] RESERVING FOR EXPORT PROCESSING ZONE PURPOSES A CERTAIN PARCEL OF LAND OF THE PUBLIC DOMAIN SITUATED IN THE CITY OF BAGUIO, ISLAND OF LUZON.

Admit[13] petition, with the present Petition[14] attached. Petitioner challenges the CA decision on two (2) issues:

I.

WHETHER OR NOT IT IS THE PETITIONER OR THE CITY ENGINEER OF BAGUIO CITY WHO HAS THE LEGAL AUTHORITY TO ISSUE BUILDING AND FENCING PERMITS FOR CONSTRUCTIONS WITHIN THE PEZA-BCEZ.

II.

WHETHER OR NOT RESPONDENTS' CALC IS SUFFICIENT TO DISREGARD THE PROVISIONS OF THE NATIONAL BUILDING CODE OF THE PHILIPPINES.[15]

Amplified, the issue for our determination is whether petitioner can require respondents to demolish the structures they had built within the territory of PEZA-BCEZ (Baguio City Economic Zone).

The OSG, at the outset, explains the delay in appealing the CA decision. It attributes the delay to the inadvertence of Senior State Solicitor Rodolfo Geronimo M. Pineda, the temporarily-designated officer-in-charge (OIC) of Division XV, who took over the case when State Solicitor Maricar S.A. Prudon-Sison went on maternity leave. Pineda allegedly merely noted receipt of the CA decision without noticing that it was adverse to PEZA. The OSG adds that the sparse complement of three (3) lawyers left at the time could not tackle at once the horde of cases assigned to the division.

On substantive grounds, petitioner claims exclusive authority to issue building and fencing permits within ecozones under Section 6[16] of Presidential Decree (P.D.)

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[13] *Rollo*, pp. 3-8.

[14] *Id.* at 9-29.

[15] *Id.* at 16.

[16] SEC. 6. The administration and enforcement of the provisions of Presidential Decree No. 1096, otherwise known as the National Building Code of the Philippines in all zones and areas owned or administered by the

No. 1716,[17] amending P.D. No. 66.[18] Alongside, petitioner asserts concurrent authority to require owners of structures without said permits to remove or demolish such structures under Section 14 (i)[19] of R.A. No. 7916.[20]

For their part, respondents rely on CAR-CALC-022 for their right to fence the lots and build a house thereon. They insist that the function of issuing building and fencing permits, even

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Authority shall be vested in the Administrator or his duly authorized representative. He shall appoint such EPZA qualified personnel as may be necessary to act as Building Officials who shall be charged with the duty of issuing Building Permits in the different zones. All fees and dues collected by the Building Officials under the National Building Code shall accrue to the Authority.

[17] FURTHER AMENDING PRESIDENTIAL DECREE NO. 66 DATED NOVEMBER 20, 1972, CREATING THE EXPORT PROCESSING ZONE AUTHORITY.

[18] CREATING THE EXPORT PROCESSING ZONE AUTHORITY AND REVISING REPUBLIC ACT NO. 5490.

[19] SEC. 14. *Powers and Functions of the Director General*. – The director general shall be the overall coordinator of the policies, plans and programs of the ECOZONES. As such, he shall provide overall supervision over and general direction to the development and operations of these ECOZONES. He shall determine the structure and the staffing pattern and personnel complement of the PEZA and establish regional offices, when necessary, subject to the approval of the PEZA Board.

In addition, he shall have the following specific powers and responsibilities:

x x x x x x x x x

(i) To require owners of houses, buildings or other structures constructed without the necessary permit whether constructed on public or private lands, to remove or demolish such houses, buildings, structures within sixty (60) days after notice and upon failure of such owner to remove or demolish such house, building or structure within said period, the director general or his authorized representative may summarily cause its removal or demolition at the expense of the owner, any existing law, decree, executive order and other issuances or part thereof to the contrary notwithstanding;

x x x x x x x x x

[20] AN ACT PROVIDING FOR THE LEGAL FRAMEWORK AND MECHANISM FOR THE CREATION, OPERATION, ADMINISTRATION, AND COORDINATION OF SPECIAL ECONOMIC ZONES IN THE PHILIPPINES, CREATING FOR THIS PURPOSE, THE PHILIPPINE ECONOMIC ZONE AUTHORITY (PEZA), AND FOR OTHER PURPOSES.

within the Baguio City Economic Zone, pertains to the Office of the City Mayor and the Building Official of Baguio City, respectively. Respondents likewise assail the petition for being filed late, stressing that it was filed only after almost three (3) months from petitioner's receipt of the CA decision.

We grant the petition.

It is settled that an appeal must be perfected within the reglementary period provided by law; otherwise, the decision becomes final and executory.[21] Before the Supreme Court, a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, must be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. Even then, review is not a matter of right, but of sound judicial discretion, and may be granted only when there are special and important reasons therefor.

In the case at bar, the Docket Division of the OSG received a copy of the CA decision on November 7, 2007. It was not until February 1, 2008 or almost three (3) months however, that the OSG, for petitioner, filed a petition for review on *certiorari* with this Court. The OSG pleads for understanding considering the scarcity of its lawyers and the inadvertence of the temporarily-designated OIC of Division XV in overlooking that the CA decision was adverse to PEZA.

While the Court realizes the OSG's difficulty in having only three (3) lawyers working full time on its cases, the OSG could have easily asked for an extension of time within which to file the petition. More importantly, as the government agency tasked to represent the government in litigations, the OSG should perform its duty with promptness and utmost diligence.

However, upon careful consideration of the merits of this case, the Court is inclined to overlook this procedural lapse in the interest of substantial justice. Although a party is bound by

[21] *TFS, Incorporated v. Commissioner of Internal Revenue*, G.R. No. 166829, April 19, 2010, p. 6.

the acts of its counsel, including the latter's mistakes and negligence, a departure from this rule is warranted where such mistake or neglect would result in serious injustice to the client. Indeed, procedural rules may be relaxed for persuasive reasons to relieve a litigant of an injustice not commensurate with his failure to comply with the prescribed procedure.[22] More so, when to allow the assailed decision to go unchecked would set a precedent that will sanction a violation of substantive law. Such is the situation in this case.

Injunction is a judicial writ, process or proceeding whereby a party is directed either to do a particular act, in which case it is called a mandatory injunction or to refrain from doing a particular act, in which case it is called a prohibitory injunction. As a main action, injunction seeks to permanently enjoin the defendant through a final injunction issued by the court and contained in the judgment. Section 9, Rule 58 of the 1997 Rules of Civil Procedure, as amended, provides,

> SEC. 9. *When final injunction granted.* – If after the trial of the action it appears that the applicant is entitled to have the act or acts complained of permanently enjoined, the court shall grant a final injunction perpetually restraining the party or person enjoined from the commission or continuance of the act or acts or confirming the preliminary mandatory injunction.

Two (2) requisites must concur for injunction to issue: (1) there must be a right to be protected and (2) the acts against which the injunction is to be directed are violative of said right.[23] Particularly, in actions involving realty, preliminary injunction will lie only after the plaintiff has fully established his title or right thereto by a proper action for the purpose. To authorize a temporary injunction, the complainant must make out at least a *prima facie* showing of a right to the final relief. Preliminary injunction will not issue to protect a right not *in esse*.[24] These

[22] *Id.* at 7.

[23] *City Government of Baguio City v. Masweng*, G.R. No. 180206, February 4, 2009, 578 SCRA 88, 99.

[24] *Ortigas & Company, Limited Partnership v. Ruiz*, No. L-33952, March 9, 1987, 148 SCRA 326, 336.

principles are equally relevant to actions seeking permanent injunction.

At the onset, we must stress that petitioner does not pose an adverse claim over the subject land. Neither does petitioner dispute that respondents hold building and fencing permits over the lots. For petitioner, the question that must be answered is whether respondents may build structures within the Baguio City Economic Zone on the basis of their CAR-CALC-022, and the building and fencing permits issued by the City Building Official.

We rule in the negative.

In the parallel case of *Philippine Economic Zone Authority (PEZA) v. Borreta*,[25] Benedicto Carantes invoked CAR-CALC-022, the same CALC invoked by respondents in this case, to put up structures in the land subject of said case. The Court, speaking through Justice Angelina Sandoval-Gutierrez, refused to recall the writ of demolition issued by the trial court therein. We held that Carantes is a mere applicant for the issuance of a certificate of ownership of an ancestral land who has yet to acquire a vested right as owner thereof so as to exclude the land from the areas under PEZA. We perceive no good reason to depart from this ruling as we find respondents herein to be similarly situated.

As holders of a CALC, respondents possess no greater rights than those enumerated in Par. 1, Section 2, Article VII of DENR Department Administrative Order (DAO) No. 02, Series of 1993:

SECTION 2. Rights and Responsibilities of Ancestral Land Claimants –

1. Rights

1. The right to peacefully occupy and cultivate the land, and utilize the natural resources therein, **subject to existing laws, rules and regulations applicable thereto**;

2. The right of the heirs to succeed to the claims subject to existing rules and regulations;

[25] G.R. No. 142669, March 15, 2006, 484 SCRA 664, 669.

3. The right to exclude from the claim any other person who does not belong to the family or clan; and

4. The right to utilize trees and other forest products inside the ancestral land subject to these rules as well as customary laws. (Emphasis supplied.)

Respondents being holders of a mere CALC, their right to possess the subject land is limited to occupation in relation to cultivation. Unlike No. 1,[26] Par. 1, Section 1, Article VII of the same DENR DAO, which expressly allows ancestral domain claimants to reside peacefully within the domain, nothing in Section 2 grants ancestral land claimants a similar right, much less the right to build permanent structures on ancestral lands – an act of ownership that pertains to one (1) who has a recognized right by virtue of a Certificate of Ancestral Land Title. On this score alone, respondents' action for injunction must fail.

Yet, even if respondents had established ownership of the land, they cannot simply put up fences or build structures thereon without complying with applicable laws, rules and regulations. In particular, Section 301 of P.D. No. 1096, otherwise known as the National Building Code of the Philippines mandates:

SECTION 301. *Building Permits*

No person, firm or corporation, including any agency or instrumentality of the government shall erect, construct, alter, repair, move, convert or demolish any building or structure or cause the same to be done without first obtaining a building permit therefor from the Building Official assigned in the place where the subject building is located or the building work is to be done.

Supplementary to a building permit, a fencing permit must also be secured from the Building Official concerned before fences may be installed in the premises.

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[26] SECTION 1. Rights and Responsibilities of Ancestral Domain Claimants

1. Rights

1. The right to occupy, cultivate and utilize the land and all natural resources found therein, as well as to **reside** peacefully within the domain, subject to existing laws, rules and regulations applicable thereto. (Emphasis supplied.)

In the present case, petitioner refuses to honor the building and fencing permits issued by the City Building Official to respondents. Petitioner PEZA maintains that the function of administering and enforcing the provisions of P.D. No. 1096 within the areas owned and administered by it, pertains to PEZA. Hence, it is PEZA, and not the local Building Official of Baguio City, which may properly issue building and fencing permits within PEZA.

On this point, Section 205 of P.D. No. 1096 is pertinent:

SECTION 205. *Building Officials*

Except as otherwise provided herein, the Building Official shall be responsible for carrying out the provisions of this Code in the field as well as the enforcement of orders and decisions made pursuant thereto.

Due to the exigencies of the service, the Secretary may designate incumbent Public Works District Engineers, City Engineers and Municipal Engineers to act as Building Officials in their respective areas of jurisdiction.

The designation made by the Secretary under this Section shall continue until regular positions of Building Official are provided or unless sooner terminated for causes provided by law or decree.

The position of Building Official is a regular item in the organizational structure of the local government. Only in case of urgent necessity may the Secretary of Public Works designate the incumbent District Engineer, Municipal Engineer or City Engineer, as the case may be. This was the applicable law even for areas covered by the Export Processing Zone Authority (EPZA) until P.D. No. 1716 was enacted on August 21, 1980.

P.D. No. 1716 further amended P.D. No. 66,[27] the law creating the EPZA, by creating the PEZA. Section 11 of R.A. No. 7916 provides that the existing EPZA created under P.D. No. 66 shall evolve into and be referred to as the PEZA in accordance with the guidelines and regulations set forth in an executive order issued for the purpose.

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[27] Dated November 20, 1972.

Thus, on October 30, 1995, Executive Order No. 282[28] was enacted. Under Section 1 thereof, all the powers, functions and responsibilities of EPZA under P.D. No. 66, as amended, insofar as they are not inconsistent with the powers, functions and responsibilities of the PEZA, under R.A. No. 7916, shall be assumed and exercised by PEZA.

Among such powers is the administration and enforcement of the National Building Code of the Philippines in all zones and areas owned or administered by EPZA, as expressly provided in Section 6 of P.D. No. 1716:

> SEC. 6. The administration and enforcement of the provisions of Presidential Decree No. 1096, otherwise known as the National Building Code of the Philippines **in all zones and areas owned or administered by the Authority** shall be vested in the **Administrator or his duly authorized representative**. **He shall appoint such EPZA qualified personnel as may be necessary to act as Building Officials who shall be charged with the duty of issuing Building Permits in the different zones**. All fees and dues collected by the Building Officials under the National Building Code shall accrue to the Authority. (Emphasis supplied.)

This function, which has not been repealed and does not appear to be inconsistent with any of the powers and functions of PEZA under R.A. No. 7916, subsists. Complimentary thereto, Section 14 (i) of R.A. No. 7916 states:

> SEC. 14. *Powers and Functions of the Director General.* — The **director general** shall be the overall [coordinator] of the policies, plans and programs of the ECOZONES. As such, he shall provide overall supervision over and general direction to the development and operations of these ECOZONES. He shall determine the structure and the staffing pattern and personnel complement of the PEZA and establish regional offices, when necessary, subject to the approval of the PEZA Board.

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[28] PROVIDING FOR THE GUIDELINES AND REGULATIONS FOR THE EVOLUTION OF THE EXPORT PROCESSING ZONE AUTHORITY; CREATED UNDER PRESIDENTIAL DECREE NO. 66, INTO THE PHILIPPINE ECONOMIC ZONE AUTHORITY UNDER REPUBLIC ACT NO. 7916.

In addition, he shall have the following specific powers and responsibilities:

xxx x x x xxx

(i) To require owners of houses, buildings or other structures constructed without the necessary permit **whether constructed on public or private lands**, to remove or demolish such houses, buildings, structures within sixty (60) days after notice and upon failure of such owner to remove or demolish such house, building or structure within said period, the director general or his authorized representative may summarily cause its removal or demolition at the expense of the owner, any existing law, decree, executive order and other issuances or part thereof to the contrary notwithstanding; (Emphasis supplied.)

By specific provision of law, it is PEZA, through its building officials, which has authority to issue building permits for the construction of structures within the areas owned or administered by it, whether on public or private lands. Corollary to this, PEZA, through its director general may require owners of structures built without said permit to remove such structures within sixty (60) days. Otherwise, PEZA may summarily remove them at the expense of the owner of the houses, buildings or structures.

As regards the issuance of fencing permits on ancestral lands, particularly within Baguio City and the rest of the Cordilleras, DENR-Circular No. 03-90 (Rules on the Acceptance, Identification, Evaluation, and Delineation of Ancestral Land Claims by the Special Task Force Created by the Virtue of DENR Special Order Nos. 31 and 31-A both Series of 1990) prescribes in Section 12:

SEC. 12. The Regional Land Management Services or the CENROs, through their respective Provincial Environment and Natural Resources Officer (PENRO), shall prepare and submit to the Special Task Force a report on each and every application surveyed and delineated. Thereafter, the Special Task Force after evaluating the reports, shall endorse valid ancestral land claims to the Secretary through the Indigenous Community Affairs Division, Special Concerns Office for the issuance of a Certificate of Ancestral Land Claim.

As soon as ancestral land claim is found to be valid and in meritorious cases, the Special Task Force may recommend **to the City/Municipal Mayor's Office the issuance of a fencing permit to the applicant over areas actually occupied at the time of filing**. (Emphasis supplied.)

This is the general rule. Considering, however, that in this case, a fencing permit is issued complementary to a building permit and that within the premises of PEZA, it is the Authority that may properly issue a building permit, it is only fitting that fencing permits be issued by the Authority.

From the foregoing disquisition, it clearly appears that respondents likewise failed to satisfy the second requisite in order that an injunction may issue: that the acts against which the injunction is to be directed, are violative of said right. PEZA acted well within its functions when it demanded the demolition of the structures which respondents had put up without first securing building and fencing permits from the Authority.

WHEREFORE, the Petition is *GRANTED*. The Decision dated October 26, 2007 of the Court of Appeals in CA-G.R. CV No. 73230 affirming the Order dated October 2, 2001 of the court *a quo* in Civil Case No. 4339-R is *REVERSED and SET ASIDE*. Respondents are hereby *DIRECTED* to demolish the residential building they had built within the premises of PEZA within sixty (60) days from notice.

No costs.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Abad,*[*] *JJ.,* concur.

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[*] Additional member per Special Order No. 843.

THIRD DIVISION

[G.R. No. 186128. June 23, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SUSAN LATOSA *y* CHICO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; EXEMPTING CIRCUMSTANCES; ACCIDENT, REQUISITES OF. — The basis of appellant's defense of accidental shooting is Article 12, paragraph 4 of the Revised Penal Code, as amended. x x x Thus, it was incumbent upon appellant to prove with clear and convincing evidence, the following essential requisites for the exempting circumstance of accident, to wit: 1. She was performing a lawful act; 2. With due care; 3. She caused the injury to her husband by mere accident; 4. Without fault or intention of causing it.

2. ID.; ID.; ID.; ABSENCE OF DUE CARE IN THE PERFORMANCE OF AN ACT, ESTABLISHED; CASE AT BAR. — [B]y no stretch of imagination could the pointing of the gun towards her husband's head and pulling the trigger be considered as performing a lawful act with due care. As correctly found by the CA, which we quote in full: Appellant's version that she "accidentally shot" her husband is not credible. Appellant's manner of carrying the caliber .45 pistol negates her claim of "due care" in the performance of an act. The location of the wound sustained by the victim shows that the shooting was not merely accidental. The victim was lying down and the fact that the gun was found near his left hand was not directly disputed by her. x x x [A]ppellant held the gun in one hand and extended it towards her husband who was still lying in bed. Assuming *arguendo* that appellant has never learned how to fire a gun and was merely handing the firearm over to the deceased, the muzzle is never pointed to a person, a basic firearms safety rule which appellant is deemed to have already known since she admitted, during trial, that she sometimes handed over the gun to her husband. Assuming further that she was not aware of this basic rule, it needed explaining why the gun would accidentally fire, when it should not, unless there was pressure on the trigger.

3. ID.; PARRICIDE; INTENT TO KILL, AND NOT MOTIVE, IS THE ESSENTIAL ELEMENT OF THE OFFENSE; INTENT TO KILL, HOW PROVED. — There is no merit in appellant's contention that the prosecution failed to prove by circumstantial evidence her motive in killing her husband. Intent to kill and not motive is the essential element of the offense on which her conviction rests. Evidence to prove intent to kill in crimes against persons may consist, *inter alia*, in the means used by the malefactors, the nature, location and number of wounds sustained by the victim, the conduct of the malefactors before, at the time, or immediately after the killing of the victim, the circumstances under which the crime was committed and the motives of the accused. If the victim dies as a result of a deliberate act of the malefactors, intent to kill is presumed.

4. ID.; ID.; ID.; INTENT TO KILL IS SUFFICIENTLY ESTABLISHED BY CIRCUMSTANTIAL EVIDENCE. — In the instant case, the x x x circumstantial evidence considered by the RTC and affirmed by the CA satisfactorily established appellant's intent to kill her husband and sustained her conviction for the crime.

5. ID.; ID.; CIVIL LIABILITIES; AWARD OF EXEMPLARY DAMAGES, INCREASED. — On the matter of damages, the CA awarded exemplary damages in the amount of ₱25,000.00. We increase the award to ₱30,000.00 in light of prevailing jurisprudence fixing the award of exemplary damages to said amount.

6. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURTS. — [T]he Court finds no cogent reason to review much less depart now from the findings of the RTC as affirmed by the CA that appellant's version is undeserving of credence. It is doctrinally settled that the assessments of the credibility of witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which

witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case. We find none in this case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VILLARAMA, JR., *J.*:

This is an appeal from the Decision[1] dated April 23, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02192 which affirmed the April 12, 2006 Decision[2] of the Regional Trial Court (RTC) of Pasig City, Branch 159, convicting appellant Susan Latosa *y* Chico of parricide.

Appellant was charged with parricide in an information[3] which reads,

That, on or about the 5th of February 2002, in the Municipality of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then the legitimate wife of one Felixberto Latosa *y* Jaudalso, armed with and using an unlicensed gun, with intent to kill, did then and there willfully, unlawfully and feloniously shoot her husband, Felixberto Latosa *y* Jaudalso, hitting him on the head, thereby causing the latter to sustain gunshot wound which directly caused his death.

CONTRARY TO LAW.

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[1] *Rollo*, pp. 2-17. Penned by Associate Justice Rosalinda Asuncion-Vicente with Associate Justices Remedios A. Salazar-Fernando and Sesinando E. Villon, concurring.

[2] CA *rollo*, pp. 21-45. Penned by Judge Rodolfo R. Bonifacio.

[3] Records, pp. 1-2.

Upon arraignment on June 25, 2002, appellant, with the assistance of counsel, pleaded not guilty. Trial thereafter ensued.

The prosecution's evidence established the following version:

On February 5, 2002, at around 2:00 in the afternoon, appellant and her husband Major Felixberto Latosa, Sr. (Felixberto) together with two (2) of their children, Sassymae Latosa (Sassymae) and Michael Latosa (Michael), were at their house in Fort Bonifacio. Felixberto, Sr. was then asleep[4] when Sassymae saw appellant take Felixberto Sr.'s gun from the cabinet and leave. She asked her mother where she was going and if she could come along, but appellant refused.[5]

Moments later, appellant returned and told Sassymae to buy ice cream at the commissary. Appellant gave her money and asked her to leave.[6] After Sassymae left, appellant instructed Michael to follow his sister, but he refused as he was hungry. Appellant insisted and further told Michael not to make any noise as his father was sleeping. Nevertheless, appellant went back inside the house and turned up the volume of the television and the radio to full.[7] Shortly after that, she came out again and gave Michael some money to buy food at the grocery.

Instead of buying food, Michael bought ice candy and returned to the barracks located at the back of their house. Michael thereupon saw his friend Mac-Mac Nisperos who told him that he saw appellant running away from their house. Michael did not pay any attention to his friend's comment, and simply continued eating his ice candy. Moments later, a certain Sgt. Ramos arrived and asked if something had happened in their house. Michael replied in the negative then entered their house. At that point, he saw his father lying on the bed with a hole in the left portion of his head and a gun at his left hand.

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[4] TSN, November 8, 2005, pp. 10-11.

[5] TSN, May 19, 2003, pp. 4-6, 20.

[6] *Id.* at 5.

[7] TSN, May 5, 2003, pp. 9-11.

Michael immediately went outside and informed Sgt. Ramos about what happened. Sgt. Ramos told him that appellant had reported the shooting incident to the Provost Marshall office.[8] Then, Sassymae arrived and saw her father with a bullet wound on his head and a gun near his left hand.[9]

Felixberto Latosa, Jr., one (1) of the legitimate sons of appellant and the victim, also testified that sometime in December 2001, their father told him and his siblings over dinner about a threat to their lives by a certain Efren Sta. Inez.[10]

Appellant, testifying on her own behalf, on the other hand claimed that when Felixberto, Sr. woke up, he asked her to get his service pistol from the cabinet adjacent to their bed. As she was handing the pistol to him it suddenly fired, hitting Felixberto, Sr. who was still lying down. Shocked, she ran quickly to Felixberto, Sr.'s office and asked for help.[11] She also claimed that when Felixberto, Sr. asked her for his gun, she was on her way out of the house to follow her children who left for the market on an errand she had earlier given Sassymae. She claimed that she wanted to drive for them because it was hot. She ran after them but after a few minutes, when she realized that she did not have with her the keys to their jeep, she went back to their house. Felixberto, Sr. then asked again for his gun, and it was then that it fired as she was handing it to him.[12]

Appellant further described herself as a good mother and a good provider for their six (6) children whom she raised by herself while Felixberto, Sr. was in Mindanao. She claimed that they testified against her because they were manipulated by her brother-in-law, Francisco Latosa.[13] She denied that Sassymae saw her holding a gun when she asked her to buy ice

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[8] *Id.* at 8, 11-13, 15.

[9] TSN, May 19, 2003, p. 5.

[10] TSN, July 15, 2003, pp. 3, 5-6.

[11] TSN, November 8, 2005, pp. 18-24.

[12] *Id.* at 13-19.

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

cream, alleging that Michael and Sassymae saw her holding the gun only when she placed it inside the cabinet before they proceeded to the hospital.[14]

Appellant also denied her children's testimony[15] that she was having an affair with a certain Col. Efren Sta. Inez (Sta. Inez), a policeman. She claimed that she first met Sta. Inez when her youngest brother was killed on June 6, 2001 by unidentified men. Sta. Inez was the one (1) who assisted her. She was alone at that time since her husband informed her that he could not leave his post in Mindanao for he had to rush some papers. She allegedly only saw Sta. Inez twice but admitted that Sta. Inez went to the precinct when he learned of the shooting incident.[16] She also denied that she was terminated from her job at the Philippine Public Safety College due to immorality for having said affair. She claimed that she was terminated because she had incurred numerous absences from her work as she grieved the death of her youngest brother and had lost interest in her work after his death.[17]

The RTC found appellant guilty beyond reasonable doubt for killing her husband Felixberto, Sr. The dispositive portion of the decision reads:

> WHEREFORE, in view of the foregoing, this Court finds the accused SUSAN LATOSA *Y* CHICO "GUILTY" beyond reasonable doubt of the crime of parricide under Art. 246 of the Revised Penal Code as amended by RA 7659 in rel. to Sec. 1[,] 3rd par. PD 1866 as amended by RA 8294 and Sec. 5, RA 8294 and hereby sentences the said accused to suffer the penalty of *reclusion perpetua* and to further indemnify the victim the amount of ₱50,000 as civil indemnity[,] ₱50,000 as moral damages and ₱25,000 as exemplary damages.
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> SO ORDERED.[18]

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[14] *Id.* at 42-44.

[15] TSN, May 19, 2003, p. 4; TSN, May 5, 2003, pp. 17-18.

[16] TSN, November 8, 2005, pp. 29-32.

[17] *Id.* at 36-41.

[18] CA *rollo*, p. 45.

The RTC held that the claim of accidental shooting was inconsistent with the evidence considering the location of the gunshot wound, which was at the left temple of Felixberto, Sr., and the fact that the gun was found near Felixberto, Sr.'s left hand despite his being right-handed. The trial court found that appellant planned the killing by asking her two (2) children to leave the house and, after the shooting, placing the gun near the victim's left hand to suggest that the death was suicide. But appellant overlooked the fact that Felixberto, Sr. was right-handed. The trial court noted that despite the grueling cross-examination of the defense counsel, the Latosa children never wavered in their testimonies about what they knew regarding the circumstances surrounding the shooting incident. Their testimonies bore the hallmarks of truth as they were consistent on material points. The RTC found it inconceivable that the children would testify against their own mother or concoct a story of parricide unless they were impelled by their passion to condemn an injustice done to their father.[19]

The RTC, in finding appellant guilty, considered the following circumstantial evidence established by the prosecution: (1) shortly before the shooting, appellant asked her two (2) children to do errands for her which were not usually asked of them; (2) at the time of the shooting, only the appellant and Felixberto, Sr. were in the house; (3) appellant was seen running away from the house immediately after the shooting; (4) when Michael went inside their house, he found his father with a hole in the head and a gun in his left hand; (5) the medico-legal report showed that the cause of death was intracranial hemorrhage due to the gunshot wound on the head with the point of entry at the left temporal region; (6) the Firearms Identification Report concluded that appellant fired two (2) shots; (7) Felixberto, Sr. was right-handed and the gun was found near his left hand; (8) Sassymae testified that she heard Sta. Inez tell appellant "*bakit mo inamin. Sana pinahawak mo kay Major iyong baril saka mo pinutok*"; (9) appellant's children testified that they were informed by Felixberto, Sr. regarding the threat of appellant's

[19] *Id.* at 43-45.

paramour, Sta. Inez, to the whole family; and (10) Francisco Latosa presented a memorandum showing that appellant was terminated from her teaching job by reason of immorality.[20]

On appeal, the CA upheld the decision of the RTC. The CA held that since appellant admitted having killed her husband albeit allegedly by accident, she has the burden of proving the presence of the exempting circumstance of accident to relieve herself of criminal responsibility. She must rely on the strength of her own evidence and not on the weakness of the prosecution, for even if this be weak, it cannot be disbelieved after the appellant has admitted the killing.[21]

The CA, however, found appellant's version of accidental shooting not credible. Citing the case of *People v. Reyes*,[22] the CA held that appellant's claim of accidental shooting was negated by the following facts: (1) a revolver is not prone to accidental firing as pressure on the trigger is necessary to make the gun fire, cocked or uncocked; and (2) when handing a gun to a person, the barrel or muzzle is never pointed to that person. In this case, appellant held the gun in one (1) hand and extended it towards her husband who was still lying in bed. Assuming that appellant was not aware of the basic firearm safety rule that the firearm's muzzle is never pointed to a person, she failed to explain why the gun would accidentally fire, when it should not have fired unless there was pressure on the trigger. The location of Felixberto, Sr.'s wound also showed that the shooting was not accidental. Appellant did not dispute that Felixberto, Sr. was lying down during the shooting and that after the incident, the gun was found near his left hand. The CA found that it was contrary to human nature that a newly awakened military man would suddenly ask his wife, who was busy doing other things, to bring his firearm, and patiently wait for her to come back to their house, when the gun was just

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[20] *Id.* at 42-43.

[21] *Rollo*, p. 14.

[22] No. L-33154, February 27, 1976, 69 SCRA 474, 478-479.

inside an adjacent cabinet only two (2) meters away from his bed.[23]

The dispositive portion of the CA decision reads as follows:

> WHEREFORE, premises considered, the assailed decision of the Regional Trial Court of Pasig City, Branch 159, in Criminal Case No. 122621-H finding SUSAN LATOSA *y* CHICO guilty beyond reasonable doubt of the crime of parricide under Article 246 of the Revised Penal Code and sentencing her to suffer the penalty of *reclusion perpetua* and ordering her to pay the heirs of Felixberto Latosa the amount of ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages, and ₱25,000.00 as exemplary damages is AFFIRMED.
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> SO ORDERED.[24]

Undaunted, appellant filed a Notice of Appeal on May 12, 2008.[25]

Appellant argues that the circumstantial evidence presented by the prosecution was insufficient to prove that she intentionally killed her husband. She insists that the gun fired accidentally while she was giving it to Felixberto, Sr. Since she had no experience in handling firearms, she was not able to foresee that it would fire accidentally and hit her husband. After her husband was hit, she immediately rushed to his office and asked for assistance.[26]

The only issue the Court has to resolve in this case is whether the exempting circumstance of accident was established by appellant.

The basis of appellant's defense of accidental shooting is Article 12, paragraph 4 of the Revised Penal Code, as amended, which provides:

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[23] *Rollo*, p. 15.

[24] *Id.* at 17.

[25] *Id.* at 18-19.

[26] CA *rollo*, pp. 64-70.

ART. 12. *Circumstances which exempt from criminal liability.* – The following are exempt from criminal liability:

x x x x x x x x x

4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.

Thus, it was incumbent upon appellant to prove with clear and convincing evidence, the following essential requisites for the exempting circumstance of accident, to wit:

1. She was performing a lawful act;
2. With due care;
3. She caused the injury to her husband by mere accident;
4. Without fault or intention of causing it.[27]

To prove the circumstance she must rely on the strength of her own evidence and not on the weakness of that of the prosecution, for even if this be weak, it can not be disbelieved after the accused has admitted the killing.[28]

However, by no stretch of imagination could the pointing of the gun towards her husband's head and pulling the trigger be considered as performing a lawful act with due care. As correctly found by the CA, which we quote in full:

Appellant's version that she "accidentally shot" her husband is not credible. Appellant's manner of carrying the caliber .45 pistol negates her claim of "due care" in the performance of an act. The location of the wound sustained by the victim shows that the shooting was not merely accidental. The victim was lying down and the fact that the gun was found near his left hand was not directly disputed by her. We find it contrary to human nature that a newly awakened military man would suddenly ask his wife for his firearm, and even patiently wait for her return to the house, when the said firearm was just inside the cabinet which, according to appellant, was just about two meters away from his bed.

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[27] *Toledo v. People*, G.R. No. 158057, September 24, 2004, 439 SCRA 94, 105.

[28] *People v. Nepomuceno, Jr.*, G.R. No. 127818, November 11, 1998, 298 SCRA 450, 464.

x x x x x x x x x

In the case at bench, appellant held the gun in one hand and extended it towards her husband who was still lying in bed. Assuming *arguendo* that appellant has never learned how to fire a gun and was merely handing the firearm over to the deceased, the muzzle is never pointed to a person, a basic firearms safety rule which appellant is deemed to have already known since she admitted, during trial, that she sometimes handed over the gun to her husband. Assuming further that she was not aware of this basic rule, it needed explaining why the gun would accidentally fire, when it should not, unless there was pressure on the trigger.[29]

There is no merit in appellant's contention that the prosecution failed to prove by circumstantial evidence her motive in killing her husband. Intent to kill and not motive is the essential element of the offense on which her conviction rests. Evidence to prove intent to kill in crimes against persons may consist, *inter alia*, in the means used by the malefactors, the nature, location and number of wounds sustained by the victim, the conduct of the malefactors before, at the time, or immediately after the killing of the victim, the circumstances under which the crime was committed and the motives of the accused. If the victim dies as a result of a deliberate act of the malefactors, intent to kill is presumed.[30]

In the instant case, the following circumstantial evidence considered by the RTC and affirmed by the CA satisfactorily established appellant's intent to kill her husband and sustained her conviction for the crime, to wit:

The prosecution established the following circumstantial evidence:

(1) Susan Latosa, the accused, asked her twins to do errands for her. She first asked Sassymae to go to Commissary to buy ice cream, thereafter, she asked Michael to follow his sister at the Commissary which according to the prosecution witnesses was not the usual thing the accused would do;

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[29] *Rollo*, p. 15.

[30] *Rivera v. People*, G.R. No. 166326, January 25, 2006, 480 SCRA 188, 197.

(2) Thereafter, it was only the accused and the victim who were left alone in the house;

(3) After the witness Michael, son of the accused and the victim left and proceeded at the barracks located at the back of their house, Susan Latosa was seen running away from the house by Michael's friend named Macmac;

(4) Immediately thereafter, Michael Latosa went inside the room of their barracks and saw his father with sort of a hole in the head, blood on the nose and had a gun in his left hand (TSN, May 5, 2003, pp. 7-8, 12-13);

(5) The cause of death of the victim Felixberto Latosa was intracranial hemorrhage due to gunshot wound of the head (per Medico-legal Report No. M-052-2002, Exh. P);

(6) Susan Latosa's paraffin test yielded positive result for the presence of gunpowder nitrate in her right hand;

x x x

(8) The point of entry of the gunshot wound found on the victim was located at the left temporal region as evidenced by Medico Legal Report No. M-052-2002 (Exhibit P);

(9) The victim was a right-handed and the gun was found on the latter's left hand;

(10) Sassymae Latosa [testified] that she heard Col. Sta. Inez [tell] her mother, … "*bakit mo inamin. Sana pinahawak mo kay Major iyong baril saka mo pinutok*." (TSN, May 19, 2002, p. 13); and

(11) The children testified that they were informed by the victim regarding the threat of Sta. Inez to the whole family who alleged[ly] has an amorous relationship with their mother. Francisco Latosa presented a *memorandum* that accused was terminated from her teaching job by reason of immorality.[31]

Moreover, the Court finds no cogent reason to review much less depart now from the findings of the RTC as affirmed by the CA that appellant's version is undeserving of credence. It is doctrinally settled that the assessments of the credibility of

[31] CA *rollo*, pp. 42-43.

witnesses and their testimonies is a matter best undertaken by the trial court, because of its unique opportunity to observe the witnesses firsthand and to note their demeanor, conduct and attitude under grilling examination. These are the most significant factors in evaluating the sincerity of witnesses and in unearthing the truth, especially in the face of conflicting testimonies. Through its observations during the entire proceedings, the trial court can be expected to determine, with reasonable discretion, whose testimony to accept and which witness to believe. Verily, findings of the trial court on such matters will not be disturbed on appeal unless some facts or circumstances of weight have been overlooked, misapprehended or misinterpreted so as to materially affect the disposition of the case.[32] We find none in this case.

One last note. On the matter of damages, the CA awarded exemplary damages in the amount of ₱25,000.00. We increase the award to ₱30,000.00 in light of prevailing jurisprudence[33] fixing the award of exemplary damages to said amount.

WHEREFORE, the appeal of Susan Latosa *y* Chico is *DISMISSED*. The April 23, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02192 is hereby *AFFIRMED with MODIFICATION*. The amount of exemplary damages is increased to ₱30,000.00.

With costs against the accused-appellant.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Bersamin, and *Abad,*[*] *JJ.,* concur.

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[32] *People v. Pili,* G.R. No. 124739, April 15, 1998, 289 SCRA 118, 131.

[33] *People v. Mortera,* G.R. No. 188104, April 23, 2010, p. 14.

[*] Additional member per Special Order No. 843.

EN BANC

[G.R. No. 176278. June 25, 2010]

ALAN F. PAGUIA, *petitioner, vs.* **OFFICE OF THE PRESIDENT, SECRETARY OF FOREIGN AFFAIRS, and HON. HILARIO DAVIDE, JR., in his capacity as Permanent Representative of the Philippines to the United Nations,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PARTIES; LEGAL STANDING; A PARTY'S CITIZENSHIP AND TAXPAYER STATUS DO NOT CLOTHE HIM A STANDING TO FILE AN ACTION FOR JUDICIAL INTERPRETATION OF A STATUTORY PROVISION ON THE RETIREMENT OF GOVERNMENT PERSONNEL. — Petitioner's citizenship and taxpayer status do not clothe him with standing to bring this suit. We have granted access to citizen's suits on the narrowest of ground: when they raise issues of "transcendental" importance calling for urgent resolution. Three factors are relevant in our determination to allow third party suits so we can reach and resolve the merits of the crucial issues raised – the character of funds or assets involved in the controversy, a clear disregard of constitutional or statutory prohibition, and the lack of any other party with a more direct and specific interest to bring the suit. None of petitioner's allegations comes close to any of these parameters. Indeed, implicit in a petition seeking a judicial interpretation of a statutory provision on the retirement of government personnel occasioned by its seemingly ambiguous crafting is the admission that a "*clear disregard* of constitutional or statutory prohibition" is absent. Further, the DFA is not devoid of personnel with "more direct and specific interest to bring the suit." Career ambassadors forced to leave the service at the mandated retirement age unquestionably hold interest far more substantial and personal than petitioner's generalized interest as a citizen in ensuring enforcement of the law. The same conclusion holds true for petitioner's invocation of his taxpayer status. Taxpayers' contributions to the state's coffers entitle them to question appropriations for expenditures which are claimed to be unconstitutional or illegal. However, the

salaries and benefits respondent Davide received commensurate to his diplomatic rank are fixed by law and other executive issuances, the funding for which was included in the appropriations for the DFA's total expenditures contained in the annual budgets Congress passed since respondent Davide's nomination. Having assumed office under color of authority (appointment), respondent Davide is at least a *de facto* officer entitled to draw salary, negating petitioner's claim of "illegal expenditure of scarce public funds."

2. ID.; ID.; ID.; A PARTY WHO IS SUSPENDED FROM THE PRACTICE OF LAW IS BARRED FROM FILING LEGAL ACTIONS.— An incapacity to bring legal actions peculiar to petitioner also obtains. Petitioner's suspension from the practice of law bars him from performing "any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience." Certainly, preparing a petition raising carefully crafted arguments on equal protection grounds and employing highly legalistic rules of statutory construction to parse Section 23 of RA 7157 falls within the proscribed conduct.

APPEARANCES OF COUNSEL

The Solicitor General for public respondent.

Calderon Davide Trinidad Tolentino & Castillo for Hon. Hilario G. Davide, Jr.

R E S O L U T I O N

CARPIO, *J.*:

At issue is the power of Congress to limit the President's prerogative to *nominate* ambassadors by legislating age qualifications despite the constitutional rule limiting Congress' role in the appointment of ambassadors to the Commission on Appointments' *confirmation* of nominees.[1] However, for lack

[1] Section 16 (1), Article VII of the 1987 Constitution provides: "The President shall nominate and, with the consent of the Commission on Appointments, appoint x x x ambassadors, other public ministers and consuls x x x." The following comment on the interaction of the constitutional spheres of power of the President, Senate (the Commission on Appointments in this

of a case or controversy grounded on petitioner's lack of capacity to sue and mootness,[2] we dismiss the petition without reaching the merits, deferring for another day the resolution of the question raised, novel and fundamental it may be.

Petitioner Alan F. Paguia (petitioner), as citizen and taxpayer, filed this original action for the writ of *certiorari* to invalidate President Gloria Macapagal-Arroyo's nomination of respondent former Chief Justice Hilario G. Davide, Jr. (respondent Davide) as Permanent Representative to the United Nations (UN) for violation of Section 23 of Republic Act No. 7157 (RA 7157), the Philippine Foreign Service Act of 1991. Petitioner argues that respondent Davide's age at that time of his nomination in March 2006, 70, disqualifies him from holding his post. Petitioner grounds his argument on Section 23 of RA 7157 pegging the mandatory retirement age of all officers and employees of the Department of Foreign Affairs (DFA) at 65.[3] Petitioner theorizes

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jurisdiction), and Congress in the nomination and confirmation process under the US Constitution's Appointments Clause, the normative model of the first sentence of Section 16 (1), Article VII of the 1987 Constitution, is instructive:

> The Constitution assigns the power of nomination for a confirmation appointment to the President alone, and it allocates the power of confirmation appointments to the President together with the Senate. Congress can pass laws x x x to help the President and Senate carry out those functions, such as establishing an agency to help identify and evaluate potential nominees. **But x x x Congress cannot require that the President limit his nominees to a specific group of individuals named by someone else, or constrain appointments *to people who meet a particular set of qualifications,* for confirmation appointments**. (Hanah Metchis Volokh, *The Two Appointments Clauses: Statutory Qualifications For Federal Officers*, 10 U. Pa. J. Const. L. 745, 763 [2007]) (internal citations omitted; emphasis supplied).

> The President's exclusive power to nominate ambassadors is complimented by a subsidiary doctrine treating ambassadorial selections as "based on the special trust and confidence" of the President (*Santos v. Macaraig*, G.R. No. 94070, 10 April 1992, 208 SCRA 74, 84).

[2] Prescinding from Section 5, Article VIII of the 1987 Constitution limiting this Court's jurisdiction to "cases."

[3] Section 23 provides: "Compulsory Retirements. — All officers and employees of the Department who have reached the age of sixty-five (65) shall be compulsorily and automatically retired from the Service: *Provided, however*, That all incumbent non-career chiefs of mission who are seventy

that Section 23 imposes an absolute rule for all DFA employees, career or non-career; thus, respondent Davide's entry into the DFA ranks discriminates against the rest of the DFA officials and employees.

In their separate Comments, respondent Davide, the Office of the President, and the Secretary of Foreign Affairs (respondents) raise threshold issues against the petition. First, they question petitioner's standing to bring this suit because of his indefinite suspension from the practice of law.[4] Second, the Office of the President and the Secretary of Foreign Affairs (public respondents) argue that neither petitioner's citizenship nor his taxpayer status vests him with standing to question respondent Davide's appointment because petitioner remains without personal and substantial interest in the outcome of a suit which does not involve the taxing power of the state or the illegal disbursement of public funds. Third, public respondents question the propriety of this petition, contending that this suit is in truth a petition for *quo warranto* which can only be filed by a contender for the office in question.

On the eligibility of respondent Davide, respondents counter that Section 23's mandated retirement age applies only to career diplomats, excluding from its ambit non-career appointees such as respondent Davide.

The petition presents no case or controversy for petitioner's lack of capacity to sue and mootness.

First. Petitioner's citizenship and taxpayer status do not clothe him with standing to bring this suit. We have granted access to citizen's suits on the narrowest of ground: when they raise issues of "transcendental" importance calling for urgent resolution.[5] Three factors are relevant in our determination to allow third party suits so we can reach and resolve the merits

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(70) years old and above shall continue to hold office until June 30, 1992 unless sooner removed by the appointing authority. Non-career appointees who shall serve beyond the age of sixty-five (65) years shall not be entitled to retirement benefits."

[4] Imposed in *Estrada v. Sandiganbayan*, 462 Phil. 135 (2003).

[5] *Kilosbayan v. Morato*, 320 Phil. 171, 186 (1995).

of the crucial issues raised – the character of funds or assets involved in the controversy, a clear disregard of constitutional or statutory prohibition, and the lack of any other party with a more direct and specific interest to bring the suit.[6] None of petitioner's allegations comes close to any of these parameters. Indeed, implicit in a petition seeking a judicial interpretation of a statutory provision on the retirement of government personnel occasioned by its seemingly ambiguous crafting is the admission that a "*clear disregard* of constitutional or statutory prohibition" is absent. Further, the DFA is not devoid of personnel with "more direct and specific interest to bring the suit." Career ambassadors forced to leave the service at the mandated retirement age unquestionably hold interest far more substantial and personal than petitioner's generalized interest as a citizen in ensuring enforcement of the law.

The same conclusion holds true for petitioner's invocation of his taxpayer status. Taxpayers' contributions to the state's coffers entitle them to question appropriations for expenditures which are claimed to be unconstitutional or illegal.[7] However, the salaries and benefits respondent Davide received commensurate to his diplomatic rank are fixed by law and other executive issuances, the funding for which was included in the appropriations for the DFA's total expenditures contained in the annual budgets Congress passed since respondent Davide's nomination. Having assumed office under color of authority (appointment), respondent Davide is at least a *de facto* officer entitled to draw salary,[8] negating petitioner's claim of "illegal expenditure of scarce public funds."[9]

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[6] *Francisco v. House of Representatives*, 460 Phil. 838, 899 (2003) citing *Kilosbayan v. Guingona*, G.R. No. 113375, 5 May 1994, 232 SCRA 110, 155-156 (1995) (Feliciano, *J.*, concurring).

[7] See *e.g. Pascual v. Secretary of Public Works*, 110 Phil. 331 (1960) (involving the constitutionality of Republic Act No. 920 appropriating funds for public works); *Sanidad v. COMELEC*, No. L-44640, 12 October 1976, 73 SCRA 333 (concerning the constitutionality of presidential decrees calling for the holding of a national referendum on constitutional amendments and appropriating funds for the purpose).

[8] See *Malaluan v. COMELEC*, 324 Phil. 676, 696-697 (1996).

[9] *Rollo*, p. 7.

Second. An incapacity to bring legal actions peculiar to petitioner also obtains. Petitioner's suspension from the practice of law bars him from performing "any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training and experience."[10] Certainly, preparing a petition raising carefully crafted arguments on equal protection grounds and employing highly legalistic rules of statutory construction to parse Section 23 of RA 7157 falls within the proscribed conduct.

Third. A supervening event has rendered this case academic and the relief prayed for moot. Respondent Davide resigned his post at the UN on 1 April 2010.

WHEREFORE, we *DISMISS* the petition.

SO ORDERED.

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

Brion, J., on leave.

SECOND DIVISION

[G.R. No. 162175. June 28, 2010]

MIGUEL J. OSSORIO PENSION FOUNDATION, INCORPORATED, *petitioner, vs.* **COURT OF APPEALS and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

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[10] *Cayetano v. Monsod*, G.R. No. 100113, 3 September 1991, 201 SCRA 210, 214.

SYLLABUS

1. CIVIL LAW; IMPLIED TRUSTS; WHEN A CO-OWNER ALLOWS THE REGISTRATION OF HIS PROPORTIONATE SHARE IN THE NAME OF HIS CO-OWNER, TRUST IS CREATED BY FORCE OF LAW; WHERE "COMMON CONSENT" IS REQUIRED. — The law **expressly allows** a co-owner (first co-owner) of a parcel of land to register his proportionate share in the name of his co-owner (second co-owner) in whose name the entire land is registered. The second co-owner serves as a legal trustee of the first co-owner insofar as the proportionate share of the first co-owner is concerned. The first co-owner remains the owner of his proportionate share and not the second co-owner in whose name the entire land is registered. Article 1452 of the Civil Code provides: Art. 1452. If two or more persons agree to purchase a property and by common consent the legal title is taken in the name of one of them for the benefit of all, **a trust is created by force of law** in favor of the others in proportion to the interest of each. For Article 1452 to apply, all that a co-owner needs to show is that there is "common consent" among the purchasing co-owners to put the legal title to the purchased property in the name of one co-owner for the benefit of all. Once this "common consent" is shown, "**a trust is created by force of law**." The BIR has no option but to recognize such legal trust as well as the beneficial ownership of the real owners because the trust is created by force of law. The fact that the title is registered solely in the name of one person is not conclusive that he alone owns the property.

2. ID.; ID.; ID.; THE TRUSTOR-BENEFICIARY IS NOT ESTOPPED FROM PROVING ITS OWNERSHIP OVER THE PROPERTY HELD IN TRUST. — The trustor-beneficiary is not estopped from proving its ownership over the property held in trust by the trustee when the purpose is not to contest the disposition or encumbrance of the property in favor of an innocent third-party purchaser for value. The BIR, not being a buyer or claimant to any interest in the MBP lot, has not relied on the face of the title of the MBP lot to acquire any interest in the lot. There is no basis for the BIR to claim that petitioner is estopped from proving that it co-owns, as trustee of the

Employees' Trust Fund, the MBP lot. Article 1452 of the Civil Code recognizes the lawful ownership of the trustor-beneficiary over the property registered in the name of the trustee. Certainly, the Torrens system was not established to foreclose a trustor or beneficiary from proving its ownership of a property titled in the name of another person when the rights of an innocent purchaser or lien-holder are not involved. More so, when such other person, as in the present case, admits its being a mere trustee of the trustor or beneficiary.

3. ID.; ID.; WHAT IS REQUIRED TO CREATE A TRUSTOR AND TRUSTEE RELATIONSHIP. — No particular words are required for the creation of a trust, it being sufficient that a trust is clearly intended. It is immaterial whether or not the trustor and the trustee know that the relationship which they intend to create is called a trust, and whether or not the parties know the precise characteristic of the relationship which is called a trust because what is important is whether the parties manifested an intention to create the kind of relationship which in law is known as a trust.

4. TAXATION; TAX EXEMPTIONS; INCOME FROM EMPLOYEES' TRUST FUND IS EXEMPT FROM INCOME TAX. — The tax-exempt character of petitioner's Employees' Trust Fund is not at issue in this case. The tax-exempt character of the Employees' Trust Fund has long been settled. It is also settled that petitioner exists for the purpose of holding title to, and administering, the tax-exempt Employees' Trust Fund established for the benefit of VMC's employees. As such, petitioner has the personality to claim tax refunds due the Employees' Trust Fund.

APPEARANCES OF COUNSEL

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Alberto R. Bomediano, Jr. for BIR.

D E C I S I O N

CARPIO, *J.*:

The Case

The Miguel J. Ossorio Pension Foundation, Incorporated (petitioner or MJOPFI) filed this Petition for *Certiorari*[1] with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction to reverse the Court of Appeals' (CA) Decision[2] dated 30 May 2003 in CA-G.R. SP No. 61829 as well as the Resolution[3] dated 7 November 2003 denying the Motion for Reconsideration. In the assailed decision, the CA affirmed the Court of Tax Appeals' (CTA) Decision[4] dated 24 October 2000. The CTA denied petitioner's claim for refund of withheld creditable tax of ₱3,037,500 arising from the sale of real property of which petitioner claims to be a co-owner as trustee of the employees' trust or retirement funds.

The Facts

Petitioner, a non-stock and non-profit corporation, was organized for the purpose of holding title to and administering the employees' trust or retirement funds (Employees' Trust Fund) established for the benefit of the employees of Victorias Milling Company, Inc. (VMC).[5] Petitioner, as trustee, claims that the income earned by the Employees' Trust Fund is tax exempt under Section 53(b) of the National Internal Revenue Code (Tax Code).

Petitioner alleges that on 25 March 1992, petitioner decided to invest part of the Employees' Trust Fund to purchase a lot[6]

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

[2] Penned by Associate Justice Renato C. Dacudao with Associate Justices Godardo A. Jacinto and Danilo B. Pine, concurring.

[3] Penned by Associate Justice Renato C. Dacudao with Associate Justices Mario L. Guariña III and Danilo B. Pine, concurring.

[4] Penned by Associate Judge Ramon O. De Veyra with Presiding Judge Ernesto D. Acosta and Associate Judge Amancio Q. Saga, concurring.

[5] *Rollo*, p. 7.

[6] *Id.* at 6.

in the Madrigal Business Park (MBP lot) in Alabang, Muntinlupa. Petitioner bought the MBP lot through VMC.[7] Petitioner alleges that its investment in the MBP lot came about upon the invitation of VMC, which also purchased two lots. Petitioner claims that its share in the MBP lot is 49.59%. Petitioner's investment manager, the Citytrust Banking Corporation (Citytrust),[8] in submitting its Portfolio Mix Analysis, regularly reported the Employees' Trust Fund's share in the MBP lot.[9] The MBP lot is covered by Transfer Certificate of Title No. 183907 (TCT 183907) with VMC as the registered owner.[10]

Petitioner claims that since it needed funds to pay the retirement and pension benefits of VMC employees and to reimburse advances made by VMC, petitioner's Board of Trustees authorized the sale of its share in the MBP lot.[11]

On 14 March 1997, VMC negotiated the sale of the MBP lot with Metropolitan Bank and Trust Company, Inc.

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[7] *Id.* at 159. Excerpts of the Minutes of the Meeting of the Board of Trustees of the Miguel J. Ossorio Pension Foundation, Inc. held on 25 March 1992 read as follows:

Mr. C.R. De Luzuriaga, Jr. informed the Board that VMC Co., Inc. and some of its subsidiaries are buying Ayala-Alabang lots in Muntinlupa. He inquired whether MJOPFI would be willing to invest in, or buy part, of the lots being purchased by VMC. Upon motion of Mr. Emilio Y. Hilado, Jr. seconded by Mr. Orlando D. Fuentes, it was unanimously-

Resolution No. 92-34

RESOLVED, That MJOPFI buy one-half (½) of one (1) Ayala-Alabang lot thru [VMC Co., Inc.], the purchase price thereof to be paid thru VMC and/or to be reimbursed to VMC.

[8] Now Bank of the Philippine Islands after their merger.

[9] *Rollo*, pp. 162-165. From 1994-1997, the Portfolio Mix Analysis reported that ₱5,504,748.25 was invested in real estate, specifically on the Madrigal Business Park I property.

[10] *Id.* at 59.

[11] *Id.* at 166. Excerpts of the Minutes of the Meeting of the Board of Trustees of the petitioner held on 24 July 1996 read as follows:

2. Mr. Gerardo B. Javellana informed the Board that there is a need to raise cash to pay pension benefits. Upon motion of Mr. Rolando Hautea, seconded by Mr. Orlando D. Fuentes, it was unanimously-

(Metrobank) for ₱81,675,000, but the consummation of the sale was withheld.[12]

On 26 March 1997, VMC eventually sold the MBP lot to Metrobank. VMC, through its Vice President Rolando Rodriguez and Assistant Vice President Teodorico Escober, signed the Deed of Absolute Sale as the sole vendor.

Metrobank, as withholding agent, paid the Bureau of Internal Revenue (BIR) ₱6,125,625 as withholding tax on the sale of real property.

Petitioner alleges that the parties who co-owned the MBP lot executed a notarized Memorandum of Agreement as to the proceeds of the sale, the pertinent provisions of which state:[13]

Resolution No. 96-46

RESOLVED, that MJOPFI's property consisting of 500 sq. m. situated at Madrigal Park in Alabang, Muntinlupa, be sold at the best price available, and that any of the corporate officers, namely, Mr. C.R. De Luzuriaga, Jr., or Mr. Rolando Hautea, or Mr. Orlando D. Fuentes be authorized to sign the required deed of sale.

[12] *Id.* at 167. Excerpts of the Minutes of the Meeting of the Board of Directors of VMC on 17 March 1997 read as follows:

Mr. Gerardo Javellana informed the Board that pursuant to previous authority from the Board, VMC sold the Lot 1, Block 4 of the land, registered in VMC's name as TCT No. 183907 of the Registry of Deeds of Makati, which land is co-owned with Miguel J. Ossorio Pension Foundation, Inc. and Victorias Insurance Factors Corp., in favor of Metro Bank on March 14, 1997 for ₱81,675,000.00; that Metro Bank issued a check in favor of VMC of ₱75,549,375.00 (which is less of ₱6,125,625.00 withholding tax), which was supposed to have been deposited with Urban Bank, but in view of the latter's freezing all VMC's deposits, VMC advised Metro Bank not to fund the check (to stop payment), which it did. However, Metro Bank thereafter refused to release the proceeds of the check to VMC, saying that it would apply part of the proceeds of the sale to the obligations of VMC to Metrobank. As Metrobank's moves meant that it did not pay VMC, because a check amounted to payment only when cashed, upon motion of Mr. Manuel Manalac, seconded by Mr. Gerardo Javellana, it was unanimously —

RESOLVED, That in the event matters would not be amicably resolved or ironed out with Metrobank, a letter be sent to Metrobank rescinding or cancelling the deed of sale of Lot 1, Block 4 at the Madrigal Business Part (sic) in Muntinlupa, with TCT No. 183907.

[13] *Id.* at 13.

2. The said parcels of land are actually co-owned by the following:

BLOCK 4, LOT 1 COVERED BY TCT NO. 183907

	%	SQ.M.	AMOUNT
MJOPFI	49.59%	450.00	₱ 5,504,748.25
VMC	32.23%	351.02	3,578,294.70
VFC	18.18%	197.98	2,018,207.30

3. Since Lot 1 has been sold for ₱81,675,000.00 (gross of 7.5% withholding tax and 3% broker's commission, MJOPFI's share in the proceeds of the sale is ₱40,500,000.00 (gross of 7.5% withholding tax and 3% broker's commission. However, MJO Pension Fund is indebted to VMC representing pension benefit advances paid to retirees amounting to ₱21,425,141.54, thereby leaving a balance of ₱14,822,358.46 in favor of MJOPFI. Check for said amount of ₱14,822,358.46 will therefore be issued to MJOPFI as its share in the proceeds of the sale of Lot 1. The check corresponding to said amount will be deposited with MJOPFI's account with BPI Asset Management & Trust Group which will then be invested by it in the usual course of its administration of MJOPFI funds.

Petitioner claims that it is a co-owner of the MBP lot as trustee of the Employees' Trust Fund, based on the notarized Memorandum of Agreement presented before the appellate courts. Petitioner asserts that VMC has confirmed that petitioner, as trustee of the Employees' Trust Fund, is VMC's co-owner of the MBP lot. Petitioner maintains that its ownership of the MBP lot is supported by the excerpts of the minutes and the resolutions of petitioner's Board Meetings. Petitioner further contends that there is no dispute that the Employees' Trust Fund is exempt from income tax. Since petitioner, as trustee, purchased 49.59% of the MBP lot using funds of the Employees' Trust Fund, petitioner asserts that the Employees' Trust Fund's 49.59% share in the income tax paid (or ₱3,037,697.40 rounded off to ₱3,037,500) should be refunded.[14]

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[14] *Id.* at 15.

Petitioner maintains that the tax exemption of the Employees' Trust Fund rendered the payment of ₱3,037,500 as illegal or erroneous. On 5 May 1997, petitioner filed a claim for tax refund.[15]

On 14 August 1997, the BIR, through its Revenue District Officer, wrote petitioner stating that under Section 26 of the Tax Code, petitioner is not exempt from tax on its income from the sale of real property. The BIR asked petitioner to submit documents to prove its co-ownership of the MBP lot and its exemption from tax.[16]

On 2 September 1997, petitioner replied that the applicable provision granting its claim for tax exemption is not Section 26 but Section 53(b) of the Tax Code. Petitioner claims that its co-ownership of the MBP lot is evidenced by Board Resolution Nos. 92-34 and 96-46 and the memoranda of agreement among petitioner, VMC and its subsidiaries.[17]

Since the BIR failed to act on petitioner's claim for refund, petitioner elevated its claim to the Commissioner of Internal Revenue (CIR) on 26 October 1998. The CIR did not act on petitioner's claim for refund. Hence, petitioner filed a petition for tax refund before the CTA. On 24 October 2000, the CTA rendered a decision denying the petition.[18]

On 22 November 2000, petitioner filed its Petition for Review before the Court of Appeals. On 20 May 2003, the CA rendered a decision denying the appeal. The CA also denied petitioner's Motion for Reconsideration.[19]

Aggrieved by the appellate court's Decision, petitioner elevated the case before this Court.

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[15] *Id.*

[16] *Id.*

[17] *Id.* at 16.

[18] *Id.* at 17.

[19] *Id.* at 17-18.

The Ruling of the Court of Tax Appeals

The CTA held that under Section 53(b)[20] [now Section 60(b)] of the Tax Code, it is not petitioner that is entitled to exemption from income tax but the income or earnings of the Employees' Trust Fund. The CTA stated that petitioner is not the pension trust itself but it is a separate and distinct entity whose function is to administer the pension plan for some VMC employees.[21] The CTA, after evaluating the evidence adduced by the parties, ruled that petitioner is not a party in interest.

To prove its co-ownership over the MBP lot, petitioner presented the following documents:

a. Secretary's Certificate showing how the purchase and eventual sale of the MBP lot came about.

b. Memoranda of Agreement showing various details:

i. That the MBP lot was co-owned by VMC and petitioner on a 50/50 basis;

ii. That VMC held the property in trust for North Legaspi Land Development Corporation, North Negros Marketing Co., Inc.,

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[20] Section 53(b) of the Tax Code.

Section 53. Imposition of Tax.

x x x

(b) Exception. - The tax imposed by this Title shall not apply to employee's trust which forms part of a pension, stock bonus or profit-sharing plan of an employer for the benefit of some or all of his employees (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument it is impossible, at any time prior to satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees: Provided, That any amount actually distributed to any employee or distributee shall be taxable to him in the year in which so distributed to the extent that it exceeds the amount contributed by such employee or distributee.

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

Victorias Insurance Factors Corporation, Victorias Science and Technical Foundation, Inc. and Canetown Development Corporation.

iii. That the previous agreement (ii) was cancelled and it showed that the MBP lot was co-owned by petitioner, VMC and Victorias Insurance Factors Corporation (VFC).[22]

The CTA ruled that these pieces of evidence are self-serving and cannot by themselves prove petitioner's co-ownership of the MBP lot when the TCT, the Deed of Absolute Sale, and the Monthly Remittance Return of Income Taxes Withheld (Remittance Return) disclose otherwise. The CTA further ruled that petitioner failed to present any evidence to prove that the money used to purchase the MBP lot came from the Employees' Trust Fund.[23]

The CTA concluded that petitioner is estopped from claiming a tax exemption. The CTA pointed out that VMC has led the government to believe that it is the sole owner of the MBP lot through its execution of the Deeds of Absolute Sale both during the purchase and subsequent sale of the MBP lot and through the registration of the MBP lot in VMC's name. Consequently, the tax was also paid in VMC's name alone. The CTA stated that petitioner may not now claim a refund of a portion of the tax paid by the mere expediency of presenting Secretary's Certificates and memoranda of agreement in order to prove its ownership. These documents are self-serving; hence, these documents merit very little weight.[24]

The Ruling of the Court of Appeals

The CA declared that the findings of the CTA involved three types of documentary evidence that petitioner presented to prove its contention that it purchased 49.59% of the MBP lot with funds from the Employees' Trust Fund: (1) the memoranda of agreement executed by petitioner and other VMC subsidiaries; (2) Secretary's Certificates containing excerpts of the minutes

[22] *Id.* at 115.

[23] *Id.* at 116.

[24] *Id.* at 116-117.

of meetings conducted by the respective boards of directors or trustees of VMC and petitioner; (3) Certified True Copies of the Portfolio Mix Analysis issued by Citytrust regarding the investment of ₱5,504,748.25 in Madrigal Business Park I for the years 1994 to 1997.[25]

The CA agreed with the CTA that these pieces of documentary evidence submitted by petitioner are largely self-serving and can be contrived easily. The CA ruled that these documents failed to show that the funds used to purchase the MBP lot came from the Employees' Trust Fund. The CA explained, thus:

> We are constrained to echo the findings of the Court of Tax Appeals in regard to the failure of the petitioner to ensure that legal documents pertaining to its investments, *e.g.* title to the subject property, were really in its name, considering its awareness of the resulting tax benefit that such foresight or providence would produce; hence, genuine efforts towards that end should have been exerted, this notwithstanding the alleged difficulty of procuring a title under the names of all the co-owners. Indeed, we are unable to understand why petitioner would allow the title of the property to be placed solely in the name of petitioner's alleged co-owner, *i.e.* the VMC, although it allegedly owned a much bigger (nearly half), portion thereof. Withal, petitioner failed to ensure a "fix" so to speak, on its investment, and we are not impressed by the documents which the petitioner presented, as the same apparently allowed "mobility" of the subject real estate assets between or among the petitioner, the VMC and the latter's subsidiaries. Given the fact that the subject parcel of land was registered and sold under the name solely of VMC, even as payment of taxes was also made only under its name, we cannot but concur with the finding of the Court of Tax Appeals that petitioner's claim for refund of withheld creditable tax is bereft of solid juridical basis.[26]

The Issues

The issues presented are:

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[25] *Id.* at 66.

[26] *Id.* at 67.

1. Whether petitioner or the Employees' Trust Fund is estopped from claiming that the Employees' Trust Fund is the beneficial owner of 49.59% of the MBP lot and that VMC merely held 49.59% of the MBP lot in trust for the Employees' Trust Fund.

2. If petitioner or the Employees' Trust Fund is not estopped, whether they have sufficiently established that the Employees' Trust Fund is the beneficial owner of 49.59% of the MBP lot, and thus entitled to tax exemption for its share in the proceeds from the sale of the MBP lot.

The Ruling of the Court

We grant the petition.

The law **expressly allows** a co-owner (first co-owner) of a parcel of land to register his proportionate share in the name of his co-owner (second co-owner) in whose name the entire land is registered. The second co-owner serves as a legal trustee of the first co-owner insofar as the proportionate share of the first co-owner is concerned. The first co-owner remains the owner of his proportionate share and not the second co-owner in whose name the entire land is registered. Article 1452 of the Civil Code provides:

> Art. 1452. If two or more persons agree to purchase a property and by common consent the legal title is taken in the name of one of them for the benefit of all, **a trust is created by force of law** in favor of the others in proportion to the interest of each. (Emphasis supplied)

For Article 1452 to apply, all that a co-owner needs to show is that there is "common consent" among the purchasing co-owners to put the legal title to the purchased property in the name of one co-owner for the benefit of all. Once this "common consent" is shown, "**a trust is created by force of law**." The BIR has no option but to recognize such legal trust as well as the beneficial ownership of the real owners because the trust is created by force of law. The fact that the title is registered solely in the name of one person is not conclusive that he alone owns the property.

Thus, this case turns on whether petitioner can sufficiently establish that petitioner, as trustee of the Employees' Trust Fund, has a common agreement with VMC and VFC that petitioner, VMC and VFC shall jointly purchase the MBP lot and put the title to the MBP lot in the name of VMC for the benefit petitioner, VMC and VFC.

We rule that petitioner, as trustee of the Employees' Trust Fund, has more than sufficiently established that it has an agreement with VMC and VFC to purchase jointly the MBP lot and to register the MBP lot solely in the name of VMC for the benefit of petitioner, VMC and VFC.

Factual findings of the CTA will be reviewed when judgment is based on a misapprehension of facts.

Generally, the factual findings of the CTA, a special court exercising expertise on the subject of tax, are regarded as final, binding and conclusive upon this Court, especially if these are substantially similar to the findings of the CA which is normally the final arbiter of questions of fact.[27] However, there are recognized exceptions to this rule,[28] such as when the judgment is based on a misapprehension of facts.

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[27] *Far East Bank and Trust Company v. Court of Appeals*, G.R. No. 129130, 9 December 2005, 477 SCRA 49, 52.

[28] Recognized exceptions to this rule are: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellee and the appellant; (7) when the findings are contrary to the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

Petitioner contends that the CA erred in evaluating the documents as self-serving instead of considering them as truthful and genuine because they are public documents duly notarized by a Notary Public and presumed to be regular unless the contrary appears. Petitioner explains that the CA erred in doubting the authenticity and genuineness of the three memoranda of agreement presented as evidence. Petitioner submits that there is nothing wrong in the execution of the three memoranda of agreement by the parties. Petitioner points out that VMC authorized petitioner to administer its Employees' Trust Fund which is basically funded by donation from its founder, Miguel J. Ossorio, with his shares of stocks and share in VMC's profits.[29]

Petitioner argues that the Citytrust report reflecting petitioner's investment in the MBP lot is concrete proof that money of the Employees' Trust Funds was used to purchase the MBP lot. In fact, the CIR did not dispute the authenticity and existence of this documentary evidence. Further, it would be unlikely for Citytrust to issue a certified copy of the Portfolio Mix Analysis stating that petitioner invested in the MBP lot if it were not true.[30]

Petitioner claims that substantial evidence is all that is required to prove petitioner's co-ownership and all the pieces of evidence have overwhelmingly proved that petitioner is a co-owner of the MBP lot to the extent of 49.59% of the MBP lot. Petitioner explains:

> Thus, how the parties became co-owners was shown by the excerpts of the minutes and the resolutions of the Board of Trustees of the petitioner and those of VMC. All these documents showed that as far as March 1992, petitioner already expressed intention to be co-owner of the said property. It then decided to invest the retirement funds to buy the said property and culminated in it owning 49.59% thereof. When it was sold to Metrobank, petitioner received its share in the proceeds from the sale thereof. The excerpts and resolutions of the parties' respective Board of Directors were certified under oath by their respective Corporate Secretaries at the time. The

[29] *Rollo*, pp. 351-352.

[30] *Id.* at 353.

corporate certifications are accorded verity by law and accepted as *prima facie* evidence of what took place in the board meetings because the corporate secretary is, for the time being, the board itself.[31]

Petitioner, citing Article 1452 of the Civil Code, claims that even if VMC registered the land solely in its name, it does not make VMC the absolute owner of the whole property or deprive petitioner of its rights as a co-owner.[32] Petitioner argues that under the Torrens system, the issuance of a TCT does not create or vest a title and it has never been recognized as a mode of acquiring ownership.[33]

The issues of whether petitioner or the Employees' Trust Fund is estopped from claiming 49.59% ownership in the MBP lot, whether the documents presented by petitioner are self-serving, and whether petitioner has proven its exemption from tax, are all questions of fact which could only be resolved after reviewing, examining and evaluating the probative value of the evidence presented. The CTA ruled that the documents presented by petitioner cannot prove its co-ownership over the MBP lot especially that the TCT, Deed of Absolute Sale and the Remittance Return disclosed that VMC is the sole owner and taxpayer.

However, the appellate courts failed to consider the genuineness and due execution of the notarized Memorandum of Agreement acknowledging petitioner's ownership of the MBP lot which provides:

2. **The said parcels of land are actually co-owned by the following**:

BLOCK 4, LOT 1 COVERED BY TCT NO. 183907

	%	SQ.M.	AMOUNT
MJOPFI	49.59%	450.00	₱5,504,748.25
VMC	32.23%	351.02	3,578,294.70
VFC	18.18%	197.98	2,018,207.30

[31] *Id.* at 354.

[32] *Id.* at 357.

[33] *Id.* at 358.

Thus, there is a "common consent" or agreement among petitioner, VMC and VFC to co-own the MBP lot in the proportion specified in the notarized Memorandum of Agreement.

In *Cuizon v. Remoto*,[34] we held:

> Documents acknowledged before notaries public are public documents and public documents are admissible in evidence without necessity of preliminary proof as to their authenticity and due execution. They have in their favor the presumption of regularity, and to contradict the same, there must be evidence that is clear, convincing and more than merely preponderant.

The BIR failed to present any clear and convincing evidence to prove that the notarized Memorandum of Agreement is fictitious or has no legal effect. Likewise, VMC, the registered owner, did not repudiate petitioner's share in the MBP lot. Further, Citytrust, a reputable banking institution, has prepared a Portfolio Mix Analysis for the years 1994 to 1997 showing that petitioner invested ₱5,504,748.25 in the MBP lot. Absent any proof that the Citytrust bank records have been tampered or falsified, and the BIR has presented none, the Portfolio Mix Analysis should be given probative value.

The BIR argues that under the Torrens system, a third person dealing with registered property need not go beyond the TCT and since the registered owner is VMC, petitioner is estopped from claiming ownership of the MBP lot. This argument is grossly erroneous. The trustor-beneficiary is not estopped from proving its ownership over the property held in trust by the trustee when the purpose is not to contest the disposition or encumbrance of the property in favor of an innocent third-party purchaser for value. The BIR, not being a buyer or claimant to any interest in the MBP lot, has not relied on the face of the title of the MBP lot to acquire any interest in the lot. There is no basis for the BIR to claim that petitioner is estopped from proving that it co-owns, as trustee of the Employees' Trust Fund, the MBP lot. Article 1452 of the Civil

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[34] G.R. No. 143027, 11 October 2005, 472 SCRA 274, 282.

Code recognizes the lawful ownership of the trustor-beneficiary over the property registered in the name of the trustee. Certainly, the Torrens system was not established to foreclose a trustor or beneficiary from proving its ownership of a property titled in the name of another person when the rights of an innocent purchaser or lien-holder are not involved. More so, when such other person, as in the present case, admits its being a mere trustee of the trustor or beneficiary.

The registration of a land under the Torrens system does not create or vest title, because registration is not one of the modes of acquiring ownership. A TCT is merely an evidence of ownership over a particular property and its issuance in favor of a particular person does not foreclose the possibility that the property may be co-owned by persons not named in the certificate, or that it may be held in trust for another person by the registered owner.[35]

No particular words are required for the creation of a trust, it being sufficient that a trust is clearly intended.[36] It is immaterial whether or not the trustor and the trustee know that the relationship which they intend to create is called a trust, and whether or not the parties know the precise characteristic of the relationship which is called a trust because what is important is whether the parties manifested an intention to create the kind of relationship which in law is known as a trust.[37]

The fact that the TCT, Deed of Absolute Sale and the Remittance Return were in VMC's name does not forestall the possibility that the property is owned by another entity **because Article 1452 of the Civil Code expressly authorizes a person to purchase a property with his own money and to take conveyance in the name of another.**

In *Tigno v. Court of Appeals*, the Court explained, thus:

[35] *Naval v. Court of Appeals*, G.R. No. 167412, 22 February 2006, 483 SCRA 102, 113.

[36] Civil Code, Article 1444.

[37] De Leon, Hector, *Comments and Cases on Partnership, Agency and Trusts*, 5th ed., p. 665 (1999).

An implied trust arises where a person purchases land with his own money and takes conveyance thereof in the name of another. In such a case, the property is held on resulting trust in favor of the one furnishing the consideration for the transfer, unless a different intention or understanding appears. The trust which results under such circumstances does not arise from a contract or an agreement of the parties, but from the facts and circumstances; that is to say, the trust results because of equity and it arises by implication or operation of law.[38]

In this case, the notarized Memorandum of Agreement and the certified true copies of the Portfolio Mix Analysis prepared by Citytrust clearly prove that petitioner invested ₱5,504,748.25, using funds of the Employees' Trust Fund, to purchase the MBP lot. Since the MBP lot was registered in VMC's name only, **a resulting trust is created by operation of law.** A resulting trust is based on the equitable doctrine that valuable consideration and not legal title determines the equitable interest and is presumed to have been contemplated by the parties.[39] Based on this resulting trust, the Employees' Trust Fund is considered the beneficial co-owner of the MBP lot.

Petitioner has sufficiently proven that it had a "common consent" or agreement with VMC and VFC to jointly purchase the MBP lot. The absence of petitioner's name in the TCT does not prevent petitioner from claiming before the BIR that the Employees' Trust Fund is the beneficial owner of 49.59% of the MBP lot and that VMC merely holds 49.59% of the MBP lot in trust, through petitioner, for the benefit of the Employees' Trust Fund.

The BIR has acknowledged that the owner of a land can validly place the title to the land in the name of another person. In BIR Ruling [DA-(I-012) 190-09] dated 16 April 2009, a certain Amelia Segarra purchased a parcel of land and registered it in the names of Armin Segarra and Amelito Segarra as trustees on the condition that upon demand by Amelia Segarra, the

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[38] G.R. No. 110115, 8 October 1997, 280 SCRA 262, 271.

[39] *Buan Vda. de Esconde v. Court of Appeals*, 323 Phil. 81, 89 (1996).

trustees would transfer the land in favor of their sister, Arleen May Segarra-Guevara. The BIR ruled that an implied trust is deemed created by law and the transfer of the land to the beneficiary is not subject to capital gains tax or creditable withholding tax.

Income from Employees' Trust Fund is Exempt from Income Tax

Petitioner claims that the Employees' Trust Fund is exempt from the payment of income tax. Petitioner further claims that as trustee, it acts for the Employees' Trust Fund, and can file the claim for refund. As trustee, petitioner considers itself as the entity that is entitled to file a claim for refund of taxes erroneously paid in the sale of the MBP lot.[40]

The Office of the Solicitor General argues that the cardinal rule in taxation is that tax exemptions are highly disfavored and whoever claims a tax exemption must justify his right by the clearest grant of law. Tax exemption cannot arise by implication and any doubt whether the exemption exists is strictly construed against the taxpayer.[41] Further, the findings of the CTA, which were affirmed by the CA, should be given respect and weight in the absence of abuse or improvident exercise of authority.[42]

Section 53(b) and now Section 60(b) of the Tax Code provides:

SEC. 60. Imposition of Tax. —

(A) Application of Tax. — x x x

(B) Exception. — The tax imposed by this Title shall not apply to employee's trust which forms part of a pension, stock bonus or profit-sharing plan of an employer for the benefit of some or all of his employees (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust

[40] *Rollo*, p. 361.

[41] *Id.* at 324.

[42] *Id.* at 325.

instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees: *Provided*, That any amount actually distributed to any employee or distributee shall be taxable to him in the year in which so distributed to the extent that it exceeds the amount contributed by such employee or distributee.

Petitioner's Articles of Incorporation state the purpose for which the corporation was formed:

Primary Purpose

To hold legal title to, control, invest and administer in the manner provided, pursuant to applicable rules and conditions as established, and in the interest and for the benefit of its beneficiaries and/or participants, **the private pension plan as established for certain employees of Victorias Milling Company, Inc., and other pension plans of Victorias Milling Company affiliates and/or subsidiaries,** the pension funds and assets, as well as accruals, additions and increments thereto, and such amounts as may be set aside or accumulated for the benefit of the participants of said pension plans; and in furtherance of the foregoing and as may be incidental thereto.[43] (Emphasis supplied)

Petitioner is a corporation that was formed to administer the Employees' Trust Fund. Petitioner invested ₱5,504,748.25 of the funds of the Employees' Trust Fund to purchase the MBP lot. When the MBP lot was sold, the gross income of the Employees' Trust Fund from the sale of the MBP lot was ₱40,500,000. The 7.5% withholding tax of ₱3,037,500 and broker's commission were deducted from the proceeds. In *Commissioner of Internal Revenue v. Court of Appeals*,[44] the Court explained the rationale for the tax-exemption privilege of income derived from employees' trusts:

It is evident that tax-exemption is likewise to be enjoyed by the income of the pension trust. Otherwise, taxation of those earnings

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[43] *Id.* at 128.

[44] G.R. No. 95022, 23 March 1992, 207 SCRA 487, 495.

would result in a diminution of accumulated income and reduce whatever the trust beneficiaries would receive out of the trust fund. This would run afoul of the very intendment of the law.

In *Miguel J. Ossorio Pension Foundation, Inc. v. Commissioner of Internal Revenue*,[45] the CTA held that petitioner is entitled to a refund of withholding taxes paid on interest income from direct loans made by the Employees' Trust Fund since such interest income is exempt from tax. The CTA, in recognizing petitioner's entitlement for tax exemption, explained:

> In or about 1968, Victorias Milling Co., Inc. established a retirement or pension plan for its employees and those of its subsidiary companies pursuant to a 22-page plan. Pursuant to said pension plan, Victorias Milling Co., Inc. makes a (sic) regular financial contributions to the employee trust for the purpose of distributing or paying to said employees, the earnings and principal of the funds accumulated by the trust in accordance with said plan. Under the plan, it is imposable, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be used for, or diverted to, purposes other than for the exclusive benefit of said employees. Moreover, upon the termination of the plan, any remaining assets will be applied for the benefit of all employees and their beneficiaries entitled thereto in proportion to the amount allocated for their respective benefits as provided in said plan.
>
> The petitioner and Victorias Milling Co., Inc., on January 22, 1970, entered into a Memorandum of Understanding, whereby they agreed that petitioner would administer the pension plan funds and assets, as assigned and transferred to it in trust, as well as all amounts that may from time to time be set aside by Victorias Milling Co., Inc. "For the benefit of the Pension Plan, said administration is to be strictly adhered to pursuant to the rules and regulations of the Pension Plan and of the Articles of Incorporation and By Laws" of petitioner.

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[45] CTA Case No. 4244, 2 November 1990. On 2 November 1990, the CTA rendered this decision which was affirmed by the CA in a decision dated 20 January 1993 in CA G.R. SP No. 23980 and which became final and executory on 3 August 1993. In compliance with the decision, the CIR refunded to petitioner the amounts of ₱780,352.28 on 23 September 1994 and ₱312,606.40 on 19 September 1996.

The pension plan was thereafter submitted to the Bureau of Internal Revenue for registration and for a ruling as to whether its income or earnings are exempt from income tax pursuant to Rep. Act 4917, in relation to Sec. 56(b), now Sec. 54(b), of the Tax Code.

In a letter dated January 18, 1974 addressed to Victorias Milling Co., Inc., the Bureau of Internal Revenue ruled that ***"the income of the trust fund of your retirement benefit plan is exempt from income tax, pursuant to Rep. Act 4917 in relation to Section 56(b) of the Tax Code."***

In accordance with petitioner's Articles of Incorporation (Annex A), petitioner would ***"hold legal title to, control, invest and administer, in the manner provided, pursuant to applicable rules and conditions as established, and in the interest and for the benefit of its beneficiaries and/or participants, the private pension plan as established for certain employees of Victorias Milling Co., Inc. and other pension plans of Victorias Milling Co. affiliates and/or subsidiaries, the pension funds and assets, as well as the accruals, additions and increments thereto, and such amounts as may be set aside or accumulated of said pension plans. Moreover, pursuant to the same Articles of Incorporations, petitioner is empowered to "settle, compromise or submit to arbitration, any claims, debts or damages due or owing to or from pension funds and assets and other funds and assets of the corporation, to commence or defend suits or legal proceedings and to represent said funds and assets in all suits or legal proceedings."***

Petitioner, through its investment manager, the City Trust Banking Corporation, has invested the funds of the employee trust in treasury bills, Central Bank bills, direct lending, *etc.* so as to generate income or earnings for the benefit of the employees-beneficiaries of the pension plan. *Prior to the effectivity of Presidential Decree No. 1959 on October 15, 1984, respondent did not subject said income or earning of the employee trust to income tax because they were exempt from income tax pursuant to Sec. 56(b), now Sec. 54(b) of the Tax Code and the BIR Ruling dated January 18, 1984 (Annex D).* (Boldfacing supplied; italicization in the original)

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It asserted that the pension plan in question was previously submitted to the Bureau of Internal Revenue for a ruling as to whether the income or earnings of the retirement funds of said plan are exempt

from income tax and in a letter dated January 18,1984, **the Bureau ruled that the earnings of the trust funds of the pension plan are exempt from income tax under Sec. 56(b) of the Tax Code**. (Emphasis supplied)

> "A close review of the provisions of the plan and trust instrument disclose that in reality the corpus and income of the trust fund are not at no time used for, or diverted to, any purpose other than for the exclusive benefit of the plan beneficiaries. This fact was likewise confirmed after verification of the plan operations by the Revenue District No. 63 of the Revenue Region No. 14, Bacolod City. Section X also confirms this fact by providing that if any assets remain after satisfaction of the requirements of all the above clauses, such remaining assets will be applied for the benefits of all persons included in such classes in proportion to the amounts allocated for their respective benefits pursuant to the foregoing priorities.
>
> "In view of all the foregoing, this Office is of the opinion, as it hereby holds, that the income of the trust fund of your retirement benefit plan is exempt from income tax pursuant to Republic Act 4917 in relation to Section 56(b) of the Tax Code. (Annex "D" of Petition)

This CTA decision, which was affirmed by the CA in a decision dated 20 January 1993, became final and executory on 3 August 1993.

The tax-exempt character of petitioner's Employees' Trust Fund is not at issue in this case. The tax-exempt character of the Employees' Trust Fund has long been settled. It is also settled that petitioner exists for the purpose of holding title to, and administering, the tax-exempt Employees' Trust Fund established for the benefit of VMC's employees. As such, petitioner has the personality to claim tax refunds due the Employees' Trust Fund.

In *Citytrust Banking Corporation as Trustee and Investment Manager of Various Retirement Funds v. Commissioner of Internal Revenue*,[46] the CTA granted Citytrust's claim for refund

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[46] CTA Case No. 5083, 9 March 1998. In a Resolution dated 13 July 1998, the Court of Appeals in CA G.R. SP No. 47375 ruled:

on withholding taxes paid on the investments made by Citytrust in behalf of the trust funds it manages, **including petitioner**.[47] Thus:

> In resolving the second issue, we note that the same is not a case of first impression. Indeed, the petitioner is correct in its adherence to the clear ruling laid by the Supreme Court way back in 1992 in the case of *Commissioner of Internal Revenue vs. The Honorable Court of Appeals, The Court of Tax Appeals and GCL Retirement Plan,* 207 SCRA 487 at page 496, *supra,* wherein it was succinctly held:
>
> x x x x x x x x x
>
> > There can be no denying either that the final withholding tax is collected from income in respect of which employees' trusts are declared exempt (Sec. 56(b), now 53(b), Tax Code). The application of the withholdings system to interest on bank deposits or yield from deposit substitutes is essentially to maximize and expedite the collection of income taxes by requiring its payment at the source. If an employees' trust like the GCL enjoys a tax-exempt status from income, we see no logic in withholding a certain percentage of that income which it is not supposed to pay in the first place. x x x
>
> Similarly, the income of the trust funds involved herein is exempt from the payment of final withholding taxes.

This CTA decision became final and executory when the CIR failed to file a Petition for Review within the extension granted by the CA.

Similarly, in BIR Ruling [UN-450-95], Citytrust wrote the BIR to request for a ruling exempting it from the payment of withholding tax on the sale of the land by various BIR-approved

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For failure of the Commissioner of Internal Revenue to file the Petition for Review within the extension granted which expired on 11 April 1998, this case is considered abandoned and withdrawn and is ordered dismissed.

[47] Citytrust was refunded the amount of ₱5,114,260.44 representing erroneously paid final withholding taxes on the investments made by Citytrust in behalf of the trust funds it manages. Of this amount, petitioner was refunded ₱293,482.49.

trustees and tax-exempt private employees' retirement benefit trust funds[48] represented by Citytrust. The BIR ruled that the private employees benefit trust funds, **which included petitioner**, have met the requirements of the law and the regulations and therefore qualify as reasonable retirement benefit plans within the contemplation of Republic Act No. 4917 (now Sec. 28(b)(7)(A), Tax Code). The income from the trust fund investments is therefore exempt from the payment of income tax and consequently from the payment of the creditable withholding tax on the sale of their real property.[49]

Thus, the documents issued and certified by Citytrust showing that money from the Employees' Trust Fund was invested in the MBP lot cannot simply be brushed aside by the BIR as self-serving, in the light of previous cases holding that Citytrust was indeed handling the money of the Employees' Trust Fund.

These documents, together with the notarized Memorandum of Agreement, clearly establish that petitioner, on behalf of the Employees' Trust Fund, indeed invested in the purchase of the MBP lot. Thus, the Employees' Trust Fund owns 49.59% of the MBP lot.

Since petitioner has proven that the income from the sale of the MBP lot came from an investment by the Employees' Trust Fund, petitioner, as trustee of the Employees' Trust Fund, is entitled to claim the tax refund of ₱3,037,500 which was erroneously paid in the sale of the MBP lot.

WHEREFORE, we *GRANT* the petition and *SET ASIDE* the Decision of 30 May 2003 of the Court of Appeals in CA-G.R. SP No. 61829. Respondent Commissioner of Internal

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[48] The list of BIR-approved duly trusteed and tax-exempt private employee's retirement benefit trust funds includes petitioner Miguel J. Ossorio Pension Foundation, Inc. Trust Fund under Trust Account No. TA # 5C-019A.

[49] Likewise, in BIR Ruling [DA-(C-033) 139-09] dated 5 March 2009, the BIR confirmed that the sale of the Bank of the Philippine Islands Group of Companies Retirement Fund's (BPI RTF) capital assets is exempt from capital gains tax and from the creditable expanded withholding tax.

Revenue is directed to refund petitioner Miguel J. Ossorio Pension Foundation, Incorporated, as trustee of the Employees' Trust Fund, the amount of ₱3,037,500, representing income tax erroneously paid.

SO ORDERED.

Peralta, Abad, Perez,[*] and *Mendoza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 171872. June 28, 2010]

FAUSTO R. PREYSLER, JR., *petitioner, vs.* **MANILA SOUTHCOAST DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; MOTIONS; NOTICE REQUIREMENTS; THREE-DAY NOTICE RULE, NOT ABSOLUTE. — The three-day notice rule is not absolute. A liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority. Indeed, Section 6, Rule 1 of the Rules of Court provides that the Rules should be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Rules of procedure are tools designed to facilitate the attainment of justice, and courts must avoid their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice. In *Somera Vda. De Navarro v. Navarro*, the Court held that there was substantial compliance of the

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[*] Designated additional member per Raffle dated 2 June 2010.

rule on notice of motions even if the first notice was irregular because no prejudice was caused the adverse party since the motion was not considered and resolved until after several postponements of which the parties were duly notified. Likewise, in *Jehan Shipping Corporation v. National Food Authority*, the Court held that despite the lack of notice of hearing in a Motion for Reconsideration, there was substantial compliance with the requirements of due process where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion.

2. ID.; ID.; ID.; ID.; NOTICE OF HEARING SHOULD BE SERVED AT LEAST THREE DAYS BEFORE THE DATE OF HEARING; CASE AT BAR. — Section 4 of Rule 15 provides that "[e]very written motion required to be heard and the notice of the hearing thereof **shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of the hearing**, unless the court for good cause sets the hearing on shorter notice." Thus, the date of the hearing should be at least three days after receipt of the notice of hearing by the other parties. In this case, the petitioner's Omnibus Motion was set for hearing on 12 November 2004. Thus, to comply with the notice requirement, respondent should have received the notice of the hearing at least three days before 12 November 2004, which is 9 November 2004. Clearly, respondent's receipt on 9 November 2004 (Tuesday) of the notice of hearing of the Omnibus Motion which was set to be heard on 12 November 2004 (Friday), was within the required minimum three-days' notice. As explained by Retired Justice Jose Y. Feria in his book, Civil Procedure Annotated, when the notice of hearing should be given: "**The ordinary motion day is Friday. Hence, the notice should be served by Tuesday at the latest, in order that the requirement of the three days may be complied with.** If notice be given by ordinary mail, it should be actually received by Tuesday, or if not claimed from the post office, the date of the first notice of the postmaster should be at least five (5) days before Tuesday."

APPEARANCES OF COUNSEL

Ortega Del Castillo Bacorro Odulio Calma & Carbonell for petitioner.

Pacis & Reyes for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 22 November 2005 Decision[2] and the 3 March 2006 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 89621.

The Facts

On 15 January 2002, petitioner Fausto R. Preysler, Jr. (petitioner) filed with the Municipal Trial Court (MTC) of Batangas a complaint for forcible entry against respondent Manila Southcoast Development Corporation (respondent). The subject matter of the complaint is a parcel of land with an area of 21,922 square meters located in Sitio Kutad, Barangay Papaya, Nasugbu, Batangas. The disputed land, covered by Transfer Certificate of Title (TCT) No. TF-1217[4] in the name of petitioner, is also within the property covered by TCT No. T-72097[5] in the name of respondent.[6] TCT No. T-72097 covers three contiguous parcels of land with an aggregate area of 86,507,778 square meters.

On 13 December 2002, the MTC ruled in favor of petitioner and ordered respondent to vacate the disputed land covered by TCT No. TF-1217 in the name of petitioner and to return the possession of the land to petitioner.[7] Respondent appealed to

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

[2] *Rollo*, pp. 74-86. Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justices Hakim S. Abdulwahid and Estela M. Perlas-Bernabe, concurring.

[3] *Id.* at 88.

[4] CA *rollo*, p. 79.

[5] *Id.* at 270-287.

[6] MTC Decision dated 13 December 2002, p. 1; *id.* at 302.

[7] *Id.* at 310-311. The MTC Decision dated 13 December 2002 reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff Fausto R. Preysler, Jr. and against defendant Manila South Coast Development Corporation as follows:

the Regional Trial Court (RTC). In its Decision dated 22 January 2004, the RTC, Branch 14, Nasugbu, Batangas reversed the MTC decision and dismissed petitioner's complaint.

Petitioner received the RTC Decision on 9 February 2004 and thereafter filed a Motion for Reconsideration, which was set for hearing on 26 February 2004. Petitioner sent a copy of the Motion for Reconsideration to respondent's counsel by registered mail on 23 February 2004. During the 26 February 2004 scheduled hearing of the motion, the RTC judge reset the hearing to 2 April 2004 because the court's calendar could not accommodate the hearing of the motion. All the parties were notified of the schedule for the next hearing.

Meanwhile, it was only on 3 March 2004, or 6 days after the scheduled hearing on 26 February 2004, that respondent's counsel received a copy of petitioner's Motion for Reconsideration.

The rescheduled hearing on 2 April 2004 was again reset on 7 May 2004 because the RTC judge was on official leave. The 7 May 2004 hearing was further reset to 6 August 2004. After the hearing, respondent filed its Motion to Dismiss dated 9 August 2004,[8] claiming that non-compliance with the three-day notice rule did not toll the running of the period of appeal, which rendered the decision final.

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1. Ordering the said defendant and all persons claiming rights from the defendant to vacate the subject parcel of land which is covered by Transfer Certificate of Title No. 1217 in the name of the plaintiff situated at Sitio Kutad, Barangay Papaya, Nasugbu, Batangas and to return and restore possession of the same to the plaintiff;

2. Ordering the defendant to pay the plaintiff reasonable compensation for the use and occupation of subject property in the amount of ₱30,000.00 a month beginning August 2001 until defendant vacates the subject premises and possession is restored to the plaintiff;

3. Ordering the defendant to pay attorney's fees in the amount of ₱50,000.00 and;

4. To pay the costs of the suit.

[8] *Id*. at 370-374.

On 4 October 2004, the RTC issued an Order, denying petitioner's Motion for Reconsideration for failure to appeal within the 15 days reglementary period and declaring the 22 January 2004 Decision as final and executory. The RTC ruled that petitioner's Motion for Reconsideration was fatally flawed for failure to observe the three-day notice rule. Petitioner filed an Omnibus Motion for Reconsideration of the Order dated 4 October 2004. In its Order dated 22 February 2005, the RTC dismissed the Omnibus Motion. Petitioner then filed a petition for *certiorari* with the Court of Appeals, alleging that the RTC committed grave abuse of discretion in dismissing the Motion for Reconsideration and Omnibus Motion for petitioner's alleged failure to observe the three-day notice rule.

The Ruling of the Court of Appeals

In its Decision dated 22 November 2005, the Court of Appeals dismissed the petition. The Court of Appeals held that the three-day notice rule under Sections 4, 5, and 6 of Rule 15 of the Rules of Court is mandatory and non-compliance therewith is fatal and renders the motion *pro forma*. As found by the RTC, petitioner's Motion for Reconsideration dated 12 February 2004 was received by respondent only on 3 March 2004, or six days after the scheduled hearing on 26 February 2004. Furthermore, the Court of Appeals held that all violations of Sections 4, 5, and 6 of Rule 15 which render the purpose of the notice of hearing of the motion nugatory are deemed fatal.

Petitioner moved for reconsideration, which the Court of Appeals denied in its Resolution dated 3 March 2006. Hence, this petition for review.

The Issues

In his petition for review, petitioner submits that:

I

THE COURT OF APPEALS COMMITTED GRAVE ERROR IN AFFIRMING THE RULING OF THE PUBLIC RESPONDENT THAT PETITIONER HAD VIOLATED THE THREE-DAY NOTICE RULE DESPITE THE FACTS THAT:

A) PRIVATE RESPONDENT WAS DULY HEARD ON THE MOTION FOR RECONSIDERATION, HAD OPPORTUNITY TO OPPOSE, AND ACTUALLY OPPOSED SAID MOTION.
B) PRIVATE RESPONDENT WAS NOT PREJUDICED BY THE ALLEGED DEFECT OF THE MOTION.
C) THE PURPOSE OF THE THREE-DAY NOTICE RULE WAS SUFFICIENTLY ACHIEVED.
D) THE ALLEGED FAILURE OF PETITIONER TO COMPLY WITH SECTION 4, RULE 15 WAS CURED BY THE FACT THAT THE PUBLIC RESPONDENT RESET SEVERAL TIMES THE HEARING OF THE MOTION, AND THE PRIVATE RESPONDENT WAS PROPERLY NOTIFIED THEREOF AND OPPOSED SAID MOTION.
E) PETITIONER HAD AN EXTREMELY MERITORIOUS CASE.

II

THE COURT OF APPEALS SERIOUSLY ERRED IN NOT RULING ON THE ISSUE OF THE ALLEGED DEFECT OF THE PETITIONER'S OMNIBUS MOTION, THEREBY AFFIRMING THE ERRONEOUS COMPUTATION OF THE THREE-DAY NOTICE BY THE RESPONDENT TRIAL JUDGE.

III

THE COURT OF APPEALS ERRED IN NOT RESOLVING THE MERITS OF THE PETITIONER'S MOTION FOR RECONSIDERATION FILED BEFORE THE PUBLIC RESPONDENT.[9]

The Ruling of the Court

We find the petition meritorious.

In upholding the RTC Order denying petitioner's Motion for Reconsideration, the Court of Appeals relied mainly on petitioner's alleged violation of the notice requirements under Sections 4, 5, and 6, Rule 15 of the Rules of Court which read:

SECTION 4. *Hearing of motion*. – Except for motions which the court may act upon without prejudicing the rights of the adverse party, every written motion shall be set for hearing by the applicant.

Every written motion required to be heard and the notice of the hearing thereof shall be served in such a manner as to ensure its

[9] *Rollo*, pp. 29-30.

receipt by the other party at least three (3) days before the date of hearing, unless the court for good cause sets the hearing on shorter notice.

SECTION 5. *Notice of hearing*. – The notice of hearing shall be addressed to all parties concerned, and shall specify the time and date of the hearing which must not be later than ten (10) days after the filing of the motion.

SECTION 6. *Proof of service necessary*. – No written motion set for hearing shall be acted upon by the court without proof of service thereof.

The three-day notice rule is not absolute. A liberal construction of the procedural rules is proper where the lapse in the literal observance of a rule of procedure has not prejudiced the adverse party and has not deprived the court of its authority.[10] Indeed, Section 6, Rule 1 of the Rules of Court provides that the Rules should be liberally construed in order to promote their objective of securing a just, speedy and inexpensive disposition of every action and proceeding. Rules of procedure are tools designed to facilitate the attainment of justice, and courts must avoid their strict and rigid application which would result in technicalities that tend to frustrate rather than promote substantial justice.[11]

In *Somera Vda. De Navarro v. Navarro*,[12] the Court held that there was substantial compliance of the rule on notice of motions even if the first notice was irregular because no prejudice was caused the adverse party since the motion was not considered and resolved until after several postponements of which the parties were duly notified.[13]

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[10] *E & L Mercantile, Inc. v. Intermediate Appellate Court*, 226 Phil. 299 (1986).

[11] *Strategic Alliance Development Corporation v. Radstock Securities Limited*, G.R. Nos. 178158 and 180428, 4 December 2009.

[12] 76 Phil. 122 (1946).

[13] 1 J. Feria & M.C. Noche, *Civil Procedure Annotated*, 406 (2001).

Likewise, in *Jehan Shipping Corporation v. National Food Authority*,[14] the Court held that despite the lack of notice of hearing in a Motion for Reconsideration, there was substantial compliance with the requirements of due process where the adverse party actually had the opportunity to be heard and had filed pleadings in opposition to the motion. The Court held:

> This Court has indeed held time and again, that under Sections 4 and 5 of Rule 15 of the Rules of Court, mandatory is the requirement in a motion, which is rendered defective by failure to comply with the requirement. As a rule, a motion without a notice of hearing is considered *pro forma* and does not affect the reglementary period for the appeal or the filing of the requisite pleading.
>
> **As an integral component of the procedural due process, the three-day notice required by the Rules is not intended for the benefit of the movant. Rather, the requirement is for the purpose of avoiding surprises that may be sprung upon the adverse party, who must be given time to study and meet the arguments in the motion before a resolution of the court. Principles of natural justice demand that the right of a party should not be affected without giving it an opportunity to be heard.**
>
> **The test is the presence of opportunity to be heard, as well as to have time to study the motion and meaningfully oppose or controvert the grounds upon which it is based.** x x x
>
> A close perusal of the records reveal that the trial court gave petitioner ten days within which to comment on respondent's Motion for Reconsideration. Petitioner filed its Opposition to the Motion on November 26, 2001. In its 14-page Opposition, it not only pointed out that the Motion was defective for not containing a notice of hearing and should then be dismissed outright by the court; it also ventilated its substantial arguments against the merits of the Motion and of the Supplemental Motion for Reconsideration. Notably, its arguments were recited at length in the trial court's January 8, 2002 Joint Resolution. Nevertheless, the court proceeded to deny the Motions on the sole ground that they did not contain any notice of hearing.

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[14] G.R. No. 159750, 14 December 2005, 477 SCRA 781.

The requirement of notice of time and hearing in the pleading filed by a party is necessary only to apprise the other of the actions of the former. Under the circumstances of the present case, the purpose of a notice of hearing was served.[15] (Emphasis supplied)

In this case, the Court of Appeals ruled that petitioner failed to comply with the three-day notice rule. However, the Court of Appeals overlooked the fact that although respondent received petitioner's Motion for Reconsideration six days after the scheduled hearing on 26 February 2004, the said hearing was reset three (3) times with due notice to the parties. Thus, it was only on 6 August 2004, or more than five months after respondent received a copy of petitioner's Motion for Reconsideration, that the motion was heard by the RTC. Clearly, respondent had more than sufficient time to oppose petitioner's Motion for Reconsideration. In fact, respondent did oppose the motion when it filed its Motion to Dismiss dated 9 August 2004. In view of the circumstances of this case, we find that there was substantial compliance with procedural due process. Instead of dismissing petitioner's Motion for Reconsideration based merely on the alleged procedural lapses, the RTC should have resolved the motion based on the merits.

Furthermore, the RTC likewise erred in dismissing petitioner's Omnibus Motion for allegedly failing to comply with the three-day notice requirement. The RTC found that the notice of hearing of petitioner's Omnibus Motion which was set to be heard on 12 November 2004 was received by respondent on 9 November 2004. The RTC held that the service of the notice of hearing was one day short of the prescribed minimum three days notice.

We disagree. Section 4 of Rule 15 provides that "[e]very written motion required to be heard and the notice of the hearing thereof **shall be served in such a manner as to ensure its receipt by the other party at least three (3) days before the date of the hearing**, unless the court for good cause sets the hearing on shorter notice." Thus, the date of the hearing should be at least three days after receipt of the notice of hearing by

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[15] *Id.* at 788-790.

the other parties. In this case, the petitioner's Omnibus Motion was set for hearing on 12 November 2004. Thus, to comply with the notice requirement, respondent should have received the notice of the hearing at least three days before 12 November 2004, which is 9 November 2004. Clearly, respondent's receipt on 9 November 2004 (Tuesday) of the notice of hearing of the Omnibus Motion which was set to be heard on 12 November 2004 (Friday), was within the required minimum three-days' notice. As explained by Retired Justice Jose Y. Feria in his book, Civil Procedure Annotated, when the notice of hearing should be given:

> **The ordinary motion day is Friday. Hence, the notice should be served by Tuesday at the latest, in order that the requirement of the three days may be complied with.**
>
> If notice be given by ordinary mail, it should be actually received by Tuesday, or if not claimed from the post office, the date of the first notice of the postmaster should be at least five (5) days before Tuesday.[16] (Emphasis supplied)

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the Decision dated 22 November 2005 and the Resolution dated 3 March 2006 of the Court of Appeals in CA-G.R. SP No. 89621. We *REMAND* the case to the Regional Trial Court, Branch 14, Nasugbu, Batangas to resolve petitioner's Motion for Reconsideration and Omnibus Motion on the merits.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.*, concur.

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[16] 1 J. FERIA & M.C. NOCHE, *Civil Procedure Annotated*, 405-406 (2001).

FIRST DIVISION

[G.R. No. 185209. June 28, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RENE BARON** *y* **TANGAROCAN,** *appellant.*

REY VILLATIMA and *alias* "DEDONG" BARGO, *accused.*

SYLLABUS

1. CRIMINAL LAW; ROBBERY WITH HOMICIDE; ELEMENTS. — Robbery with homicide exists when a homicide is committed either by reason, or on occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in the generic sense, was committed. A conviction needs certainty that the robbery is the central purpose and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.

2. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT TO SUSTAIN CONVICTION. — Circumstantial evidence is sufficient to sustain conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; (c) the combination of all circumstances is such as to warrant a finding of guilt beyond reasonable doubt. A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator.

3. CRIMINAL LAW; CONSPIRACY; DULY ESTABLISHED IN CASE AT BAR. — The concerted manner in which the appellant

and his companions perpetrated the crime showed beyond reasonable doubt the presence of conspiracy. When a homicide takes place by reason of or on the occasion of the robbery, all those who took part shall be guilty of the special complex crime of robbery with homicide whether they actually participated in the killing, unless there is proof that there was an endeavor to prevent the killing. There was no evidence adduced in this case that the appellant attempted to prevent the killing. Thus, regardless of the acts individually performed by the appellant and his co-accused, and applying the basic principle in conspiracy that the "act of one is the act of all," the appellant is guilty as a co-conspirator. As a result, the criminal liabilities of the appellant and his co-accused are one and the same.

4. ID.; EXEMPTING CIRCUMSTANCES; ACTING UNDER THE IMPULSE OF AN UNCONTROLLABLE FEAR OF AN EQUAL OR GREATER INJURY; ELEMENTS; NOT PRESENT IN CASE AT BAR. — The appellant's attempt to evade criminal liability by insisting that he acted under the impulse of an uncontrollable fear of an equal or greater injury fails to impress. To avail of this exempting circumstance, the evidence must establish: (1) the existence of an uncontrollable fear; (2) that the fear must be real and imminent; and (3) the fear of an injury is greater than or at least equal to that committed. A threat of future injury is insufficient. The compulsion must be of such a character as to leave no opportunity for the accused to escape. We find nothing in the records to substantiate appellant's insistence that he was under duress from his co-accused in participating in the crime. In fact, the evidence is to the contrary.

5. ID.; AGGRAVATING CIRCUMSTANCES; TREACHERY; APPRECIATED IN CASE AT BAR. — We find that the trial court correctly appreciated the aggravating circumstance of treachery, which exists when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof that tend directly and specifically to insure its execution without risk to himself arising from the defense that the offended party might make. The evidence points that one of the co-conspirators tied the hands of the victim before dragging him to the sugarcane field. Thus, he

was unable to defend and protect himself against his malefactors who were superior in number and armed with knives and guns.

6. ID.; ID.; ID.; NOT A QUALIFYING CIRCUMSTANCE BUT A GENERIC AGGRAVATING CIRCUMSTANCE TO ROBBERY WITH HOMICIDE. — As thoroughly discussed in *People v. Escote, Jr.*, treachery is not a qualifying circumstance but "a generic aggravating circumstance to robbery with homicide although said crime is classified as a crime against property and a single and indivisible crime". Corollarily, "Article 62, paragraph 1 of the Revised Penal Code provides that in diminishing or increasing the penalty for a crime, aggravating circumstances shall be taken into account. However, aggravating circumstances which in themselves constitute a crime especially punishable by law or which are included by the law in defining a crime and prescribing a penalty therefor shall not be taken into account for the purpose of increasing the penalty". In the case at bar, "treachery is not an element of robbery with homicide". Neither is it "inherent in the crime of robbery with homicide". As such, treachery may be properly considered in increasing the penalty for the crime.

7. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, TEMPERATE DAMAGES, EXEMPLARY DAMAGES AND MORAL DAMAGES; AWARDED IN CASE AT BAR. — In line with current jurisprudence, if the death penalty would have been imposed if not for the proscription in RA 9346, the civil indemnity for the victim shall be ₱75,000.00. As compensatory damages, the award of ₱2,400.00 for the burial lot of the victim must be deleted since this expense was not supported by receipts. However, the heirs are entitled to an award of temperate damages in the sum of ₱25,000.00. The existence of one aggravating circumstance merits the award of exemplary damages under Article 2230 of the New Civil Code. Thus, the award of exemplary damages is proper. However, it must be increased from ₱25,000.00 to ₱30,000.00. Moral damages must also be increased from ₱25,000.00 to ₱75,000.00.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

DEL CASTILLO, *J.*:

Circumstantial evidence is sufficient to produce a conviction that the appellant conspired with his co-accused in committing the crime of robbery with homicide. His claim that he acted under the impulse of uncontrollable fear of an equal or greater injury could not be sustained because there was no genuine, imminent, and reasonable threat, preventing his escape that compelled him to take part in the commission of the offense charged.

Factual Antecedents

On July 19, 1995, an Information[1] was filed before the Regional Trial Court of Cadiz City, Negros Occidental, Branch 60, charging Rene Baron *y* Tangarocan (appellant), Rey Villatima (Villatima), and *alias* "Dedong" Bargo (Bargo) with the special complex crime of robbery with homicide committed against Juanito Berallo (Berallo). The Information contained the following accusatory allegations:

> That on or about 9 o'clock in the evening of June 28, 1995 at Hda. Sta. Ana, Brgy. Burgos, Cadiz City, Negros Occidental, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and helping one another with evident premeditation and treachery and with intent to kill, did then and there, willfully, unlawfully and feloniously assault, attack and stab to death one Juanito Berallo in order to rob, steal and take away the following:
>
> 1) sidecar of the tricycle which costs ₱16,000.00;
> 2) motorcycle described as Kawasaki HDX colored black with Engine No. G7E-088086 and Chassis No. HDX-849776 which is worth ₱103,536.00;
> 3) wallet with cash money of ₱1,250.00;
> 4) wrist watch and ring worth ₱3,800.00.
>
> and inflicting upon the person of Juanito Berallo the following injuries, to wit:

[1] Records, pp. 1-3.

1. Gaping incised wound, shallow at the extremeties and deeper at the middle portion, 7½ cms. long, from right lateral aspect of the neck going slightly downward and to the left of anterior neck.
2. Stabbed wound, 2 cm. long, 14 cm. deep, directed slightly upward and to the right, located on the upper chest below wound # 1.
3. Stabbed wound, 2 cm. long, 12½ cm. deep, directed to the right, located at the left chest, level of 3rd rib.
4. Stabbed wound, 2 cm. long 20 cm. deep, directed slightly downward and to the left, located at the middle of the chest, level of 5th rib.
5. Incised wound 1½ cm long, right cheek.
6. Stabbed wound, 2 cm. long, 6½ cm. deep, directed downward located at the medial aspect of the upper back, right.
7. Stabbed wound, 2½ cm. long, 10 cm. deep, located at the upper outer quadrant of the back, right.
8. Incised wound, 2 cm. long, located at the middle of the upper quadrant of back, right.
9. Stabbed wound, 2 cm. long, 4 cm. deep, directed downward located at the medial aspect of upper inner quadrant of back, left.
10. Stabbed wound, 2 cm. long, 5 cm deep, directed downward, located at the middle of upper quadrant of back, left.
11. Incised wound, 2 cm long, located 2 cm to the left of wound # 10.
12. Stabbed wound, 2 cm. long, 7½ cm. deep, directed downward located at the middle of lower back, left.
13. Incised wound, 6½ cm. long, distal third left forearm.
14. Incised wound, 3 cm. long palmar surface left hand.
15. Incised wound, 5 cm. long palmar surface left hand, 2 cm. below wound # 13.

CAUSE OF DEATH: Severe hemorrhage due to Multiple Stabbed wounds,

which directly caused the death of the victim Juanito Berallo, to the damage and prejudice of the heirs of the victim in the amount, to wit:

₱ 50, 000.00 - as indemnity for the death of the victim.

₱ 150, 000.00 - as indemnity for the loss of earning capacity, or such amount to be fixed by the court.

ACT CONTRARY TO LAW.

Only the appellant was arrested. Villatima and Bargo remain at-large to date. Appellant entered a plea of "not guilty" when arraigned. After the termination of the pre-trial conference, trial ensued.

The Prosecution's Version

Culled from the evidence presented by the prosecution, the case against the appellant is as follows:

On June 28, 1995, at around 8:30 in the evening, Ernesto Joquino, Jr. (Joquino), a tricycle driver, was having a conversation with Canni Ballesteros (Ballesteros) in front of Julie's Bakeshop at Magsaysay St., Cadiz City. Berallo arrived and parked his tricycle in front of the bakeshop. The appellant approached Berallo and asked if he could take him and his companions to Hacienda Caridad for ₱30.00. When Berallo agreed, the appellant called Villatima, then wearing a fatigue jacket, and Bargo. They then rode Berallo's tricycle.

Pacita Caratao, a dressmaker, was also in Julie's Bakeshop at around the same time Joquino and Ballesteros were in front of the premises. She noticed Berallo sitting on a parked tricycle while the appellant was seated behind him. After buying bread, she approached Berallo and asked if he was going home to Lag-asan, hoping that she could ride with him. However, Berallo replied that he still had to ferry passengers. She thus decided to cross the street and take a passenger jeep. While inside the jeep, she saw two more persons boarding Berallo's tricycle.

On June 29, 1995, SPO2 Jude dela Rama received a report of a robbery with homicide incident. Together with other policemen, he proceeded to Hacienda Sta. Ana, Cadiz City, where he saw Berallo lying dead in a sugarcane plantation about 20 meters away from the highway. They also noticed several traces of footprints near Berallo's body and a tricycle sidecar in a canal beside the Martesan Bridge. Beside the sidecar was a fatigue jacket.

Dr. Merle Jane B. Regalado conducted the post-mortem examination on the cadaver of Berallo. She found that the victim sustained 15 stab wounds and died of severe hemorrhage due to multiple stab wounds. Five of them were considered as fatal and caused the immediate death of Berallo. The wounds also indicated that they could have been inflicted by more than one person.

The follow-up investigation of the police team identified the appellant as one of the suspects. After having been apprised of his rights, appellant admitted that he and his co-accused took Berallo's tricycle and, after detaching the motorcycle from the sidecar, brought the motorcycle to *Barangay* Oringao, Kabankalan, Negros Occidental and left the same at the house of Villatima's aunt, Natividad Camparicio (Natividad).

Natividad denied knowledge of the incident but admitted that her nephew Villatima, together with the appellant, and another companion, were the ones who brought the motorcycle to her house in Kabankalan.

Nemia Berallo (Nemia) identified the motorcycle recovered from the house of Natividad as the one stolen from her deceased husband. She also testified on the sum of money and the value of the personal property stolen from her husband. She allegedly spent the sum of ₱2,400.00 for the purchase of the burial lot.

The Version of the Defense

Appellant denied any participation in the crime. He claimed that on June 28, 1995, at around 7 o'clock in the evening, he bought rice and other necessities for his family and proceeded to the public transport terminal to get a ride home. A tricycle with two passengers passed by and its driver inquired if he wanted a ride up to Segundo Diez. He boarded the tricycle and told the driver that he would alight at Canibugan, but the driver requested him to accompany them up to Segundo Diez. He agreed out of concern for the safety of the driver. Upon reaching Bangga Doldol, however, the passengers announced a hold-up. Armed with guns, the passengers told him and the driver not to make any wrong move, or they would be killed.

Thereafter, the passengers tied the hands of the driver and dragged him towards the sugarcane fields. He no longer knew what happened to the driver since he remained in the tricycle. However, he suspected that the driver was killed by the two passengers.

Thereafter, the passengers went to *Taytay* Martesan and detached the sidecar of the tricycle. They then took him to a house at *Barangay* Oringao and did not allow him to leave the premises. The following morning, they returned to Cadiz City. The two passengers even accompanied him to his house and threatened him and his wife at gunpoint not to report the incident to the police authorities.

On June 30, 1995, at around 10:00 o'clock in the evening, policemen came to his house and asked where the motorcycle was taken. He told them of the location of the vehicle and insisted that he had nothing to do with the incident. He stressed that the two passengers whose names he did not know, were responsible for the crime committed.

Ruling of the Regional Trial Court

On February 12, 2002, the trial court rendered a Decision[2] finding the appellant guilty beyond reasonable doubt of the complex crime of robbery with homicide. It disposed as follows:

> WHEREFORE, in view of the foregoing, this Court finds accused RENE BARON *Y* TANGAROCAN (detained) GUILTY beyond reasonable doubt of the complex crime of Robbery with Homicide as charged in the information and there being the attendance of the aggravating circumstance of treachery hereby sentences him to suffer the penalty of DEATH.
>
> The accused is further ordered to pay the heirs of the victim the amount of ₱50,000.00 by way of indemnity for the death of the victim, Juanito Berallo and the amount of ₱5,050.00 for the cash and the value of the wrist watch and ring of the victim plus the amount of ₱2,400.00 for the purchase of the burial lot by way of reparation and in addition the amount of ₱100,000.00 as moral damages and

[2] *Id.* at 202-221; penned by Executive Judge Renato D. Munez.

₱50,000.00 as exemplary damages. The sidecar and the motorcycle are hereby ordered returned to the heirs of the victim.

The accused is further ordered to be immediately committed to the National Penitentiary for service of his sentence.

The Clerk of Court of this Court is hereby ordered to immediately forward the records of this case together with the Decision of this Court to the Supreme Court for automatic review.

The case against Rey Villatima and *alias* "Dedong" Bargo [both of whom are] at-large is hereby ordered archived and [to] be immediately revived upon their arrest.

Cost against accused Rene Baron.

SO ORDERED.[3]

Ruling of the Court of Appeals

Before the appellate court, appellant alleged that the trial court erred in finding him guilty as charged and in not appreciating in his favor the exempting circumstance of irresistible force and/or uncontrollable fear of an equal or greater injury. However, the same was disregarded by the CA holding that all the requisites for said circumstances were lacking. The appellate court found that the alleged threat, if at all, was not real or imminent. Appellant had every opportunity to escape but did not take advantage of the same. Instead, he waited inside the tricycle as if he was one of the malefactors. The dispositive portion of the CA Decision[4] reads as follows:

WHEREFORE, the APPEAL is DISMISSED. The Decision dated February 12, 2002, of the Regional Trial Court (RTC), Cadiz City, Negros Occidental, Branch 60, in Criminal Case No. 1675-C finding accused-appellant Rene Baron *y* Tangarocan guilty of robbery with homicide is AFFIRMED with MODIFICATION reducing the death penalty to *reclusion perpetua* without parole conformably with R.A. 9346 and reducing the award of moral damages from ₱100,000.00 to ₱50,000.00 and exemplary damages from ₱50,000.00 to ₱25,000.00.

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[3] *Id.* at 221.

[4] CA *rollo*, pp. 146-166; penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Pampio A. Abarintos and Francisco P. Acosta.

Costs against accused-appellant.

SO ORDERED.

Issues

Still aggrieved, the appellant comes to us for a final review of his case. In his brief, he assigns the following correlated errors:

I

THE TRIAL COURT GRAVELY ERRED IN FAILING TO APPRECIATE THE EXEMPTING CIRCUMSTANCES OF IRRESISTABLE FORCE AND/OR UNCONTROLLABLE FEAR OF AN EQUAL OR GREATER INJURY.

II

THE TRIAL COURT GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.[5]

Our Ruling

The appeal is unmeritorious.

Robbery with homicide exists when a homicide is committed either by reason, or on occasion, of the robbery. To sustain a conviction for robbery with homicide, the prosecution must prove the following elements: (1) the taking of personal property belonging to another; (2) with intent to gain; (3) with the use of violence or intimidation against a person; and (4) on the occasion or by reason of the robbery, the crime of homicide, as used in the generic sense, was committed. A conviction needs certainty that the robbery is the central purpose and objective of the malefactor and the killing is merely incidental to the robbery. The intent to rob must precede the taking of human life but the killing may occur before, during or after the robbery.[6]

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[5] *Id.* at 61.

[6] *People v. Dela Cruz*, G.R. No. 168173, December 24, 2008, 575 SCRA 412, 436.

In this case, the prosecution successfully adduced proof beyond reasonable doubt that the real intention of the appellant and his companions was to rob the victim. The appellant and his companions boarded the tricycle of the victim pretending to be passengers. Midway to their destination, one of the accused declared a hold-up and at gun point, tied the hands of the victim and brought him towards the sugarcane field where he was stabbed to death. The victim was divested of his wallet containing ₱1,250.00, a wrist watch and ring. Emerging from the sugarcane plantation, they boarded the tricycle of the victim, detached the sidecar and dumped the same in a canal beside the Martesan Bridge with the fatigue jacket of one of the accused. They proceeded to *Barangay* Oringao, Kabankalan and hid the motorcycle in the house of Villatima's aunt, Natividad.

Concededly, there is no direct evidence proving that the appellant conspired and participated in committing the crime. However, his complicity may be proved by circumstantial evidence, which consists of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience.[7] Circumstantial evidence is sufficient to sustain conviction if: (a) there is more than one circumstance; (b) the facts from which the inferences are derived have been established; (c) the combination of all circumstances is such as to warrant a finding of guilt beyond reasonable doubt.[8] A judgment of conviction based on circumstantial evidence can be sustained when the circumstances proved form an unbroken chain that results to a fair and reasonable conclusion pointing to the accused, to the exclusion of all others, as the perpetrator.[9]

In this case, the circumstantial evidence presented by the prosecution leads to the inescapable conclusion that the appellant and his co-accused conspired to commit robbery with homicide.

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[7] *People v. Darilay*, 465 Phil. 747, 767 (2004).

[8] Rules of Court, Rule 133, Section 4.

[9] *People v. Pascual*, G.R. No. 172326, January 19, 2009, 576 SCRA 242, 252.

When considered together, the circumstances point to them and no one else as the culprits. We thus agree with the observation of the trial court that:

A careful examination of the records of this case reveals, [that] no eye witness was presented by the prosecution pointing to the three accused to be actually responsible in the perpetration of the crime charged except the extra-judicial narration of the accused Rene Baron but who also tried to exculpate himself from the commission of the crime by denying his [complicity] in the crime.

Despite this finding however, this Court found from the records of this case, numerous and cumulative material circumstantial evidence from which one can derive a logical and necessary inference clearly showing the three accused to be responsible for the crime charged and these are the following; to wit:

1. The fact that at about 8:30 in the evening of June 28, 1995 witness Ernesto Joquino, Jr. while in front of Julie's Bakeshop saw the victim Juanito Berallo [park] the latter's tricycle in front of the bakeshop when accused Rene Baron hired the tricycle of the victim in going to Hda. Caridad and whose companions were Rey Villatima and "Dedong" Bargo (TSN-Tan, January 18, 1996, pp. 6-10). Thus, the excerpts of the Transcript of the Stenographic Notes has this to reveal in vivid fashion, to wit:

"Q. Mr. Joquino, on June 28, 1995 at about 8:30 in the evening where were you?

A. I was in front of Julie's Bakeshop.

Q. Where is this Julie's Bakeshop located x x x?
A. At Magsaysay Street, Cadiz City.

Q. What were you doing at Julie's Bakeshop at that particular date and time?
A. I was x x x having a conversation with Canni Ballesteros.

Q. While you were x x x in front of Julie's Bakeshop, was there anything that transpired?
A. Yes, ma'am.

Q. Can you tell us what was that?

A. I saw Juanito Berallo park his tricycle in front of Julie's Bakeshop.

Q. When you saw Juanito Berallo park his tricycle x x x in front of Julie's Bakeshop, what transpired after that?

A. Rene Baron approached Juanito Berallo and asked him if he can conduct Rene Baron to Hda. Caridad.

Q By the way, do you know Rene Baron before June 28, 1995?

A. Yes, ma'am, I know him because we are all drivers of the tricycle.

Q. What about this Juanito Berallo, do you know him before June 28, 1995?

A. Yes ma'am.

Q. Why do you know him?

A. Because he ran as councilor in Cadiz City.

Q. So going back to the incident where you said Rene Baron approached Juanito Berallo and asked Berallo if the latter would conduct him to Hda. Caridad, what was the answer of Juanito Berallo to Rene Baron?

A. Juanito Berallo asked Rene Baron how much he will pay [to] him and then Rene Baron said that he will pay Juanito Berallo the amount of ₱30.00 and then again Juanito Berallo asked Rene Baron how many x x x will ride on the tricycle and Rene Baron said that there were three of them.

Q. By the way, how far were you from where Juanito Berallo and Rene Baron were talking?

A. From here up there. (Witness pointed to a distance of about four (4) meters.)

Q. After Juanito Berallo agreed with Rene Baron and his companions to conduct them to Hda. Caridad, what did Rene Baron do if there was any?

A. Rene Baron called his companions who were just across the street.

Q. Were you able to recognize x x x the two companions whom Rene Baron called from across the street?

A. Yes, sir.

Q. And who were they if you know?
A. Rey Villatima and Dedong Bargo."

(TSN-Tan, January 18, 1996, pp. 6-10)

2. The fact the Rey Villatima was wearing a fatigue jacket when the latter boarded the tricycle of the victim and proceeded to Hda. Caridad (*ibid*, p. 12) and it was the same fatigue jacket recovered by the police from the sidecar of the tricycle at the scene of the crime and this was the last time that the victim was seen alive;

3. The fact that witness Pacita Caratao corroborated the testimony of Ernesto Joquino, Jr. and Berallo sitting on the latter's tricycle parked near Julie's Bakeshop and saw Rene Baron sitting behind Juanito Berallo and the witness even asked the former if he will be going to Lag-asan to which the victim Juanito Berallo refused because he has some passengers to be conducted (TSN-Tan, March 13, 1997, pp. 3-4) and has referred to the accused Rene Baron and his two companions (TSN-Tan, March 13, 1997, pp. 4-5) as his passengers;

4. The fact that the during the police investigation witness SPO2 Jude de la Rama found the dead body of the victim inside the sugarcane plantation in Hda. Sta. Ana and found many traces of footsteps inside the sugarcane fields (TSN-Tan, July 8, 1997, p. 4) indicating that more than one person conspired and co-operated with each other in killing the victim;

5. The fact that the witness De la Rama found the sidecar of the tricycle beside the Martisan Bridge which is just beside the scene of the incident and also beside the sidecar of the tricycle they found a fatigue jacket and has recovered inside its pocket a used soap (*ibid*, p. 5);

6. The fact that when the police officers invited Rene Baron for interview, Rene Baron pointed to his co-accused, Rey Villatima as the one who was wearing the fatigue jacket the police officers recovered as well as had named his (Baron) other companion as *alias* "Dedong" Bargo (*ibid*, p. 7);

7. The fact that after the three accused had detached the motorcycle from its sidecar, Rey Villatima was pointed to by the accused Rene Baron as the one who drove it while he (Rene Baron) and "Dedong" Bargo rode behind and all of them immediately proceeded to the house of the aunt of Rey Villatima in Brgy. Oringao, Kabankalan, Negros Occidental (*ibid*);

8. The fact that it was accused Rene Baron who had guided the police investigators to Kabankalan City, Negros Occidental, a city in the southern portion of Negros Occidental which is about 150 kilometers away from Cadiz City in the north, the scene of the crime; and with the cooperation of the Chief of Police of the former place proceeded to the house of a certain Natividad Camparicio, the aunt of accused Rey Villatima (*ibid*, pp. 7-8);

9. The fact that Natividad Camparicio affirmed that the stolen motorcycle was brought to her house at around 1:15 in the morning of July 1, 1995 by her nephew, Rey Villatima together with the latter's companions and pinpointed to accused Rene Baron as one of them (*ibid*, p. 9);

10. The fact that prosecution witness, Police Insp. Eduardo Berena also confirmed they were able to recover the stolen motorcycle which was kept in the ground floor of the house of Mrs. Camparicio (TSN-Guanzon, October 2, 1997, pp. 8-15);

11. The fact that the stolen motorcycle was positively identified by witness Nemia Berallo as the same motorcycle driven, owned and registered in the name of the victim, Juanito Berallo (TSN-Guanzon, October 2, 1997, pp. 9-10);

12. The fact that accused Rene Baron admitted during his testimony that he rode in the tricycle driven by the victim together with the two passengers in going to Segundo Diez but reached only the area of Bangga "Doldol" where the actual robbery and killing took place (TSN-Tan, May 11, 1999, pp. 9-12);

13. The fact that when the two hold-up men brought the driver inside the sugarcane field, accused Rene Baron who was left on the road outside the sugarcane field (*ibid*, p. 11) did nothing and instead of escaping and seeking help, accused

Rene Baron leisurely stayed in the tricycle as if everything [was] normal and nothing [happened], thus indicating that he (Baron) [was] in conspiracy to rob and kill the victim since as the facts are depicted x x x Rene Baron would clearly appear that he (Baron) acted as a "look out" while the two companions were killing the victim and to make matters worse, he (Baron) even went along with the two other accused up to Oringao, Kabankalan City where they hid the stolen motorcycle (*ibid*, pp. 12-13);

14. The fact that the accused Baron was left unharmed by the killers of the victim in spite of the fact that he (Baron) is a potential witness to the serious crime of Robbery with Homicide; and when they were in Oringao, ate breakfast with them then rode a passenger jeep with many passengers; alighted in Kabankalan proper from Barangay Oringao; stood and waited in a public place at the Ceres Bus Terminal; rode a public transportation bus to Bacolod City for three (3) hours then alighted in Libertad Street in Bacolod City; and again rode a passenger jeepney going to a place known as "Shopping" to take another passenger bus in going back to Cadiz City (*ibid*, pp. 21-30).

From [this] series of proven circumstantial evidence, the inescapable and natural conclusion is the three accused were in conspiracy with one another to kill the victim and cart away the motorcycle as the combination of these numerous circumstantial evidence [is] enough to produce the strong moral certainty from an unbiased and [unprejudiced] mind to safely conclude that no other persons but the three accused conspired to perpetrate the crime as clearly the series of events indubitably [shows] that there was unity of purpose, concurrence of will, and that they all acted in concert towards the same end, the accused being together with a group when they rode the tricycle of the victim; all of them were together at the scene of the crime, they all rode in the same stolen motorcycle going to Barangay Oringao, Kabankalan City; all of them were together in hiding the stolen motorcycle in the house of Natividad Camparicio; and they were together as a group going to Cadiz City from Kabankalan City passing [through] and stopping [at] various cities and municipalities.[10]

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[10] Records, pp. 212-217.

The concerted manner in which the appellant and his companions perpetrated the crime showed beyond reasonable doubt the presence of conspiracy. When a homicide takes place by reason of or on the occasion of the robbery, all those who took part shall be guilty of the special complex crime of robbery with homicide whether they actually participated in the killing, unless there is proof that there was an endeavor to prevent the killing.[11] There was no evidence adduced in this case that the appellant attempted to prevent the killing. Thus, regardless of the acts individually performed by the appellant and his co-accused, and applying the basic principle in conspiracy that the "act of one is the act of all," the appellant is guilty as a co-conspirator. As a result, the criminal liabilities of the appellant and his co-accused are one and the same.[12]

The appellant's attempt to evade criminal liability by insisting that he acted under the impulse of an uncontrollable fear of an equal or greater injury fails to impress. To avail of this exempting circumstance, the evidence must establish: (1) the existence of an uncontrollable fear; (2) that the fear must be real and imminent; and (3) the fear of an injury is greater than or at least equal to that committed.[13] A threat of future injury is insufficient. The compulsion must be of such a character as to leave no opportunity for the accused to escape.[14]

We find nothing in the records to substantiate appellant's insistence that he was under duress from his co-accused in participating in the crime. In fact, the evidence is to the contrary. Villatima and Bargo dragged the victim towards the sugarcane field and left the appellant inside the tricycle that was parked by the roadside. While all alone, he had every opportunity to escape since he was no longer subjected to a real, imminent or reasonable fear. Surprisingly, he opted to wait for his co-accused to return

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[11] *People v. Reyes*, 369 Phil. 61, 80 (1999).

[12] *Supra* note 7.

[13] Revised Penal Code, Article 12(6); *People v. Petenia*, 227 Phil. 337, 345 (1986).

[14] *People v. Palencia*, 162 Phil. 695, 711 (1976).

and even rode with them to Kabankalan, Negros Occidental to hide the victim's motorcycle in the house of Villatima's aunt.

The appellant had other opportunities to escape since he traveled with his co-accused for more than 10 hours and passed several transportation terminals. However, he never tried to escape or at least request for assistance from the people around him.

Robbery with Homicide is a single indivisible crime punishable with *reclusion perpetua* to death under paragraph 1, Article 294 of the Revised Penal Code. We find that the trial court correctly appreciated the aggravating circumstance of treachery, which exists when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof that tend directly and specifically to insure its execution without risk to himself arising from the defense that the offended party might make.[15] The evidence points that one of the co-conspirators tied the hands of the victim before dragging him to the sugarcane field.[16] Thus, he was unable to defend and protect himself against his malefactors who were superior in number and armed with knives and guns.

As thoroughly discussed in *People v. Escote, Jr.*,[17] treachery is not a qualifying circumstance but "a generic aggravating circumstance to robbery with homicide although said crime is classified as a crime against property and a single and indivisible crime".[18] Corollarily, "Article 62, paragraph 1 of the Revised Penal Code provides that in diminishing or increasing the penalty for a crime, aggravating circumstances shall be taken into account. However, aggravating circumstances which in themselves constitute a crime especially punishable by law or which are included by the law in defining a crime and prescribing a penalty therefor shall not be taken into account for the purpose of increasing the penalty".[19] In the case at bar, "treachery is

[15] REVISED PENAL CODE, Article 14(16).

[16] TSN, May 11, 1999, p. 10.

[17] 448 Phil. 749 (2003).

[18] *Id.* at 791.

[19] *Id.*

not an element of robbery with homicide".[20] Neither is it "inherent in the crime of robbery with homicide".[21] As such, treachery may be properly considered in increasing the penalty for the crime.

In this case, the presence of treachery as a generic aggravating circumstance would have merited the imposition of the death penalty. However, in view of the subsequent passage of Republic Act (RA) No. 9346, entitled "An Act Prohibiting the Imposition of the Death Penalty in the Philippines," we are mandated to impose on the appellant the penalty of *reclusion perpetua* without eligibility for parole.[22]

In line with current jurisprudence, if the death penalty would have been imposed if not for the proscription in RA 9346, the civil indemnity for the victim shall be ₱75,000.00.[23] As compensatory damages, the award of ₱2,400.00 for the burial lot of the victim must be deleted since this expense was not supported by receipts.[24] However, the heirs are entitled to an award of temperate damages in the sum of ₱25,000.00.[25] The existence of one aggravating circumstance merits the award of exemplary damages under Article 2230 of the New Civil Code. Thus, the award of exemplary damages is proper. However, it must be increased from ₱25,000.00 to ₱30,000.00.[26] Moral damages must also be increased from ₱25,000.00 to ₱75,000.00.[27] Moreover, the appellant is ordered to return the stolen items that were not recovered. Should this no longer be possible, there must be restitution in the total amount of ₱5,050.00 representing the cash contained in the victim's wallet,

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[20] *Id.* at 792.

[21] *Id.*

[22] *People v. Villanueva*, G.R. No. 187152, July 22, 2009, 593 SCRA 523, 547-548. See also *People v. Darilay*, *supra* note 7.

[23] *People v. Villanueva*, *supra*.

[24] *People v. Escote, Jr.*, *supra* note 17 at 796.

[25] *People v. Diaz*, G.R. No. 185841, August 4, 2009.

[26] *Supra* note 7.

[27] *Id.*

as well as the value of the wrist watch, the ring, the motorcycle and sidecar taken by the appellant and his co-accused.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR HC No. 00638 finding appellant guilty beyond reasonable doubt of Robbery with Homicide and sentencing him to suffer the penalty of *reclusion perpetua* is *AFFIRMED* with *MODIFICATIONS*. The appellant is hereby ordered to *PAY* the heirs of the victim ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. Actual damages is *DELETED*, and in lieu thereof, appellant is ordered to pay temperate damages in the amount of ₱25,000.00. The appellant is also ordered to return the cash of ₱5,050.00 taken from the victim's wallet and the other pieces of personal property also taken but not recovered, more particularly his wrist watch, ring, his Kawasaki HDX motorcycle and its sidecar. Should restitution be no longer possible, the appellant must pay the equivalent value of the unreturned items.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

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— The burden of proof rests on the employer to show that the dismissal is for a just cause. *(Id.)*

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Loss of trust and confidence as a ground — Employee dismissed on this ground is not entitled to separation pay. (Bank of Phil. Islands *vs*. NLRC, G.R. No. 179801, June 18, 2010) p. 271

— Must be based not on an ordinary breach by the employee of the trust reposed in him by the employer, but, in the language of Article 282 (c) of the Labor Code, on willful breach. (Lima Land, Inc. *vs*. Cuevas, G.R. No. 169523, June 16, 2010) p. 36

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