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REPORTS OF CASES

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OF THE

PHILIPPINES

FROM

JUNE 29, 2010 TO JULY 2, 2010

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MANILA
2014

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2014

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 8392. June 29, 2010]
(Formerly CBD Case No. 08-2175)

ROSARIO T. MECARAL, *complainant, vs.* **ATTY. DANILO S. VELASQUEZ,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY AND LAWYER'S OATH; RESPONDENT'S ACT OF CONTRACTING TWO MARRIAGES AND HIS SUBSEQUENT DETENTION AND TORTURE OF THE COMPLAINANT, A VIOLATION OF. —** Investigating Commissioner Felimon C. Abelita III of the CBD, in his Report and Recommendation dated September 29, 2008, found that: "[respondent's] acts of converting his secretary into a mistress; contracting two marriages with Shirley and Leny, are **grossly immoral** which no civilized society in the world can countenance. The subsequent detention and torture of the complainant is **gross misconduct** [which] only a beast may be able to do. Certainly, the respondent had violated Canon 1 of the Code of Professional Responsibility which reads: **CANON 1** — A lawyer shall **uphold the constitution, obey the laws** of the land and promote respect for law and legal processes. x x x In the long line of cases, the Supreme Court has consistently imposed severe penalty for grossly immoral conduct of a lawyer like the case at bar." The IBP Board of Governors of Pasig City, by Resolution dated December 11,

2008, ADOPTED the Investigating Commissioner's findings and APPROVED the recommendation for the disbarment of respondent. As did the IBP Board of Governors, the Court finds the IBP Commissioner's evaluation and recommendation well taken. x x x Aside then from the IBP's finding that respondent violated **Canon 1** of the Code of Professional Responsibility, he also violated the **Lawyer's Oath** reading: x x x "I will support its Constitution and obey the laws x x x." and **Rule 7.03, Canon 7** of the same Code reading: "Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession."

2. ID.; ID.; PRACTICE OF LAW; NATURE. — The practice of law is not a right but a privilege bestowed by the state upon those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege. When a lawyer's moral character is assailed, such that his right to continue practicing his cherished profession is imperiled, it behooves him to meet the charges squarely and present evidence, to the satisfaction of the investigating body and this Court, that he is morally fit to keep his name in the Roll of Attorneys.

3. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; PREPONDERANCE OF EVIDENCE; THE QUANTUM OF EVIDENCE NEEDED IN ADMINISTRATIVE CASES AGAINST LAWYERS; CASE AT BAR. — The April 30, 2008 Resolution of the Provincial Prosecutor on complainant's charge against respondent and Bernardita Tadeo for Serious Illegal Detention bears special noting, *viz:* x x x "The people from the Faith Healers Association had the express and implied orders coming from respondent Atty. Danilo Velasquez to keep guarding Rosario Mecaral and not to let her go freely. That can be **gleaned from the affidavit of co-respondent Bernardita Tadeo.** The latter being reprimanded whenever Atty. Velasquez would learn that complainant had untangled the cloth tied on her wrists and feet." That, as reflected in the immediately-quoted Resolution in the criminal complaint against respondent, his therein co-respondent corroborated the testimonies of complainant's witnesses, and that the allegations against him

remain unrebutted, sufficiently prove the charges against him by clearly preponderant evidence, the quantum of evidence needed in an administrative case against a lawyer.

APPEARANCES OF COUNSEL

Women's Legal Bureau-Lawnet Lawyer's Network for complainant.

D E C I S I O N

***PER CURIAM*:**

Rosario T. Mecaral (complainant) charged Atty. Danilo S. Velasquez (respondent) before the Integrated Bar of the Philippines (IBP) Committee on Bar Discipline (CBD)[1] with Gross Misconduct and Gross Immoral Conduct which she detailed in her Position Paper[2] as follows:

After respondent hired her as his secretary in 2002, she became his lover and common-law wife. In October 2007, respondent brought her to the mountainous Upper San Agustin in Caibiran, Biliran where he left her with a religious group known as the Faith Healers Association of the Philippines, of which he was the leader. Although he visited her daily, his visits became scarce in November to December 2007, prompting her to return home to Naval, Biliran. Furious, respondent brought her back to San Agustin where, on his instruction, his followers tortured, brainwashed and injected her with drugs. When she tried to escape on December 24, 2007, the members of the group tied her spread-eagled to a bed. Made to wear only a T-shirt and diapers and fed stale food, she was guarded 24 hours a day by the women members including a certain Bernardita Tadeo.

Her mother, Delia Tambis *Vda. De* Mecaral (Delia), having received information that she was weak, pale and walking barefoot

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[1] *Rollo,* pp. 1-2.

[2] *Id.* at 28-31.

along the streets in the mountainous area of Caibiran, sought the help of the Provincial Social Welfare Department which immediately dispatched two women volunteers to rescue her. The religious group refused to release her, however, without the instruction of respondent. It took PO3 Delan G. Lee (PO3 Lee) and PO1 Arnel S. Robedillo (PO1 Robedillo) to rescue and reunite her with her mother.

Hence, the present disbarment complaint against respondent. Additionally, complainant charges respondent with bigamy for contracting a second marriage to Leny H. Azur on August 2, 1996, despite the subsistence of his marriage to his first wife, Ma. Shirley G. Yunzal.

In support of her charges, complainant submitted documents including the following: Affidavit[3] of Delia dated February 5, 2008; Affidavit of PO3 Lee and PO1 Robedillo[4] dated February 14, 2008; photocopy of the Certificate of Marriage[5] between respondent and Leny H. Azur; photocopy of the Marriage Contract[6] between respondent and Shirley G. Yunzal; National Statistics Office Certification[7] dated April 23, 2008 showing the marriage of Ma. Shirley G. Yunzal to respondent on April 27, 1990 in Quezon City and the marriage of Leny H. Azur to respondent on August 2, 1996 in Mandaue City, Cebu; and certified machine copy of the Resolution[8] of the Office of the Provincial Prosecutor of Naval, Biliran and the Information[9] lodged with the RTC-Branch 37-Caibiran, Naval, Biliran, for Serious Illegal Detention against respondent and Bernardita Tadeo on complaint of herein complainant.

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

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

[5] *Id.* at 15.

[6] *Id.* at 16.

[7] *Id.* at 61.

[8] *Id.* at 52-58.

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

Despite respondent's receipt of the February 22, 2008 Order[10] of the Director for Bar Discipline for him to submit his Answer within 15 days from receipt thereof, and his expressed intent to "properly make [his] defense in a verified pleading,"[11] he did not file any Answer.

On the scheduled Mandatory Conference set on September 2, 2008 of which the parties were duly notified, only complainant's counsel was present. Respondent and his counsel failed to appear.

Investigating Commissioner Felimon C. Abelita III of the CBD, in his Report and Recommendation[12] dated September 29, 2008, found that:

[respondent's] acts of converting his secretary into a mistress; contracting two marriages with Shirley and Leny, are **grossly immoral** which no civilized society in the world can countenance. The subsequent detention and torture of the complainant is **gross misconduct** [which] only a beast may be able to do. Certainly, the respondent had violated Canon 1 of the Code of Professional Responsibility which reads:

> **CANON 1** — A lawyer shall **uphold the constitution, obey the laws** of the land and promote respect for law and legal processes.

x x x x x x x x x

In the long line of cases, the Supreme Court has consistently imposed severe penalty for grossly immoral conduct of a lawyer like the case at bar. In the celebrated case of *Joselano Guevarra vs. Atty. Jose Manuel Eala*, the [Court] ordered the disbarment of the respondent for maintaining extra-marital relations with a married woman, and having a child with her. In the instant case, not only did the respondent commit bigamy for contracting marriages with Shirley Yunzal in 1990 and Leny Azur in 1996, but the respondent also made his secretary (complainant) his mistress and subsequently, tortured her to the point of death. All these circumstances showed the moral fiber respondent is made of, which [leave] the undersigned

[10] *Id.* at 17.

[11] *Id.* at 18.

[12] *Id.* at 64-69.

with no choice but to recommend the disbarment of Atty. Danilo S. Velasquez.[13] (emphasis and underscoring supplied)

The IBP Board of Governors of Pasig City, by Resolution[14] dated December 11, 2008, ADOPTED the Investigating Commissioner's findings and APPROVED the recommendation for the disbarment of respondent.

As did the IBP Board of Governors, the Court finds the IBP Commissioner's evaluation and recommendation well taken.

The practice of law is not a right but a privilege bestowed by the state upon those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege.[15] When a lawyer's moral character is assailed, such that his right to continue practicing his cherished profession is imperiled, it behooves him to meet the charges squarely and present evidence, to the satisfaction of the investigating body and this Court, that he is morally fit to keep his name in the Roll of Attorneys.[16]

Respondent has not discharged the burden. He never attended the hearings before the IBP to rebut the charges brought against him, suggesting that they are true.[17] Despite his letter dated March 28, 2008 manifesting that he would come up with his defense "in a verified pleading," he never did.

Aside then from the IBP's finding that respondent violated **Canon 1** of the Code of Professional Responsibility, he also violated the **Lawyer's Oath** reading:

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[13] *Id.* at 67-68.

[14] *Id.* at 63.

[15] *Mendoza v. Deciembre,* A.C. No. 5338, February 23, 2009, 580 SCRA 26, 36; *Yap-Paras v. Paras*, A.C. No. 4947, February 14, 2005, 451 SCRA 194, 202.

[16] *Narag v. Narag*, A.C. No. 3405, June 29, 1998, 291 SCRA 451, 464.

[17] *Arnobit v. Arnobit*, A.C. No. 1481, October 17, 2008, 569 SCRA 247, 254.

I _________, having been permitted to continue in the practice of law in the Philippines, do solemnly swear that I recognize the supreme authority of the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same; I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well as to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God, (underscoring supplied),

and **Rule 7.03, Canon 7** of the same Code reading:

Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

The April 30, 2008 Resolution[18] of the Provincial Prosecutor on complainant's charge against respondent and Bernardita Tadeo for Serious Illegal Detention bears special noting, *viz:*

[T]he counter-affidavit of x x x Bernardita C. Tadeo (co-accused in the complaint) has the effect of strengthening the allegations against Atty. Danilo Velasquez. Indeed, it is clear now that there was really physical restraint employed by Atty. Velasquez upon the person of Rosario Mecaral. Even as he claimed that on the day private complainant was fetched by the two women and police officers, complainant was already freely roaming around the place and thus, could not have been physically detained. However, it is not really necessary that Rosario be physically kept within an enclosure to restrict her freedom of locomotion. In fact, she was always accompanied wherever she would wander, that it could be impossible for her to escape especially considering the remoteness and the distance between Upper San Agustin, Caibiran, Biliran to Naval, Biliran where she is a resident. The people from the Faith Healers Association had the express and implied orders coming from respondent Atty.

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[18] *Supra* note 8.

Danilo Velasquez to keep guarding Rosario Mecaral and not to let her go freely. That can be **gleaned from the affidavit of co-respondent Bernardita Tadeo.** The latter being reprimanded whenever Atty. Velasquez would learn that complainant had untangled the cloth tied on her wrists and feet.[19] (emphasis and underscoring supplied)

That, as reflected in the immediately-quoted Resolution in the criminal complaint against respondent, his therein co-respondent corroborated the testimonies of complainant's witnesses, and that the allegations against him remain unrebutted, sufficiently prove the charges against him by clearly preponderant evidence, the quantum of evidence needed in an administrative case against a lawyer.[20]

In fine, by engaging himself in acts which are grossly immoral and acts which constitute gross misconduct, respondent has ceased to possess the qualifications of a lawyer.[21]

WHEREFORE, respondent, Atty. Danilo S. Velasquez, is *DISBARRED,* and his name *ORDERED STRICKEN* from the Roll of Attorneys. This Decision is immediately executory and ordered to be part of the records of respondent in the Office of the Bar Confidant, Supreme Court of the Philippines.

Let copies of the Decision be furnished the Integrated Bar of the Philippines and circulated to all courts.

SO ORDERED.

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

Brion, J., on leave.

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[19] *Id.* at 57.

[20] *Guevarra v. Eala*, A.C. No. 7136, August 1, 2007, 529 SCRA 1.

[21] *Rollo*, p. 68.

EN BANC

[A.M. No. 09-2-74-RTC. June 29, 2010]

Request of Judge Nino[1] A. Batingana, Regional Trial Court, Branch 6, Mati City, Davao Oriental, for extension of time to decide Civil Case No. 2049.

SYLLABUS

1. **JUDICIAL ETHICS; JUDGES; UNDUE DELAY IN RENDERING A DECISION; CLASSIFIED AS A LESS SERIOUS CHARGE; PENALTY; CASE AT BAR. —** [T]he Court finds respondent to have committed undue delay in deciding the subject case. Even granting that his requests for extension for a total of 180 days were granted, the due date of the decision would have been March 4, 2009, yet he decided the case only on October 16, 2009, or more than seven months later. x x x Undue delay in rendering decision is classified under Rule 140 of the Rules of Court as a less serious charge punishable with suspension of not less than one month but not more than three months or a fine of more than ₱10,000 but not exceeding ₱20,000. The Court had, in some cases, allowed a deviation from the range and did not thus apply strictly the rules by either imposing fines in the amount less or more than what is prescribed. x x x Under the circumstances, this being respondent's third offense of the same nature, the penalty recommended by the OCA must be increased. A fine in the amount of ₱25,000 with a stern warning that a still another commission of the same or similar act shall be dealt with most severely is thus imposed on respondent.

2. **POLITICAL LAW; JUDICIAL DEPARTMENT; CASES OR MATTERS BEFORE THE LOWER COURTS; SHOULD BE DECIDED WITHIN NINETY DAYS. —** The Constitution mandates that cases or matters before the lower courts are to be decided within 90 days. And the *New Code of Judicial Conduct for the Philippine Judiciary,* which took effect on June 1, 2004, requires judges to "perform all judicial duties,

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[1] Also spelled "Niño."

including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness."

3. **JUDICIAL ETHICS; JUDGES; SHOULD BE MINDFUL THAT ANY DELAY IN THE ADMINISTRATION OF JUSTICE, NO MATTER HOW BRIEF, DEPRIVES THE LITIGANT OF HIS RIGHT TO A SPEEDY DISPOSITION OF HIS CASE. —** Any delay in the administration of justice, no matter how brief, deprives the litigant of his right to a speedy disposition of his case which can easily undermine the people's faith and confidence in the judiciary, lower its standards and bring it to disrepute, since it reinforces in the minds of the litigants the impression that the wheels of justice grind ever so slowly. "On the whole, judges ought to be mindful of the crucial role they play in keeping the flames of justice alive and forever burning. Cognizant of this sacred task, judges are duty-bound to vigilantly and conscientiously man the wheels of justice as it grinds through eternity. In a sense, judges are revered as modern-day sentinels, who, like their erudite forerunners, must never slumber, so to speak, in the hour of service to their countrymen. For as lady justice never sleeps, so must the gallant men tasked to guard her domain."

RESOLUTION

CARPIO MORALES, *J.*:

By Resolution of March 30, 2009,[2] the Court, acting on the September 5, 2008[3] and December 4, 2008[4] letters of Judge Nino A. Batingana (respondent), Presiding Judge of Branch 6, Regional Trial Court, Mati City, Davao Oriental, requesting for extension of time (fourth and fifth) for a total of 180 days to decide Civil Case No. 2049,[5] denied the request since "the

[2] *Rollo*, pp. 7-8.

[3] *Id.* at 3. In his letter, Judge Batingana stated that the case was due for resolution on September 5, 2008.

[4] *Id.* at 5. According to Judge Batingana, this was his fifth request for extension.

[5] Entitled "*Nenita A. Villa v. Julius Jupia, et al.*" for specific performance and damages.

Court did not receive [respondent's] requests for first, second and third extension to decide the case and that there is no more time to extend as the due date to decide ha[d] already elapsed." Respondent was thereupon directed to immediately furnish the Court with a copy of the decision in the aforementioned case upon rendition.

A copy of respondent's Decision dated October 16, 2009[6] was received by the Office of the Court Administrator (OCA) on November 11, 2009.

By Memorandum of November 27, 2009,[7] the OCA found that while there was no information as to when Civil Case No. 2049 was submitted for decision, respondent mentioned in his September 5, 2008 letter that the case was due for resolution on even date, September 5, 2008. Thus, he incurred a delay of more than one year. The OCA thus recommended that he be fined in the amount of ₱10,000.

Indeed, the Court finds respondent to have committed undue delay in deciding the subject case. Even granting that his requests for extension for a total of 180 days were granted, the due date of the decision would have been March 4, 2009, yet he decided the case only on October 16, 2009, or more than seven months later.

The Constitution[8] mandates that cases or matters before the lower courts are to be decided within 90 days. And the *New Code of Judicial Conduct for the Philippine Judiciary,* which took effect on June 1, 2004, requires judges to "perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and <u>with</u> <u>reasonable</u> <u>promptness</u>."[9]

Any delay in the administration of justice, no matter how brief, deprives the litigant of his right to a speedy disposition of his case which can easily undermine the people's faith and

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[6] *Rollo*, pp. 11-15.

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

[8] Art. VIII, Sec. 15.

[9] Sec. 5, Canon 6.

confidence in the judiciary, lower its standards and bring it to disrepute,[10] since it reinforces in the minds of the litigants the impression that the wheels of justice grind ever so slowly.[11]

On the whole, judges ought to be mindful of the crucial role they play in keeping the flames of justice alive and forever burning. Cognizant of this sacred task, judges are duty-bound to vigilantly and conscientiously man the wheels of justice as it grinds through eternity. In a sense, judges are revered as modern-day sentinels, who, like their erudite forerunners, must never slumber, so to speak, in the hour of service to their countrymen.

For as lady justice never sleeps, so must the gallant men tasked to guard her domain.[12]

Undue delay in rendering decision is classified under Rule 140 of the Rules of Court as a less serious charge punishable with suspension of not less than one month but not more than three months or a fine of more than ₱10,000 but not exceeding ₱20,000. The Court had, in some cases, allowed a deviation from the range and did not thus apply strictly the rules by either imposing fines in the amount less or more than what is prescribed.[13]

The Court notes that in A.M. No. 05-8-463, "*Request of Judge Niño A. Batingana, Regional Trial Court, Branch 6, Mati, Davao Oriental for extension of time to decide Civil Cases Nos. 2063 and 1756*," the Court, by Decision of February 17, 2010, imposed a fine of ₱20,000 upon respondent after noting that he had earlier been fined ₱11,000 in A.M. No. 08-2-107-RTC, "*Request for Extension of Time to Decide Criminal*

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[10] *Duque v. Garrido*, A.M. No. RTJ-06-2027, February 27, 2009, 580 SCRA 321, 327.

[11] *Torrevillas v. Navidad,* A.M. Nos. RTJ-06-1976, April 29, 2009, 587 SCRA 39, 57.

[12] *Report on the Judicial Audit Conducted in the RTC- Br. 20, Manila*, A.M. No. 00-1-48-RTC, October 12, 2000, 342 SCRA 587, 592.

[13] Vide *Re: Cases submitted for decision before Hon. Teresito Andoy, former Judge, Municipal Trial Court, Cainta, Rizal,* A.M. No. 09-9163-MTC, May 6, 2010.

Case No. 4745-05," by Decision of February 1, 2010. In both cases, he was warned that a repetition of the same or similar act would be dealt with more severely.

Under the circumstances, this being respondent's third offense of the same nature, the penalty recommended by the OCA must be increased. A fine in the amount of ₱25,000 with a stern warning that a still another commission of the same or similar act shall be dealt with most severely is thus imposed on respondent.

WHEREFORE, Judge Nino A. Batingana, Presiding Judge, Regional Trial Court, Branch 6, Mati City, Davao Oriental, is, for delay in rendering decision in Civil Case No. 2049, *FINED* in the amount of Twenty Five Thousand (₱25,000) Pesos with a stern warning that a still another commission of the same or similar act shall be dealt with most severely.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Nachura, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., and *Mendoza, JJ.,* concur.

Perez, J., no part.

Brion, J., on leave.

EN BANC

[A.M. No. P-05-2014. June 29, 2010]

JUDGE ORLANDO D. BELTRAN, *complainant, vs.* **VILMA C. PAGULAYAN, Interpreter III, RTC, Branch 2, Tuguegarao City, Cagayan,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS AND EMPLOYEES; COURT PERSONNEL; GROSS MISCONDUCT; RESPONDENT'S COMMISSION OF EXTORTION AGAINST A PARTY-LITIGANT BY FALSELY USING THE NAME OF COMPLAINANT-JUDGE, A CASE OF. —** We find OCA's analysis of the evidence to be well-founded. Baccay's testimony that she gave money to Pagulayan upon Pagulayan's demand, to our mind, should prevail over Pagulayan's denial that she received money from him. While Pagulayan presented a copy of the registry return receipt with notation "5383-judgment-7-17-2k" with Baccay's signature, the OCA noted that Pagulayan failed to establish who actually served Baccay's copy of the judgment. We note in this regard Martirez's testimony that court decisions, although covered by a registry return card indicating service, do not go through the mails because service is through a process server. This negates Pagulayan's obvious attempt to show that a party other than herself, gave a copy of the decision to Baccay; Martirez herself could not have been the source as she testified that neither Baccay nor Acain came to her to ask for a copy of the decision, and that extra copies of the decisions are usually kept in her unlocked table drawer. The ₱20,000.00 demanded and given, largely unrefuted except by Pagulayan's denial, is consistent with the claim that Pagulayan was the source of Baccay's copy of the decision. We accept without hesitation Baccay's testimony showing that Pagulayan indeed committed the transgression Judge Beltran charged. No explanation is necessary to account for Judge Beltran's reason for charging Pagulayan. **What Pagulayan did is the nightmare of every decisionmaker and magistrate who is usually the last to know that somebody has used his or her name to ask for money — "*para kay Fiscal o para kay Judge*" as mulcters reputedly always say**. Pagulayan's misconduct, it must be stressed, brought dishonor to the administration of justice in particular and, to the public service in general.

2. **ID.; ID.; ID.; ID.; SHOULD ACT AND BEHAVE BEYOND REPROACH AND WITH HEAVY BURDEN OF RESPONSIBILITY. —** As the OCA aptly put it — "Time and again the Honorable Supreme Court had held that the conduct of each employee of a court of justice must, at all

times, not only be characterized with propriety and decorum, but above all else, be above suspicion. The conduct and behavior required of every court personnel from the presiding judge to the lowliest clerk must always be beyond reproach and circumscribed with heavy burden of responsibility. Every employee of the judiciary should be an example of integrity, probity, uprightness, honesty and diligence. We believe that the respondent failed to observe these very exacting standards. Her acts indeed corrode the dignity and honor of the courts and shake the people's faith and trust in the judiciary." Indeed, Pagulayan failed to live up to the standards of honesty and integrity required in the public service. In the words of the Constitution, public office is a public trust and Pagulayan betrayed this trust.

3. ID.; ID.; CIVIL SERVICE RULES; GROSS MISCONDUCT; PUNISHABLE BY DISMISSAL. — Under Civil Service rules, gross misconduct is a grave offense and punishable by dismissal. For the enormity of the transgression she committed, Pagulayan deserved no less than dismissal. She should not be treated with leniency, for she committed the worst kind of graft in the judiciary and should not lightly be punished, lest others may be emboldened to follow her nefarious example.

4. ID.; ID.; ID.; ID.; ID.; WHERE THE PENALTY OF DISMISSAL CANNOT BE IMPOSED DUE TO RETIREMENT, FORFEITURE OF RETIREMENT BENEFITS IS WARRANTED; CASE AT BAR. — Public service, especially the judiciary, has no place for corrupt personnel like Pagulayan and she should not be allowed to escape the mandated penalty through the expedient of retirement that she availed of on April 1, 2006. While Pagulayan may no longer be dismissed because of her retirement, she can still be sanctioned with a forfeiture of her retirement benefits. Under Section 58(a) of the Revised Uniform Rules of Administrative Cases, the penalty of dismissal carries with it, among other administrative disabilities, the forfeiture of retirement benefits.

DECISION

***PER CURIAM*:**

We resolve as an administrative matter[1] the complaint/affidavit dated July 18, 2001[2] of Acting Presiding Judge Orlando Beltran (*Judge Beltran*), Regional Trial Court (*RTC*), Branch 2, Tuguegarao City, charging Vilma C. Pagulayan (*Pagulayan*), Interpreter III of the same court, with gross misconduct. The complaint alleged that Pagulayan demanded and received ₱20,000.00 from the plaintiffs in Civil Case No. 5383 (entitled *Heirs of Benito Acain, et al. v. Sps. Anselmo and Anicia Acain* for Quieting of Title and Damages) which Judge Beltran decided in the plaintiffs' favor. The demanded sum was allegedly for Judge Beltran. After receiving the demanded sum, Pagulayan personally handed the plaintiffs an unsigned copy of Judge Beltran's decision.

Judge Beltran and the Branch Clerk of Court, Atty. Maita Grace Deray-Israel (*Deray-Israel*), requested the National Bureau of Investigation (*NBI*) District Office in Tuguegarao City, to investigate the matter. On August 6, 2001, the NBI submitted to the Office of the Court Administrator (*OCA*) a Final Report[3] with the recommendation that Pagulayan be charged administratively for misconduct. The NBI recommendation was based largely on the affidavits of Judge Beltran,[4] Deray-Israel[5] and plaintiffs Facundo Baccay (*Baccay*) and Saturnino Acain (*Acain*).[6]

The OCA required Pagulayan to comment on the complaint.[7] In her Comment dated September 20, 2001,[8] Pagulayan denied

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[1] P-05-2014 (formerly OCA IPI No. 01-1207-P).

[2] *Rollo*, p. 8.

[3] *Id.* at 1-5.

[4] *Supra* note 2.

[5] *Rollo*, p. 3, E(b), NBI Report.

[6] *Id.* at 4, E(c), NBI Report.

[7] 1st Indorsement dated August 22, 2001.

[8] *Rollo*, pp. 13-16.

what she regarded as Judge Beltran's unsubstantiated accusation against her; she claimed that she did not demand nor receive any amount of money for herself or for anyone from the plaintiffs who did not even come out with a complaint/affidavit of their own. She maintained that her only involvement took place when she referred one Apolinario Allam — a friend of her husband's and a relative of Baccay and who was following up the case — to Primativa Martirez, the clerk in charge of civil cases. She was therefore surprised when, after one year, she was charged for having demanded and received money for Judge Beltran. She lamented that Judge Beltran did not even confront her about the matter, or ask her to face the alleged complainants.

At the OCA's recommendation, the Court referred the matter to the Executive Judge, RTC, Tuguegarao City, for investigation, report and recommendation within sixty (60) days from receipt.[9] Executive Judge Jimmy Henry F. Luczon, Jr.,[10] and Executive Judge Vilma T. Pauig,[11] in succession, asked that the assignment be given to another judge since they cannot conduct an impartial investigation on the case; Judge Luczon, Jr. stated that he previously filed a falsification charge against Pagulayan, while Judge Pauig declined because Pagulayan was the interpreter in her court.

On March 29, 2004, the Court re-assigned the case to the executive judge of the RTC in Aparri, Cagayan[12] — Judge Virgilio M. Alameda (*Judge Alameda*). On October 14, 2004, Judge Alameda submitted a Final Report through the OCA.[13] Judge Alameda found Pagulayan to be guilty of gross misconduct. The judge based his conclusion mainly on the testimony of Baccay that Pagulayan demanded and received money from him, allegedly to be given to Judge Beltran for the favorable decision the judge

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[9] *Id.* at 34; Resolution dated July 24, 2002.

[10] *Id.* at 37; Judge Luczon, Jr.'s Manifestation dated August 19, 2002.

[11] *Id.* at 42; Judge Panig's Manifestation dated August 19, 2002.

[12] *Id.* at 44; Resolution of March 29, 2004.

[13] *Id.* at 86-99.

rendered. Judge Alameda recommended that Pagulayan be suspended for six (6) months without pay and without benefits, in consideration of her 29 years of service in the Judiciary and because this was her first offense.

In a Resolution dated December 8, 2004,[14] the Court referred Judge Alameda's report to the OCA for evaluation, report and recommendation. In a memorandum dated April 22, 2005,[15] the OCA found Judge Alameda's conclusions to be "in accord with the evidence presented during the investigation x x x and applicable jurisprudence." Although it took into consideration the extenuating circumstances Judge Alameda cited in Pagulayan's favor, the OCA nonetheless recommended that she be found guilty of gross misconduct and be suspended for one (1) year without pay and without benefits.

On June 15, 2005, the Court resolved to re-docket the case as a regular administrative matter and required the parties to manifest whether they are willing to submit the case for decision based on the pleadings and the records on file.[16]

On August 9, 2005, Pagulayan filed a Compliance[17] manifesting that she wanted to present her evidence. She had failed to do so, however, because she travelled to the United States of America (*USA*) for medical check-up from July 28, 2004 to December 15, 2004, while her counsel of record withdrew from the case at the time she was to present evidence. Again, the Court referred the matter to the OCA for appropriate action.[18] The OCA, while acknowledging that a full blown investigation had already been conducted *vis-à-vis* the complaint and Pagulayan had been given every opportunity to present her side, recommended that she be given fifteen (15) days to present her witnesses and submit her evidence to Judge Alameda.

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[14] *Id.* at 102.

[15] *Id.* at 103-108.

[16] *Id.* at 109; Resolution dated June 15, 2005.

[17] *Id.* at 110-111.

[18] *Id.* at 113.

On December 14, 2005, the Court approved the OCA's recommendation.[19] In the meantime, Judge Alameda was transferred to the RTC, Manila,[20] prompting the Court to direct the new executive judge — Judge Rolando R. Velasco (*Judge Velasco*) — to take over from Judge Alameda and to continue the investigation.[21]

On July 24, 2006, Judge Velasco submitted a Report which the Court referred to the OCA for evaluation, report and recommendation.[22] The OCA, in turn, submitted its Report[23] to the Court on January 2, 2007. This Report is summarized below.

<u>OCA Report: The Case for Judge Beltran</u>

Judge Beltran's evidence consisted of the following: **(1)** Exhibit "A", Judge Beltran's affidavit dated July 18, 2001; **(2)** Exhibit "B", joint affidavit of Baccay and Acain dated July 13, 2001; **(3)** Exhibit "C", affidavit dated July 18, 2001 of Branch Clerk of Court Deray-Israel; **(4)** Exhibit "E", NBI Report dated August 3, 2001; and the testimonies of Judge Beltran, Deray-Israel and Facundo Baccay.

Judge Beltran deposed that he rendered the decision in favor of the plaintiffs Baccay and Acain based on the merits of the evidence presented, and not for any monetary consideration. To protect his integrity, he requested the NBI to investigate after he received reports of circulating rumors that money had been demanded for the judgment. Deray-Israel testified that the duplicate original copy of Judge Beltran's decision which Pagulayan personally handed to the plaintiffs is an unsigned carbon original copy that bears only her (Deray-Israel) initials to signify that the copy is authentic. Baccay and Acain stated

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[19] *Id.* at 123.

[20] *Id.* at 129; letter dated January 20, 2006 of Executive Judge Rolando R. Velasco.

[21] *Id.* at 130; Resolution dated March 27, 2006.

[22] Resolution dated September 18, 2006.

[23] *Ibid.*

under oath that Pagulayan demanded and received the amount of ₱20,000.00 from them, allegedly to be given to Judge Beltran, and that thereafter, she personally delivered to them an unsigned copy of the decision.

OCA Report: The Case for Pagulayan

Pagulayan offered the following pieces of evidence: **(1)** Exhibit "1", judgment dated July 17, 2000 and Exhibits "2" and "2-C", registry return receipts, to show that the copy of the judgment was officially received by Baccay on July 17, 2000; **(2)** Exhibit "3-D", affidavit dated September 14, 2001 of Apolinario B. Allan stating that — he is the relative of the plaintiff by affinity and a friend of Pagulayan's husband; when he followed up the case, he was referred by Pagulayan to Mrs. Martirez, the clerk in charge of civil cases; and that he did not ask money from anybody; and **(3)** Pagulayan's and Mrs. Martirez's testimonies.

Mrs. Martirez testified that a judgment dated July 17, 2000 was rendered in Baccay's civil case, and that Deray-Israel gave her a copy of the judgment but she could not remember when it was given to her. As clerk in charge of civil cases, she accordingly prepared copies of the decision for the parties' lawyers and for the defendant. She identified the registry return cards presented in evidence, although she admitted that copies with return cards were not sent through the mails so that the records do not bear the stamp mark of the post office.[24]

For her part, Pagulayan declared that she retired as court interpreter in March 2006 after service for 32 years. She vehemently denied that she demanded money (allegedly reduced to ₱20,000.00 from the initial ₱30,000.00) from Baccay and Acain on the instruction of Judge Beltran for the favorable decision the judge rendered; and neither had she seen Baccay and Acain. She reasoned out that she could not have committed the imputed act as she would not risk losing her long years of service in the government. She did not know why Judge Beltran would charge her, but surmised that it must be because of "something (she said) against the judge."

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[24] TSN, June 30, 2006, pp. 294-296.

Like Judge Alameda, Judge Velasco found Pagulayan guilty of gross misconduct as her evidence failed to overcome Judge Beltran's evidence. Judge Velasco recommended that Pagulayan be found guilty of gross misconduct and be suspended for one (1) year without pay and without benefits.

The OCA Evaluation and Recommendation

In considering the evidence, the OCA excluded the testimonies of Judge Beltran and Deray-Israel for being hearsay because they both admitted that they had no personal knowledge of the act complained of.

After considering Pagulayan's evidence, the OCA opined that assuming that the signature of Baccay in the registry return receipt[25] to be his, Pagulayan failed to establish who actually served the copy of the decision on Baccay; her own witness — the clerk for civil cases (Martirez) — admitted that the copy did not pass through the mails and was not stamped received by the post office. Martirez also admitted that it has been the practice in the court to serve copies of decisions on the plaintiff's counsel and not on the plaintiff himself, unless the latter would ask for a copy. She clarified, however, that the plaintiffs did not ask her for a copy of the decision. Extra copies of decisions are usually kept in her unlocked drawer. The OCA concluded that in light of Martirez's testimony, the possibility cannot be ruled out that either Pagulayan gave a copy to the plaintiffs, or two (2) copies of the decision were given to them.

Under this analysis, the OCA opined that Pagulayan's guilt or innocence rests on the sole testimony of Baccay and, in this respect, cited Judge Alameda's earlier evaluation that "*[B]y and large, the Court finds the testimony of Baccay to be credible and the Court has no reason to doubt his testimony. Baccay has no reason to falsely testify against Pagulayan. He has no motive to fabricate a story against Pagulayan as there is no evidence of any misunderstanding between them in the past.*

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[25] Exh. "2-C", *Rollo*, p. 143.

Evidently, he agreed to testify x x x to simply attest to the truth of his allegations."

Thus the OCA, like Judge Alameda and Judge Velasco, found Pagulayan's guilt to have been established. It reiterated the recommendation it made in its memorandum dated April 22, 2005[26] to hold Pagulayan administratively liable for gross misconduct and to suspend her from the service for one (1) year without pay and without benefits. It further recommended that the action on her application for early retirement be deferred pending the service of her suspension. *It observed that it is the practice of judges and court personnel facing administrative cases, where the evidence appears to be irrefutable, to file their resignation or application for early retirement ahead of the resolution of their cases so that a mere fine would be imposed on them in lieu of the graver penalties of dismissal, forfeiture of benefits, as well as suspension from the service*.

THE COURT'S RULING

At the outset, we emphasize that Pagulayan was given all the opportunity to be heard. In fact, the charge against her was investigated twice. Notably, the second investigation (by Judge Velasco) was conducted to give her the chance, after she had pleaded with the Court, to present her evidence. She failed to present evidence in the first opportunity given to her (in the investigation by Judge Alameda), as she then travelled to the USA while her counsel of record withdrew his appearance.

We find OCA's analysis of the evidence to be well-founded. Baccay's testimony that she gave money to Pagulayan upon Pagulayan's demand, to our mind, should prevail over Pagulayan's denial that she received money from him. While Pagulayan presented a copy of the registry return receipt with notation "5383-judgment-7-17-2k"[27] with Baccay's signature, the OCA noted that Pagulayan failed to establish who actually served Baccay's copy of the judgment. We note in this regard

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[26] *Supra* note 15.

[27] *Rollo,* p. 143, Exh. "2-C".

Martirez's testimony that court decisions, although covered by a registry return card indicating service, do not go through the mails because service is through a process server. This negates Pagulayan's obvious attempt to show that a party other than herself, gave a copy of the decision to Baccay; Martirez herself could not have been the source as she testified that neither Baccay nor Acain came to her to ask for a copy of the decision, and that extra copies of the decisions are usually kept in her unlocked table drawer. The ₱20,000.00 demanded and given, largely unrefuted except by Pagulayan's denial, is consistent with the claim that Pagulayan was the source of Baccay's copy of the decision.

We accept without hesitation Baccay's testimony showing that Pagulayan indeed committed the transgression Judge Beltran charged. No explanation is necessary to account for Judge Beltran's reason for charging Pagulayan. **What Pagulayan did is the nightmare of every decisionmaker and magistrate who is usually the last to know that somebody has used his or her name to ask for money — "*para kay Fiscal o para kay Judge*" as mulcters reputedly always say**.

Pagulayan's misconduct, it must be stressed, brought dishonor to the administration of justice in particular and, to the public service in general. As the OCA aptly put it —

> Time and again the Honorable Supreme Court had held that the conduct of each employee of a court of justice must, at all times, not only be characterized with propriety and decorum, but above all else, be above suspicion. The conduct and behavior required of every court personnel from the presiding judge to the lowliest clerk must always be beyond reproach and circumscribed with heavy burden of responsibility. Every employee of the judiciary should be an example of integrity, probity, uprightness, honesty and diligence. We believe that the respondent failed to observe these very exacting standards. Her acts indeed corrode the dignity and honor of the courts and shake the people's faith and trust in the judiciary.

Indeed, Pagulayan failed to live up to the standards of honesty and integrity required in the public service. In the words of the

Constitution, public office is a public trust[28] and Pagulayan betrayed this trust.

Under Civil Service rules,[29] gross misconduct is a grave offense and punishable by dismissal. For the enormity of the transgression she committed, Pagulayan deserved no less than dismissal. She should not be treated with leniency, for she committed the worst kind of graft in the judiciary and should not lightly be punished, lest others may be emboldened to follow her nefarious example. Public service, especially the judiciary, has no place for corrupt personnel like Pagulayan and she should not be allowed to escape the mandated penalty through the expedient of retirement that she availed of on April 1, 2006.[30] While Pagulayan may no longer be dismissed because of her retirement, she can still be sanctioned with a forfeiture of her retirement benefits. Under Section 58(a) of the Revised Uniform Rules of Administrative Cases, the penalty of dismissal carries with it, among other administrative disabilities, the forfeiture of retirement benefits.

WHEREFORE, premises considered, respondent Vilma C. Pagulayan, Interpreter III, Regional Trial Court, Branch 2, Tuguegarao City, is hereby found *LIABLE* for *GROSS MISCONDUCT* for the extortion she committed against Facundo Baccay by falsely using the name, and to the prejudice, of Judge Orlando Beltran. She shall suffer the penalty of forfeiture of her retirement benefits, except accrued leave credits, with prejudice to any re-employment in any branch or instrumentality of the government.

SO ORDERED.

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

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[28] *Santiago B. Burgos v. Vicky A. Baes, Clerk of Court, Clerk of Court II, MCTCC, President Roxas, Capiz*, A.M. No. 05-2002, December 17, 2008, 574 SCRA 159.

[29] Revised Uniform Rules on Administrative Cases, Sec. 52 A(3).

[30] Resolution dated December 10, 2008.

SPECIAL THIRD DIVISION

[G.R. No. 164435. June 29, 2010]

VICTORIA S. JARILLO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CIVIL LAW; FAMILY CODE; MARRIAGE; ARTICLE 40 OF THE CODE IS A RULE OF PROCEDURE WHICH SHOULD BE APPLIED RETROACTIVELY. —** As far back as 1995, in *Atienza v. Brillantes, Jr.*, the Court already made the declaration that **Article 40, which is a rule of procedure**, should be applied retroactively because Article 256 of the Family Code itself provides that said "Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights." The Court went on to explain, thus: "The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending actions. The **retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected.** The reason is that as a general rule, no vested right may attach to, nor arise from, procedural laws."

2. **ID.; ID.; ID.; ID.; NON-ENFORCEMENT OF ARTICLE 40 OF THE CODE, EFFECT. —** In *Marbella-Bobis v. Bobis*, the Court pointed out the danger of not enforcing the provisions of Article 40 of the Family Code, to wit: "In the case at bar, respondent's clear intent is to obtain a judicial declaration of nullity of his first marriage and thereafter to invoke that very same judgment to prevent his prosecution for bigamy. He cannot have his cake and eat it too. Otherwise, all that an adventurous bigamist has to do is disregard Article 40 of the Family Code, contract a subsequent marriage and escape a bigamy charge by simply claiming that the first marriage is void and that the subsequent marriage is equally void for lack of a prior judicial declaration of nullity of the first. A party may even enter into a marriage aware of the absence of a requisite — usually the marriage license — and thereafter contract a subsequent marriage without obtaining a declaration of nullity of the first on the assumption that

the first marriage is void. Such scenario would render nugatory the provision on bigamy. x x x"

APPEARANCES OF COUNSEL

Nelson A. Clemente for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

PERALTA, *J.*:

This resolves petitioner's Motion for Reconsideration[1] dated November 11, 2009 and respondent's Comment[2] thereto dated March 5, 2010.

In the Decision dated September 29, 2009, the Court affirmed petitioner's conviction for bigamy. Petitioner is moving for reconsideration of the Decision, arguing that since petitioner's marriages were entered into before the effectivity of the Family Code, then the applicable law is Section 29 of the Marriage Law (Act 3613), instead of Article 40 of the Family Code, which requires a final judgment declaring the previous marriage void before a person may contract a subsequent marriage.

Petitioner's argument lacks merit.

As far back as 1995, in *Atienza v. Brillantes, Jr.*,[3] the Court already made the declaration that **Article 40, which is a rule of procedure**, should be applied retroactively because Article 256 of the Family Code itself provides that said "Code shall have retroactive effect insofar as it does not prejudice or impair vested or acquired rights." The Court went on to explain, thus:

The fact that procedural statutes may somehow affect the litigants' rights may not preclude their retroactive application to pending

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[1] *Rollo,* pp. 255-268.

[2] *Id.* at 276-280.

[3] A.M. No. MTJ-92-706, March 29, 1995, 243 SCRA 32.

actions. The **retroactive application of procedural laws is not violative of any right of a person who may feel that he is adversely affected.** The reason is that as a general rule, no vested right may attach to, nor arise from, procedural laws.[4]

In *Marbella-Bobis v. Bobis*,[5] the Court pointed out the danger of not enforcing the provisions of Article 40 of the Family Code, to wit:

> In the case at bar, respondent's clear intent is to obtain a judicial declaration of nullity of his first marriage and thereafter to invoke that very same judgment to prevent his prosecution for bigamy. He cannot have his cake and eat it too. Otherwise, all that an adventurous bigamist has to do is disregard Article 40 of the Family Code, contract a subsequent marriage and escape a bigamy charge by simply claiming that the first marriage is void and that the subsequent marriage is equally void for lack of a prior judicial declaration of nullity of the first. A party may even enter into a marriage aware of the absence of a requisite — usually the marriage license — and thereafter contract a subsequent marriage without obtaining a declaration of nullity of the first on the assumption that the first marriage is void. Such scenario would render nugatory the provision on bigamy. x x x[6]

The foregoing scenario is what petitioner seeks to obtain in her case, and this, the Court shall never sanction. Clearly, therefore, petitioner's asseveration, that Article 40 of the Family Code should not be applied to her case, cannot be upheld.

IN VIEW OF THE FOREGOING, the Motion for Reconsideration dated November 11, 2009 is *DENIED with FINALITY.*

SO ORDERED.

Velasco, Jr. (Chairperson), Nachura, Leonardo-de Castro, and *Villarama, Jr., JJ.,* concur.

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[4] *Id.* at 35. (Emphasis supplied; citations omitted.)

[5] 391 Phil. 648 (2000).

[6] *Id.* at 654.

FIRST DIVISION

[G.R. No. 164791. June 29, 2010]

SELWYN F. LAO and EDGAR MANANSALA, *petitioners, vs.* **SPECIAL PLANS, INC.,** *respondent.*

SYLLABUS

1. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; COMPENSATION; WHEN PROPER. —** The Civil Code provides that compensation shall take place when two persons, in their own right, are creditors and debtors of each other. In order for compensation to be proper, it is necessary that: "1. Each one of the obligors be bound principally and that he be at the same time a principal creditor of the other; 2. Both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated; 3. The two debts are due; 4. The **debts are liquidated and demandable**; 5. Over neither of them be any retention or controversy, commenced by third parties and communicated in due time to the debtor."

2. **ID.; ID.; ID.; ID.; TAKES PLACE ONLY IF BOTH OBLIGATIONS ARE LIQUIDATED; CLAIM, WHEN CONSIDERED LIQUIDATED. —** A claim is liquidated when the amount and time of payment is fixed. If acknowledged by the debtor, although not in writing, the claim must be treated as liquidated. When the defendant, who has an unliquidated claim, sets it up by way of counterclaim, and a judgment is rendered liquidating such claim, it can be compensated against the plaintiff's claim from the moment it is liquidated by judgment. We have restated this in *Solinap v. Hon. Del Rosario* where we held that compensation takes place only if both obligations are liquidated.

3. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; A PARTY WHO HAS NOT APPEALED FROM A DECISION CANNOT SEEK ANY RELIEF THAN WHAT IS PROVIDED IN THE JUDGMENT APPEALED FROM; CASE AT BAR. —** In its Memorandum, SPI prays that

petitioners be ordered to pay 3% interest monthly as stipulated in the Contract for Lease, plus attorney's fees. However, as SPI did not appeal the RTC Decision before the appellate court, we cannot act on the same. It is well-settled that a party who has not appealed from a Decision cannot seek any relief other than what is provided in the judgment appealed from. SPI did not appeal, thus it cannot obtain from the appellate court any affirmative relief other than those granted in the Decision of the court below. It can only advance any argument that it may deem necessary to defeat petitioners' claim or to uphold the Decision that is being disputed, and it can assign errors in its brief if such is required to strengthen the views expressed by the court *a quo*. These assigned errors, in turn, may be considered by the appellate court solely to maintain the appealed decision on other grounds, but not for the purpose of reversing or modifying the judgment in SPI's favor and giving it other reliefs.

4. **LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; LITIGANTS SHOULD GIVE THE NECESSARY ASSISTANCE TO THEIR COUNSEL AND EXERCISE DUE DILIGENCE TO MONITOR THE STATUS OF THEIR CASE; CASE AT BAR.—** SPI failed to exercise due diligence in keeping itself updated on the developments of the case. That its erstwhile counsel has not communicated for a long period of time and has migrated abroad, should have cautioned it that something was amiss with the case. By that time, SPI should have initiated moves to locate its counsel or to inquire from the court on the progress of the case. It should have ensured that its address on record with the court is updated and current. Thus, it has been equally stressed that litigants represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of the case. Instead, they should give the necessary assistance to their counsel and exercise due diligence to monitor the status of the case for what is at stake is ultimately their interest.

APPEARANCES OF COUNSEL

Cacho & Chua Law Offices for petitioners.
Ibuyan Garcia Ibuyan Law Offices for respondent.

DECISION

DEL CASTILLO, *J.*:

In Roman Law, compensation was the reciprocal extinction of claims between mutual debtors. In the earlier stages of that system the practice did not exist as a matter of right but its application was discretionary with the *judex*. Later the praetor applied it by incorporating into the formula, which he prepared for the *judex*, an exception *doli*, that is, an authorization to take into account any circumstances which would render inequitable the enforcement of the claim. The effect was to cause a dismissal of the claim, however large, if a counterclaim, however small, was proven and the indirect result was to compel the actor (plaintiff) to deduct the counterclaim in advance.[1]

Factual Antecedents

Petitioners Selwyn F. Lao (Lao) and Edgar Manansala (Manansala), together with Benjamin Jim (Jim), entered into a Contract of Lease[2] with respondent Special Plans, Inc. (SPI) for the period January 16, 1993 to January 15, 1995 over SPI's building at No. 354 Quezon Avenue, Quezon City. Petitioners intended to use the premises for their karaoke and restaurant business known as "Saporro Restaurant".

Upon expiration of the lease contract, it was renewed for a period of eight months at a rental rate of ₱23,000.00 per month.

On June 3, 1996, SPI sent a Demand Letter[3] to the petitioners asking for full payment of rentals in arrears.

Receiving no payment, SPI filed on July 23, 1996 a Complaint[4] for sum of money with the Metropolitan Trial Court (MeTC) of Quezon City, claiming that Jim and petitioners have

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[1] 12 C.J. 224.

[2] *Rollo*, pp. 547-552.

[3] *Id.* at 553.

[4] *Id.* at 70-73.

accumulated unpaid rentals of ₱118,000.00 covering the period March 16, 1996 to August 16, 1996.

After service of summons, petitioners filed their Verified Answer[5] faulting SPI for making them believe that it owns the leased property. They likewise asserted that SPI did not deliver the leased premises in a condition fit for petitioners' intended use. Thus, petitioners claimed that they were constrained to incur expenses for necessary repairs as well as expenses for the repair of structural defects, which SPI failed and refused to reimburse. Petitioners prayed that the complaint be dismissed and judgment on their counterclaims be rendered ordering SPI to pay them the sum of ₱422,920.40 as actual damages, as well as moral damages, attorney's fees and exemplary damages.

After the issues were joined, trial on the merits ensued. As culled from the MeTC Decision, the following account was presented by SPI:

Delfin Cruz, president of Special Plans, Inc. testified that on January 7, 1993, plaintiff-corporation and herein defendants entered into a two-year Contract of Lease (Exhibit "A" inclusive, with sub-markings) starting January 16, 1993 until January 15, 1995, involving a portion of said plaintiff-corporation's office building which used to be the Bahay Namin Food and Drinks at 354 Quezon Avenue, Quezon City. Defendants used the leased premises for their karaoke and restaurant business known as Saporro Restaurant. Upon [expiration of the lease], defendants, through defendant Lao requested in writing (Exhibit "B") for a renewal of the contract of lease, but plaintiff-corporation agreed only for an eight-month extension of [the] contract with all its terms and conditions on a month-to-month basis at a monthly rental of ₱23,000.00.

This witness further testified that while defendants paid the sum of ₱23,000.00 in August 1996 they nevertheless failed to pay the agreed rental since March 16, 1996, thus the accumulated unpaid rentals shot up to ₱118,000.00. Plaintiff-corporation demanded upon defendants payment therefor in a letter dated June 3, 1996 (Exhibit "D" inclusive with sub-markings).

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[5] *Id.* at 74-95.

On cross, Delfin Cruz admitted that plaintiff-corporation did not inform defendants that it was not the owner of the leased premises during the signing of the contract of lease and that said defendants did not inform him of the structural defects of the subject premises, including the repair works conducted thereon.

Antonio San Mateo, vice-president for legal affairs of plaintiff-corporation, averred that he made the demand to pay upon defendants for their failure to settle their agreed monthly rentals starting March 16, 1996 to August 15, 1996; and that for the period covering September 16, 1995 to October 15, 1995, defendants paid only ₱20,000.00, hence, the balance of ₱3,000.00 (Exhibit "E").[6]

In their defense, Jim and petitioners proffered the following:

Meanwhile, defendant Benjamin Jim testified that he was one of the signatories [to] the original contract of lease involving the subject premises whose facilities, including the roof, were already dilapidated: thus prompting the group to renovate the same. After a year of operation, Saporro lost so he decided to back out but defendant Lao convinced him to stay with the group for another x x x year. But the business lost even more so he finally called it quits with the consent of the group. He pulled out his audio-video equipment, refrigerator, and air-conditioning unit on January 2, 1995, thirteen (13) days before the expiration of the contract of lease. He further denied having signed the request for the extension of the contract.

On cross, he stated that he did not sign documents for and in behalf of Saporro; and, that he allowed defendant Lao and Victor San Luis to sign for the group.

Testifying for defendant Jim, Atty. Maria Rosario Carmela Nova declared that defendant Jim sought her services on August 30, 1996 for the recovery of his money invested at Mount Fuji and Saporro but Atty. Cesa, who acted as counsel for defendants Lao and Manansala, refused to return the same in a letter-reply dated September 23, 1996 (Exhibit "1-Jim" inclusive with sub-markings).

Defendant Selwyn Lao testified that the group was not able to inspect the leased premises since Delfin Cruz had no key thereon during the signing of the contract of lease on January 7, 1993. He

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[6] *Id.* at 96-97.

stated that paragraph 6 of the said contract provides that the LESSEE shall maintain the leased premises, including the parking lot, in good, clean and sanitary condition and shall make all necessary repairs thereon at his own expense except repairs of structural defects which shall be the responsibility of the LESSOR (Exhibit "1-Lao and Manansala"). When the group took possession of the leased premises on January 16, 1993, the equipment and furniture, among others, were found to be not in good condition. The trusses, roof and ceiling of the premises were already dilapidated. Rain seeped through the floor. When the group talked with Delfin Cruz about the condition of the leased property, the latter would just tell the former not to worry about it.

The group conducted structural and necessary repairs thereon, thus incurring the sum of ₱545,000.00 (Exhibit "2-Lao and Manansala" inclusive, with sub-markings), ₱125,000.00 of which was spent on structural defects, as follows:

Roofing repair	-	₱ 45,000.00	(Exhibit "2-A")
Ceiling repair	-	50,000.00	(Exhibit "2-B")
Flooring repair	-	20,000.00	(Exhibit "2-C")
Waterproofing	-	10,000.00	(Exhibit "2-D")

Defendant Lao further testified that Delfin Cruz told him to proceed with the repair work without informing him (Lao) that plaintiff-corporation was not the owner of the leased premises. The witness added that the group paid the sum of ₱23,000.00 on July 21, 1996 for the period March 16, 1996 to April 15, 1996.

On cross, he averred that he sought the expertise of Gregorio Tamayo to repair the premises for ₱545,000.00; and that he had a verbal authority to sign for and in behalf of defendant Jim who took his audio-video equipment on January 2, 1996.

Presented at the witness stand to testify for defendant Lao and Manansala, Gregorio Tamayo admitted that defendant Lao sought his services to undertake both structural and finishing works on the subject property at a cost of ₱545,00.00.

On cross, he declared that he was the subcontractor of defendant Lao.[7]

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[7] *Id.* at 97-99.

Ruling of the Metropolitan Trial Court

On December 15, 1999, the MeTC rendered its Decision[8] finding that the unpaid rentals stood at only ₱95,000.00. It also found that SPI is solely responsible for repairing the structural defects of the leased premises, for which the petitioners spent ₱125,000.00. It held that even assuming that petitioners did not notify SPI about the structural defects and the urgency to repair the same, Article 1663 of the Civil Code allows the lessee to make urgent repairs in order to avoid an imminent danger at the lessor's cost. Hence, the MeTC dismissed the complaint for lack of cause of action. The dispositive portion of the Decision reads:

Wherefore, in view of the foregoing considerations, let this case be, as it is, hereby ordered DISMISSED for lack of cause of action. No costs.

The counterclaim and cross-claim of the defendants are likewise DENIED for lack of merit.

SO ORDERED.[9]

Ruling of the Regional Trial Court

Aggrieved, SPI filed an appeal before the RTC of Quezon City. Both parties filed their respective memoranda.[10] However, on November 24, 2000, counsel for SPI filed his Withdrawal of Appearance[11] with the conformity of SPI, through its Vice President Antonio L. San Mateo.[12] In an Order[13] dated January 5, 2001, the RTC granted the Withdrawal of Appearance and ordered that all notices, orders and other court processes in the

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[8] *Id.* at 96-101; penned by Presiding Judge Augustus C. Diaz, Pairing Judge for MeTC Branch 38.

[9] *Id.* at 101.

[10] CA *rollo*, pp. 78-97.

[11] *Id.* at 98-99.

[12] *Id.* at 98.

[13] *Rollo*, 314.

case be forwarded to SPI at its address at 354 Quezon Avenue, Quezon City.

On March 12, 2001, the RTC rendered a Decision[14] affirming with modification the MeTC Decision by ordering petitioners to pay SPI the amount of ₱95,000.00 for unpaid rentals.[15] The RTC disagreed with the MeTC on the aspect of off-setting the amount allegedly spent by petitioners for the repairs of the structural defects of subject property with their unpaid rentals. The dispositive portion of the RTC Decision reads:

> FROM THE GOING MILLIEU (sic), premises considered, the lower court's (Branch 38) decision dated December 15, 1999 is modified to the effect that Defendants Selwyn Lao and Edgar Manansala are ordered to pay to the plaintiff-corporation the amount of Ninety Five Thousand (₱95,000.00) pesos for unpaid rentals. With respect to the other aspect of the decision, there being no cogent reason to disturb the lower court's ruling, the same stands.
>
> SO ORDERED.[16]

Ruling of the Court of Appeals

On April 25, 2003, petitioners Lao and Manansala filed a Petition for Review with the CA.[17] Jim did not join them. Hence, the appealed Decision of the RTC had become final insofar as Jim is concerned.

On June 30, 2003, the CA rendered a Decision[18] affirming *in toto* the RTC Decision. Petitioners moved for reconsideration, but it was denied in a Resolution[19] dated August 9, 2004.

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[14] *Id.* at 560-562; penned by Judge Percival Mandap Lopez.

[15] *Id.* at 562.

[16] *Id.*

[17] *Id.* at 2.

[18] *Id.* at 108-116; penned by Associate Justice Bienvenido L. Reyes and concurred in by Associate Justices Salvador J. Valdez, Jr. and Danilo B. Pine.

[19] *Id.* at 162-163.

Issues

Petitioners do not take issue that the unpaid rentals amount to ₱95,000.00.[20] Nonetheless, they assert that the amount of ₱545,000.00 they spent for repairs, ₱125,000.00 of which was spent on structural repairs, should be judicially compensated against the said unpaid rentals amounting to ₱95,000.00.[21] On the other hand, SPI avers that petitioners have not shown proof that they spent these amounts.[22]

Our Ruling

The petition is without merit.

The Civil Code provides that compensation shall take place when two persons, in their own right, are creditors and debtors of each other.[23] In order for compensation to be proper, it is necessary that:

1. Each one of the obligors be bound principally and that he be at the same time a principal creditor of the other;
2. Both debts consist in a sum of money, or if the things due are consumable, they be of the same kind, and also of the same quality if the latter has been stated;
3. The two debts are due;
4. The **debts are liquidated and demandable**;
5. Over neither of them be any retention or controversy, commenced by third parties and communicated in due time to the debtor.[24]

Petitioners failed to properly discharge their burden to show that

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[20] CA *rollo*, p. 487.

[21] *Id.* at 487-486.

[22] *Id.* at 524.

[23] CIVIL CODE, Art. 1278.

[24] CIVIL CODE, Art. 1279.

the debts are liquidated and demandable. Consequently, legal compensation is inapplicable.

A claim is liquidated when the amount and time of payment is fixed.[25] If acknowledged by the debtor, although not in writing, the claim must be treated as liquidated.[26] When the defendant, who has an unliquidated claim, sets it up by way of counterclaim, and a judgment is rendered liquidating such claim, it can be compensated against the plaintiff's claim from the moment it is liquidated by judgment.[27] We have restated this in *Solinap v. Hon. Del Rosario*[28] where we held that compensation takes place only if both obligations are liquidated.

In addition, paragraph 6 of the contract of lease between the petitioners and the respondent reads:

> The lessee shall maintain the leased premises including the parking lot in good, clean and sanitary condition and shall make all the necessary repairs thereon at their own expense *except repairs of the structural defects* which shall be the responsibility of the lessor. x x x (Emphasis supplied)

As the contract contrastingly treats necessary repairs, which are on the account of the lessee, and repairs of structural defects, which are the responsibility of the lessor, the *onus* of the petitioners is two-fold: (1) to establish the existence, amount and demandability of their claim; and (2) to show that these expenses were incurred in the repair of structural defects.

Respecting these issues, petitioner Lao testified as follows:[29]

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[25] Sentence Spanish Supr. Trib. March 21, 1898, 83 Jur. Civ. 679.

[26] *Ogden v. Cain*, 5 La. Ann. 160; *Reynaud v. His Creditors*, 4 Rob. (La.) 514.

[27] TOLENTINO, *CIVIL CODE OF THE PHILIPPINES,* Vol. IV (1973 edition), 354 citing Manresa 409-410.

[28] 208 Phil. 561, 565 (1983).

[29] *Rollo*, pp. 107-115.

Q: When you took possession of the premises on January 16, 1993, were you able to notice or discover anything about the structure of the premises, if any?

A: Being an engineer, when I took possession of the premises I have noticed the structure of the premises specially the trusses and the roof and the ceiling were already dilapidated.

Q: What else if any were you able to discover?

A: We discovered that when it is raining, water [seeped] through the floor and it caused a lot of mess especially the carpet getting wet.

Q: What did you do next after having discovered the defects in the premises?

A: I tried to talk to Mr. Cruz regarding our position because based on our agreement the rental is high because according to him we can move in immediately without so much cost to our company that's why the 3 of us came up only with ₱120,000.00 for the immediate operation of the Karaoke but Mr. Cruz told us never mind, *pag-usapan na natin sa ibang araw yan.*

Q: What happened next after you were [able] to talk to Mr. Cruz?

A: The group decided not to waste time because our rental expenses are already running so, we decided that I will [be] the one to shoulder first the construction and repair of the premises.

Q: How much did you spend and were you able to repair the defects?

A: I was able to repair the defects but it caused me a lot of time and money because usually repairs cannot be controlled and my expenses reached more than ₱500,000.00.

Q: I am showing to you a document can you please go over it and identify it if this is the document?

A: This is the contract signed by me and the sub-contractor who was assigned to renovate and prepare the whole structure.

Q: According to this document you submitted a quotation?

A: Yes, sir.

Q: And whose signature appears above the name Gregorio Tamayo?

A: The signature of an engineer/contractor, sir.

Q: Among the list of scope of work can you please specify the repairs done x x x.
A: It was indicated here that the roofing repair works costs around ₱45,000.00; the ceiling repair works is ₱50,000.00; the floor repair works is ₱50,000.00; and the water proofing works is ₱10,000.00.

Q: And what happened to the repairs?
A: It was completed, sir.

x x x x x x x x x

Q: All in all how much did it cost you in Exh. "2"?
A: More than ₱500,00.00 sir.

x x x x x x x x x

Q: With respect to the roofing repair works, the ceiling repair works, the flooring repair works and the water proofing works, all in all how much is total amount you incurred in these repairs?
A: ₱ 140,000.00 sir

x x x x x x x x x

Q: And, what happened next after informing the lessor.
A: He told me that I being an engineer/contractor, just proceed with the repair works and then he said, *saka na lang pag-usapan yan maliit lang naman na bagay yan*.

Q: Were you able to talk to him some other day with respect to these repairs?
A: Yes, sir.

Q: What happened when you were able to talk to Mr. Cruz?
A: He is shy on us sometime but don't talk to us, sir.

On the basis of Lao's testimony, the MeTC found that "the group conducted structural and necessary repairs thereon, incurring the sum of ₱545,000.00, ₱125,000.00 of which was spent on structural defects."

We are not persuaded. The evidence presented by the petitioners failed to establish by preponderant evidence that they have indeed

spent the amounts they claim. Based on the arguments presented by both parties, we agree with the observation of the CA that:

> Petitioners did not present any convincing evidence of proof which could support their allegation on structural defects and the subsequent repairs made on the leased premises, *i.e.* documentary evidence (receipts of payments made to subcontractor Tamayo for the repairs made on the building) except for the self-serving testimony of petitioner Lao. They (petitioners) merely submitted an estimated statement of account which did not show that there were actual expenses made for the alleged structural defects. Neither were they able to submit proofs of actual expenses made on the alleged structural defects. Besides, it is contrary to human experience that a lessee would continually renew the lease contract if the subject property were not in good condition free from structural defects.
>
> Further, the testimony of Tamayo, the alleged subcontractor who made the repairs on the leased premises did not convince Us that there were repairs made thereat since he failed to present any receipts of acknowledgments of payments which was allegedly made to him.[30]

Further manifesting the present appeal's lack of merit, petitioner Lao, as shown above in his testimony, did not define the lessor's and the lessees' understanding of the demarcation between "repairs of structural defects" and "necessary repairs." Even petitioners' second witness, Gregorio Tamayo, the contractor who supposedly performed the repair work on the leased premises, did not credibly and categorically testify on classification of structural repairs:

> Q: Insofar as you are concerned, <u>what do you mean by structural?</u>
> A: Because when I inspect the building…
>
> Q: <u>In this room, what is the structural defect?</u>
> A: <u>Rocks on the wall</u>.
>
> Q: **It has something to do with the foundation?**
> A: **Maybe, sir.**[31] (Emphasis supplied)

The petitioners attempted to prove that they spent for the repair of the roofing, ceiling and flooring, as well as for

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[30] *Id.* at 37.

[31] *Id.* at 532-533.

waterproofing. However, they failed to appreciate that, as per their lease contract, only structural repairs are for the account of the lessor, herein respondent SPI. In which case, they overlooked the need to establish that aforesaid repairs are structural in nature, in the context of their earlier agreement. It would have been an altogether different matter if the lessor was informed of the said structural repairs and he implicitly or expressly consented and agreed to take responsibility for the said expenses. Such want of evidence on this respect is fatal to this appeal. Consequently, their claim remains unliquidated and, legal compensation is inapplicable.

For failure to timely appeal the RTC Decision before the CA and subsequently the latter's Decision before this Court, SPI can no longer ask for affirmative reliefs.

In its Memorandum, SPI prays that petitioners be ordered to pay 3% interest monthly as stipulated in the Contract for Lease, plus attorney's fees. However, as SPI did not appeal the RTC Decision before the appellate court, we cannot act on the same.

It is well-settled that a party who has not appealed from a Decision cannot seek any relief other than what is provided in the judgment appealed from.[32] SPI did not appeal, thus it cannot obtain from the appellate court any affirmative relief other than those granted in the Decision of the court below.[33] It can only advance any argument that it may deem necessary to defeat petitioners' claim or to uphold the Decision that is being disputed, and it can assign errors in its brief if such is required to strengthen the views expressed by the court *a quo*.[34] These assigned errors, in turn, may be considered by the appellate court solely to maintain the appealed decision on other grounds, but not for the purpose

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[32] *Solidbank Corp. v. Court of Appeals*, 456 Phil. 879, 887 (2003).

[33] *Quezon Development Bank v. Court of Appeals*, 360 Phil. 392, 399 (1998).

[34] *Spouses Buot v. Court of Appeals*, 410 Phil. 183, 200 (2001).

of reversing or modifying the judgment in SPI's favor and giving it other reliefs.[35]

We find on record that SPI's counsel, with the concurrence of its Vice President, withdrew his appearance on November 24, 2000. The RTC granted said withdrawal in its Order dated January 5, 2001. Subsequently, the case was decided by the RTC and appealed by the petitioners to the CA. In due time, the CA rendered judgment on the same and petitioners filed this Petition for Review on *Certiorari*. SPI did not interpose an appeal from the RTC Decision nor from the CA Decision. After more than six years, on September 13, 2007, a new law firm entered its appearance as counsel of SPI.[36] SPI now claims that it was not able to appeal the Decision of the RTC and subsequently of the CA which failed to impose 3% monthly interest as provided in the Contract of Lease because it never received said Decisions, considering that its counsel has migrated to another country and that petitioners misled the courts about SPI's address.[37]

We are not persuaded. SPI failed to exercise due diligence in keeping itself updated on the developments of the case. That its erstwhile counsel has not communicated for a long period of time and has migrated abroad, should have cautioned it that something was amiss with the case. By that time, SPI should have initiated moves to locate its counsel or to inquire from the court on the progress of the case. It should have ensured that its address on record with the court is updated and current. Thus, it has been equally stressed that litigants represented by counsel should not expect that all they need to do is sit back, relax and await the outcome of the case.[38] Instead, they should give the necessary assistance to their counsel and exercise due diligence to monitor the status of the case for what is at stake is ultimately their interest.

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[35] *Spouses Custodio v. Court of Appeals*, 323 Phil. 575, 584 (1996).

[36] *Rollo* at 430-433.

[37] *Id.* at 464.

[38] *Friend v. Union Bank of the Philippines*, G.R. No. 165767, November 29, 2005, 476 SCRA 453, 549.

WHEREFORE, the instant petition is *DENIED*. The June 30, 2003 Decision of the Court of Appeals in CA-G.R. SP No. 76631 ordering the petitioners to pay ₱95,000.00 as unpaid rentals and the August 9, 2004 Resolution denying the motion for reconsideration are *AFFIRMED*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 166134. June 29, 2010]

ANGELES CITY, *petitioner, vs.* **ANGELES ELECTRIC CORPORATION and REGIONAL TRIAL COURT BRANCH 57, ANGELES CITY,** *respondents.*

SYLLABUS

1. **TAXATION; COLLECTION OF TAXES; PROHIBITION ON THE ISSUANCE OF A WRIT OF INJUNCTION TO ENJOIN THE COLLECTION OF TAXES APPLIES ONLY TO NATIONAL INTERNAL REVENUE TAXES, AND NOT TO LOCAL TAXES. —** A principle deeply embedded in our jurisprudence is that taxes being the lifeblood of the government should be collected promptly, without unnecessary hindrance or delay. In line with this principle, the National Internal Revenue Code of 1997 (NIRC) expressly provides that no court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by the code. An exception to this rule obtains only when in the opinion of the Court of Tax Appeals (CTA) the collection thereof may jeopardize the interest of the government and/or the taxpayer. The situation, however, is different in

the case of the collection of local taxes as there is no express provision in the LGC prohibiting courts from issuing an injunction to restrain local governments from collecting taxes. Thus, in the case of *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch II,* cited by the petitioner, we ruled that: "Unlike the National Internal Revenue Code, the Local Tax Code does not contain any specific provision prohibiting courts from enjoining the collection of local taxes. Such statutory lapse or intent, however it may be viewed, may have allowed preliminary injunction where local taxes are involved but cannot negate the procedural rules and requirements under Rule 58." x x x Nevertheless, it must be emphasized that although there is no express prohibition in the LGC, injunctions enjoining the collection of local taxes are frowned upon. Courts therefore should exercise extreme caution in issuing such injunctions.

2. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ISSUANCE OF A WRIT OF PRELIMINARY INJUNCTION; REQUISITES. —** Section 3, Rule 58, of the Rules of Court lays down the requirements for the issuance of a writ of preliminary injunction, *viz*: "(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually; (b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or (c) That a party, court, or agency or a person is doing, threatening, or attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual." Two requisites must exist to warrant the issuance of a writ of preliminary injunction, namely: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.

3. **ID.; ID.; ID.; ISSUANCE THEREOF RESTS ENTIRELY WITHIN THE DISCRETION OF THE COURT AND WILL NOT BE INTERFERED WITH, EXCEPT WHERE THERE IS GRAVE ABUSE OF DISCRETION. —** As a rule, the

issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and will not be interfered with, except where there is grave abuse of discretion committed by the court.

4. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; WHEN TO PROSPER AS A GROUND FOR *CERTIORARI*. — For grave abuse of discretion to prosper as a ground for *certiorari*, it must be demonstrated that the lower court or tribunal has exercised its power in an arbitrary and despotic manner, by reason of passion or personal hostility, and it must be patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law. In other words, mere abuse of discretion is not enough.

APPEARANCES OF COUNSEL

Edgardo G. Pineda for petitioner.
Villanueva De Leon Hipolito Cusi & Tuazon for private respondent.

D E C I S I O N

DEL CASTILLO, *J*.:

The prohibition on the issuance of a writ of injunction to enjoin the collection of taxes applies only to national internal revenue taxes, and not to local taxes.

This Petition[1] for *Certiorari* under Rule 65 of the Rules of Court seeks to set aside the Writ of Preliminary Injunction issued by the Regional Trial Court (RTC) of Angeles City, Branch 57, in Civil Case No. 11401, enjoining Angeles City and its City Treasurer from levying, seizing, disposing and selling at public auction the properties owned by Angeles Electric Corporation (AEC).

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

Factual Antecedents

On June 18, 1964, AEC was granted a legislative franchise under Republic Act No. (RA) 4079[2] to construct, maintain and operate an electric light, heat, and power system for the purpose of generating and distributing electric light, heat and power for sale in Angeles City, Pampanga. Pursuant to Section 3-A thereof,[3] AEC's payment of franchise tax for gross earnings from electric current sold was in lieu of all taxes, fees and assessments.

On September 11, 1974, Presidential Decree No. (PD) 551 reduced the franchise tax of electric franchise holders. Section 1 of PD 551 provided that:

> SECTION 1. Any provision of law or local ordinance to the contrary notwithstanding, the franchise tax payable by all grantees of franchises to generate, distribute and sell electric current for light, heat and power shall be two percent (2%) of their gross receipts received from the sale of electric current and from transactions incident to the generation, distribution and sale of electric current.
>
> Such franchise tax shall be payable to the Commissioner of Internal Revenue or his duly authorized representative on or before the twentieth day of the month following the end of each calendar quarter or month as may be provided in the respective franchise or pertinent municipal regulation and shall, any provision of the Local Tax Code or any other law to the contrary notwithstanding, be in lieu of all taxes and assessments of whatever nature imposed by any national or local authority on earnings, receipts, income and privilege of generation, distribution and sale of electric current.

On January 1, 1992, RA 7160 or the Local Government Code (LGC) of 1991 was passed into law, conferring upon provinces

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[2] Amended by Republic Act No. 9381, which lapsed into law on March 9, 2010.

[3] Sec. 3-A. The franchise tax paid for the gross earnings from electric current sold under this franchise shall be in lieu of all taxes, fees and assessments of whatever authority now and in the future upon privileges, capital stock, income, franchise, right of way, machinery and equipment, poles, wires, transformers, watt-hour meters, insulators of the grantee and all other property owned or operated by the grantee under this concession or franchise, from which taxes and assessments the grantee is hereby expressly exempted.

and cities the power, among others, to impose tax on businesses enjoying franchise.[4] In accordance with the LGC, the *Sangguniang Panlungsod* of Angeles City enacted on December 23, 1993 Tax Ordinance No. 33, S-93, otherwise known as the Revised Revenue Code of Angeles City (RRCAC).

On February 7, 1994, a petition seeking the reduction of the tax rates and a review of the provisions of the RRCAC was filed with the *Sangguniang Panlungsod* by Metro Angeles Chamber of Commerce and Industry Inc. (MACCI) of which AEC is a member. There being no action taken by the *Sangguniang Panlungsod* on the matter, MACCI elevated the petition[5] to the Department of Finance, which referred the same to the Bureau of Local Government Finance (BLGF). In the petition, MACCI alleged that the RRCAC is oppressive, excessive, unjust and confiscatory; that it was published only once, simultaneously on January 22, 1994; and that no public hearings were conducted prior to its enactment. Acting on the petition, the BLGF issued a First Indorsement[6] to the City Treasurer of Angeles City, instructing the latter to make representations with the *Sangguniang Panlungsod* for the appropriate amendment of the RRCAC in order to ensure compliance with the provisions of the LGC, and to make a report on the action taken within five days.

Thereafter, starting July 1995, AEC has been paying the local franchise tax to the Office of the City Treasurer on a quarterly basis, in addition to the national franchise tax it pays every quarter to the Bureau of Internal Revenue (BIR).

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[4] SECTION 137. *Franchise Tax.* — Notwithstanding any exemption granted by any law or other special law, the province may impose a tax on businesses enjoying a franchise, at the rate not exceeding fifty percent (50%) of one percent (1%) of the gross annual receipts for the preceding calendar year based on the incoming receipt, or realized, within its territorial jurisdiction.

In the case of a newly started business, the tax shall not exceed one-twentieth (1/20) of one percent (1%) of the capital investment. In the succeeding calendar year, regardless of when the business started to operate, the tax shall be based on the gross receipts for the preceding calendar year, or any fraction thereon, as provided herein.

[5] *Rollo,* pp. 63-73.

[6] *Id.* at 74.

Proceedings before the City Treasurer

On January 22, 2004, the City Treasurer issued a Notice of Assessment[7] to AEC for payment of business tax, license fee and other charges for the period 1993 to 2004 in the total amount of ₱94,861,194.10. Within the period prescribed by law, AEC protested the assessment claiming that:

(a) pursuant to RA 4079, it is exempt from paying local business tax;

(b) since it is already paying franchise tax on business, the payment of business tax would result in double taxation;

(c) the period to assess had prescribed because under the LGC, taxes and fees can only be assessed and collected within five (5) years from the date they become due; and

(d) the assessment and collection of taxes under the RRCAC cannot be made retroactive to 1993 or prior to its effectivity.[8]

On February 17, 2004, the City Treasurer denied the protest for lack of merit and requested AEC to settle its tax liabilities.[9]

Proceedings before the RTC

Aggrieved, AEC appealed the denial of its protest to the RTC of Angeles City *via* a Petition for Declaratory Relief,[10] docketed as Civil Case No. 11401.

On April 5, 2004, the City Treasurer levied on the real properties of AEC.[11] A Notice of Auction Sale[12] was published

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[7] *Id.* at 81-91.

[8] *Id.* at 92-96.

[9] *Id.* at 103.

[10] *Id.* at 18-37; The Petition for Declaratory Relief filed by AEC should be considered as an appeal under Section 195 of the LGC. In the case of *CJH Development Corporation v. Bureau of Internal Revenue,* G.R. No. 172457, December 24, 2008, 575 SCRA 467, it was ruled that courts do not have jurisdiction over petitions for declaratory relief involving tax assessments.

[11] *Id.* at 113-114.

[12] *Id.* at 157-158.

and posted announcing that a public auction of the levied properties of AEC would be held on May 7, 2004.

This prompted AEC to file with the RTC, where the petition for declaratory relief was pending, an Urgent Motion for Issuance of Temporary Restraining Order and/or Writ of Preliminary Injunction[13] to enjoin Angeles City and its City Treasurer from levying, annotating the levy, seizing, confiscating, garnishing, selling and disposing at public auction the properties of AEC.

Meanwhile, in response to the petition for declaratory relief filed by AEC, Angeles City and its City Treasurer filed an Answer with Counterclaim[14] to which AEC filed a Reply.[15]

After due notice and hearing, the RTC issued a Temporary Restraining Order (TRO)[16] on May 4, 2004, followed by an Order[17] dated May 24, 2004 granting the issuance of a Writ of Preliminary Injunction, conditioned upon the filing of a bond in the amount of ₱10,000,000.00. Upon AEC's posting of the required bond, the RTC issued a Writ of Preliminary Injunction on May 28, 2004,[18] which was amended on May 31, 2004 due to some clerical errors.[19]

On August 5, 2004, Angeles City and its City Treasurer filed a "Motion for Dissolution of Preliminary Injunction and Motion for Reconsideration of the Order dated May 24, 2004,"[20] which was opposed by AEC.[21]

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[13] *Id.* at 104-112.

[14] *Id.* at 124-131.

[15] Records, pp. 120-124.

[16] *Rollo,* pp. 132-137.

[17] *Id.* at 138-143.

[18] Records, pp. 154-155.

[19] *Id.* at 157-158.

[20] *Rollo,* pp. 144-150.

[21] Records, pp. 190-194.

Finding no compelling reason to disturb and reconsider its previous findings, the RTC denied the joint motion on October 14, 2004.[22]

Issue

Being a special civil action for *certiorari*, the issue in the instant case is limited to the determination of whether the RTC gravely abused its discretion in issuing the writ of preliminary injunction enjoining Angeles City and its City Treasurer from levying, selling, and disposing the properties of AEC. All other matters pertaining to the validity of the tax assessment and AEC's tax exemption must therefore be left for the determination of the RTC where the main case is pending decision.

Petitioner's Arguments

Petitioner's main argument is that the collection of taxes cannot be enjoined by the RTC, citing *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch II,*[23] wherein the lower court's denial of a motion for the issuance of a writ of preliminary injunction to enjoin the collection of a local tax was upheld. Petitioner further reasons that since the levy and auction of the properties of a delinquent taxpayer are proper and lawful acts specifically allowed by the LGC, these cannot be the subject of an injunctive writ. Petitioner likewise insists that AEC must first pay the tax before it can protest the assessment. Finally, petitioner contends that the tax exemption claimed by AEC has no legal basis because RA 4079 has been expressly repealed by the LGC.

Private respondent's Arguments

Private respondent AEC on the other hand asserts that there was no grave abuse of discretion on the part of the RTC in issuing the writ of preliminary injunction because it was issued after due notice and hearing, and was necessary to prevent the petition from becoming moot. In addition, AEC claims that the

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[22] *Rollo,* pp. 151-154.

[23] 253 Phil. 494 (1989).

issuance of the writ of injunction was proper since the tax assessment issued by the City Treasurer is not yet final, having been seasonably appealed pursuant to Section 195[24] of the LGC. AEC likewise points out that following the case of *Pantoja v. David*,[25] proceedings to invalidate a warrant of distraint and levy to restrain the collection of taxes do not violate the prohibition against injunction to restrain the collection of taxes because the proceedings are directed at the right of the City Treasurer to collect the tax by distraint or levy. As to its tax liability, AEC maintains that it is exempt from paying local business tax. In any case, AEC counters that the issue of whether it is liable to pay the assessed local business tax is a factual issue that should be determined by the RTC and not by the Supreme Court via a petition for *certiorari* under Rule 65 of the Rules of Court.

Our Ruling

We find the petition bereft of merit.

The LGC does not specifically prohibit an injunction enjoining the collection of taxes

A principle deeply embedded in our jurisprudence is that taxes being the lifeblood of the government should be collected

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[24] SECTION 195. *Protest of Assessment*. — When the local treasurer or his duly authorized representative finds that the correct taxes, fees, or charges have not been paid, he shall issue a notice of assessment stating the nature of the tax, fee, or charge, the amount of deficiency, the surcharges, interests and penalties. Within sixty (60) days from the receipt of the notice of assessment, the taxpayer may file a written protest with the local treasurer contesting the assessment; otherwise, the assessment shall become final and executory. The local treasurer shall decide the protest within sixty (60) days from the time of its filing. If the local treasurer finds the protest to be wholly or partly meritorious, he shall issue a notice cancelling wholly or partially the assessment. However, if the local treasurer finds the assessment to be wholly or partly correct, he shall deny the protest wholly or partly with notice to the taxpayer. The taxpayer shall have thirty (30) days from the receipt of the denial of the protest or from the lapse of the sixty-day (60) period prescribed herein within which to appeal with the court of competent jurisdiction otherwise the assessment becomes conclusive and unappealable.

[25] 111 Phil. 197, 199-200 (1961).

promptly,[26] without unnecessary hindrance[27] or delay.[28] In line with this principle, the National Internal Revenue Code of 1997 (NIRC) expressly provides that no court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by the code.[29] An exception to this rule obtains only when in the opinion of the Court of Tax Appeals (CTA) the collection thereof may jeopardize the interest of the government and/or the taxpayer.[30]

The situation, however, is different in the case of the collection of local taxes as there is no express provision in the LGC prohibiting courts from issuing an injunction to restrain local governments from collecting taxes. Thus, in the case of *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch II,* cited by the petitioner, we ruled that:

> Unlike the National Internal Revenue Code, the Local Tax Code[31] does not contain any specific provision prohibiting courts from enjoining the collection of local taxes. Such statutory lapse or intent, however it may be viewed, may have allowed preliminary injunction where local taxes are involved but cannot negate the procedural rules and requirements under Rule 58.[32]

In light of the foregoing, petitioner's reliance on the above-cited case to support its view that the collection of taxes cannot be enjoined is misplaced. The lower court's denial of the motion for the issuance of a writ of preliminary injunction to enjoin the

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[26] *Filipino Metals Corp. v. Secretary of the Dept. of Trade and Industry*, 502 Phil. 191, 198 (2005).

[27] *Republic v. Caguioa,* G.R. No. 168584, October 15, 2007, 536 SCRA 193, 223-224.

[28] *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch II, supra* note 23 at 500.

[29] NATIONAL INTERNAL REVENUE CODE OF 1997, Section 218.

[30] Section 11 of RA 1125, as amended by Section 9 of RA 9282.

[31] Now Local Government Code.

[32] *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch II, supra* note 23 at 499.

collection of the local tax was upheld in that case, not because courts are prohibited from granting such injunction, but because the circumstances required for the issuance of writ of injunction were not present.

Nevertheless, it must be emphasized that although there is no express prohibition in the LGC, injunctions enjoining the collection of local taxes are frowned upon. Courts therefore should exercise extreme caution in issuing such injunctions.

No grave abuse of discretion was committed by the RTC

Section 3, Rule 58, of the Rules of Court lays down the requirements for the issuance of a writ of preliminary injunction, *viz*:

(a) That the applicant is entitled to the relief demanded, and the whole or part of such relief consists in restraining the commission or continuance of the acts complained of, or in the performance of an act or acts, either for a limited period or perpetually;

(b) That the commission, continuance or non-performance of the act or acts complained of during the litigation would probably work injustice to the applicant; or

(c) That a party, court, or agency or a person is doing, threatening, or attempting to do, or is procuring or suffering to be done, some act or acts probably in violation of the rights of the applicant respecting the subject of the action or proceeding, and tending to render the judgment ineffectual.

Two requisites must exist to warrant the issuance of a writ of preliminary injunction, namely: (1) the existence of a clear and unmistakable right that must be protected; and (2) an urgent and paramount necessity for the writ to prevent serious damage.[33]

In issuing the injunction, the RTC ratiocinated that:

It is very evident on record that petitioner[34] resorted and filed an urgent motion for issuance of a temporary restraining order and

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[33] *Talento v. Escalada, Jr.*, G.R. No. 180884, June 27, 2008, 556 SCRA 491, 500.

[34] Herein Private Respondent AEC.

preliminary injunction to stop the scheduled auction sale only when a warrant of levy was issued and published in the newspaper setting the auction sale of petitioner's property by the City Treasurer, merely few weeks after the petition for declaratory relief has been filed, because if the respondent will not be restrained, it will render this petition moot and academic. To the mind of the Court, since there is no other plain, speedy and adequate remedy available to the petitioner in the ordinary course of law except this application for a temporary restraining order and/or writ of preliminary injunction to stop the auction sale and/or to enjoin and/or restrain respondents from levying, annotating the levy, seizing, confiscating, garnishing, selling and disposing at public auction the properties of petitioner, or otherwise exercising other administrative remedies against the petitioner and its properties, this alone justifies the move of the petitioner in seeking the injunctive reliefs sought for.

Petitioner in its petition is questioning the assessment or the ruling of the City Treasurer on the business tax and fees, and not the local ordinance concerned. This being the case, the Court opines that notice is not required to the Solicitor General since what is involved is just a violation of a private right involving the right of ownership and possession of petitioner's properties. Petitioner, therefore, need not comply with Section 4, Rule 63 requiring such notice to the Office of the Solicitor General.

The Court is fully aware of the Supreme Court pronouncement that injunction is not proper to restrain the collection of taxes. The issue here as of the moment is the restraining of the respondent from pursuing its auction sale of the petitioner's properties. The right of ownership and possession of the petitioner over the properties subject of the auction sale is at stake.

Respondents assert that not one of the witnesses presented by the petitioner have proven what kind of right has been violated by the respondent, but merely mentioned of an injury which is only a scenario based on speculation because of petitioner's claim that electric power may be disrupted.

Engr. Abordo's testimony reveals and even his Affidavit Exhibit "S" showed that if the auction sale will push thru, petitioner will not only lose control and operation of its facility, but its employees will also be denied access to equipments vital to petitioner's operations, and since only the petitioner has the capability to operate Petersville sub station, there will be a massive power failure or blackout which

will adversely affect business and economy, if not lives and properties in Angeles City and surrounding communities.

Petitioner, thru its witnesses, in the hearing of the temporary restraining order, presented sufficient and convincing evidence proving irreparable damages and injury which were already elaborated in the temporary restraining order although the same may be realized only if the auction sale will proceed. And unless prevented, restrained, and enjoined, grave and irreparable damage will be suffered not only by the petitioner but all its electric consumers in Angeles, Clark, Dau and Bacolor, Pampanga.

The purpose of injunction is to prevent injury and damage from being incurred, otherwise, it will render any judgment in this case ineffectual.

"As an extraordinary remedy, injunction is calculated to preserve or maintain the status quo of things and is generally availed of to prevent actual or threatened acts, until the merits of the case can be heard" (*Cagayan de Oro City Landless Res. Assn. Inc. vs. CA*, 254 SCRA 220)

It appearing that the two essential requisites of an injunction have been satisfied, as there exists a right on the part of the petitioner to be protected, its right[s] of ownership and possession of the properties subject of the auction sale, and that the acts (conducting an auction sale) against which the injunction is to be directed, are violative of the said rights of the petitioner, the Court has no other recourse but to grant the prayer for the issuance of a writ of preliminary injunction considering that if the respondent will not be restrained from doing the acts complained of, it will preempt the Court from properly adjudicating on the merits the various issues between the parties, and will render moot and academic the proceedings before this court.[35]

As a rule, the issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and will not be interfered with, except where there is grave abuse of discretion committed by the court.[36] For grave abuse of discretion to prosper as a ground for *certiorari*, it must be

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[35] *Rollo*, pp. 142-unpaged.

[36] *City of Naga v. Asuncion,* G.R. No. 174042, July 9, 2008, 557 SCRA 528, 545.

demonstrated that the lower court or tribunal has exercised its power in an arbitrary and despotic manner, by reason of passion or personal hostility, and it must be patent and gross as would amount to an evasion or to a unilateral refusal to perform the duty enjoined or to act in contemplation of law.[37] In other words, mere abuse of discretion is not enough.[38]

Guided by the foregoing, we find no grave abuse of discretion on the part of the RTC in issuing the writ of injunction. Petitioner, who has the burden to prove grave abuse of discretion,[39] failed to show that the RTC acted arbitrarily and capriciously in granting the injunction. Neither was petitioner able to prove that the injunction was issued without any factual or legal justification. In assailing the injunction, petitioner primarily relied on the prohibition on the issuance of a writ of injunction to restrain the collection of taxes. But as we have already said, there is no such prohibition in the case of local taxes. Records also show that before issuing the injunction, the RTC conducted a hearing where both parties were given the opportunity to present their arguments. During the hearing, AEC was able to show that it had a clear and unmistakable legal right over the properties to be levied and that it would sustain serious damage if these properties, which are vital to its operations, would be sold at public auction. As we see it then, the writ of injunction was properly issued.

A final note. While we are mindful that the damage to a taxpayer's property rights generally takes a back seat to the paramount need of the State for funds to sustain governmental functions,[40] this rule finds no application in the instant case

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[37] *Levi Strauss (Phils.), Inc. v. Lim,* G.R. No. 162311, December 4, 2008, 573 SCRA 25, 42-43.

[38] *Basmala v. Commission on Elections,* G.R. No. 176724, October 6, 2008, 567 SCRA 664, 668.

[39] *Office of the Ombudsman v. Magno*, G.R. No. 178923, November 27, 2008, 572 SCRA 272, 286-287.

[40] *Valley Trading Co., Inc. v. Court of First Instance of Isabela, Branch II, supra* note 23 at 499-500.

where the disputed tax assessment is not yet due and demandable. Considering that AEC was able to appeal the denial of its protest within the period prescribed under Section 195 of the LGC, the collection of business taxes[41] through levy at this time is, to our mind, hasty, if not premature.[42] The issues of tax exemption, double taxation, prescription and the alleged retroactive application of the RRCAC, raised in the protest of AEC now pending with the RTC, must first be resolved before the properties of AEC can be levied. In the meantime, AEC's rights of ownership and possession must be respected.

WHEREFORE, the petition is hereby *DISMISSED.*

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

EN BANC

[G.R. No. 167622. June 29, 2010]

GREGORIO V. TONGKO, *petitioner, vs.* **THE MANUFACTURERS LIFE INSURANCE CO. (PHILS.), INC. and RENATO A. VERGEL DE DIOS,** *respondents.*

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[41] This should be distinguished from real property taxes. Section 231 of the LGC provides that an appeal on assessments of real property made under the provision of the Code shall, in no case, suspend the collection of the corresponding realty taxes on the property involved.

[42] Vitug, Jose C. and Acosta, Ernesto D., *Tax Law and Jurisprudence,* 2006 Edition, p. 487.

SYLLABUS

1. **MERCANTILE LAW; INSURANCE CODE; INSURANCE AGENCY; ELEMENTS OF CONTROL SPECIFIC TO AN INSURANCE AGENCY SHOULD NOT BE READ AS ELEMENTS OF CONTROL IN AN EMPLOYMENT RELATIONSHIP GOVERNED BY THE LABOR CODE; INSURANCE AGENTS, QUALIFICATION AND DUTY. —** [U]nder the Insurance Code, the agent must, as a matter of qualification, be licensed and must also act within the parameters of the authority granted under the license and under the contract with the principal. Other than the need for a license, the agent is limited in the way he offers and negotiates for the sale of the company's insurance products, in his collection activities, and in the delivery of the insurance contract or policy. Rules regarding the desired results (*e.g.*, the required volume to continue to qualify as a company agent, rules to check on the parameters on the authority given to the agent, and rules to ensure that industry, legal and ethical rules are followed) are built-in elements of control specific to an insurance agency and should not and cannot be read as elements of control that attend an employment relationship governed by the Labor Code.

2. **CIVIL LAW; SPECIAL CONTRACTS; AGENCY; AGENT, DEFINED; AGENCY AND EMPLOYMENT, DISTINGUISHED. —** [T]he Civil Code defines an agent as a "person [who] binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter." While this is a very broad definition that on its face may even encompass an employment relationship, the distinctions between agency and employment are sufficiently established by law and jurisprudence. Generally, the determinative element is the control exercised over the one rendering service. The employer controls the employee both in the results and in the means and manner of achieving this result. The principal in an agency relationship, on the other hand, also has the prerogative to exercise control over the agent in undertaking the assigned task based on the parameters outlined in the pertinent laws.

3. **ID.; ID.; ID.; PROVISIONS ON AGENCY ARE APPLICABLE TO AN INSURANCE AGENCY. —** Under the general law on agency as applied to insurance, an agency must be express in

light of the need for a license and for the designation by the insurance company. In the present case, the Agreement fully serves as grant of authority to Tongko as Manulife's insurance agent. This agreement is supplemented by the company's agency practices and usages, duly accepted by the agent in carrying out the agency. By authority of the Insurance Code, an insurance agency is for compensation, a matter the Civil Code Rules on Agency presumes in the absence of proof to the contrary. Other than the compensation, the principal is bound to advance to, or to reimburse, the agent the agreed sums necessary for the execution of the agency. By implication at least under Article 1994 of the Civil Code, the principal can appoint two or more agents to carry out the same assigned tasks, based necessarily on the specific instructions and directives given to them. With particular relevance to the present case is the provision that "In the execution of the agency, the agent shall act in accordance with the instructions of the principal." This provision is pertinent for purposes of the necessary control that the principal exercises over the agent in undertaking the assigned task, and is an area where the instructions can intrude into the labor law concept of control so that minute consideration of the facts is necessary. A related article is Article 1891 of the Civil Code which binds the agent to render an account of his transactions to the principal.

4. **MERCANTILE LAW; INSURANCE CODE; INSURANCE AGENCY; ESTABLISHED IN CASE AT BAR. —** The primary evidence in the present case is the July 1, 1977 Agreement that governed and defined the parties' relations until the Agreement's termination in 2001. This Agreement stood for more than two decades and, **based on the records of the case,** was never modified or novated. It assumes primacy because it directly dealt with the nature of the parties' relationship up to the very end; moreover, both parties never disputed its authenticity or the accuracy of its terms. By the Agreement's express terms, Tongko served as an "insurance agent" for Manulife, not as an employee. x x x The Agreement, by its express terms, is in accordance with the Insurance Code model when it provided for a principal-agent relationship, and thus cannot lightly be set aside nor simply be considered as an agreement that does not reflect the parties' true intent. This intent, incidentally, is reinforced by the system of compensation the Agreement provides, which likewise is in accordance with the production-based sales commissions the Insurance Code

provides. x x x That Tongko assumed a leadership role but nevertheless wholly remained an agent is the inevitable conclusion that results from the reading of the Agreement (the only agreement on record in this case) and his continuing role thereunder as sales agent, from the perspective of the Insurance and the Civil Codes and in light of what Tongko himself attested to as his role as Regional Sales Manager. x x x Evidence indicates that Tongko consistently clung to the view that he was an independent agent selling Manulife insurance products since he invariably declared himself a business or self-employed person in his income tax returns. **This consistency with, and action made pursuant to the Agreement were pieces of evidence that were never mentioned nor considered in our Decision of November 7, 2008.** Had they been considered, they could, *at the very least*, serve as Tongko's admissions against his interest. Strictly speaking, Tongko's tax returns cannot but be legally significant because he certified under oath the amount he earned as gross business income, claimed business deductions, leading to his net taxable income. This should be evidence of the first order that cannot be brushed aside by a mere denial. Even on a layman's view that is devoid of legal considerations, the extent of his annual income alone renders his claimed employment status doubtful. Hand in hand with the concept of admission against interest in considering the tax returns, the concept of estoppel — a legal and equitable concept– necessarily must come into play. Tongko's previous admissions in several years of tax returns as an independent agent, as against his belated claim that he was all along an employee, are too diametrically opposed to be simply dismissed or ignored.

5. **ID.; ID.; ID.; CODES OF CONDUCT IMPOSED ON AGENTS IN THE SALE OF INSURANCE ARE NOT *PER SE* INDICATIVE OF LABOR LAW CONTROL; CASE AT BAR. —** What, to Tongko, serve as evidence of labor law control are the codes of conduct that Manulife imposes on its agents in the sale of insurance. The mere presentation of codes or of rules and regulations, however, is not *per se* indicative of labor law control as the law and jurisprudence teach us. x x x [T]he Insurance Code imposes obligations on both the insurance company and its agents in the performance of their respective obligations under the Code, particularly on licenses and their renewals, on the representations to be made to potential

customers, the collection of premiums, on the delivery of insurance policies, on the matter of compensation, and on measures to ensure ethical business practice in the industry.

6. **CIVIL LAW; SPECIAL CONTRACTS; AGENCY; THE GENERAL LAW ON AGENCY EXPRESSLY ALLOWS THE PRINCIPAL AN ELEMENT OF CONTROL OVER THE AGENT IN A MANNER CONSISTENT WITH AN AGENCY RELATIONSHIP. —** The general law on agency x x x expressly allows the principal an element of control over the agent in a manner consistent with an agency relationship. In this sense, these control measures cannot be read as indicative of labor law control. Foremost among these are the directives that the principal may impose on the agent to achieve the assigned tasks, to the extent that they do not involve the means and manner of undertaking these tasks. The law likewise obligates the agent to render an account; in this sense, the principal may impose on the agent specific instructions on how an account shall be made, particularly on the matter of expenses and reimbursements. To these extents, control can be imposed through rules and regulations without intruding into the labor law concept of control for purposes of employment.

7. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; LABOR LAW CONCEPT OF CONTROL; WHEN PRESENT. —** From jurisprudence, an important lesson that the *first Insular Life* case teaches us is that a commitment to abide by the rules and regulations of an insurance company does not *ipso facto* make the insurance agent an employee. Neither do guidelines somehow restrictive of the insurance agent's conduct necessarily indicate "control" as this term is defined in jurisprudence. **Guidelines indicative of labor law "control," as the *first Insular Life* case tells us, should not merely relate to the mutually desirable result intended by the contractual relationship; they must have the nature of dictating the means or methods to be employed in attaining the result, or of fixing the methodology and of binding or restricting the party hired to the use of these means.** In fact, results-wise, the principal can impose production quotas and can determine how many agents, with specific territories, ought to be employed to achieve the company's objectives. These are management policy decisions that the labor law element

of control cannot reach. Our ruling in these respects in the *first Insular Life* case was practically reiterated in *Carungcong*. Thus, x x x Manulife's codes of conduct, all of which do not intrude into the insurance agents' means and manner of conducting their sales and only control them as to the desired results and Insurance Code norms, cannot be used as basis for a finding that the labor law concept of control existed between Manulife and Tongko.

8. ID.; ID.; ID.; ID.; DE DIOS' LETTER IN CASE AT BAR IS NOT DETERMINATIVE OF CONTROL. — Even ***de Dios' letter*** is not determinative of control as it indicates the least amount of intrusion into Tongko's exercise of his role as manager in guiding the sales agents. Strictly viewed, de Dios' directives are merely operational guidelines on how Tongko could align his operations with Manulife's re-directed goal of being a "big league player." The method is to expand coverage through the use of more agents. This requirement for the recruitment of more agents is not a means-and-method control as it relates, more than anything else, and is directly relevant, to Manulife's objective of expanded business operations through the use of a bigger sales force whose members are all on a principal-agent relationship. **An important point to note here is that Tongko was not supervising regular full-time employees of Manulife engaged in the running of the insurance business; Tongko was effectively guiding his corps of sales agents, who are bound to Manulife through the same Agreement that he had with Manulife, all the while sharing in these agents' commissions through his overrides.** This is the lead agent concept x x x for want of a more appropriate term, since the title of Branch Manager used by the parties is really a misnomer given that what is involved is not a specific regular branch of the company but a corps of non-employed agents, defined in terms of covered territory, through which the company sells insurance. Still another point to consider is that Tongko was not even setting policies in the way a regular company manager does; company aims and objectives were simply relayed to him with suggestions on how these objectives can be reached through the expansion of a non-employee sales force.

9. MERCANTILE LAW; INSURANCE; INSURANCE AGENCY; INCOME IS DEPENDENT ON RESULT, NOT ON THE MEANS AND MANNER OF SELLING; CASE AT BAR.

— [A] large part of de Dios' letter focused on income, which Manulife demonstrated, in Tongko's case, to be unaffected by the new goal and direction the company had set. Income in insurance agency, of course, is dependent on results, not on the means and manner of selling – a matter for Tongko and his agents to determine and an area into which Manulife had not waded. Undeniably, de Dios' letter contained a directive to secure a competent assistant at Tongko's own expense. While couched in terms of a directive, it cannot strictly be understood as an intrusion into Tongko's method of operating and supervising the group of agents within his delineated territory. More than anything else, the "directive" was a signal to Tongko that his results were unsatisfactory, and was a suggestion on how Tongko's perceived weakness in delivering results could be remedied. It was a solution, with an eye on results, for a consistently underperforming group; its obvious intent was to save Tongko from the result that he then failed to grasp – that he could lose even his own status as an agent, as he in fact eventually did.

10. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; CONSTRUCTION IN FAVOR OF LABOR; APPLIES ONLY WHEN A DOUBT EXISTS IN THE IMPLEMENTATION AND APPLICATION OF THE LABOR CODE AND ITS IMPLEMENTING RULES. —** The dissent pointed out, as an argument to support its employment relationship conclusion, that any doubt in the existence of an employer-employee relationship should be resolved in favor of the existence of the relationship. This observation, apparently drawn from Article 4 of the Labor Code, is misplaced, as Article 4 applies only when a doubt exists in the "implementation and application" of the Labor Code and its implementing rules; it does not apply where no doubt exists as in a situation where the claimant clearly failed to substantiate his claim of employment relationship by the quantum of evidence the Labor Code requires.

CARPIO MORALES, ***J., separate dissenting opinion*****:**

1. **MERCANTILE LAW; INSURANCE; INSURANCE AGENCY; INSURANCE AGENT; MAY AT THE SAME TIME BE AN EMPLOYEE OF A LIFE INSURANCE COMPANY.**

— In *Great Pacific Life Assurance Corp. v. NLRC* (second Grepalife case), the Court found that an employer-employee relationship existed between Grepalife and the Ruiz brothers in their capacities as zone supervisor and district manager. On the relevant point, it elucidated: "True, it cannot be denied that **based on the definition of an 'insurance agent' in the Insurance Code some of the functions performed by private respondents were those of insurance agents. Nevertheless, it does not follow that they are not employees of Grepalife. The Insurance Code may govern the licensing requirements and other particular duties of insurance agents, but it does not bar the application of the Labor Code with regard to labor standards and labor relations**." This type of hybrid role is not novel. In *Insular Life Assurance Co., Ltd. v. NLRC (4th Division)* (second Insular Life case), the Court ruled that the therein respondent Pantaleon de los Reyes, acting unit manager, was an employee of Insular Life **only insofar as the management contract is concerned**. "Parenthetically, both petitioner and respondent NLRC treated the agency contract and the management contract entered into between petitioner and De los Reyes as contracts of agency. We[,] however[,] hold otherwise. Unquestionably there exist major distinctions between the two agreements. **While the first has the earmarks of an agency contract, the second is far removed from the concept of agency in that provided therein are conditionalities that indicate an employer-employee relationship**. The NLRC therefore was correct in finding that **private respondent was an employee of petitioner, but this holds true only insofar as the management contract is concerned**. In view thereof, the Labor Arbiter has jurisdiction over the case." In the present case, the employer-employee relationship is extant from petitioner's management functions as Unit Manager in 1983, later as Branch Manager in 1990, and finally as Regional Sales Manager in 1996, notwithstanding the absence of written management contracts. Even assuming that management contracts were executed, the law is deemed written into them and its application cannot be disavowed by the parties. Admittedly, petitioner was allowed to continue selling as an agent simultaneously with his management functions. Insofar as the termination of his agency agreement is concerned, the trial court has jurisdiction over such controversy.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; CONCEPT OF CONTROL; EXPLAINED. — In declaring the type of "control" that is necessary for one to be deemed an employee, the Court explained in the first Insular Life case, *viz*: "x x x It should, however, be obvious that not every form of control that the hiring party reserves to himself over the conduct of the party hired in relation to the services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term. A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether. Realistically, it would be a rare contract of service that gives untrammelled freedom to the party hired and eschews any intervention whatsoever in his performance of the engagement. Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and **those that control or fix the methodology and bind or restrict the party hired to the use of such means**. The first, which aim only to promote the result, create no employer-employee relationship unlike **the second, which address both the result and the means used to achieve it**. The distinction acquires particular relevance in the case of an enterprise affected with public interest, as is the business of insurance, and is on that account subject to regulation by the State with respect, not only to the relations between insurer and insured but also to the internal affairs of the insurance company. Rules and regulations governing the conduct of the business are provided for in the Insurance Code and enforced by the Insurance Commissioner. It is, therefore, usual and expected for an insurance company to promulgate a set of rules to guide its commission agents in selling its policies that they may not run afoul of the law and what it requires or prohibits. Of such a character are the rules which prescribe the qualifications of persons who may be insured, subject insurance applications to processing and approval by the Company, and also reserve to the Company the determination of the premiums to be paid and the schedules of payment. None of these really invades the agent's contractual prerogative to adopt his own selling methods or to sell insurance at his own time and convenience,

hence cannot justifiably be said to establish an employer-employee relationship between him and the company."

3. **ID.; ID.; ID.; ID.; PRESENCE OF "CONTROL OVER THE MEANS AND METHODS" MUST ALWAYS BE IN RELATION TO THE ATTAINMENT OF THE RESULT OR GOAL. —** The question on the presence of "control over the means and methods" must always be taken **in relation to the attainment of the result** or goal. The proper query is thus not whether respondent exercised means-and-method control but whether such control was directed in attaining which result. Although the bottomline of any commercial enterprise has always been sales, the identification of the specific "result or goal" in a particular case can only be gathered from the nature of one's functions. **It is thus imperative to identify the functions appurtenant to the goal before administering the control test.**

4. **ID.; ID.; ID.; ID.; PRESENCE OF CONTROL IN CASES INVOLVING INSURANCE MANAGERS, INDICATORS. —** [I]n the succeeding *Insular Life* case, the Court found the following indicators material in finding the presence of control in cases involving insurance managers: "Exclusivity of service, control of assignments and removal of agents under private respondent's unit, collection of premiums, furnishing of company facilities and materials as well as capital described as Unit Development Fund are but hallmarks of the management system in which herein private respondent worked. This obtaining, there is no escaping the conclusion that private respondent Pantaleon de los Reyes was an employee of herein petitioner."

5. **ID.; ID.; ID.; PRESENT IN CASE AT BAR. —** On top of the exclusive service rendered to respondent, which *AFP Mutual Benefit Association, Inc. v. NLRC* instructs to be not controlling, other factors were present. Petitioner established no agency of his own as the Metro North Region to which he was assigned remained intact even after his ties with respondent were severed. Respondent provided and furnished company facilities, equipments and materials for petitioner at respondent's Makati office. Respondent's control of assignments was evident from its act of removing the North Star Branch from petitioner's scope of the Metro North Region, on which a "memo to spell this matter out in greater detail" was advised to be issued shortly

thereafter. Respondent reserved to impose other improvements in the region after manifesting its intention to closely follow the region. Respondent's managers, like petitioner, could only refer and recommend to respondent prospective agents who would be part of their respective units. In other words, respondent had the last say on the composition and structure of the sales unit or region of petitioner. Respondent, in fact, even devised the deployment of an Agency Development Officer in the region to "contribute towards the manpower development work x x x as part of our agency growth campaign." Such an arrangement leads to no other conclusion than that respondent exercised the type of control of an employer, thereby wiping away the perception that petitioner was only a "lead agent" as viewed by the *ponencia*. Even respondent sees otherwise when it rebuked petitioner that "[y]ou (petitioner) may have excelled in the past as an agent but, to this date, you still carry the mindset of a senior agent." Insofar as his management functions were concerned, petitioner was no longer considered a senior agent.

VELASCO, JR., *J., dissenting opinion*:

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ELEMENTS.** — In resolving the issue of whether an employer-employee tie obtains, attention was focused, as jurisprudential trend dictates, on the *four-fold test* on employment developed and invariably invoked by labor officials and this Court as a guiding, if not governing norm, to determine, based on the facts and circumstances involved in a given situation, whether such relationship exists. These four elements are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the control test. And as stressed in the Decision subject of this recourse, of the four, the control test — meaning whether or not the employer controls or has reserved the right to control the employee not only as to the result of the work to be done but also the means and methods employed in reaching that end — constitutes the most important index of the existence of an employer-employee relationship.

2. **ID.; ID.; TERMINATION OF EMPLOYMENT; REGULAR EMPLOYMENT; SECURITY OF TENURE CANNOT BE**

DEFEATED BY ANY CONTRACT. — [T]he security of tenure of a regular employee flowing from employment cannot be defeated by any contract, for the law defines the employment status of a person. Article 280 of the Labor Code provides that "[t]he provisions of written agreement to the contrary notwithstanding and regardless of oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer."

3. **ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; EXISTENCE THEREOF IS NEVER LEFT FOR THE PARTIES TO DETERMINE. —** As it were, the question of the existence of an employer-employee relationship is a matter of public concern, never left, if ever, for the parties to peremptorily determine. To borrow from *Insular Life Assurance Co., Ltd. v. NLRC (4th Division)* (*Insular Life II*), neither can such existence be negated by expressly repudiating it in the management contract and providing therein, as here, that the employee is an independent contractor. For, as earlier indicated, the law defines and prescribes the employment status of a person, not what the clashing parties chose to call it or say it should be.

4. **MERCANTILE LAW; INSURANCE; INSURANCE AGENCY; INSURANCE AGENT; MAY AT THE SAME TIME BE AN EMPLOYEE OF AN INSURANCE COMPANY. —** [T]he fact that the *Agreement* was subsisting even after Tongko's appointment as manager does not militate against a conclusion that Tongko was Manulife's employee, at least during his stint as such manager. To be sure, an insurance agent may at the same time be an employee of an insurance company. Or to put it a bit differently, an employee-manager may be given the privilege of soliciting insurance, as agent, and earn in the process commission for every contract concluded as a result of such solicitation. The reality of two personalities — one as employee and the other as non-employee of an insurance company, coinciding in one person — was acknowledged in *Insular Life II*, in which the Court wrote: "Parenthetically, both petitioner and respondent NLRC treated the agency contract and the management contract entered into between [Insular Life] and [respondent] De Los Reyes as contracts of agency.

We however hold otherwise. Unquestionably there exist major distinctions between the two agreements. While the first has the earmarks of an agency contract, the second is far removed from the concept of agency in that provided therein are conditionalities that indicate an employer-employee relationship. The NLRC therefore was correct in finding that private respondent was an employee of petitioner, but this holds true only insofar the management contract is concerned. x x x" *Grepalife* may also be cited where we declared: "True, it cannot be denied that based on the definition of an 'insurance agent' in the Insurance Code some of the functions performed by private respondent were those of insurance agents. Nevertheless, it does not follow that they are not employees of Grepalife. The Insurance Code may govern the licensing requirements and other particular duties of insurance agents, but it does not bar the application of the Labor Code with regard to labor standards and labor relations."

5. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; ABSENCE OF A MANAGEMENT CONTRACT IS IRRELEVANT TO THE ISSUE OF THE PRESENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP; CASE AT BAR. —** [T]he absence of a written agreement to memorialize the naming and assumption of Tongko as unit and later branch manager is irrelevant to the issue of the presence of an employer-employee relationship. A management contract, for purposes of determining the relationship between the worker and the employer, is simply an evidence to support a conclusion either way. Such document, or the absence thereof, would not influence the conclusion on the issue of employment. The presence of a management contract would merely simplify the issue as to the duties and responsibilities of the employee concerned as they would then be defined more clearly. Manulife's decision not to execute a management contract with Tongko was well within its discretion. However, the fact of Manulife and Tongko not having inked a management contract, if this were the case, did not reduce the petitioner to a mere "lead agent," as the *ponencia* would have it. While there was perhaps no written management contract whence Tongko's rights, duties and functions as unit/branch manager may easily be fleshed out as a prelude to determining if an employer-employee relationship with Manulife did exist, other evidence was adduced to show

such duties and responsibilities. For one, in his letter of November 6, 2001, respondent de Dios distinctly referred to Tongko as sales manager. For another, it is well nigh inconceivable that Manulife issued no promotional appointments to petitioner as unit manager, branch manager and eventually regional sales manager. Basic and sound management practice simply requires an appointment for any upward personnel movement, particularly when additional duties and compensation are involved. Then, too, the aforementioned affidavits of the managers of Manulife as to the duties and responsibilities of a unit manager, such as Tongko, point to the conclusion that these managers were employees of Manulife, applying the four-fold test.

6. **REMEDIAL LAW; ACTIONS; JUDGMENTS; *STARE DECISIS* DOCTRINE; REQUIRES THAT HIGH COURTS MUST FOLLOW ITS OWN PRECEDENTS OR RESPECT SETTLED JURISPRUDENCE ABSENT COMPELLING REASON TO DO OTHERWISE. —** *Grepalife* and *Insular Life II* bear obvious parallelism to the instant case *vis-à-vis* the facts against which they are cast. Too, the parties are similarly situated in point of positions occupied, the agreed exclusivity of service and functional profiles to warrant the application of the *stare decisis* doctrine. The Latin maxim s*tare decisis et non quieta movere,* translates "stand by the thing and do not disturb the calm." It requires that high courts must follow, as a matter of sound policy, its own precedents, or respect settled jurisprudence absent compelling reason to do otherwise. Put a bit differently, the doctrine holds that when a court has laid down a principle of law as applicable to a certain set of facts, it will abide with that principle in future cases in which the facts are substantially the same. In the view I take of this case, there is absolutely nothing in *Grepalife* and *Insular Life II* which may be viewed as plainly unreasonable as to justify withholding from them the *stare decisis* effect.

7. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; EXISTENCE THEREOF IS DETERMINED BY THE FOUR-FOLD TEST. —** [B]oth *Grepalife* and *Insular Life II* appreciated and applied the element of control — the most crucial and determinative indicator of an employer-employee relationship — as a labor law concept. The Labor Code and other labor

relations laws, some of which have been incorporated in the Civil Code, regulate the relationship between labor and capital or between worker and employer in the private sector. The Insurance Code, on the other hand, governs the licensing requirements and other particular duties of insurance agents; it also regulates not only the relationship between the insurer and the insured but also the internal affairs of the insurance company. These are the particular areas of operation of the aforementioned laws. To argue then that the Insurance Code and insurance industry practice shall determine the existence of an employer-employee relationship in the case at bench is, it is submitted, simplistic if not downright erroneous. Both law and jurisprudence do not support the contention on the primacy of the Insurance Code and insurance usages in determining said relationship. As a matter of fact, the Court, in a string of cases involving corporations engaged in non-insurance activities as well as those into the insurance business, notably in *Grepalife*, *Insular Life I* and *II*, *Great Pacific Life Assurance Corporation v. Judico*, and *AFP Mutual Benefit Association v. NLRC*, held that the determination of the existence of an employer-employee relationship lies in the four-fold test. An examination of these cases yields no indication that a separate law, other than the Labor Code and labor law concepts, was ever considered by the Court in determining the existence of an employer-employee relationship.

8. **ID.; ID.; ID.; EXISTS EVEN IF COMPENSATION IS PAID BY WAY OF COMMISSION. —** There can be no quibbling that Tongko, as unit, branch and regional sales manager, was without a fixed salary, but earned his income strictly on commission basis. However, how and when he was paid his compensation is, without more, not an argument against a finding that he was an employee of Manulife. For, the phrase "wage paid," as a component of employment and as an element of the four-fold test, is defined under Art. 97(f) of the Labor Code as "the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece or **commission basis** or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered." *Lazaro v. Social Security Commission* is emphatic on this point: "Lazaro's arguments

may be dispensed with by applying precedents. **Suffice it to say, the fact that Laudato was paid by way of commission does not preclude the establishment of an employer-employee relationship.** In *Grepalife v. Judico*, the Court upheld the existence of an employer-employee relationship between the insurance company and its agents, despite the fact that the compensation that the agents on commission received was not paid by the company but by the investor or the person insured. The relevant factor remains, as stated earlier, whether the 'employer' controls or has reserved the right to control the 'employee' not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished."

9. **ID.; PROTECTION TO LABOR PROVISIONS IN CONSTITUTION, CIVIL CODE AND LABOR CODE, CITED; CONSTRUCTION IN FAVOR OF LABOR; APPLIED IN CASE AT BAR. —** No less than the Constitution itself guarantees protection to labor: ARTICLE XIII LABOR Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all. x x x The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace. The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth. Complementing the foregoing guarantee provisions is Article 1702 of the Civil Code mandating that, in case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer. Along side with the Civil Code command is Art. 4 of the Labor Code providing: "ART. 4. *Construction in favor of labor*. — All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor." The fairly recent *Dealco Farms, Inc. v. National Labor Relations Commission (5th Division)* is reflective of the statutory bias in favor of the working class and the need to give labor the benefit of the doubt, thus: "Having failed to

substantiate its allegation on the relationship between the parties, we stick to the settled rule in controversies between a laborer and his master that **doubts reasonably arising from the evidence should be resolved in the former's favor**." In the instant case, doubts as to the true relationship between Tongko and Manulife should be resolved in favor of the former and for employment.

APPEARANCES OF COUNSEL

Ronald Rex S. Recidoro for petitioner.
Pizarras & Associates Law Office for respondents.

R E S O L U T I O N

BRION, *J.*:

This resolves the *Motion for Reconsideration*[1] dated December 3, 2008 filed by respondent The Manufacturers Life Insurance Co. (Phils.), Inc. (Manulife) to set aside our Decision of November 7, 2008. In the assailed decision, we found that an employer-employee relationship existed between Manulife and petitioner Gregorio Tongko and ordered Manulife to pay Tongko backwages and separation pay for illegal dismissal.

The following facts have been stated in our Decision of November 7, 2008, now under reconsideration, but are repeated, simply for purposes of clarity.

The **contractual relationship between Tongko and Manulife had two basic phases. The first or initial phase began on July 1, 1977**, under a Career Agent's Agreement (*Agreement*) that provided:

It is understood and agreed that the Agent is an independent contractor and nothing contained herein shall be construed or interpreted as creating an employer-employee relationship between the Company and the Agent.

x x x x x x x x x

[1] *Rollo*, pp. 772-819.

a) The Agent shall canvass for applications for Life Insurance, Annuities, Group policies and other products offered by the Company, and collect, in exchange for provisional receipts issued by the Agent, money due to or become due to the Company in respect of applications or policies obtained by or through the Agent or from policyholders allotted by the Company to the Agent for servicing, subject to subsequent confirmation of receipt of payment by the Company as evidenced by an Official Receipt issued by the Company directly to the policyholder.

x x x x x x x x x

The Company may terminate this Agreement for any breach or violation of any of the provisions hereof by the Agent by giving written notice to the Agent within fifteen (15) days from the time of the discovery of the breach. No waiver, extinguishment, abandonment, withdrawal or cancellation of the right to terminate this Agreement by the Company shall be construed for any previous failure to exercise its right under any provision of this Agreement.

Either of the parties hereto may likewise terminate his Agreement at any time without cause, by giving to the other party fifteen (15) days notice in writing.[2]

Tongko additionally agreed (1) to comply with all regulations and requirements of Manulife, and (2) to maintain a standard of knowledge and competency in the sale of Manulife's products, satisfactory to Manulife and sufficient to meet the volume of the new business, required by his Production Club membership.[3]

The **second phase** started in 1983 when Tongko was named Unit Manager in Manulife's Sales Agency Organization. In 1990, he became a Branch Manager. Six years later (or in 1996), Tongko became a Regional Sales Manager.[4]

Tongko's gross earnings consisted of commissions, persistency income, and management overrides. **Since the beginning, Tongko consistently declared himself self-employed in his income tax**

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[2] *Tongko v. The Manufacturers Life Insurance Co. (Phils.), Inc.*, G.R. No. 167622, November 7, 2008, 570 SCRA 503, 506-507.

[3] *Rollo*, p. 52.

[4] *Id.* at 53.

returns. Thus, *under oath, he declared his gross business income and deducted his business expenses to arrive at his taxable business income*. Manulife withheld the corresponding 10% tax on Tongko's earnings.[5]

In 2001, Manulife instituted manpower development programs at the regional sales management level. Respondent Renato Vergel de Dios wrote Tongko a letter dated November 6, 2001 on concerns that were brought up during the October 18, 2001 Metro North Sales Managers Meeting. De Dios wrote:

The first step to transforming Manulife into a big league player has been very clear — to increase the number of agents to at least 1,000 strong for a start. This may seem diametrically opposed to the way Manulife was run when you first joined the organization. Since then, however, substantial changes have taken place in the organization, as these have been influenced by developments both from within and without the company.

x x x x x x x x x

The issues around agent recruiting are central to the intended objectives hence the need for a Senior Managers' meeting earlier last month when Kevin O'Connor, SVP-Agency, took to the floor to determine from our senior agency leaders what more could be done to bolster manpower development. At earlier meetings, Kevin had presented information where evidently, your Region was the lowest performer (on a per Manager basis) in terms of recruiting in 2000 and, as of today, continues to remain one of the laggards in this area.

While discussions, in general, were positive other than for certain comments from your end which were perceived to be uncalled for, it became clear that a one-on-one meeting with you was necessary to ensure that you and management, were on the same plane. As gleaned from some of your previous comments in prior meetings (both in group and one-on-one), it was not clear that we were proceeding in the same direction.

Kevin held subsequent series of meetings with you as a result, one of which I joined briefly. In those subsequent meetings you reiterated

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[5] *Ibid.*

certain views, the validity of which we challenged and subsequently found as having no basis.

With such views coming from you, I was a bit concerned that the rest of the Metro North Managers may be a bit confused as to the directions the company was taking. For this reason, I sought a meeting with everyone in your management team, including you, to clear the air, so to speak.

This note is intended to confirm the items that were discussed at the said Metro North Region's Sales Managers meeting held at the 7/F Conference room last 18 October.

x x x x x x x x x

Issue # 2: "Some Managers are unhappy with their earnings and would want to revert to the position of agents."

This is an often repeated issue you have raised with me and with Kevin. For this reason, I placed the issue on the table before the rest of your Region's Sales Managers to verify its validity. As you must have noted, no Sales Manager came forward on their own to confirm your statement and it took you to name Malou Samson as a source of the same, an allegation that Malou herself denied at our meeting and in your very presence.

This only confirms, Greg, that those prior comments have no solid basis at all. I now believe what I had thought all along, that these allegations were simply meant to muddle the issues surrounding the inability of your Region to meet its agency development objectives!

Issue # 3: "Sales Managers are doing what the company asks them to do but, in the process, they earn less."

x x x x x x x x x

All the above notwithstanding, we had your own records checked and we found that you made a lot more money in the Year 2000 versus 1999. In addition, you also volunteered the information to Kevin when you said that you probably will make more money in the Year 2001 compared to Year 2000. Obviously, your above statement about making "less money" did not refer to you but the way you argued this point had us almost believing that you were spouting the gospel of truth when you were not. x x x

x x x x x x x x x

All of a sudden, Greg, I have become much more worried about your ability to lead this group towards the new direction that we have been discussing these past few weeks, *i.e.,* Manulife's goal to become a major agency-led distribution company in the Philippines. While as you claim, you have not stopped anyone from recruiting, I have never heard you proactively push for greater agency recruiting. You have not been proactive all these years when it comes to agency growth.

x x x x x x x x x

I cannot afford to see a major region fail to deliver on its developmental goals next year and so, we are making the following changes in the interim:

1. You will hire at your expense a competent assistant who can unload you of much of the routine tasks which can be easily delegated. This assistant should be so chosen as to complement your skills and help you in the areas where you feel "may not be your cup of tea."

You have stated, if not implied, that your work as Regional Manager may be too taxing for you and for your health. The above could solve this problem.

x x x x x x x x x

2. Effective immediately, Kevin and the rest of the Agency Operations will deal with the North Star Branch (NSB) in autonomous fashion. x x x

I have decided to make this change so as to reduce your span of control and allow you to concentrate more fully on overseeing the remaining groups under Metro North, your Central Unit and the rest of the Sales Managers in Metro North. I will hold you solely responsible for meeting the objectives of these remaining groups.

x x x x x x x x x

The above changes can end at this point and they need not go any further. This, however, is entirely dependent upon you. But you have to understand that meeting corporate objectives by everyone is primary and will not be compromised. We are meeting tough challenges next year, and I would want everybody on board. Any resistance or holding back by anyone will be dealt with accordingly.[6]

[6] *Supra* note 2, at 508-510.

Subsequently, de Dios wrote Tongko another letter, dated December 18, 2001, terminating Tongko's services:

It would appear, however, that despite the series of meetings and communications, both one-on-one meetings between yourself and SVP Kevin O'Connor, some of them with me, as well as group meetings with your Sales Managers, all these efforts have failed in helping you align your directions with Management's avowed agency growth policy.

x x x x x x x x x

On account thereof, Management is exercising its prerogative under Section 14 of your Agents Contract as we are now issuing this **notice of termination of your Agency Agreement with us** effective fifteen days from the date of this letter.[7]

Tongko responded by filing an illegal dismissal complaint with the National Labor Relations Commission (*NLRC*) Arbitration Branch. He essentially alleged — *despite the clear terms of the letter terminating his Agency Agreement* — that he was Manulife's employee before he was illegally dismissed.[8]

Thus, the **threshold issue** is the existence of an employment relationship. A finding that none exists renders the question of illegal dismissal moot; a finding that an employment relationship exists, on the other hand, necessarily leads to the need to determine the validity of the termination of the relationship.

A. Tongko's Case for Employment Relationship

Tongko asserted that as Unit Manager, he was paid an annual over-rider not exceeding ₱50,000.00, regardless of production levels attained and exclusive of commissions and bonuses. He also claimed that as Regional Sales Manager, he was given a travel and entertainment allowance of ₱36,000.00 per year in addition to his overriding commissions; he was tasked with numerous administrative functions and supervisory authority over Manulife's employees, aside from merely selling policies

[7] *Id.* at 511.

[8] *Rollo,* pp. 57-58.

and recruiting agents for Manulife; and he recommended and recruited insurance agents subject to vetting and approval by Manulife. He further alleges that he was assigned a definite place in the Manulife offices when he was not in the field — at the 3rd Floor, Manulife Center, 108 Tordesillas corner Gallardo Sts., Salcedo Village, Makati City — for which he never paid any rental. Manulife provided the office equipment he used, including tables, chairs, computers and printers (and even office stationery), and paid for the electricity, water and telephone bills. As Regional Sales Manager, Tongko additionally asserts that he was required to follow at least three codes of conduct.[9]

B. Manulife's Case — Agency Relationship with Tongko

Manulife argues that Tongko had no fixed wage or salary. Under the Agreement, Tongko was paid commissions of varying amounts, computed based on the premium paid in full and actually received by Manulife on policies obtained through an agent. As sales manager, Tongko was paid overriding sales commission derived from sales made by agents under his unit/ structure/branch/region. Manulife also points out that *it deducted and withheld a 10% tax from all commissions Tongko received; Tongko even declared himself to be self-employed and consistently paid taxes as such — i.e., he availed of tax deductions such as ordinary and necessary trade, business and professional expenses to which a business is entitled.*

Manulife asserts that the labor tribunals have no jurisdiction over Tongko's claim as he was not its employee as characterized in the four-fold test and our ruling in *Carungcong v. National Labor Relations Commission*.[10]

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[9] Tongko's Petition for Review, *id.* at 3-46; and Summary of Tongko's Position in the September 27, 2004 decision of the NLRC (*id.* at 349-351) and the CA decision (*id.* at 57-58).

[10] 347 Phil. 587 (1997); see Summary of Manulife's Position in the September 27, 2004 decision of the NLRC (*rollo*, pp. 351-353) and the CA decision (*rollo*, pp. 58-59).

The Conflicting Rulings of the Lower Tribunals

The labor arbiter decreed that no employer-employee relationship existed between the parties. However, the NLRC reversed the labor arbiter's decision on appeal; it found the existence of an employer-employee relationship and concluded that Tongko had been illegally dismissed. In the petition for *certiorari* with the Court of Appeals (*CA*), the appellate court found that the NLRC gravely abused its discretion in its ruling and reverted to the labor arbiter's decision that no employer-employee relationship existed between Tongko and Manulife.

Our Decision of November 7, 2008

In our Decision of November 7, 2008, we reversed the CA ruling and found that an employment relationship existed between Tongko and Manulife. We concluded that Tongko is Manulife's employee for the following reasons:

1. Our ruling in the first *Insular*[11] case did not foreclose the possibility of an insurance agent becoming an employee of an insurance company; if evidence exists showing that the company promulgated rules or regulations that effectively controlled or restricted an insurance agent's choice of methods or the methods themselves in selling insurance, an employer-employee relationship would be present. The determination of the existence of an employer-employee relationship is thus on a case-to-case basis depending on the evidence on record.

2. Manulife had the power of control over Tongko, sufficient to characterize him as an employee, as shown by the following indicators:

> 2.1 Tongko undertook to comply with Manulife's rules, regulations and other requirements, *i.e.*, the different codes of conduct such as the Agent Code of Conduct, the Manulife Financial Code of Conduct, and the Financial Code of Conduct Agreement;

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[11] *Insular Life Assurance Co., Ltd. v. NLRC*, G.R. No. 84484, November 15, 1989, 179 SCRA 459.

2.2 The various affidavits of Manulife's insurance agents and managers, who occupied similar positions as Tongko, showed that they performed administrative duties that established employment with Manulife;[12] and

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[12] In an Affidavit dated April 28, 2003, John D. Chua, a Regional Sales Manager of Manulife, stated:

> 4. On September 1, 1996, my services were engaged by Manulife as an Agency Regional Sales Manager ("RSM") for Metro South Region pursuant to an Agency Contract. As such RSM, I have the following functions:
>
> 1. Refer and recommend prospective agents to Manulife
> 2. Coach agents to become productive
> 3. Regularly meet with, and coordinate activities of agents affiliated to my region.

While Amanda Toledo, a Branch Manager of Manulife, stated in her Affidavit, dated April 29, 2003, that:

> 3. In January 1997, I was assigned as a Branch Manager ("BM") of Manulife for the Metro North Sector;
>
> 4. As such BM, I render the following services:
>
> a. Refer and recommend prospective agents to Manulife;
> b. Train and coordinate activities of other commission agents;
> c. Coordinate activities of Agency Managers who, in turn, train and coordinate activities of other commission agents;
> d. Achieve agreed production objectives in terms of Net Annualized Commissions and Case Count and recruitment goals; and
> e. Sell the various products of Manulife to my personal clients.

While Ma. Lourdes Samson, a Unit Manager of Manulife, stated in her Affidavit, dated April 28, 2003, that:

> 3. In 1977, I was assigned as a Unit Manager ("UM") of North Peaks Unit, North Star Branch, Metro North Region;
>
> 4. As such UM, I render the following services:
>
> a. To render or recommend prospective agents to be licensed, trained and contracted to sell Manulife products and who will be part of my Unit.
> b. To coordinate activities of the agents under my Unit in their daily, weekly and monthly selling activities, making sure that their respective sales targets are met.
> c. To conduct periodic training sessions for my agents to further enhance their sales skills.

2.3 Tongko was tasked to recruit some agents in addition to his other administrative functions. De Dios' letter harped on the direction Manulife intended to take, *viz.*, greater agency recruitment as the primary means to sell more policies; Tongko's alleged failure to follow this directive led to the termination of his employment with Manulife.

The Motion for Reconsideration

Manulife disagreed with our Decision and filed the present motion for reconsideration on the following **GROUNDS**:

1. The November 7[, 2008] Decision violates Manulife's right to due process by: (a) confining the review only to the issue of "control" and utterly disregarding all the other issues that had been joined in this case; (b) mischaracterizing the divergence of conclusions between the CA and the NLRC decisions as confined only to that on "control"; (c) grossly failing to consider the findings and conclusions of the CA on the majority of the material evidence, especially [Tongko's] declaration in his income tax returns that he was a "business person" or "self-employed"; and (d) allowing [Tongko] to repudiate his sworn statement in a public document.

2. The November 7[, 2008] Decision contravenes settled rules in contract law and agency, distorts not only the legal relationships of agencies to sell but also distributorship and franchising, and ignores the constitutional and policy context of contract law *vis-à-vis* labor law.

3. The November 7[, 2008] Decision ignores the findings of the CA on the three elements of the four-fold test other than the "control" test, reverses well-settled doctrines of law on employer-employee relationships, and grossly misapplies the "control test," by selecting,

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d. To assist my agents with their sales activities by way of joint fieldwork, consultations and one-on-one evaluation and analysis of particular accounts.

e. To provide opportunities to motivate my agents to succeed like conducting promos to increase sales activities and encouraging them to be involved in company and industry activities.

f. To provide opportunities for professional growth to my agents by encouraging them to be a member of the LUCAP (Life Underwriters Association of the Philippines).

without basis, a few items of evidence to the exclusion of more material evidence to support its conclusion that there is "control."

4. The November 7[, 2008] Decision is judicial legislation, beyond the scope authorized by Articles 8 and 9 of the Civil Code, beyond the powers granted to this Court under Article VIII, Section 1 of the Constitution and contravenes through judicial legislation, the constitutional prohibition against impairment of contracts under Article III, Section 10 of the Constitution.

5. For all the above reasons, the November 7[, 2008] Decision made unsustainable and reversible errors, which should be corrected, in concluding that Respondent Manulife and Petitioner had an employer-employee relationship, that Respondent Manulife illegally dismissed Petitioner, and for consequently ordering Respondent Manulife to pay Petitioner backwages, separation pay, nominal damages and attorney's fees.[13]

THE COURT'S RULING

A. The Insurance and the Civil Codes; the Parties' Intent and Established Industry Practices

We cannot consider the present case purely from a labor law perspective, oblivious that the factual antecedents were set in the insurance industry so that the Insurance Code primarily governs. Chapter IV, Title 1 of this Code is wholly devoted to "Insurance Agents and Brokers" and specifically defines the agents and brokers relationship with the insurance company and how they are governed by the Code and regulated by the Insurance Commission.

The Insurance Code, of course, does not wholly regulate the "agency" that it speaks of, as agency is a civil law matter governed by the Civil Code. Thus, at the very least, three sets of laws — namely, the Insurance Code, the Labor Code and the Civil Code — have to be considered in looking at the present case. Not to be forgotten, too, is the Agreement (partly reproduced on page 2 of this Dissent and which no one disputes) that the

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[13] *Rollo*, pp. 776-777.

parties adopted to govern their relationship for purposes of selling the insurance the company offers. To forget these other laws is to take a myopic view of the present case and to add to the uncertainties that now exist in considering the legal relationship between the insurance company and its "agents."

The main issue of whether an agency or an employment relationship exists depends on the incidents of the relationship. The Labor Code concept of "control" has to be compared and distinguished with the "control" that must necessarily exist in a principal-agent relationship. The principal cannot but also have his or her say in directing the course of the principal-agent relationship, especially in cases where the company-representative relationship in the insurance industry is an agency.

a. The laws on insurance and agency

The business of insurance is a highly regulated commercial activity in the country, in terms particularly of who can be in the insurance business, who can act for and in behalf of an insurer, and how these parties shall conduct themselves in the insurance business. Section 186 of the Insurance Code provides that *"No person, partnership, or association of persons shall transact any insurance business in the Philippines except as agent of a person or corporation authorized to do the business of insurance in the Philippines."* Sections 299 and 300 of the Insurance Code on Insurance Agents and Brokers, among other provisions, provide:

> Section 299. No insurance company doing business in the Philippines, nor any agent thereof, shall **pay any commission or other compensation to any person for services in obtaining insurance**, unless such person shall have first procured from the Commissioner a license to act as an insurance agent of such company or as an insurance broker as hereinafter provided.
>
> No person shall act as an insurance agent or as an insurance broker in the solicitation or procurement of applications for insurance, or receive for services in obtaining insurance, any commission or other compensation from any insurance company doing business in the Philippines or any agent thereof, without first procuring a license so to act from the Commissioner x x x The Commissioner shall

satisfy himself as to the competence and trustworthiness of the applicant and shall have the right to refuse to issue or renew and to suspend or revoke any such license in his discretion.

Section 300. Any person who for compensation solicits or obtains insurance on behalf of any insurance company or transmits for a person other than himself an application for a policy or contract of insurance to or from such company or offers or assumes to act in the negotiating of such insurance shall be an insurance agent within the intent of this section and shall thereby become liable to all the duties, requirements, liabilities and penalties to which an insurance agent is subject.

The application for an insurance agent's license requires a written examination, and the applicant must be of good moral character and must not have been convicted of a crime involving moral turpitude.[14] The insurance agent who collects premiums from an insured person for remittance to the insurance company does so in a fiduciary capacity, and an insurance company which delivers an insurance policy or contract to an authorized agent is deemed to have authorized the agent to receive payment on the company's behalf.[15] Section 361 further prohibits the offer, negotiation, or collection of any amount other than that specified in the policy and this covers any rebate from the premium or any special favor or advantage in the dividends or benefit accruing from the policy.

Thus, under the Insurance Code, the agent must, as a matter of qualification, be licensed and must also act within the parameters of the authority granted under the license and under the contract with the principal. Other than the need for a license, the agent is limited in the way he offers and negotiates for the sale of the company's insurance products, in his collection activities, and in the delivery of the insurance contract or policy. Rules regarding the desired results (*e.g.*, the required volume to continue to qualify as a company agent, rules to check on the parameters on the authority given to the agent, and rules to

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[14] Sections 303 and 304, Insurance Code.

[15] Section 306, Insurance Code.

ensure that industry, legal and ethical rules are followed) are built-in elements of control specific to an insurance agency and should not and cannot be read as elements of control that attend an employment relationship governed by the Labor Code.

On the other hand, the Civil Code defines an agent as a "person [who] binds himself to render some service or to do something in representation or on behalf of another, with the consent or authority of the latter."[16] While this is a very broad definition that on its face may even encompass an employment relationship, the distinctions between agency and employment are sufficiently established by law and jurisprudence.

Generally, the determinative element is the control exercised over the one rendering service. The employer controls the employee both in the results and in the means and manner of achieving this result. The principal in an agency relationship, on the other hand, also has the prerogative to exercise control over the agent in undertaking the assigned task based on the parameters outlined in the pertinent laws.

Under the general law on agency as applied to insurance, an agency must be express in light of the need for a license and for the designation by the insurance company. In the present case, the Agreement fully serves as grant of authority to Tongko as Manulife's insurance agent.[17] This agreement is supplemented by the company's agency practices and usages, duly accepted by the agent in carrying out the agency.[18] By authority of the Insurance Code, an insurance agency is for compensation,[19] a matter the Civil Code Rules on Agency presumes in the absence of proof to the contrary.[20] Other than the compensation, the principal is bound to advance to, or to reimburse, the agent the agreed sums necessary for the execution of the

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[16] Article 1868, Civil Code.

[17] Article 1869, Civil Code.

[18] Article 1870, Civil Code.

[19] Section 299, Insurance Code.

[20] Article 1875, Civil Code.

agency.[21] By implication at least under Article 1994 of the Civil Code, the principal can appoint two or more agents to carry out the same assigned tasks,[22] based necessarily on the specific instructions and directives given to them.

With particular relevance to the present case is the provision that "In the execution of the agency, the agent shall act in accordance with the instructions of the principal."[23] This provision is pertinent for purposes of the necessary control that the principal exercises over the agent in undertaking the assigned task, and is an area where the instructions can intrude into the labor law concept of control so that minute consideration of the facts is necessary. A related article is Article 1891 of the Civil Code which binds the agent to render an account of his transactions to the principal.

B. The Cited Case

The Decision of November 7, 2008 refers to the first *Insular* and *Grepalife* cases to establish that the company rules and regulations that an agent has to comply with are indicative of an employer-employee relationship.[24] The Dissenting Opinions of Justice Presbitero Velasco, Jr. and Justice Conchita Carpio Morales also cite *Insular Life Assurance Co. v. National Labor Relations Commission* (second Insular case)[25] to support the view that Tongko is Manulife's employee. On the other hand, Manulife cites the *Carungcong* case and *AFP Mutual Benefit Association, Inc. v. National Labor Relations Commission* (AFPMBAI case)[26] to support its allegation that Tongko was not its employee.

A *caveat* has been given above with respect to the use of the rulings in the cited cases because none of them is on all fours

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[21] Articles 1886 and 1918, Civil Code.

[22] Article 1894, Civil Code.

[23] Article 1887, Civil Code.

[24] *Supra* note 2, at 519-520.

[25] G.R. No. 119930, March 12, 1998, 287 SCRA 476.

[26] G.R. No. 102199, January 28, 1997, 267 SCRA 47.

with the present case; the uniqueness of the factual situation of the present case prevents it from being directly and readily cast in the mold of the cited cases. These cited cases are themselves different from one another; this difference underscores the need to read and quote them in the context of their own factual situations.

The present case at first glance appears aligned with the facts in the *Carungcong*, the *Grepalife*, and the *second Insular Life* cases. A critical difference, however, exists as **these cited cases dealt with the proper legal characterization of a *subsequent* management contract that superseded the original agency contract between the insurance company and its agent**. *Carungcong* dealt with a subsequent Agreement making Carungcong a New Business Manager that clearly superseded the Agreement designating Carungcong as an agent empowered to solicit applications for insurance. The *Grepalife case*, on the other hand, dealt with the proper legal characterization of the appointment of the Ruiz brothers to positions higher than their original position as insurance agents. Thus, after analyzing the duties and functions of the Ruiz brothers, ***as these were enumerated in their contracts***, we concluded that the company practically dictated the manner by which the Ruiz brothers were to carry out their jobs. Finally, the *second Insular Life case* dealt with the implications of de los Reyes' appointment as acting unit manager which, like the subsequent contracts in the *Carungcong* and the *Grepalife* cases, was clearly defined under a subsequent contract. **In all these cited cases, a determination of the presence of the Labor Code element of control was made on the basis of the stipulations of the subsequent contracts.**

In stark contrast with the *Carungcong, the Grepalife*, and *the second Insular Life* cases, the only contract or document **extant and submitted as evidence** in the present case is the Agreement — a pure agency agreement in the Civil Code context similar to the original contract in *the first Insular Life case* and the contract in the *AFPMBAI case*. And while Tongko was later on designated unit manager in 1983, Branch Manager in 1990, and Regional Sales Manager in 1996, no formal contract

regarding these undertakings appears in the records of the case. Any such contract or agreement, had there been any, could have at the very least provided the bases for properly ascertaining the juridical relationship established between the parties.

These critical differences, particularly between the present case and *the Grepalife* and the *second Insular Life cases,* should therefore immediately drive us to be more prudent and cautious in applying the rulings in these cases.

C. Analysis of the Evidence

c.1. The Agreement

The primary evidence in the present case is the July 1, 1977 Agreement that governed and defined the parties' relations until the Agreement's termination in 2001. This Agreement stood for more than two decades and, **based on the records of the case,** was never modified or novated. It assumes primacy because it directly dealt with the nature of the parties' relationship up to the very end; moreover, both parties never disputed its authenticity or the accuracy of its terms.

By the Agreement's express terms, Tongko served as an "insurance agent" for Manulife, not as an employee. To be sure, the Agreement's legal characterization of the nature of the relationship cannot be conclusive and binding on the courts; as the dissent clearly stated, the characterization of the juridical relationship the Agreement embodied is a matter of law that is for the courts to determine. At the same time, though, the characterization the parties gave to their relationship in the Agreement cannot simply be brushed aside because it embodies their intent at the time they entered the Agreement, and they were governed by this understanding throughout their relationship. At the very least, the provision on the absence of employer-employee relationship between the parties can be an aid in considering the Agreement and its implementation, and in appreciating the other evidence on record.

The parties' legal characterization of their intent, although not conclusive, is critical in this case because this intent is not illegal or outside the contemplation of law, particularly of the

Insurance and the Civil Codes. From this perspective, the provisions of the Insurance Code cannot be disregarded as this Code (as heretofore already noted) expressly envisions a principal-agent relationship between the insurance company and the insurance agent in the sale of insurance to the public. **For this reason, we can take judicial notice that as a matter of Insurance Code-based business practice, an agency relationship prevails in the insurance industry for the purpose of selling insurance.** The Agreement, by its express terms, is in accordance with the Insurance Code model when it provided for a principal-agent relationship, and thus cannot lightly be set aside nor simply be considered as an agreement that does not reflect the parties' true intent. This intent, incidentally, is reinforced by the system of compensation the Agreement provides, which likewise is in accordance with the production-based sales commissions the Insurance Code provides.

Significantly, evidence shows that Tongko's role as an insurance agent never changed during his relationship with Manulife. If changes occurred at all, the changes did not appear to be in the nature of their core relationship. Tongko essentially remained an agent, but moved up in this role through Manulife's recognition that he could use other agents approved by Manulife, but operating under his guidance and in whose commissions he had a share. For want of a better term, Tongko perhaps could be labeled as a "lead agent" who guided under his wing other Manulife agents similarly tasked with the selling of Manulife insurance.

Like Tongko, the evidence suggests that these other agents operated under their own agency agreements. Thus, if Tongko's compensation scheme changed at all during his relationship with Manulife, the change was solely for purposes of crediting him with his share in the commissions the agents under his wing generated. As an agent who was recruiting and guiding other insurance agents, Tongko likewise moved up in terms of the reimbursement of expenses he incurred in the course of his lead agency, a prerogative he enjoyed pursuant to Article 1912 of the Civil Code. Thus, Tongko received greater reimbursements for his expenses and was even allowed to use Manulife facilities in his interactions with the agents, all of whom were, in the

strict sense, Manulife agents approved and certified as such by Manulife with the Insurance Commission.

That Tongko assumed a leadership role but nevertheless wholly remained an agent is the inevitable conclusion that results from the reading of the Agreement (the only agreement on record in this case) and his continuing role thereunder as sales agent, from the perspective of the Insurance and the Civil Codes and in light of what Tongko himself attested to as his role as Regional Sales Manager. To be sure, this interpretation could have been contradicted if other agreements had been submitted as evidence of the relationship between Manulife and Tongko on the latter's expanded undertakings. In the absence of any such evidence, however, this reading — based on the available evidence and the applicable insurance and civil law provisions — must stand, subject only to objective and evidentiary Labor Code tests on the existence of an employer-employee relationship.

In applying such Labor Code tests, however, the enforcement of the Agreement during the course of the parties' relationship should be noted. From 1977 until the termination of the Agreement, Tongko's occupation was to sell Manulife's insurance policies and products. Both parties acquiesced with the terms and conditions of the Agreement. Tongko, for his part, accepted all the benefits flowing from the Agreement, particularly the generous commissions.

Evidence indicates that Tongko consistently clung to the view that he was an independent agent selling Manulife insurance products since he invariably declared himself a business or self-employed person in his income tax returns. **This consistency with, and action made pursuant to the Agreement were pieces of evidence that were never mentioned nor considered in our Decision of November 7, 2008.** Had they been considered, they could, *at the very least*, serve as Tongko's admissions against his interest. Strictly speaking, Tongko's tax returns cannot but be legally significant because he certified under oath the amount he earned as gross business income, claimed business deductions, leading to his net taxable income. This should be evidence of the first order that cannot be brushed aside by a

mere denial. Even on a layman's view that is devoid of legal considerations, the extent of his annual income alone renders his claimed employment status doubtful.[27]

Hand in hand with the concept of admission against interest in considering the tax returns, the concept of estoppel – a legal and equitable concept[28] — necessarily must come into play. Tongko's previous admissions in several years of tax returns as an independent agent, as against his belated claim that he was all along an employee, are too diametrically opposed to be simply dismissed or ignored. *Interestingly, Justice Velasco's dissenting opinion states that Tongko was forced to declare himself a business or self-employed person by Manulife's persistent refusal to recognize him as its employee.*[29] ***Regrettably, the dissent has shown no basis for this conclusion, an understandable omission since no evidence in fact exists on this point in the records of the case.*** In fact, what the evidence shows is Tongko's full conformity with, and action as, an independent agent until his relationship with Manulife took a bad turn.

Another interesting point the dissent raised with respect to the Agreement is its conclusion that the Agreement negated any employment relationship between Tongko and Manulife so that the commissions he earned as a sales agent should not be considered in the determination of the backwages and separation pay that should be given to him. This part of the dissent is correct although it went on to twist this conclusion by asserting that Tongko had dual roles in his relationship with Manulife; he was an agent, not an employee, in so far as he sold insurance

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[27] In 1997, his income was ₱2,822,620.00; in 1998 – ₱4,805,166.34; in 1999, ₱6,797,814.05; in 2001, ₱6,214,737.11; and in 2002, ₱8,003,180.38.

[28] Articles 1431 to 1439 of the Civil Code.

[29] Justice Velasco's Dissenting Opinion, p. 10. Justice Velasco maintains that Tongko's declaration in his tax returns that he was self-employed was forced upon him by Manulife, which refused and still refuses to consider him as its employee, and withheld 10% of Tongko's income as an agent for taxes. Tongko therefore had no choice but to use the withholding tax certificates issued to Manulife in connection with the taxes it paid on his income as an agent and he could not have been faulted for declaring himself as self-employed.

for Manulife, but was an employee in his capacity as a manager. Thus, the dissent concluded that Tongko's backwages should only be with respect to his role as Manulife's manager.

The conclusion with respect to Tongko's employment as a manager is, of course, unacceptable for the legal, factual and practical reasons discussed in this Resolution. In brief, the **factual reason** is grounded on the lack of evidentiary support of the conclusion that Manulife exercised control over Tongko in the sense understood in the Labor Code. The **legal reason**, partly based on the lack of factual basis, is the erroneous legal conclusion that Manulife controlled Tongko and was thus its employee. The **practical reason**, on the other hand, is the havoc that the dissent's unwarranted conclusion would cause the insurance industry that, by the law's own design, operated along the lines of principal-agent relationship in the sale of insurance.

c.2. Other Evidence of Alleged Control

A glaring evidentiary gap for Tongko in this case is the lack of evidence on record showing that Manulife ever exercised means-and-manner control, even to a limited extent, over Tongko during his ascent in Manulife's sales ladder. In 1983, Tongko was appointed unit manager. Inexplicably, Tongko never bothered to present any evidence at all on what this designation meant. This also holds true for Tongko's appointment as branch manager in 1990, and as Regional Sales Manager in 1996. The best evidence of control — the agreement or directive relating to Tongko's duties and responsibilities — was never introduced as part of the records of the case. *The reality is, prior to de Dios' letter, Manulife had practically left Tongko alone not only in doing the business of selling insurance, but also in guiding the agents under his wing.* As discussed below, the alleged directives covered by de Dios' letter, heretofore quoted in full, were policy directions and targeted results that the company wanted Tongko and the other sales groups to realign with in their own selling activities. This is the reality that the parties' presented evidence consistently tells us.

What, to Tongko, serve as evidence of labor law control are the codes of conduct that Manulife imposes on its agents in the

sale of insurance. The mere presentation of codes or of rules and regulations, however, is not *per se* indicative of labor law control as the law and jurisprudence teach us.

As already recited above, the Insurance Code imposes obligations on both the insurance company and its agents in the performance of their respective obligations under the Code, particularly on licenses and their renewals, on the representations to be made to potential customers, the collection of premiums, on the delivery of insurance policies, on the matter of compensation, and on measures to ensure ethical business practice in the industry.

The general law on agency, on the other hand, expressly allows the principal an element of control over the agent in a manner consistent with an agency relationship. In this sense, these control measures cannot be read as indicative of labor law control. Foremost among these are the directives that the principal may impose on the agent to achieve the assigned tasks, to the extent that they do not involve the means and manner of undertaking these tasks. The law likewise obligates the agent to render an account; in this sense, the principal may impose on the agent specific instructions on how an account shall be made, particularly on the matter of expenses and reimbursements. To these extents, control can be imposed through rules and regulations without intruding into the labor law concept of control for purposes of employment.

From jurisprudence, an important lesson that the *first Insular Life* case teaches us is that a commitment to abide by the rules and regulations of an insurance company does not *ipso facto* make the insurance agent an employee. Neither do guidelines somehow restrictive of the insurance agent's conduct necessarily indicate "control" as this term is defined in jurisprudence. **Guidelines indicative of labor law "control," as the *first Insular Life* case tells us, should not merely relate to the mutually desirable result intended by the contractual relationship; they must have the nature of dictating the means or methods to be employed in attaining the result, or of fixing the methodology and of binding or restricting the party hired**

to the use of these means. In fact, results-wise, the principal can impose production quotas and can determine how many agents, with specific territories, ought to be employed to achieve the company's objectives. These are management policy decisions that the labor law element of control cannot reach. Our ruling in these respects in the *first Insular Life* case was practically reiterated in *Carungcong*. Thus, as will be shown more fully below, Manulife's codes of conduct,[30] all of which do not intrude into the insurance agents' means and manner of conducting their sales and only control them as to the desired results and Insurance Code norms, cannot be used as basis for a finding that the labor law concept of control existed between Manulife and Tongko.

The dissent considers the imposition of administrative and managerial functions on Tongko as indicative of labor law control; thus, Tongko *as manager, but not as insurance agent,* became Manulife's employee. It drew this conclusion from what the other Manulife managers disclosed in their affidavits (*i.e.*, their enumerated administrative and managerial functions) and after comparing these statements with the managers in *Grepalife*. The dissent compared the control exercised by Manulife over its managers in the present case with the control the managers in the *Grepalife* case exercised over their employees by presenting the following matrix:[31]

Duties of Manulife's Manager	Duties of Grepalife's Managers/Supervisors
– to render or recommend prospective agents to be licensed, trained and contracted to sell Manulife products and who will be part of my Unit	– train understudies for the position of district manager
– to coordinate activities of the agents under [the managers'] Unit	– properly account, record and document the company's funds,

[30] These include the Agent Code of Conduct, the Manulife Financial Code of Conduct, and the Manulife Code of Conduct Agreement.

[31] Justice Velasco's Dissenting Opinion, pp. 3-4.

in [the agents'] daily, weekly and monthly selling activities, making sure that their respective sales targets are met; – to conduct periodic training sessions for [the] agents to further enhance their sales skill; and – to assist [the] agents with their sales activities by way of joint fieldwork, consultations and one-on-one evaluation and analysis of particular accounts	spot-check and audit the work of the zone supervisors, x x x follow up the submission of weekly remittance reports of the debit agents and zone supervisors – direct and supervise the sales activities of the debit agents under him, x x x undertake and discharge the functions of absentee debit agents, spot-check the record of debit agents, and insure proper documentation of sales and collections of debit agents.

Aside from these affidavits however, no other evidence exists regarding the effects of Tongko's additional roles in Manulife's sales operations on the contractual relationship between them.

To the dissent, Tongko's administrative functions as recruiter, trainer, or supervisor of other sales agents constituted a substantive alteration of Manulife's authority over Tongko and the performance of his end of the relationship with Manulife. We could not deny though that Tongko remained, first and foremost, an insurance agent, and that his additional role as Branch Manager did not lessen his main and dominant role as insurance agent; this role continued to dominate the relations between Tongko and Manulife even after Tongko assumed his leadership role among agents. This conclusion cannot be denied because it proceeds from the undisputed fact that Tongko and Manulife never altered their July 1, 1977 Agreement, *a distinction the present case has with the contractual changes made in the second Insular Life case.* Tongko's results-based commissions, too, attest to the primacy he gave to his role as insurance sales agent.

The dissent apparently did not also properly analyze and appreciate the great qualitative difference that exists between:

• *the* ***Manulife managers' role*** *is to coordinate activities of the agents under the managers' Unit in the agents' daily, weekly, and monthly selling activities, making sure that their respective sales targets are met.*

• *the* ***District Manager's duty in Grepalife*** *is to properly account, record, and document the company's funds, spot-check and audit the work of the zone supervisors, conserve the company's business in the district through "reinstatements," follow up the submission of weekly remittance reports of the debit agents and zone supervisors, preserve company property in good condition, train understudies for the position of district managers, and maintain his quota of sales (the failure of which is a ground for termination).*

• *the* ***Zone Supervisor's (also in Grepalife)*** *has the duty to direct and supervise the sales activities of the debit agents under him, conserve company property through "reinstatements," undertake and discharge the functions of absentee debit agents, spot-check the records of debit agents, and insure proper documentation of sales and collections by the debit agents.*

These job contents are worlds apart in terms of "control." In *Grepalife*, the details of how to do the job are specified and pre-determined; in the present case, the operative words are the "sales target," the methodology being left undefined except to the extent of being "coordinative." To be sure, a "coordinative" standard for a manager cannot be indicative of control; the standard only essentially describes what a Branch Manager is — the person in the lead who orchestrates activities within the group. To "coordinate," and thereby to lead and to orchestrate, is not so much a matter of control by Manulife; it is simply a statement of a branch manager's role in relation with his agents from the point of view of Manulife whose business Tongko's sales group carries.

A disturbing note, with respect to the presented affidavits and Tongko's alleged administrative functions, is the selective citation of the portions supportive of an employment relationship and the consequent omission of portions leading to the contrary conclusion. For example, the following portions of the affidavit

of Regional Sales Manager John Chua, with counterparts in the other affidavits, were not brought out in the Decision of November 7, 2008, while the other portions suggesting labor law control were highlighted. Specifically, the following portions of the affidavits were not brought out:[32]

1.a. I have no fixed wages or salary since my services are compensated by way of commissions based on the computed premiums paid in full on the policies obtained thereat;

1.b. I have no fixed working hours and employ my own method in soliticing (sic) insurance at a time and place I see fit;

1.c. I have my own assistant and messenger who handle my daily work load;

1.d. I use my own facilities, tools, materials and supplies in carrying out my business of selling insurance;

x x x x x x x x x

6. I have my own staff that handles the day to day operations of my office;

7. My staff are my own employees and received salaries from me;

x x x x x x x x x

9. My commission and incentives are all reported to the Bureau of Internal Revenue (BIR) as income by a self-employed individual or professional with a ten (10) percent creditable withholding tax. I also remit monthly for professionals.

These statements, read with the above comparative analysis of the Manulife and the *Grepalife* cases, would have readily yielded the conclusion that no employer-employee relationship existed between Manulife and Tongko.

Even ***de Dios' letter*** is not determinative of control as it indicates the least amount of intrusion into Tongko's exercise

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[32] Motion for Reconsideration dated December 3, 2008; quoting the Affidavit of John Chua (Regional Sales Manager) dated April 28, 2003, Affidavit of Amanda Tolentino (Branch Manager) dated April 29, 2003, and Affidavit of Lourdes Samson (Unit Manager) dated April 28, 2003. *Rollo,* p. 803.

of his role as manager in guiding the sales agents. Strictly viewed, de Dios' directives are merely operational guidelines on how Tongko could align his operations with Manulife's re-directed goal of being a "big league player." The method is to expand coverage through the use of more agents. This requirement for the recruitment of more agents is not a means-and-method control as it relates, more than anything else, and is directly relevant, to Manulife's objective of expanded business operations through the use of a bigger sales force whose members are all on a principal-agent relationship. **An important point to note here is that Tongko was not supervising regular full-time employees of Manulife engaged in the running of the insurance business; Tongko was effectively guiding his corps of sales agents, who are bound to Manulife through the same Agreement that he had with Manulife, all the while sharing in these agents' commissions through his overrides.** This is the lead agent concept mentioned above for want of a more appropriate term, since the title of Branch Manager used by the parties is really a misnomer given that what is involved is not a specific regular branch of the company but a corps of non-employed agents, defined in terms of covered territory, through which the company sells insurance. Still another point to consider is that Tongko was not even setting policies in the way a regular company manager does; company aims and objectives were simply relayed to him with suggestions on how these objectives can be reached through the expansion of a non-employee sales force.

Interestingly, a large part of de Dios' letter focused on income, which Manulife demonstrated, in Tongko's case, to be unaffected by the new goal and direction the company had set. Income in insurance agency, of course, is dependent on results, not on the means and manner of selling — a matter for Tongko and his agents to determine and an area into which Manulife had not waded. Undeniably, de Dios' letter contained a directive to secure a competent assistant at Tongko's own expense. While couched in terms of a directive, it cannot strictly be understood as an intrusion into Tongko's method of operating and supervising the group of agents within his delineated territory. More than anything else, the "directive" was a signal to Tongko that his

results were unsatisfactory, and was a suggestion on how Tongko's perceived weakness in delivering results could be remedied. It was a solution, with an eye on results, for a consistently underperforming group; its obvious intent was to save Tongko from the result that he then failed to grasp — that he could lose even his own status as an agent, as he in fact eventually did.

The present case must be distinguished from the *second Insular Life case* that showed the hallmarks of an employer-employee relationship in the management system established. These were: exclusivity of service, control of assignments and removal of agents under the private respondent's unit, and furnishing of company facilities and materials as well as capital described as Unit Development Fund. All these are obviously absent in the present case. If there is a commonality in these cases, it is in the collection of premiums which is a basic authority that can be delegated to agents under the Insurance Code.

As previously discussed, what simply happened in Tongko's case was the grant of an expanded sales agency role that recognized him as leader amongst agents in an area that Manulife defined. **Whether this consequently resulted in the establishment of an employment relationship can be answered by concrete evidence that corresponds to the following questions:**

- as lead agent, what were Tongko's specific functions and the terms of his additional engagement;
- was he paid additional compensation as a so-called Area Sales Manager, apart from the commissions he received from the insurance sales he generated;
- what can be Manulife's basis to terminate his status as lead agent;
- can Manulife terminate his role as lead agent separately from his agency contract; and
- to what extent does Manulife control the means and methods of Tongko's role as lead agent?

The answers to these questions may, to some extent, be deduced from the evidence at hand, as partly discussed above. But strictly speaking, the questions cannot definitively and concretely be answered through the evidence on record. ***The concrete evidence required to settle these questions is simply not there, since only the Agreement and the anecdotal affidavits have been marked and submitted as evidence.***

Given this anemic state of the evidence, particularly on the requisite confluence of the factors determinative of the existence of employer-employee relationship, the Court cannot conclusively find that the relationship exists in the present case, even if such relationship only refers to Tongko's additional functions. While a rough deduction can be made, the answer will not be fully supported by the substantial evidence needed.

Under this legal situation, the only conclusion that can be made is that the absence of evidence showing Manulife's control over Tongko's contractual duties points to the absence of any employer-employee relationship between Tongko and Manulife. In the context of the established evidence, Tongko remained an agent all along; although his subsequent duties made him a lead agent with leadership role, he was nevertheless only an agent whose basic contract yields no evidence of means-and-manner control.

This conclusion renders unnecessary any further discussion of the question of whether an agent may simultaneously assume conflicting dual personalities. But to set the record straight, the concept of a single person having the dual role of agent and employee while doing the same task is a novel one in our jurisprudence, which must be viewed with caution especially when it is **devoid of any jurisprudential support or precedent.** The quoted portions in Justice Carpio Morales' dissent,[33]

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[33] Separate Dissenting Opinion of Justice Conchita Carpio Morales, pp. 1-2. Justice Carpio Morales asserts that *an agent may, at the same time, be an employee of a life insurance company* and quotes the *Grepalife* case:

> True, it cannot be denied that based on the definition of an "insurance agent" in the Insurance Code some of the functions performed by private

borrowed from both the *Grepalife* and the *second Insular Life cases*, to support the duality approach of the Decision of November 7, 2008, are regrettably far removed from their context — *i.e.*, the cases' factual situations, the issues they decided and the totality of the rulings in these cases — and cannot yield the conclusions that the dissenting opinions drew.

The *Grepalife case* dealt with the sole issue of whether the Ruiz brothers' appointment as zone supervisor and district manager made them employees of *Grepalife*. Indeed, because of the presence of the element of control in their contract of engagements, they were considered *Grepalife's* employees. This did not mean, however, that they were simultaneously considered agents as well as employees of *Grepalife*; the Court's ruling never implied that this situation existed insofar as the Ruiz brothers were concerned. The Court's statement — the Insurance Code may govern the licensing requirements and other particular duties of insurance agents, but it does not bar the application of the Labor Code with regard to labor standards and labor

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> respondents were those of insurance agents. Nevertheless, it does not follow that they are not employees of Grepalife. The Insurance Code may govern the licensing requirements and other particular duties of insurance agents, but it does not bar the application of the Labor Code with regard to labor standards and labor relations.

She additionally posits that the hybrid model is not novel — the second Insular Life case purportedly held that *Pantaleon delos Reyes,* acting unit manager*, was an employee of Insular Life* ***only insofar as the management contract is concerned***, quoting in support of this assertion the following discussion in the second *Insular Life* case:

> Parenthetically, both petitioner and respondent NLRC treated the agency contract and the management contract entered into between petitioner and De los Reyes as contracts of agency. We, however, hold otherwise. Unquestionably there exist major distinctions between the two agreements. **While the first has the earmarks of an agency contract, the second is far removed from the concept of agency in that provided therein are conditionalities that indicate an employer-employee relationship**. The NLRC therefore was correct in finding that **private respondent was an employee of petitioner, but this holds true only insofar as the management contract is concerned**. In view thereof, the Labor Arbiter has jurisdiction over the case.

relations — simply means that when an insurance company has exercised control over its agents so as to make them their employees, the relationship between the parties, which was otherwise one for agency governed by the Civil Code and the Insurance Code, will now be governed by the Labor Code. The reason for this is simple — the contract of agency has been transformed into an employer-employee relationship.

The *second Insular Life case,* on the other hand, involved the issue of whether the labor bodies have jurisdiction over an illegal termination dispute involving parties who had two contracts — first, an original contract (agency contract), which was undoubtedly one for agency, and another subsequent contract that in turn designated the agent acting unit manager (a management contract). Both the Insular Life and the labor arbiter were one in the position that both were agency contracts. The Court disagreed with this conclusion and held that insofar as the management contract is concerned, the labor arbiter has jurisdiction. It is in this light that we remanded the case to the labor arbiter for further proceedings. We never said in this case though that the insurance agent had effectively assumed dual personalities for the simple reason that the agency contract has been effectively superseded by the management contract. The management contract provided that if the appointment was terminated for any reason other than for cause, the acting unit manager would be reverted to agent status and assigned to any unit.

The dissent pointed out, as an argument to support its employment relationship conclusion, that any doubt in the existence of an employer-employee relationship should be resolved in favor of the existence of the relationship.[34] This observation, apparently drawn from Article 4 of the Labor Code, is misplaced, as Article 4 applies only when a doubt exists in the "implementation and application" of the Labor Code and its implementing rules; it does not apply where no doubt exists as in a situation where the claimant clearly failed to substantiate his claim of employment relationship by the quantum of evidence the Labor Code requires.

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[34] Justice Presbitero Velasco, Jr.'s Dissenting Opinion, p. 12.

On the dissent's last point regarding the lack of jurisprudential value of our November 7, 2008 Decision, suffice it to state that, as discussed above, the Decision was not supported by the evidence adduced and was not in accordance with controlling jurisprudence. It should, therefore, be reconsidered and abandoned, but not in the manner the dissent suggests as the dissenting opinions are as factually and as legally erroneous as the Decision under reconsideration.

In light of these conclusions, the sufficiency of Tongko's failure to comply with the guidelines of de Dios' letter, as a ground for termination of Tongko's agency, is a matter that the labor tribunals cannot rule upon in the absence of an employer-employee relationship. Jurisdiction over the matter belongs to the courts applying the laws of insurance, agency and contracts.

WHEREFORE, considering the foregoing discussion, we *REVERSE* our Decision of November 7, 2008, *GRANT* Manulife's motion for reconsideration and, accordingly, *DISMISS* Tongko's petition. No costs.

SO ORDERED.

Corona, C.J., Carpio, Peralta, del Castillo, Abad, Perez, and *Mendoza, JJ.,* concur.

Carpio Morales, J., see separate dissenting opinion.

Velasco, Jr., J., see dissenting opinion.

Nachura, Leonardo-de Castro, and *Bersamin, JJ.,* join the dissent of *J.* Velasco.

Villarama, Jr., J., no part.

SEPARATE DISSENTING OPINION

CARPIO MORALES, *J.*:

Writing for the Court, Justice Arturo Brion grants the Motion for Reconsideration (Motion) filed by respondent Manufacturer's Life Insurance Co. (Phils.). The *ponente*, who concurred in the

Court's November 7, 2008 Decision,[1] this time reverses the finding of employer-employee relationship. The *ponencia* states that petitioner cannot simultaneously assume the dual or hybrid role of employee and agent.

I dissent.

I submit this Separate Dissenting Opinion, after taking a closer look at the juxtaposition of five pertinent labor cases bearing on the insurance industry, three of which ruled in favor of the existence of an employer-employee relationship.

An agent may, at the same time, be an employee of a life insurance company

In *Great Pacific Life Assurance Corp. v. NLRC*[2] (second Grepalife case), the Court found that an employer-employee relationship existed between Grepalife and the Ruiz brothers in their capacities as zone supervisor and district manager. On the relevant point, it elucidated:

> True, it cannot be denied that **based on the definition of an "insurance agent" in the Insurance Code some of the functions performed by private respondents were those of insurance agents. Nevertheless, it does not follow that they are not employees of Grepalife. The Insurance Code may govern the licensing requirements and other particular duties of insurance agents, but it does not bar the application of the Labor Code with regard to labor standards and labor relations**.[3] (Citations omitted; emphasis and underscoring supplied)

This type of hybrid role is not novel. In *Insular Life Assurance Co., Ltd. v. NLRC (4th Division)*[4] (second Insular Life case), the Court ruled that the therein respondent Pantaleon de los

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[1] 570 SCRA 503, decided by the Court's Second Division, per Velasco, *J.*

[2] G.R. Nos. 80750-51, July 23, 1990, 187 SCRA 694, decided by the Court's Third Division, per Cortes, *J.*

[3] *Id.* at 699.

[4] G.R. No. 119930, March 12, 1998, 287 SCRA 476, decided by the Court's First Division, per Bellosillo, *J.*

Reyes, acting unit manager, was an employee of Insular Life **only insofar as the management contract is concerned**.

> Parenthetically, both petitioner and respondent NLRC treated the agency contract and the management contract entered into between petitioner and De los Reyes as contracts of agency. We[,] however[,] hold otherwise. Unquestionably there exist major distinctions between the two agreements. **While the first has the earmarks of an agency contract, the second is far removed from the concept of agency in that provided therein are conditionalities that indicate an employer-employee relationship**. The NLRC therefore was correct in finding that **private respondent was an employee of petitioner, but this holds true only insofar as the management contract is concerned**. In view thereof, the Labor Arbiter has jurisdiction over the case.[5] (Emphasis and underscoring supplied)

In the present case, the employer-employee relationship is extant from petitioner's management functions as Unit Manager in 1983, later as Branch Manager in 1990, and finally as Regional Sales Manager in 1996, notwithstanding the absence of written management contracts. Even assuming that management contracts were executed, the law is deemed written into them and its application cannot be disavowed by the parties.

Admittedly, petitioner was allowed to continue selling as an agent simultaneously with his management functions. Insofar as the termination of his agency agreement[6] is concerned, the trial court has jurisdiction over such controversy.

The *ponencia* finds it "conflicting" for petitioner to assume the dual roles of agent and employer. It agrees, however, that petitioner's "additional role as Branch Manager did not lessen his main and dominant role as insurance agent," without explaining how to weigh the dominance of one function over another.

In the present Motion, there is no reiteration of the invocation of Insurance Commission (IC) Memorandum Circular 3-93 (June 28, 1993) which provides that "[n]o official or employee of an

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[5] *Id.* at 483.

[6] *Rollo*, pp. 451-453.

insurance brokerage or an adjustment company and no individual adjuster, shall be licensed to act as an insurance agent or general agent" and that "[n]o employee with the rank of manager and above of an insurance company shall be licensed to act as its insurance agent or general agent."[7]

There is no conflict between the 1993 IC Circular and the Court's 1998 Decision in the second Insular Life case. That the regulation says that things should run in a certain manner does not mean that any determination of facts should not be contrary to that manner. "He should not" is different from "he did not." Respondent may assert that the parties herein could not have violated the Circular, but it does not bar the Court to determine otherwise when facts glaringly point to the existence of an employer-employee relationship.

Whatever infraction or tolerance committed or exhibited by the parties in defiance of the Circular or any other regulation or Code, it is for the IC or the appropriate body to determine. The same holds true with the corollary tax implications which respondent invites the Court to explore. Reconcilability of tax returns has never been decisive of the issue of employer-employee relationship. It never became the business of this Court to thresh out for the parties the tax consequences arising from every labor dispute where an alleged "independent contractor" was declared by the Court to be an employee. Suffice it to state that a party would have to face the consequences, if any, of his or her actions before the proper forum.

On one hand, respondent proffers petitioner's income tax returns and documents[8] as an admission that it did not employ petitioner, to which petitioner replies that the withholding and remittance of taxes were done by respondent as payor and withholding agent, as indicated in the Certificates of Creditable Income Tax Withheld at Source.

On the other, petitioner relies as respondent's implied admission that he is an employee respondent's having offered him a Stock

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[7] *Vide* Manulife's Comment, *rollo*, p. 418.

[8] *Rollo*, pp. 456-462.

Option that could only be exercised by "active employees" and would be terminated upon "termination of employment,"[9] respondent's disclaimer to this exceptional grant solely decided by its Head Office in Canada notwithstanding.

As the conflicting claims effectively cancel each other, a review of the other array of evidence is in order.

Control over the means and methods in the attainment of the result

It bears noting that the NLRC Decision of September 27, 2004 judiciously explained why the resolution of the employment status of petitioner hinges on the "control test" after discussing the three other components of the four-fold test.[10]

Delving into jurisprudence, no employer-employee relationship was found in *Insular Life Assurance Co., Ltd. v. NLRC*[11] (first Insular Life case) because the Court, applying the control test, found that Insular Life neither controlled nor restricted the choice of methods — or the methods themselves — of selling insurance by agency manager Melecio Basiao, leaving him free to exercise his own judgment as to the time, place and means of soliciting insurance.

In declaring the type of "control" that is necessary for one to be deemed an employee, the Court explained in the first Insular Life case, *viz*:

> x x x It should, however, be obvious that not every form of control that the hiring party reserves to himself over the conduct of the party hired in relation to the services rendered may be accorded the effect of establishing an employer-employee relationship between them in the legal or technical sense of the term. A line must be drawn somewhere, if the recognized distinction between an employee and an individual contractor is not to vanish altogether. Realistically, it would be a rare contract of service that gives untrammelled freedom

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[9] *Id.* at 291-294.

[10] *Vide rollo*, pp. 358-360.

[11] G.R. No. 84484, November 15, 1989, 179 SCRA 459, decided by the Court's First Division, per Narvasa, *J.*

to the party hired and eschews any intervention whatsoever in his performance of the engagement.

Logically, the line should be drawn between rules that merely serve as guidelines towards the achievement of the mutually desired result without dictating the means or methods to be employed in attaining it, and **those that control or fix the methodology and bind or restrict the party hired to the use of such means**. The first, which aim only to promote the result, create no employer-employee relationship unlike **the second, which address both the result and the means used to achieve it**. The distinction acquires particular relevance in the case of an enterprise affected with public interest, as is the business of insurance, and is on that account subject to regulation by the State with respect, not only to the relations between insurer and insured but also to the internal affairs of the insurance company. Rules and regulations governing the conduct of the business are provided for in the Insurance Code and enforced by the Insurance Commissioner. It is, therefore, usual and expected for an insurance company to promulgate a set of rules to guide its commission agents in selling its policies that they may not run afoul of the law and what it requires or prohibits. Of such a character are the rules which prescribe the qualifications of persons who may be insured, subject insurance applications to processing and approval by the Company, and also reserve to the Company the determination of the premiums to be paid and the schedules of payment. None of these really invades the agent's contractual prerogative to adopt his own selling methods or to sell insurance at his own time and convenience, hence cannot justifiably be said to establish an employer-employee relationship between him and the company.[12] (Emphasis and underscoring supplied)

I thus concur with the conclusion that the imposition of the codes of conduct is not indicative of control on the part of an insurance company.

In *Great Pacific Life Assurance Corporation v. Judico*[13] (first Grepalife case), however, the therein respondent Honorato Judico was found to be an employee because

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[12] *Id.* at 464-465.

[13] G.R. No. 73887, December 21, 1989, 180 SCRA 445, decided by the Court's Second Division, per Paras, *J.*

x x x the element of control by the petitioner on Judico was very much present. The record shows that petitioner Judico received a definite minimum amount per week as his wage known as "sales reserve" wherein the failure to maintain the same would bring him back to a beginner's employment with a fixed weekly wage of ₱200.00 for thirteen weeks regardless of production. He was assigned a definite place in the office to work on when he is not in the field; and in addition to his canvassing work he was burdened with the job of collection. In both cases he was required to make regular report to the company regarding these duties, and for which an anemic performance would mean a dismissal. Conversely[,] faithful and productive service earned him a promotion to Zone Supervisor with additional supervisor's allowance, a definite amount of ₱110.00 aside from the regular ₱200.00 weekly "allowance". Furthermore, his contract of services with petitioner is not for a piece of work nor for a definite period.[14] (Underscoring supplied)

The question on the presence of "control over the means and methods" must always be taken **in relation to the attainment of the result** or goal. The proper query is thus not whether respondent exercised means-and-method control but whether such control was directed in attaining which result.

Although the bottomline of any commercial enterprise has always been sales, the identification of the specific "result or goal" in a particular case can only be gathered from the nature of one's functions. **It is thus imperative to identify the functions appurtenant to the goal before administering the control test.**

In the first *Insular Life* case, it was clear that selling or soliciting insurance was the goal, the attainment of which Insular Life did not exercise control over the methodology of the agency manager. Insular Life set no accomplishment quotas and compensated him on the basis of results obtained. He was not bound to observe any schedule of working hours or report to any regular station. He could seek and work on his prospects anywhere and at anytime he chooses.

In the first *Grepalife* case, however, although the debit agent's goal of selling was basically identical, Grepalife retained control

[14] *Id.* at 450.

over the means in achieving sales. Grepalife assigned him a definite place in the office to work on when he is not in the field, gave him collection and canvassing jobs, required him to make regular report regarding these duties, and, in fact, exercised the power of dismissal for his dismal performance.

There is no element of control with respect to petitioner's function of selling insurance as an agent. His managerial function, however, takes another form.

In the second *Insular Life* and *Grepalife* cases, the goal expected from the managers was different from the first set of cases. The "result or goal" (in how to accomplish it the company was found to have exercised control) were specifically aligned to the coordination and supervision of the whole marketing effort or strategy.

In the second *Insular Life* case, the acting unit manager was assigned the task of supervising and coordinating the sales efforts of the underwriters who were to be recruited and trained within his designated territory.

In the second *Grepalife* case, the zone supervisor and the district manager were entrusted with supervisory, sales and administrative functions to guard Grepalife's business interests, to bring in more clients to the company, and to ensure that all collections and reports are faithfully brought to the company.

In both cases, the manner by which those goals were carried out was dictated by their respective employers. Similarly, in the present case, the nature of petitioner's job *as such* called for the exercise of supervisory and administrative functions, including recruitment and training of agents, which, when examined in the light of the two cases, were discharged within the close range of control wielded by respondent. Tersely stated, petitioner's duty of supervision was under the "control" of respondent.

A comparison of functions with that obtaining in the second *Grepalife* case illustrates an intimate similarity:

Furthermore, it cannot be gainsaid that Grepalife had control over private respondents' performance as well as the result of their efforts. A cursory reading of their respective functions as enumerated in their contracts reveals that the company practically dictates the manner by which their jobs are to be carried out. For instance, the District Manager must properly account, record and document the company's funds spot-check and audit the work of the zone supervisors, conserve the company's business in the district through 'reinstatements', follow up the submission of weekly remittance reports of the debit agents and zone supervisors, preserve company property in good condition, train understudies for the position of district manager, and maintain his quota of sales (the failure of which is a ground for termination). On the other hand, a zone supervisor must direct and supervise the sales activities of the debit agents under him, conserve company property through "reinstatements", undertake and discharge the functions of absentee debit agents, spot-check the records of debit agents, and insure proper documentation of sales and collections by the debit agents.[15] (Underscoring supplied)

In contradistinction with *Carungcong v. NLRC*,[16] which also involves an insurance manager, the Court found the therein petitioner Susan Carungcong, a new business manager of Sun Life Assurance Company, to be an independent contractor. In the absence of restrictive or interfering company regulations that effectively and actually controlled her choice of methods in performing her management duties, the Court gave weight to the contractual disavowals in the management contracts and her admission that she alone judges the element of time and place and means in the performance of duties. She patently admitted that she performed "monitoring, training, recruitment and sales, at her own time and convenience, at however she deemed convenient, and with whomever she chose."[17]

More significantly, in the succeeding *Insular Life* case, the Court found the following indicators material in finding the presence of control in cases involving insurance managers:

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[15] *Supra* at 698-699.

[16] G.R. No. 118086, December 15, 1997, 283 SCRA 308, decided by the Court's Third Division, per Narvasa, *C.J.*

[17] *Id.* at 322.

Exclusivity of service, control of assignments and removal of agents under private respondent's unit, collection of premiums, furnishing of company facilities and materials as well as capital described as Unit Development Fund are but hallmarks of the management system in which herein private respondent worked. This obtaining, there is no escaping the conclusion that private respondent Pantaleon de los Reyes was an employee of herein petitioner.[18] (Underscoring supplied)

The *ponencia* concludes that "[a]ll these are obviously absent" in petitioner's case. The facts show otherwise, however. On top of the exclusive service rendered to respondent, which *AFP Mutual Benefit Association, Inc. v. NLRC*[19] instructs to be not controlling, other factors were present. Petitioner established no agency of his own as the Metro North Region to which he was assigned remained intact even after his ties with respondent were severed.[20] Respondent provided and furnished company facilities, equipments and materials for petitioner at respondent's Makati office.[21] Respondent's control of assignments was evident from its act of removing the North Star Branch from petitioner's scope of the Metro North Region, on which a "memo to spell this matter out in greater detail" was advised to be issued shortly thereafter.[22] Respondent reserved to impose other improvements in the region after manifesting its intention to closely follow the region.[23] Respondent's managers, like petitioner, could only refer and recommend to respondent prospective agents who would be part of their respective units.[24] In other words, respondent had the last say on the composition and structure of the sales unit or region of petitioner. Respondent, in fact, even devised the deployment of an Agency Development Officer in the region

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[18] *Supra* at 489.

[19] G.R. No. 102199, January 28, 1997, 267 SCRA 47.

[20] *Rollo*, pp. 364-365.

[21] *Id.* at 9, 727; *vide rollo*, pp. 241-242.

[22] *Id.* at 299.

[23] *Ibid.*

[24] *Id.* at 592-595.

to "contribute towards the manpower development work x x x as part of our agency growth campaign."

Such an arrangement leads to no other conclusion than that respondent exercised the type of control of an employer, thereby wiping away the perception that petitioner was only a "lead agent" as viewed by the *ponencia*. Even respondent sees otherwise when it rebuked petitioner that "[y]ou (petitioner) may have excelled in the past as an agent but, to this date, you still carry the mindset of a senior agent."[25] Insofar as his management functions were concerned, petitioner was no longer considered a senior agent.

I vote to DENY respondent's Motion but MODIFY the dispositive portion of the Court's November 7, 2008 Decision to (*a*) clarify that petitioner, Gregorio Tongko, became respondent's employee not when he started as an agent in 1977 but when he was appointed as unit manager in 1983, thus moving the reckoning of the computation of separation pay; and (*b*) remand the case to the NLRC for the purpose of computing petitioner's proper backwages as manager.

DISSENTING OPINION

VELASCO, JR., *J.*:

By Decision dated November 7, 2008, the Court, on the finding that petitioner Gregorio V. Tongko was illegally dismissed as employee of respondent Manufacturers Life Insurance Co. (Phils.), Inc. (Manulife), awarded him full backwages and separation benefits, in lieu of reinstatement.

Manulife, via this Motion for Reconsideration, urges the Court to reconsider and set aside its aforementioned Decision by declaring, in effect, that Tongko had never been its employee.[1] As Manulife avers, the subject Decision effectively "converted

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[25] *Rollo*, p. 298.

[1] *Rollo*, pp. 2092-2114.

agency contracts of life insurance agents to contracts of regular employment."[2] It thus warns that the ruling, if not reconsidered, would apply to all 41,853 life insurance agents spread across the country, thrusting in the process the insurance industry in the Philippines into a crisis.[3]

The majority seems to agree with the grim possibilities thus painted by Manulife.

As was before the National Labor Relations Commission (NLRC), then the Court of Appeals and as it is before the Court, the critical issue in the present case is the same: whether or not Tongko — during all the time he was directly or indirectly connected with the company, first as an agent, pursuant to a *Career Agent's Agreement* (*Agreement*), and then as unit, branch and eventually regional sales manager of Manulife's Sales Agency Organization — was an employee of Manulife. In resolving the issue of whether an employer-employee tie obtains, attention was focused, as jurisprudential trend dictates, on the *four-fold test* on employment developed and invariably invoked by labor officials and this Court as a guiding, if not governing norm, to determine, based on the facts and circumstances involved in a given situation, whether such relationship exists. These four elements are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the control test.[4] And as stressed in the Decision subject of this recourse, of the four, the control test—meaning whether or not the employer controls or has reserved the right to control the employee not only as to the result of the work to be done but also the means and methods employed in reaching that end––constitutes the most important index of the existence of an employer-employee relationship. And as also there emphasized, the security of tenure of a regular employee flowing from employment cannot be defeated by any contract, for the law

[2] *Id.* at 773.

[3] *Id.* at 772.

[4] G.R. No. 166920, February 19, 2007, 516 SCRA 209.

defines the employment status of a person.[5] Article 280 of the Labor Code provides that "[t]he provisions of written agreement to the contrary notwithstanding and regardless of oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer."

From the evidence on record, it appears that Manulife had control over the work of Tongko after his appointment as manager of the company's insurance sales force, indubitably implying the existence of an employer-employee relationship between them.

It cannot be over-emphasized enough that in *Great Pacific Life Assurance Corporation v. NLRC, Ernesto Ruiz and Rodrigo Ruiz*[6] (*Grepalife*), the Court considered respondents Ruizes, then district managers, as employees of Grepalife, taking into account their duties and undertakings. Some excerpts from *Grepalife*:

> x x x A cursory reading of their respective functions as enumerated in their contracts reveals that the company practically dictates the manner by which their jobs are to be carried out. For instance, the District Manager must **properly account, record and document the company's funds, spot-check and audit the work of the zone supervisors,** conserve the company's business in the district through 'reinstatements', **follow up the submission of weekly remittance reports of the debit agents and zone supervisors,** preserve company property in good condition, **train understudies for the position of district manager, and maintain his quota of sales** (the failure of which is a ground for termination). On the other hand, a zone supervisor must **direct and supervise the sales activities of the debit agents under him,** conserve company property through "reinstatements", **undertake and discharge the functions of absentee debit agents, spot-check the records of debit agents, and insure**

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[5] *Industrial Timber Corp. v. NLRC*, G.R. No. 83616, January 20, 1989, 169 SCRA 341.

[6] G.R. Nos. 80750-51, July 23, 1990, 187 SCRA 694.

proper documentation of sales and collections by the debit agents.[7] (Emphasis supplied.)

A comparative look at the duties of the Ruizes, as set forth in the decision in *Grepalife*, and those of Tongko, as may be deduced from affidavits[8] of insurance managers of Manulife, would reveal a striking similarity in their respective duties as would adequately support a similar finding on the question of whether the petitioner, like the Ruizes, is an employee of Manulife just as the Ruizes were Grepalife's. Consider:

Duties of Manulife's Managers	Duties of Grepalife's Managers/Supervisors
– to render or recommend prospective agents to be licensed, trained and contracted to sell Manulife products, and who will be part of the manager's Unit	– train understudies for the position of district manager
– to coordinate activities of the agents under [the managers'] Unit in [the agents'] daily, weekly and monthly selling activities, making sure that their respective sales targets are met; – to conduct periodic training sessions for [the] agents to further enhance their sales skill; and – to assist [the] agents with their sales activities by way of joint fieldwork, consultations and one-on-one evaluation and analysis of particular accounts	– properly account, record and document the company's funds, spot-check and audit the work of the zone supervisors, x x x follow up the submission of weekly remittance reports of the debit agents and zone supervisors – direct and supervise the sales activities of the debit agents under him, x x x undertake and discharge the functions of absentee debit agents, spot-check the record of debit agents, and insure proper documentation of sales and collections of debit agents.

[7] *Id*. at 698-699.

[8] *Rollo*, pp. 590-594.

The *ponencia* would altogether deny Tongko––either while serving as insurance agent or underwriter pursuant to the *Agreement*, or as appointed manager––the status of Manulife's employee. It added the observation that the factual antecedents in this case were set in the insurance industry and, hence, the Insurance Code and the industry practices instead of the Labor Code shall primary govern in determining the element of control and necessarily whether an employer-employee existed between Tongko and Manulife. The *ponencia* also went on to state that the *Agreement*, which provided that "the Agent is an independent contractor x x x and nothing herein shall be construed as creating an employer-employee relationship between the Company and Agent," embodies the intent of Manulife and Tongko at the time they executed the *Agreement* and they were governed by this understanding throughout their relationship.

I beg to disagree.

First, the suggestion in the *ponencia* that the characterization the parties gave their relationship cannot simply be brushed aside runs counter against established jurisprudence. As it were, the question of the existence of an employer-employee relationship is a matter of public concern, never left, if ever, for the parties to peremptorily determine. To borrow from *Insular Life Assurance Co., Ltd. v. NLRC (4th Division)*[9] (*Insular Life II*), neither can such existence be negated by expressly repudiating it in the management contract and providing therein, as here, that the employee is an independent contractor. For, as earlier indicated, the law defines and prescribes the employment status of a person, not what the clashing parties chose to call it or say it should be.[10] We said as much in *Servidad v. National Labor Relations Commission*:[11]

The private agreement of the parties cannot prevail over Article 1700 of the Civil Code, which provides:

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[9] G.R. No. 119930, March 12, 1998, 287 SCRA 476, 489.

[10] *Industrial Timber Corp. v. NLRC*, *supra* note 5.

[11] G.R. No. 128682, March 18, 1999, 305 SCRA 49, 57-58.

> Art. 1700. The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to special laws on labor unions, collective bargaining, strikes and lockouts, closed shops, wages, working conditions, hours of labor and similar subjects.

Similarly telling is the case of *Pakistan Airlines Corporation vs. Pole, et al.* There, it was said:

> x x x provisions of applicable law, especially provisions relating to matters affected with public policy, are deemed written into the contract. Put a little differently, the governing principle is that the parties may not contract away applicable provisions of law especially peremptory provisions dealing with matters heavily impressed with public interest. The law relating to labor and employment is clearly such an area and parties are not at liberty to insulate themselves and their relationships from the impact of labor laws and regulations by simply contracting with each other. . .

Of the same tenor is the Court's fairly recent holding in *Paguio v. National Labor Relations Commission*:[12]

Respondent company cannot seek refuge under the terms of the agreement it has entered into with petitioner. The law, in defining their contractual relationship, does so, not necessarily or exclusively upon the terms of their written or oral contract, but also on the basis of the nature of the work petitioner has been called upon to perform. The law affords protection to an employee, and it will not countenance any attempt to subvert its spirit and intent. **A stipulation in an agreement can be ignored as and when it is utilized to deprive the employee of his security of tenure.** The sheer inequality that characterizes employer-employee relations, where the scales generally tip against the employee, often scarcely provides him real and better options. (Emphasis supplied.)

Second, and in relation to the first reason, the fact that the *Agreement* was subsisting even after Tongko's appointment as manager does not militate against a conclusion that Tongko was Manulife's employee, at least during his stint as such

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[12] G.R. No. 147816, May 9, 2003, 403 SCRA 190, 198.

manager. To be sure, an insurance agent may at the same time be an employee of an insurance company. Or to put it a bit differently, an employee-manager may be given the privilege of soliciting insurance, as agent, and earn in the process commission for every contract concluded as a result of such solicitation. The reality of two personalities — one as employee and the other as non-employee of an insurance company, coinciding in one person — was acknowledged in *Insular Life II*, in which the Court wrote:

> Parenthetically, both petitioner and respondent NLRC treated the agency contract and the management contract entered into between [Insular Life] and [respondent] De Los Reyes as contracts of agency. We however hold otherwise. Unquestionably there exist major distinctions between the two agreements. While the first has the earmarks of an agency contract, the second is far removed from the concept of agency in that provided therein are conditionalities that indicate an employer-employee relationship. The NLRC therefore was correct in finding that private respondent was an employee of petitioner, but this holds true only insofar the management contract is concerned.[13] x x x

Grepalife may also be cited where we declared:

> True, it cannot be denied that based on the definition of an "insurance agent" in the Insurance Code some of the functions performed by private respondent were those of insurance agents. Nevertheless, it does not follow that they are not employees of Grepalife. The Insurance Code may govern the licensing requirements and other particular duties of insurance agents, but it does not bar the application of the Labor Code with regard to labor standards and labor relations.[14]

The *ponencia* points out that *Grepalife* and *Insular Life II* factually differ with the instant case in that: "these cited cases dealt with the proper legal characterization of a subsequent management contract that superseded the original agency contract between the insurance company and its agent." In other words,

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[13] *Supra* note 9, at 483.

[14] *Supra* note 6, at 699.

the majority opinion distinguishes the instant case from *Grepalife* and *Insular Life II* in the lack of a written management contract between Tongko and Manulife.

The cited difference does not, for that reason alone, pose a plausible bar to the application of *Grepalife* and *Insular Life II* to the instant case. In fact, the absence of a written agreement to memorialize the naming and assumption of Tongko as unit and later branch manager is irrelevant to the issue of the presence of an employer-employee relationship. A management contract, for purposes of determining the relationship between the worker and the employer, is simply an evidence to support a conclusion either way. Such document, or the absence thereof, would not influence the conclusion on the issue of employment. The presence of a management contract would merely simplify the issue as to the duties and responsibilities of the employee concerned as they would then be defined more clearly.

Manulife's decision not to execute a management contract with Tongko was well within its discretion. However, the fact of Manulife and Tongko not having inked a management contract, if this were the case, did not reduce the petitioner to a mere "lead agent," as the *ponencia* would have it. While there was perhaps no written management contract whence Tongko's rights, duties and functions as unit/branch manager may easily be fleshed out as a prelude to determining if an employer-employee relationship with Manulife did exist, other evidence was adduced to show such duties and responsibilities. For one, in his letter[15] of November 6, 2001, respondent de Dios distinctly referred to Tongko as sales manager. For another, it is well nigh inconceivable that Manulife issued no promotional appointments to petitioner as unit manager, branch manager and eventually regional sales manager. Basic and sound management practice simply requires an appointment for any upward personnel movement, particularly when additional duties and compensation are involved. Then, too, the aforementioned affidavits of the managers of Manulife as to the duties and responsibilities of a unit manager, such as

[15] *Rollo*, p. 53.

Tongko, point to the conclusion that these managers were employees of Manulife, applying the four-fold test.

To my mind, *Grepalife* and *Insular Life II* bear obvious parallelism to the instant case *vis-à-vis* the facts against which they are cast. Too, the parties are similarly situated in point of positions occupied, the agreed exclusivity of service and functional profiles to warrant the application of the *stare decisis* doctrine. The Latin maxim s*tare decisis et non quieta movere,* translates "stand by the thing and do not disturb the calm." It requires that high courts must follow, as a matter of sound policy, its own precedents, or respect settled jurisprudence absent compelling reason to do otherwise.[16] Put a bit differently, the doctrine holds that when a court has laid down a principle of law as applicable to a certain set of facts, it will abide with that principle in future cases in which the facts are substantially the same.[17] In the view I take of this case, there is absolutely nothing in *Grepalife* and *Insular Life II* which may be viewed as plainly unreasonable as to justify withholding from them the *stare decisis* effect.

And lest it be overlooked, both *Grepalife* and *Insular Life II* appreciated and applied the element of control — the most crucial and determinative indicator of an employer-employee relationship — as a labor law concept. The Labor Code and other labor relations laws, some of which have been incorporated in the Civil Code, regulate the relationship between labor and capital or between worker and employer in the private sector. The Insurance Code, on the other hand, governs the licensing requirements and other particular duties of insurance agents;[18] it also regulates not only the relationship between the insurer and the insured but also the internal affairs of the insurance company.[19] These are the particular areas of operation of the aforementioned laws. To

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[16] *Republic v. Nillas*, G.R. No. 159595, January 23, 2007, 512 SCRA 286, 297.

[17] *Uy v. Villanueva*, G.R. No. 157851, June 29, 2007, 526 SCRA 73, 90.

[18] *Grepalife*, *supra* note 6.

[19] *Insular Life Insurance Co., Ltd. v. NLRC*, G.R. No. 84484, November 15, 1989, 179 SCRA 459, 465; citing 43 Am. Jur. 2d. pp. 73-91.

argue then that the Insurance Code and insurance industry practice shall determine the existence of an employer-employee relationship in the case at bench is, it is submitted, simplistic if not downright erroneous. Both law and jurisprudence do not support the contention on the primacy of the Insurance Code and insurance usages in determining said relationship. As a matter of fact, the Court, in a string of cases involving corporations engaged in non-insurance activities as well as those into the insurance business, notably in *Grepalife*, *Insular Life I*[20] and *II*, *Great Pacific Life Assurance Corporation v. Judico*,[21] and *AFP Mutual Benefit Association v. NLRC*,[22] held that the determination of the existence of an employer-employee relationship lies in the four-fold test. An examination of these cases yields no indication that a separate law, other than the Labor Code and labor law concepts, was ever considered by the Court in determining the existence of an employer-employee relationship.

There can be no quibbling that Tongko, as unit, branch and regional sales manager, was without a fixed salary, but earned his income strictly on commission basis. However, how and when he was paid his compensation is, without more, not an argument against a finding that he was an employee of Manulife. For, the phrase "wage paid," as a component of employment and as an element of the four-fold test, is defined under Art. 97(f) of the Labor Code as "the remuneration or earnings, however designated, capable of being expressed in terms of money, whether fixed or ascertained on a time, task, piece or **commission basis** or other method of calculating the same, which is payable by an employer to an employee under a written or unwritten contract of employment for work done or to be done, or for services rendered or to be rendered."[23] *Lazaro v. Social Security Commission*[24] is emphatic on this point:

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[20] *Insular Life Insurance Co., Ltd. v. NLRC*, *supra* note 19.

[21] G.R. No. 73887, December 21, 1989, 180 SCRA 445.

[22] G.R. No. 102199, January 28, 1997, 267 SCRA 47.

[23] *Iran v. NLRC (Fourth Division)*, G.R. No. 121927, April 22, 1998, 289 SCRA 433.

[24] G.R. No. 138254, July 30, 2004, 435 SCRA 472, 476.

Lazaro's arguments may be dispensed with by applying precedents. **Suffice it to say, the fact that Laudato was paid by way of commission does not preclude the establishment of an employer-employee relationship.** In *Grepalife v. Judico*, the Court upheld the existence of an employer-employee relationship between the insurance company and its agents, despite the fact that the compensation that the agents on commission received was not paid by the company but by the investor or the person insured. The relevant factor remains, as stated earlier, whether the "employer" controls or has reserved the right to control the "employee" not only as to the result of the work to be done but also as to the means and methods by which the same is to be accomplished. (Emphasis supplied.)

Much has been made in the *ponencia*, following Manulife's line, of Tongko's income tax returns (ITRs), in which he described himself to be "self-employed." It must be stressed in this regard, however, that he had no other choice but to do so, for the following reasons: (1) Manulife had refused to consider him as its employee; and (2) Manulife withheld 10% of his income as an agent as taxes. Tongko had no other viable alternative but to make use of the withholding tax certificates issued by Manulife in paying his taxes. Thus, petitioner could not have really been faulted for including in his ITRs an entry declaring himself as self-employed. While perhaps not on all fours here, because its issue revolved around estoppel instead of declaration against interest made in an ITR, *Philippine National Construction Corporation v. NLRC*[25] is nonetheless most instructive:

Time honored is the precept that quitclaims are ineffective in barring recovery for the full measure of the worker's rights and that acceptance of benefits therefrom does not amount to estoppel. In *Lopez Sugar Corporation vs. Federation of Free Workers*, the Court explained:

> Acceptance of those benefits would not amount to estoppel. The reason is plain. Employer and employee, obviously do not stand on the same footing. The employer drove the employee to the wall. The latter must have to get hold of money. Because, out of the job, he has to face harsh necessities of life. He thus

[25] G.R. No. 100353, October 22, 1999, 317 SCRA 186, 193.

found himself in no position to resist money proffered. His, then, is a case of adherence, not of choice. One thing sure, however, is that petitioners did not relent their claim. They pressed it. They are deemed not to have waived any of their rights. x x x

It may be noted at this juncture that Manulife has changed its stance on the issue of illegal dismissal. In its *Position Paper with Motion to Dismiss* filed before the Labor Arbiter, in its *Motion for Reconsideration (Re: Decision dated 27 September 2004)* dated October 11, 2004 filed before the NLRC, and in its *Comment* dated August 5, 2006 filed before the Court, Manulife had consistently assumed the posture that the dismissal of petitioner was a proper exercise of termination proviso under the *Agreement*.[26] In this motion, however, Manulife, in a virtual acknowledgment of Tongko being its employee, contends that he was "dismissed for a just and lawful cause — for gross and habitual neglect of duties, inefficiency and willful disobedience of the lawful orders."[27] Manulife adds that:

Respondents presented an abundance of evidence demonstrating how termination happened only after failure to meet company goals, after all remedial efforts to correct the inefficiency of Petitioner failed and after Petitioner, as found by the CA, created dissension in Respondent Manulife when he refused to accept the need for improvement in his area and continued to spread the bile of discontent and rebellion that he had generated among the other agents.[28]

If Manulife claimed at every possible turn that Tongko was never an employee of the insurance company, why take a formal action of dismissal with a statement of the grounds therefor?

No less than the Constitution itself guarantees protection to labor:

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[26] *Rollo*, pp. 451-453.

[27] *Id.* at 813.

[28] *Id.*

ARTICLE XIII
LABOR

Section 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.

x x x x x x x x x

The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.

The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns to investments, and to expansion and growth.

Complementing the foregoing guarantee provisions is Article 1702 of the Civil Code mandating that, in case of doubt, all labor legislation and all labor contracts shall be construed in favor of the safety and decent living for the laborer. Alongside with the Civil Code command is Art. 4 of the Labor Code providing:

ART. 4. *Construction in favor of labor*. — All doubts in the implementation and interpretation of the provisions of this Code, including its implementing rules and regulations, shall be resolved in favor of labor.

The fairly recent *Dealco Farms, Inc. v. National Labor Relations Commission (5th Division)*[29] is reflective of the statutory bias in favor of the working class and the need to give labor the benefit of the doubt, thus:

Having failed to substantiate its allegation on the relationship between the parties, we stick to the settled rule in controversies between a laborer and his master that **doubts reasonably arising from the evidence should be resolved in the former's favor**. (Emphasis supplied.)

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[29] G.R. No. 153192, January 30, 2009, 577 SCRA 280, 295.

In the instant case, doubts as to the true relationship between Tongko and Manulife should be resolved in favor of the former and for employment.

Lest it be misunderstood, this dissent proposes only to affirm the underlying Decision of the Court dated November 7, 2008, but only insofar as it considered Tongko Manulife's employee following his hiring as manager, first as unit manager, then branch manager and ultimately as regional sales manager. For, it was only after such engagement that Manulife exercised effective control not only over the results of his works, but also over the means and methods by which it is to be accomplished; it was then that Tongko was tasked to perform administrative duties. As to Tongko's stint as insurance agent, an employer-employee relationship cannot be posited in light of the paucity of evidence to support the proposition.

In view of the foregoing, I vote to **partially grant** the motion for reconsideration but only in the sense that petitioner Tongko shall only be considered as employee of respondent Manulife only after his engagement as manager of the company. Accordingly, his entitlement to backwages and separation benefits shall be reckoned from that point in time and the amount shall correspond to his commission earned as such manager only, subject to the usual accounting requirements.

FIRST DIVISION

[G.R. No. 167942. June 29, 2010]

ASIAN CONSTRUCTION and DEVELOPMENT CORPORATION, *petitioner, vs.* **CATHAY PACIFIC STEEL CORPORATION, (CAPASCO),** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW TO THE SUPREME COURT; LIMITED TO REVIEW OF QUESTIONS OF LAW. —** As a rule, only questions of law may be appealed to the Court by petition for review. The Court is not a trier of facts, its jurisdiction is limited to errors of law. Moreover factual findings of the trial court, particularly when affirmed by the CA, are generally binding on this Court.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; PRINCIPLE OF AUTONOMY OF CONTRACTS; APPLIED IN CASE AT BAR. —** Article 1306 of the Civil Code provides that the "contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy." In the present case, the sales invoices expressly stipulated the payment of interest and attorney's fees in case of overdue accounts and collection suits, to wit: "Interest at 24% per annum is to be charged to all accounts overdue plus 25% additional on unpaid invoice for attorney's fees aside from court cost, the parties expressly submit themselves to the venue of the courts in Rizal, in case of legal proceeding."

3. **ID.; ID.; CONTRACTS OF ADHESION; BINDING AS ORDINARY CONTRACTS; CASE AT BAR. —** The sales invoices are in the nature of contracts of adhesion. "The court has repeatedly held that contracts of adhesion are as binding as ordinary contracts. Those who adhere to the contract are in reality free to reject it entirely and if they adhere, they give their consent. It is true that in some occasions the Court struck down such contracts as void when the weaker party is imposed upon in dealing with the dominant party and is reduced to the alternative of accepting the contract or leaving it, completely deprived of the opportunity to bargain on equal footing." Considering that petitioner is not a small time construction company, having such construction projects as the MRT III and the Mauban Power Plant, "petitioner is presumed to have full knowledge and to have acted with due care or, at the very least, to have been aware of the terms and conditions of the contract. Petitioner was free to contract the services of another supplier if respondent's terms were not acceptable." By

contracting with respondent for the supply of the reinforcing steel bars and not interposing any objection to the stipulations in the sales invoice, petitioner did not only bind itself to pay the stated selling price, it also bound itself to pay (1) interest of 24% per annum on overdue accounts and (2) 25% of the unpaid invoice for attorney's fees. Thus, the lower courts did not err in using the invoices as basis for the award of interest.

4. **ID.; DAMAGES; ATTORNEY'S FEES; DISCUSSED. —** In *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*, an apt discussion on attorney's fees was made by the Court, thus: "The law allows a party to recover attorney's fees under a written agreement. In *Barons Marketing Corporation v. Court of Appeals*, the Court ruled that: [T]he attorney's fees here are in the nature of liquidated damages and the stipulation therefor is aptly called a penal clause. It has been said that so long as such stipulation does not contravene law, morals, or public order, it is strictly binding upon defendant. The attorney's fees so provided are awarded in favor of the litigant, not his counsel. On the other hand, the law also allows parties to a contract to stipulate on liquidated damages to be paid in case of breach. A stipulation on liquidated damages is a penalty clause where the obligor assumes a greater liability in case of breach of an obligation. The obligor is bound to pay the stipulated amount without need for proof on the existence and on the measure of damages caused by the breach." In the present case, the invoices stipulate for 25% of the overdue accounts as attorney's fees. The overdue account in this case amounts to ₱241,704.91, 25% of which is ₱60,426.23. This amount is not excessive or unconscionable, hence, we sustain the amount of attorney's fees as stipulated by the parties.

APPEARANCES OF COUNSEL

Lopez & Rempillo for petitioner.
Jensen A. Sanhi for respondent.

DECISION

DEL CASTILLO, *J.*:

Parties would do well to always be conscious of their freedom to accept or reject printed stipulations supplied by only one party that form part of the contract they enter into. Failure to object to such stipulations, which are not excessive or unconscionable, will bind them to its performance.

This Petition for Review assails the August 18, 2004 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV. No. 66741 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Antipolo City, Branch 73 in Civil Case No. 98-5093. Also assailed is the May 3, 2005 Resolution[3] denying the motion for reconsideration.

Factual Antecedents

On several occasions between June and July of 1997, petitioner Asian Construction and Development Corp. purchased from respondent Cathay Pacific Steel Corp. various reinforcing steel bars worth ₱2,650,916.40 covered by a total of 12 invoices. On November 21, 1997, petitioner made a partial payment of ₱2,159,211.49, and on March 2, 1998, another partial payment of ₱250,000, leaving a balance of ₱214,704.91. Respondent sent two demand letters dated May 12, 1998, and August 10, 1998, respectively, but no payment was made by petitioner. On November 24, 1998, respondent filed a complaint for a sum of money and damages with the RTC of Antipolo, docketed as Civil Case No. 98-5093.

In its answer, petitioner denied that it authorized the purchases/purchase orders from the respondent; it alleged that no demand for payment was made or received by petitioner, it had no

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[1] *Rollo*, pp. 26-33; penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Ruben T. Reyes and Jose C. Reyes, Jr.

[2] *Id.* at 60-21; penned by Judge Mauricio M. Rivera.

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

knowledge as to the truth of the invoices, statement of accounts and letters as they were never received by petitioner, it had not received the reinforcing steel bars, the amount billed by respondent was bloated and no deduction was made for the corresponding payments made by petitioner and that it had not agreed to pay interest and attorney's fees.

Ruling of the Regional Trial Court

After the pre-trial conference was terminated, trial of the case on the merits was set. Hearing of the case was postponed several times. During the hearing on November 22, 1999, petitioner and its counsel were absent despite notice, and upon motion of the respondent, the trial court granted and set the *ex-parte* hearing of the case before a designated commissioner. On December 1, 1999, respondent presented its sole witness, David O. Chua (Chua), vice president of respondent company. Thereafter, respondent offered its evidence and rested its case.

On January 10, 2000, the trial court rendered a Decision in favor of the respondent, the *fallo* of which reads:

WHEREFORE, premises considered, defendant Asian [Construction] and Development Corporation is hereby ordered to pay to the plaintiff:

1. ₱319,050.48 inclusive of interest as of 17 November 1998 plus 2% interest per month until the full amount is paid;

2. ₱79,762.62 as attorney's fees and as appearance fees; and

3. The costs of suit.

SO ORDERED.[4]

Ruling of the Court of Appeals

Petitioner then appealed the case to the CA which found that based on the invoices there is a specific amount of interest agreed upon, which is 24% per annum. It also found that the outstanding balance of petitioner is ₱241,704.91 which must earn interest

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[4] *Id.* at 62.

from May 12, 1998, which is the date of extra-judicial demand. The dispositive portion of the CA Decision states:

> WHEREFORE, premises considered, the assailed decision is AFFIRMED with MODIFICATION in this wise:
>
> > 'WHEREFORE, premises considered, defendant Asian Construction and Development Corporation is hereby ordered to pay to the plaintiff:
> >
> > 1. ₱241,704.91 plus 24% interest per annum from May 12, 1998 until finality of this decision;
> > 2. 10% of the total amount due as attorney's fees; and
> > 3. The costs of suit.
> >
> > SO ORDERED.'
>
> SO ORDERED.[5]

After the denial by the CA of its motion for reconsideration, petitioner filed the present petition for review on *certiorari*.

Issues

Petitioner raises the following issues:

> I- WHETHER X X X PETITIONER DID NOT QUESTION ITS LIABILITY IN ITS ANSWER.
>
> II- WHETHER X X X THE TRIAL COURT AND COURT OF APPEALS ERRED IN ADMITTING THE PHOTOCOPIES OF THE DELIVERY RECEIPTS AND THE TESTIMONY OF MR. DAVID CHUA AS ADMISSIBLE IN EVIDENCE.
>
> III- WHETHER X X X THE COURT OF APPEALS ERRED IN IMPOSING 24% PERCENT INTEREST FROM MAY 12, 1998 UNTIL FINALITY OF DECISION; AND
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> IV- WHETHER X X X RESPONDENT IS ENTITLED TO ATTORNEY'S FEES.[6]

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[5] *Id.* at 32-33.

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

Petitioner's Arguments

Petitioner contends that it disputed in its Answer the liability imputed to it by respondent. It also contends that respondent failed to prove the affirmative allegations in the complaint. It argues that the photocopies of the delivery receipts were not admissible in evidence and that the witness Chua was incompetent to establish the admissibility of secondary evidence.

Petitioner also contends that the CA did not adhere to the precedent set in the landmark case of *Eastern Shipping Lines v. Court of Appeals*[7] in the computation of interest. It further argues that respondent is not entitled to an award of attorney's fees.

Respondent's Arguments

Respondent on the other hand contends that petitioner's affirmative defenses are not only inconsistent with each other but also reveals an admission of petitioner's obligation to respondent. Respondent also submits that it has duly proven its claim by a preponderance of evidence. The originals of the invoices were presented during the hearing and the loss of the delivery receipts was properly established by respondent, hence the admission of the secondary evidence was proper.

Respondent further submits that the interest rate of 24% per annum was expressly stipulated in the invoice and should thus be the rate used in the computation of the interest. It also contends that the award of attorney's fees is proper because it was constrained to engage the services of counsel and litigate in order to protect its interests.

Our Ruling

The petition is partly meritorious.

Obligation was duly established

As a rule, only questions of law may be appealed to the Court by petition for review. The Court is not a trier of facts, its

[7] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

jurisdiction is limited to errors of law. Moreover factual findings of the trial court, particularly when affirmed by the CA, are generally binding on this Court.

In the present case, the orders by, deliveries to, and pick-ups by, petitioner of reinforcing steel bars having a total value of ₱2,650,916.40 were evidenced by the testimony of Chua and the invoices. Notably the invoices contained a statement to the effect that the reinforcing steel bars were received in good order and condition.

The total payment in the amount of ₱2,409,211.49 made by petitioner was also supported by evidence. Some payments made were in fact admitted in the Answer of petitioner.[8]

With regard to the testimony of Chua, the fact that he is the head of Marketing and Finance proves that he is competent to testify on the sale of the reinforcing steel bars to petitioner and its unpaid balance. The notations addressed to him on the purchase orders and his signature on the demand letters further support the finding that he has personal knowledge of the transactions he testified on. Mere allegations of his incompetence to testify on such matters, are not proof and these cannot prevail over evidence to the contrary.

As for the delivery receipts, there is sufficient uncontroverted evidence showing loss of the originals despite the diligence exerted to find the same. Copies of the same are thus admissible.[9]

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[8] No. 14 of the Answer states: "The amount billed by Plaintiff is bloated especially considering that Plaintiff did not deduct the corresponding payments made by Defendants. Records, p. 24.

[9] Section 3 of Rule 130 of the Rules of Court states:

Section 3. *Original document must be produced; exceptions.* — When the subject of inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, except in the following cases:

(a) When the original has been lost or destroyed, or cannot be produced in court, without bad faith on the part of the offeror;

(b) x x x

The factual findings of the trial court and the CA were based on a preponderance of evidence which were not refuted with contrary evidence by petitioner. We thus find no reason to disturb the factual findings of the trial court and the CA.

Applicable Interest Rate

Article 1306 of the Civil Code provides that the "contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy."

In the present case, the sales invoices expressly stipulated the payment of interest and attorney's fees in case of overdue accounts and collection suits, to wit: "Interest at 24% per annum is to be charged to all accounts overdue plus 25% additional on unpaid invoice for attorney's fees aside from court cost, the parties expressly submit themselves to the venue of the courts in Rizal, in case of legal proceeding." The sales invoices are in the nature of contracts of adhesion. "The court has repeatedly held that contracts of adhesion are as binding as ordinary contracts. Those who adhere to the contract are in reality free to reject it entirely and if they adhere, they give their consent. It is true that in some occasions the Court struck down such contracts as void when the weaker party is imposed upon in dealing with the dominant party and is reduced to the alternative of accepting the contract or leaving it, completely deprived of the opportunity to bargain on equal footing."[10] Considering that petitioner is not a small time construction company, having such construction projects as the MRT III and the Mauban Power Plant, "petitioner is presumed to have full knowledge and to have acted with due care or, at the very least, to have been aware of the terms and conditions of the contract. Petitioner was free to contract the services of another supplier if respondent's terms were not acceptable."[11] By contracting with respondent

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[10] *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*, G.R. No. 153874, March 1, 2007, 517 SCRA 180, 188.

[11] *Id.*

for the supply of the reinforcing steel bars and not interposing any objection to the stipulations in the sales invoice, petitioner did not only bind itself to pay the stated selling price, it also bound itself to pay (1) interest of 24% per annum on overdue accounts and (2) 25% of the unpaid invoice for attorney's fees. Thus, the lower courts did not err in using the invoices as basis for the award of interest.

Attorney's Fees

In *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*,[12] an apt discussion on attorney's fees was made by the Court, thus:

> The law allows a party to recover attorney's fees under a written agreement. In *Barons Marketing Corporation v. Court of Appeals*, the Court ruled that:
>
>> [T]he attorney's fees here are in the nature of liquidated damages and the stipulation therefor is aptly called a penal clause. It has been said that so long as such stipulation does not contravene law, morals, or public order, it is strictly binding upon defendant. The attorney's fees so provided are awarded in favor of the litigant, not his counsel.
>
> On the other hand, the law also allows parties to a contract to stipulate on liquidated damages to be paid in case of breach. A stipulation on liquidated damages is a penalty clause where the obligor assumes a greater liability in case of breach of an obligation. The obligor is bound to pay the stipulated amount without need for proof on the existence and on the measure of damages caused by the breach.[13]

In the present case, the invoices stipulate for 25% of the overdue accounts as attorney's fees. The overdue account in this case amounts to ₱241,704.91, 25% of which is ₱60,426.23. This amount is not excessive or unconscionable, hence, we sustain the amount of attorney's fees as stipulated by the parties.

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[12] *Id.*

[13] *Id.* at 189.

WHEREFORE, the petition is *DENIED*. The August 18, 2004 Decision of the Court of Appeals in CA-G.R. CV No. 66741 is *AFFIRMED with the MODIFICATION* that the attorney's fees is fixed at ₱60,426.23.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 168062. June 29, 2010]

VICTORIAS MILLING CO., INC., *petitioner, vs.* **COURT OF APPEALS and INTERNATIONAL PHARMACEUTICALS, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; PROHIBITED PLEADINGS; THE FILING OF A PETITION FOR *CERTIORARI* IS PROHIBITED IN AN EJECTMENT SUIT; CASE AT BAR. — Rule 70 of the Rules of Court, on forcible entry and unlawful detainer cases, provides: "Sec. 13. Prohibited pleadings and motions. — The following petitions, motions, or pleadings shall not be allowed: x x x 7. ***Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court***; x x x" Although it is alleged that there may be a *technical* error in connection with the service of summons, there is no showing of any ***substantive*** injustice that would be caused to IPI so as to call for the disregard of the clear and categorical prohibition of filing petitions for *certiorari*. It must be pointed out that the Rule on Summary Procedure, by way of exception, permits only a motion to dismiss

on the ground of lack of jurisdiction over the *subject matter* but it does not mention the ground of lack of jurisdiction over the *person*. It is a settled rule of statutory construction that the express mention of one thing implies the exclusion of all others. *Expressio unius est exclusio alterius*. From this it can be gleaned that allegations on the matter of lack of jurisdiction *over the person* by reason of improper service of summons, by itself, without a convincing showing of any resulting substantive injustice, cannot be used to hinder or stop the proceedings before the MCTC in the ejectment suit. With more reason, such ground should not be used to justify the violation of an express prohibition in the rules prohibiting the petition for *certiorari.*

2. ID.; RULE ON SUMMARY PROCEDURE; PURPOSE. — The purpose of the Rule on Summary Procedure is to achieve an expeditious and inexpensive determination of cases *without regard to technical rules*. In the present case, weighing the consequences of continuing with the proceedings in the MCTC as against the consequences of allowing a petition for *certiorari*, it is more in accord with justice, the purpose of the Rule on Summary Procedure, the policy of speedy and inexpensive determination of cases, and the proper administration of justice, to obey the provisions in the Rule on Summary Procedure prohibiting petitions for *certiorari*. The present situation, where IPI had filed the prohibited petition for *certiorari*; the CA's taking cognizance thereof; and the subsequent issuance of the writ of injunction enjoining the ejectment suit from taking its normal course in an expeditious and summary manner, and the ensuing delay is the antithesis of and is precisely the very circumstance which the Rule on Summary Procedure seeks to prevent.

APPEARANCES OF COUNSEL

Villanueva Gabionza & De Santos for petitioner.
Baduel Espina & Associates for private respondent.

DECISION

DEL CASTILLO, *J.*:

In an ejectment case mandated to be tried under summary procedure, the paramount consideration is its expeditious and inexpensive resolution without regard to technicalities.

This petition for *certiorari* assails the May 6, 2005 Resolution[1] of the Court of Appeals (CA) in CA-G.R. CEB-SP No. 00365 which granted the petition for *certiorari* filed before it by respondent International Pharmaceuticals, Inc. (IPI) and ordered the issuance of a writ of preliminary injunction enjoining the Municipal Circuit Trial Court (MCTC) of E.B. Magalona-Manapla, Negros Occidental from proceeding with Civil Case No. 392-M, an ejectment case, and disturbing IPI's possession of the leased premises until further orders.

Factual Antecedents

On March 4, 2004, petitioner Victorias Milling Co. (VMC), Inc., filed a complaint for unlawful detainer and damages against respondent IPI before the MCTC of E.B. Magalona-Manapla, docketed as Civil Case No. 392-M. On March 10, 2004, the sheriff served the summons upon Danilo Maglasang, IPI's Human Relations Department Manager.

On March 19, 2004, IPI filed its Answer with express reservation that said Answer should not be construed as a waiver of the lack of jurisdiction of the MCTC over the person of IPI, for non-service of summons on the proper person. It then filed an Omnibus Motion for Hearing of Affirmative Defenses raised in the Answer and moved for the suspension of proceedings.

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[1] CA *rollo*, pp. 518-519; penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Mercedes Gozo-Dadole and Pampio A. Abarintos.

Ruling of the Municipal Circuit Trial Court

On August 30, 2004, the MCTC issued an Order[2] denying the suspension of the proceedings of the case sought by IPI. It disposed as follows:

> WHEREFORE, in accordance with the Rule on Summary Procedure, set this case for preliminary conference on September 29, 2004 at 9:30 o'clock in the morning.
>
> SO ORDERED.[3]

The motion for reconsideration was denied.

Ruling of the Court of Appeals

Thus IPI filed a petition for *certiorari* with the CA, Cebu City to question the jurisdiction of the MCTC over its person.

On February 22, 2005, the CA directed VMC to file its comment, to which IPI filed its reply. VMC thereafter filed its rejoinder.

In the meantime, in the MCTC, during the scheduled preliminary conference, IPI moved for the deferment of the preliminary conference while VMC moved for the termination of the same. The said preliminary conference was terminated and the parties were directed to submit the affidavits of their witnesses and other evidence together with their position papers. The parties subsequently submitted the required position papers with the MCTC.[4]

On May 6, 2005, the CA issued the assailed Resolution which states in full:

> After going over the verified petition for *certiorari* and prohibition with prayer for a writ of preliminary injunction dated February 9, 2005, the comment dated March 7, 2005 filed by private respondent, the reply dated 23 March 2005 of petitioner, the rejoinder dated April 11, 2005 filed by the private respondent, taking into account

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[2] *Rollo*, pp. 61-67; penned by Judge Evelyn G. Gengos.

[3] *Id.* at 67.

[4] CA *rollo*, pp. 518-519.

that among others petitioner questions the jurisdiction of the trial court over its person because summons was served on its Human Relations Manager in violation of Section 11 of Rule 14 of the 1997 Rules on Civil Procedure, in order not to render ineffectual whatever judgment that may be rendered in the above-entitled case and to preserve the rights of the parties during the pendency of this case, conditioned upon the putting up of an injunction bond in the sum of ₱200,000.00 to answer for whatever damages that the private respondent may sustain should this Court [decide] that the petitioner is not entitled thereto, let a WRIT OF PRELIMINARY INJUNCTION be issued enjoining the public respondent Municipal Circuit Trial Court of E. B. Magalona-Manapla, Municipality of Magalona from proceeding with Civil Case No. 392-M and disturbing the possession of the petitioner over the leased premises during the pendency of this petition until further orders from this Court.

The parties are given twenty (20) days from receipt hereof to file simultaneously their respective memoranda on the merits amplifying their positions and supporting their arguments with pertinent jurisprudence on the matter.

SO ORDERED.[5]

VMC no longer filed a motion for reconsideration of the CA's Resolution, on the ground that the questioned CA Resolution is patently null and void and due to the urgency of VMC's predicament. It instead immediately filed the present petition for *certiorari*.

Issues

Petitioner raises the following issues:

WHETHER X X X THE PUBLIC RESPONDENT CA HAD GRAVELY ABUSED ITS DISCRETION AMOUNTING TO A LACK OR EXCESS OF ITS JURISDICTION BY ORDERING THE ISSUANCE OF AN INJUNCTIVE WRIT ON THE BASIS OF, IN CONNECTION WITH, AND/OR AS AN INCIDENT OF A CLEARLY PROHIBITED/DISALLOWED PETITION OR PLEADING (FOR *CERTIORARI* AND PROHIBITION AGAINST INTERLOCUTORY ORDERS IN AN EJECTMENT SUIT)

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[5] *Id.* at 170-171.

WHETHER X X X THE PUBLIC RESPONDENT CA HAD GRAVELY ABUSED ITS DISCRETION AMOUNTING TO AN EXCESS OF ITS JURISDICTION BY FAILING/REFUSING TO DISMISS/DENY OUTRIGHT THE PETITION FOR *CERTIORARI* AND PROHIBITION AS FILED BEFORE IT IN CA-G.R. CEB-SP NO. 00365 (AGAINST INTERLOCUTORY ORDERS IN AN EJECTMENT SUIT) NOTWITHSTANDING ITS EXPRESSLY BEING A PROHIBITED/ DISALLOWED PETITION/PLEADING UNDER THE PROVISIONS OF RULE 70, SEC. 13(7) OF THE [RULES] OF COURT

WHETHER X X X THE PUBLIC RESPONDENT CA HAD GRAVELY ABUSED ITS DISCRETION AMOUNTING TO AN EXCESS OF ITS JURISDICTION BY FAILING/REFUSING TO DISMISS/DENY OUTRIGHT THE PETITION FOR *CERTIORARI* AND PROHIBITION AS DIRECTLY FILED BEFORE IT IN CA-G.R. CEB-SP NO. 00356 (AGAINST INTERLOCUTORY ORDERS IN AN EJECTMENT SUIT) IN BLATANT DISREGARD OF THE HIERARCHY OF COURTS[6]

Petitioner's Arguments

Petitioner contends that the petition for *certiorari* filed by IPI assailing the MCTC's interlocutory order in an ejectment case is clearly and specifically prohibited under Section 13 of Rule 70 of the Rules of Court as well as the Rule on Summary Procedure. The rules being clear and unambiguous, it submits that the said petition should have been dismissed outright by the CA.

Petitioner also argues that *Go v. Court of Appeals*,[7] where the trial court ordered the "indefinite suspension" of the ejectment case therein, cannot be applied to the present case to favor IPI.

It further contends that the petition having been filed with the CA, and not the RTC, disregards the hierarchy of courts.

Finally, it alleges that IPI does not have a clear and unmistakable right to the property subject of the case as to be entitled to an injunctive writ. It emphasizes that the grant of the injunctive writ by the CA will serve no other purpose but to cause undue and unnecessary delay to what should be the speedy and summary

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

[7] 358 Phil. 214, 224 (1998).

disposition of the ejectment suit which is repugnant to public policy.

Respondent IPI's Arguments

IPI on the other hand contends that the Rule on Summary Procedure was not intended to undermine the rules of jurisdiction and rules on service of summons. It insists that in the present case, as in *Go v. Court of Appeals*,[8] there is a procedural void which justified the CA's act of providing an equitable remedy, of not immediately dismissing the petition for *certiorari* before it and of issuing the injunctive writ.

Our Ruling

The petition has merit.

There Is No Procedural Void
That Would Cause Delay

Rule 70 of the Rules of Court, on forcible entry and unlawful detainer cases, provides:

Sec. 13. Prohibited pleadings and motions.-The following petitions, motions, or pleadings shall not be allowed:

1. Motion to dismiss the complaint except on the ground of lack of jurisdiction *over the subject matter*, or failure to comply with section 12;

2. Motion for a bill of particulars;

3. Motion for a new trial, or for reconsideration of a judgment, or for reopening of trial;

4. Petition for relief from judgment;

5. Motion for extension of time to file pleadings, affidavits or any other paper;

6. Memoranda;

7. ***Petition for certiorari, mandamus, or prohibition against any interlocutory order issued by the court***;

8. Motion to declare the defendant in default;

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[8] *Id.*

9. Dilatory motions for postponement;
10. Reply;
11. Third-party complaints;
12. Interventions. (Emphasis supplied)

Although it is alleged that there may be a *technical* error in connection with the service of summons, there is no showing of any ***substantive*** injustice that would be caused to IPI so as to call for the disregard of the clear and categorical prohibition of filing petitions for *certiorari*. It must be pointed out that the Rule on Summary Procedure, by way of exception, permits only a motion to dismiss on the ground of lack of jurisdiction over the *subject matter* but it does not mention the ground of lack of jurisdiction over the *person*. It is a settled rule of statutory construction that the express mention of one thing implies the exclusion of all others. *Expressio unius est exclusio alterius*. From this it can be gleaned that allegations on the matter of lack of jurisdiction *over the person* by reason of improper service of summons, by itself, without a convincing showing of any resulting substantive injustice, cannot be used to hinder or stop the proceedings before the MCTC in the ejectment suit. With more reason, such ground should not be used to justify the violation of an express prohibition in the rules prohibiting the petition for *certiorari.*

IPI's arguments attempting to show how the Rule on Summary Procedure or lack of rules on certain matters would lead to injustice are hypothetical and need not be addressed in the present case. Of primary importance here is that IPI, the real defendant in the ejectment case, filed its Answer and participated in the proceedings before the MCTC.

The purpose of the Rule on Summary Procedure is to achieve an expeditious and inexpensive determination of cases *without regard to technical rules*.[9] In the present case, weighing the consequences of continuing with the proceedings in the MCTC as against the consequences of allowing a petition for *certiorari*,

[9] *Id.*

it is more in accord with justice, the purpose of the Rule on Summary Procedure, the policy of speedy and inexpensive determination of cases, and the proper administration of justice, to obey the provisions in the Rule on Summary Procedure prohibiting petitions for *certiorari*.

The present situation, where IPI had filed the prohibited petition for *certiorari*; the CA's taking cognizance thereof; and the subsequent issuance of the writ of injunction enjoining the ejectment suit from taking its normal course in an expeditious and summary manner, and the ensuing delay is the antithesis of and is precisely the very circumstance which the Rule on Summary Procedure seeks to prevent.

The petition for *certiorari* questioning the MCTC's interlocutory order is not needed here. The rules provide respondent IPI with adequate relief. At the proper time, IPI has the right to appeal to the RTC, and in the meantime no injustice will be caused to it by waiting for the MCTC to completely finish resolving the ejectment suit. The proceedings before the MCTC being summary in nature, the time and expense involved therein are minimal. IPI has already raised the matter of improper service of summons in its Answer. The MCTC's error/s, if any, on any of the matters raised by respondent IPI can be threshed out during appeal after the MCTC has finally resolved the ejectment case under summary procedure.

As accurately pointed out by petitioner, *Go v. Court of Appeals*[10] does not support the case of respondent IPI. The factual milieu and circumstances of the said case do not fit with the present case. They are in fact the exact opposite of those in the present case before the court hearing the original ejectment case. Not only was there an absence of any "indefinite suspension" of the ejectment suit before the MCTC but likewise there was no "procedural void" that would otherwise cause delay in the summary and expeditious resolution thereof that transpired to warrant applicability of *Go v. Court of Appeals*.[11] It is worth

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[10] *Id.*

[11] *Id.*

pointing out that in *Go v. Court of Appeals*[12] the Supreme Court categorically upheld that "the purpose of the Rule on Summary Procedure is to achieve an expeditious and inexpensive determination of cases without regard to technical rules. Pursuant to this objective, the Rule prohibits petitions for *certiorari*, like a number of other pleadings, in order to prevent unnecessary delays and to expedite the disposition of cases."

Considering that the petition for *certiorari* filed before the CA is categorically prohibited, the CA should not have entertained the same but should have dismissed it outright.

The other issues raised by petitioner, being unnecessary to resolve the main matter involved in this case, will no longer be discussed.

WHEREFORE, the petition is *GRANTED*. The May 6, 2005 Resolution of the Court of Appeals, together with the Writ of Preliminary Injunction, in CA-G.R. CEB-SP No. 00365 is *NULLIFIED* and *SET ASIDE*. The Court of Appeals is *ORDERED* to dismiss the petition for *certiorari* before it docketed as CA-G.R. CEB-SP No. 00365.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 174039. June 29, 2010]

NELLY BAUTISTA, *petitioner, vs.* **SERAPH MANAGEMENT GROUP, INC.,** *respondent.*

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[12] *Id.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; DISMISSAL OF APPEALS; WITHDRAWAL OF APPEAL BEFORE FILING OF APPELLEE'S BRIEF. —** Section 3, Rule 50 of the 1997 Rules of Civil Procedure, provides: Sec. 3. *Withdrawal of appeal*. — An appeal may be withdrawn as of right at any time before the filing of appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court. At the time petitioner moved to withdraw her appeal, respondents had not yet filed their brief, hence, the grant thereof by the appellate court was in order.
2. **LEGAL ETHICS; LAWYER-CLIENT RELATIONSHIP; TERMINATION BY CLIENT IS A MATTER OF RIGHT. —** Respecting petitioner's relief of Atty. Pefianco as her counsel, the rule is that a client has the absolute right to terminate the attorney-client relation at anytime with or without cause. Hence, the Court may not look into the propriety of petitioner's act of relieving her counsel.

APPEARANCES OF COUNSEL

Mariano R. Pefianco for petitioner.
Edwin T. Quiocho for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Nelly Bautista (petitioner) is one of the incorporators of Seraph Management Group, Inc. (respondent), a domestic corporation developing and managing resorts. On June 20, 2003, she filed an intra-corporate suit denominated as a complaint[1] against respondent and its President/Chief Executive Officer Min Sung Cho (Cho) before the Regional Trial Court (RTC) in Kalibo, Aklan, praying that she be allowed to inspect the corporate books and records and that she be furnished the company's latest financial statement.

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[1] CA *rollo*, pp. 104-108.

Petitioner alleged that since the incorporation of the company, there had been no meeting of the stockholders, contrary to the provision of its by-laws that there would be such a meeting every June, and no monthly directors' meeting had also been held; that she, through counsel, wrote[2] respondent to call for such meeting to determine the directors' salary, elect officers, declare dividends and discuss the possibility of charging Cho who had at the time a pending criminal case for frustrated murder; that she offered[3] for sale her 4,500 shares with par value of ₱100.00 per share, but respondent was only willing to buy it for ₱200,000.00; that as she did not receive any positive response to her requests, she wrote Cho on June 17, 2003[4] asking that she be allowed to inspect the books and be furnished a copy of the latest financial statements, but was refused, prompting her to file the complaint.

In its Answer,[5] respondent contended that petitioner had no right of inspection since at the time of the filing of the complaint on June 20, 2003, she was no longer a stockholder, she having executed in favor of Cho a Deed of Assignment[6] dated October 1, 2001 waiving and transferring her rights to her shares.

In her Reply and Counterclaim,[7] petitioner branded the Deed as a forgery, claiming that she could not have assigned her shares to Cho, a Korean national, without violating the 60/40 Filipino ownership requirement for domestic corporations.

By Order[8] dated October 14, 2003, Branch 8 of the Kalibo RTC dismissed the complaint due to improper venue as petitioner failed to show that the principal address of respondent had indeed been changed from Makati City to Malay, Aklan.

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[2] *Id.* at 126.

[3] See letter, *id.* at 125.

[4] *Id.* at 127.

[5] *Id.* at 128-132.

[6] *Id.* at 133-135.

[7] *Id.* at 136-140.

[8] Annex "D" of Petition, *rollo*, p. 60.

Petitioner appealed to the Court of Appeals the trial court's dismissal of her complaint during the pendency of which she, by herself, filed before the trial court a manifestation with motion relieving her counsel, Atty. Mariano Pefianco (Atty. Pefianco), and asking that the appeal be dismissed because she had already entered into a Compromise Agreement[9] with respondents. The trial court denied petitioner's manifestation due to loss of jurisdiction.

Petitioner thus filed the Manifestation with motion[10] with the appellate court which, by Resolution[11] of September 7, 2005, noted and granted the same. It accordingly dismissed her appeal. Petitioner, through Atty. Pefianco, filed a motion for reconsideration[12] of the said Resolution, averring that petitioner was a battered common law wife of Cho, was subjected to pressure and harassment and was forced to sign the compromise agreement; and that the compromise agreement should not have been relied upon by the appellate court in dismissing the appeal because it is contrary to law, morals and public policy as it resulted in the dismissal of ten cases involving petitioner and Cho.

By Resolution[13] of October 28, 2005, the appellate court required petitioner to *personally* comment on the motion for reconsideration to determine whether she conforms to it and if Atty. Pefianco remained to be her counsel.

As petitioner failed to submit her comment, the appellate court, by Resolution[14] of July 20, 2006, denied the motion for reconsideration with finality. Thus arose the present petition,

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[9] CA *rollo*, pp. 23-30.

[10] *Id.* at 19-22.

[11] *Id.* at 45-46. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Arsenio J. Magpale and Ramon M. Bato, Jr.

[12] *Id.* at 50-57.

[13] *Id.* at 60-61. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Arsenio J. Magpale and Ramon M. Bato, Jr.

[14] *Id.* at 82-84. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Arsenio J. Magpale and Ramon M. Bato, Jr.

petitioner's counsel Atty. Pefianco maintaining that the Manifestation was fictitious considering the differences in petitioner's signatures and community tax certificates (CTC) submitted, and that the compromise agreement used as basis for the dismissal of the appeal was entered into under duress by his client, herein petitioner.

The petition fails.

Section 3, Rule 50 of the 1997 Rules of Civil Procedure, provides:

> Sec. 3. *Withdrawal of appeal*. — An appeal may be withdrawn as of right at any time before the filing of appellee's brief. Thereafter, the withdrawal may be allowed in the discretion of the court. (underscoring supplied)

At the time petitioner moved to withdraw her appeal, respondents had not yet filed their brief, hence, the grant thereof by the appellate court was in order.

Respecting petitioner's relief of Atty. Pefianco as her counsel, the rule is that a client has the absolute right to terminate the attorney-client relation at anytime with or without cause.[15] Hence, the Court may not look into the propriety of petitioner's act of relieving her counsel.

On whether the Compromise Agreement was null and void for having been executed under duress, aside from Atty. Pefianco's allegations that his client had been harassed during the pendency of the cases, that the signature in the Manifestation was different from petitioner's signature in the original complaint, and that the CTC used in the Manifestation was the same one used in the Securities and Exchange Commission registration documents, no other proof was proffered by Atty. Pefianco to show that the said agreement should not be given weight. Absent such additional proof, the presumption that the Compromise Agreement is valid subsists.

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[15] *Rinconanda Tel. Co., Inc. v. Buenviaje*, G.R. Nos. 49241-42, April 27, 1990, 184 SCRA 701, 704.

It bears noting that the appellate court gave petitioner the chance to shed light on the matter of her withdrawing the appeal and relief of counsel when it ordered petitioner to personally comment on Atty. Pefianco's motion for reconsideration. Petitioner, however, failed to submit her comment.

Parenthetically, the present petition lacks petitioner's verification and certificate of non-forum shopping, which the Court takes to mean either lack of interest on her part to further prosecute the case or that Atty. Pefianco really no longer has the right to act on her behalf.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[G.R. No. 176841. June 29, 2010]

ANTHONY ORDUÑA, DENNIS ORDUÑA, and ANTONITA ORDUÑA, *petitioners, vs.* **EDUARDO J. FUENTEBELLA, MARCOS S. CID, BENJAMIN F. CID, BERNARD G. BANTA, and ARMANDO GABRIEL, JR.,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; UNENFORCEABLE CONTRACTS; STATUTE OF FRAUDS; NOT APPLICABLE TO CONTRACTS PARTIALLY

[*] Additional member per Special Order No. 843 dated May 17, 2010.

CONSUMMATED. — The Statute of Frauds expressed in Article 1403, par. (2), of the Civil Code applies only to executory contracts, *i.e.,* those where no performance has yet been made. Stated a bit differently, the legal consequence of non-compliance with the Statute does not come into play where the contract in question is completed, executed, or **partially consummated.** The Statute of Frauds, in context, provides that a contract for the sale of real property or of an interest therein shall be unenforceable unless the sale or some note or memorandum thereof is in writing and subscribed by the party or his agent. However, where the verbal contract of sale has been **partially executed through the partial payments** made by one party duly received by the vendor, as in the present case, the contract is taken out of the scope of the Statute.

2. **ID.; ID.; ID.; ID.; REQUISITE WRITTEN AGREEMENT; PURPOSE THEREOF. —** The purpose of the Statute is to prevent fraud and perjury in the enforcement of obligations depending for their evidence on the unassisted memory of witnesses, by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged. The Statute requires certain contracts to be evidenced by some note or memorandum **in order to be enforceable**. The term "Statute of Frauds" is descriptive of statutes that require certain classes of contracts to be in writing. The Statute does not deprive the parties of the right to contract with respect to the matters therein involved, but merely regulates the formalities of the contract necessary **to render it enforceable.** Since contracts are generally obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present, the Statute simply provides the method by which the contracts enumerated in Art. 1403 (2) may be proved but does not declare them invalid because they are not reduced to writing. In fine, the form required under the Statute is for convenience or evidentiary purposes only. x x x Lest it be overlooked, a contract that infringes the Statute of Frauds is ratified by the acceptance of benefits under the contract.

3. **ID.; ID.; CONTRACTS; CONSIDERATION; INCOMPLETE PAYMENT OF PURCHASE PRICE CANNOT BE EQUATED TO INADEQUACY OF PRICE. —** The trial court's posture, with which the CA effectively concurred, is

patently flawed. For starters, they equated incomplete payment of the purchase price with inadequacy of price or what passes as lesion, when both are different civil law concepts with differing legal consequences, the first being a ground to rescind an otherwise valid and enforceable contract. Perceived inadequacy of price, on the other hand, is not a sufficient ground for setting aside a sale freely entered into, save perhaps when the inadequacy is shocking to the conscience.

4. **ID.; LAND TITLES; ACTION FOR RECONVEYANCE OF FRAUDULENTLY REGISTERED LAND; PRESCRIPTION THEREIN NOT APPLICABLE AGAINST A PARTY IN POSSESSION OF THE SUBJECT LOT. —** The basic complaint, as couched, ultimately seeks the reconveyance of a fraudulently registered piece of residential land. Having possession of the subject lot, petitioners' right to the reconveyance thereof, and the annulment of the covering title, has not prescribed or is not time-barred. This is so for an action for annulment of title or reconveyance based on fraud is imprescriptible where the suitor is in possession of the property subject of the acts, the action partaking as it does of a suit for quieting of title which is imprescriptible. Such is the case in this instance. Petitioners have possession of subject lots as owners having purchased the same from Gabriel, Sr. subject only to the full payment of the agreed price. The prescriptive period for the reconveyance of fraudulently registered real property is 10 years, reckoned from the date of the issuance of the certificate of title, if the plaintiff is not in possession, but imprescriptible if he is in possession of the property. Thus, one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right. As it is, petitioners' action for reconveyance is imprescriptible.

5. **ID.; ID.; RELIANCE ON THE CORRECTNESS OF CERTIFICATE OF TITLE; NOT SUFFICIENT WHERE THE SUBJECT PROPERTY IS IN POSSESSION OF PERSONS OTHER THAN THE SELLER. —** The general rule is that one dealing with a parcel of land registered under the Torrens System may safely rely on the correctness of the certificate of title issued therefor and is not obliged to go beyond the certificate. Where, in other words, the certificate of title is in the name of the seller, the innocent purchaser for value

has the right to rely on what appears on the certificate, as he is charged with notice only of burdens or claims on the *res* as noted in the certificate. Another formulation of the rule is that (a) in the absence of anything to arouse suspicion or (b) except where the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or (c) when the purchaser has knowledge of a defect of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property, said purchaser is without obligation to look beyond the certificate and investigate the title of the seller. x x x Basic is the rule that a buyer of a piece of land which is in the actual possession of persons other than the seller must be wary and should investigate the rights of those in possession. Otherwise, without such inquiry, the buyer can hardly be regarded as a buyer in good faith. When a man proposes to buy or deal with realty, his duty is to read the public manuscript, *i.e.*, to look and see who is there upon it and what his rights are. A want of caution and diligence which an honest man of ordinary prudence is accustomed to exercise in making purchases is, in contemplation of law, a want of good faith. The buyer who has failed to know or discover that the land sold to him is in adverse possession of another is a buyer in bad faith. Where the land sold is in the possession of a person other than the vendor, the purchaser must go beyond the certificates of title and make inquiries concerning the rights of the actual possessor.

6. **ID.; SPECIAL CONTRACTS; SALES; PURCHASER IN BAD FAITH; RULE ON REGISTRATION IN CASE OF DOUBLE SALE OF IMMOVABLE PROPERTY. —** [Petitioners] Bernard, *et al.* are not purchasers in good faith and, as such, cannot be accorded the protection extended by the law to such purchasers. Moreover, not being purchasers in good faith, their having registered the sale, will not, as against the petitioners, carry the day for any of them under Art. 1544 of the Civil Code prescribing rules on preference in case of double sales of immovable property. *Occeña v. Esponilla* laid down the following rules in the application of Art. 1544: (1) knowledge by the first buyer of the second sale cannot defeat the first buyer's rights except when the second buyer first register in good faith the second sale; and (2) knowledge gained by the second buyer of the first sale defeats his rights

even if he is first to register, since such knowledge taints his registration with bad faith.

APPEARANCES OF COUNSEL

Benigno Y. Cornes for petitioners.
Galo Reyes for respondents Cids.
Zosimo Abratique for E. Fuentebella and B. Banta.

D E C I S I O N

VELASCO, JR., *J.*:

In this Petition for Review[1] under Rule 45 of the Rules of Court, Anthony Orduña, Dennis Orduña and Antonita Orduña assail and seek to set aside the Decision[2] of the Court of Appeals (CA) dated December 4, 2006 in CA-G.R. CV No. 79680, as reiterated in its Resolution of March 6, 2007, which affirmed the May 26, 2003 Decision[3] of the Regional Trial Court (RTC), Branch 3 in Baguio City, in Civil Case No. 4984-R, a suit for annulment of title and reconveyance commenced by herein petitioners against herein respondents.

Central to the case is a residential lot with an area of 74 square meters located at Fairview Subdivision, Baguio City, originally registered in the name of Armando Gabriel, Sr. (Gabriel Sr.) under Transfer Certificate of Title (TCT) No. 67181 of the Registry of Deeds of Baguio City.[4]

As gathered from the petition, with its enclosures, and the comments thereon of four of the five respondents,[5] the Court gathers the following relevant facts:

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[1] *Rollo*, pp. 9-24, dated April 21, 2007.

[2] *Id.* at 25-35. Penned by Associate Justice Arturo G. Tayag and concurred in by Associate Justices Remedios A. Salazar-Fernando and Noel G. Tijam.

[3] *Id.* at 38-49. Penned by Presiding Judge Fernando Vil Pamintuan.

[4] Exh. "D".

[5] Respondent Gabriel, Jr. did not file his comment.

Sometime in 1996 or thereabouts, Gabriel Sr. sold the subject lot to petitioner Antonita Orduña (Antonita), but no formal deed was executed to document the sale. The contract price was apparently payable in installments as Antonita remitted from time to time and Gabriel Sr. accepted partial payments. One of the Orduñas would later testify that Gabriel Sr. agreed to execute a final deed of sale upon full payment of the purchase price.[6]

As early as 1979, however, Antonita and her sons, Dennis and Anthony Orduña, were already occupying the subject lot on the basis of some arrangement undisclosed in the records and even constructed their house thereon. They also paid real property taxes for the house and declared it for tax purposes, as evidenced by Tax Declaration No. (TD) 96-04012-111087[7] in which they place the assessed value of the structure at PhP 20,090.

After the death of Gabriel Sr., his son and namesake, respondent Gabriel Jr., secured TCT No. T-71499[8] over the subject lot and continued accepting payments from the petitioners. On December 12, 1996, Gabriel Jr. wrote Antonita authorizing her to fence off the said lot and to construct a road in the adjacent lot.[9] On December 13, 1996, Gabriel Jr. acknowledged receipt of a PhP 40,000 payment from petitioners.[10] Through a letter[11] dated May 1, 1997, Gabriel Jr. acknowledged that petitioner had so far made an aggregate payment of PhP 65,000, leaving an outstanding balance of PhP 60,000. A receipt Gabriel Jr. issued dated November 24, 1997 reflected a PhP 10,000 payment.

Despite all those payments made for the subject lot, Gabriel Jr. would later sell it to Bernard Banta (Bernard) obviously without the knowledge of petitioners, as later developments would show.

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[6] RTC Decision, p. 5, *Rollo*, p. 42.

[7] Exh. "A".

[8] Records, p. 221.

[9] Exh. "H".

[10] Exh. "G".

[11] Exh. "E".

As narrated by the RTC, the lot conveyance from Gabriel Jr. to Bernard was effected against the following backdrop: Badly in need of money, Gabriel Jr. borrowed from Bernard the amount of PhP 50,000, payable in two weeks at a fixed interest rate, with the further condition that the subject lot would answer for the loan in case of default. Gabriel Jr. failed to pay the loan and this led to the execution of a Deed of Sale[12] dated June 30, 1999 and the issuance later of TCT No. T-72782[13] for subject lot in the name of Bernard upon cancellation of TCT No. 71499 in the name of Gabriel, Jr. As the RTC decision indicated, the reluctant Bernard agreed to acquire the lot, since he had by then ready buyers in respondents Marcos Cid and Benjamin F. Cid (Marcos and Benjamin or the Cids).

Subsequently, Bernard sold to the Cids the subject lot for PhP 80,000. Armed with a Deed of Absolute Sale of a Registered Land[14] dated January 19, 2000, the Cids were able to cancel TCT No. T-72782 and secure TCT No. 72783[15] covering the subject lot. Just like in the immediately preceding transaction, the deed of sale between Bernard and the Cids had respondent Eduardo J. Fuentebella (Eduardo) as one of the instrumental witnesses.

Marcos and Benjamin, in turn, ceded the subject lot to Eduardo through a Deed of Absolute Sale[16] dated May 11, 2000. Thus, the consequent cancellation of TCT No. T-72782 and issuance on May 16, 2000 of TCT No. T-3276[17] over subject lot in the name of Eduardo.

As successive buyers of the subject lot, Bernard, then Marcos and Benjamin, and finally Eduardo, checked, so each claimed, the title of their respective predecessors-in-interest with the Baguio

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[12] Exh. "J". Records, p. 223. Also Exh. "1".

[13] Exh. "K".

[14] Records, p. 226.

[15] Exh. "M".

[16] Records, p. 230. Exh. "N".

[17] *Id.* at 232.

Registry and discovered said title to be free and unencumbered at the time each purchased the property. Furthermore, respondent Eduardo, before buying the property, was said to have inspected the same and found it unoccupied by the Orduñas.[18]

Sometime in May 2000, or shortly after his purchase of the subject lot, Eduardo, through his lawyer, sent a letter addressed to the residence of Gabriel Jr. demanding that all persons residing on or physically occupying the subject lot vacate the premises or face the prospect of being ejected.[19]

Learning of Eduardo's threat, petitioners went to the residence of Gabriel Jr. at No. 34 Dominican Hill, Baguio City. There, they met Gabriel Jr.'s estranged wife, Teresita, who informed them about her having filed an affidavit-complaint against her husband and the Cids for falsification of public documents on March 30, 2000. According to Teresita, her signature on the June 30, 1999 Gabriel Jr.–Bernard deed of sale was a forgery. Teresita further informed the petitioners of her intent to honor the aforementioned 1996 verbal agreement between Gabriel Sr. and Antonita and the partial payments they gave her father-in-law and her husband for the subject lot.

On July 3, 2001, petitioners, joined by Teresita, filed a Complaint[20] for *Annulment of Title, Reconveyance with Damages* against the respondents before the RTC, docketed as Civil Case No. 4984-R, specifically praying that TCT No. T-3276 dated May 16, 2000 in the name of Eduardo be annulled. Corollary to this prayer, petitioners pleaded that Gabriel Jr.'s title to the lot be reinstated and that petitioners be declared as entitled to acquire ownership of the same upon payment of the remaining balance of the purchase price therefor agreed upon by Gabriel Sr. and Antonita.

While impleaded and served with summons, Gabriel Jr. opted not to submit an answer.

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[18] *Rollo*, p. 40.

[19] *Id.* at 39.

[20] *Id.* at 56-61.

Ruling of the RTC

By Decision dated May 26, 2003, the RTC ruled for the respondents, as defendants *a quo,* and against the petitioners, as plaintiffs therein, the dispositive portion of which reads:

> WHEREFORE, the instant complaint is hereby DISMISSED for lack of merit. The four (4) plaintiffs are hereby ordered by this Court to pay each defendant (except Armando Gabriel, Jr., Benjamin F. Cid, and Eduardo J. Fuentebella who did not testify on these damages), Moral Damages of Twenty Thousand (₱20,000.00) Pesos, so that each defendant shall receive Moral Damages of Eighty Thousand (₱80,000.00) Pesos each. Plaintiffs shall also pay all defendants (except Armando Gabriel, Jr., Benjamin F. Cid, and Eduardo J. Fuentebella who did not testify on these damages), Exemplary Damages of Ten Thousand (₱10,000.00) Pesos each so that each defendant shall receive Forty Thousand (₱40,000.00) Pesos as Exemplary Damages. Also, plaintiffs are ordered to pay each defendant (except Armando Gabriel, Jr., Benjamin F. Cid, and Eduardo J. Fuentebella who did not testify on these damages), Fifty Thousand (₱50,000.00) Pesos as Attorney's Fees, jointly and solidarily.
>
> Cost of suit against the plaintiffs.[21]

On the main, the RTC predicated its dismissal action on the basis of the following grounds and/or premises:

1. Eduardo was a purchaser in good faith and, hence, may avail himself of the provision of Article 1544[22] of the Civil Code, which provides that in case of double sale, the party in good faith who is able to register the property has better right over the property;

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[21] *Supra* note 3 at 48-49.

[22] Art. 1544. If the same thing should have been sold to different vendees, the ownership shall be transferred to the person who may have first taken possession thereof in good faith, if it should be movable property.

Should it be immovable property, the ownership shall belong to the person acquiring it who in good faith first recorded it in the Registry of Property.

Should there be no inscription, the ownership shall pertain to the person who in good faith was first in the possession; and, in the absence thereof, to the person who presents the oldest title, provided there is good faith.

2. Under Arts. 1356[23] and 1358[24] of the Code, conveyance of real property must be in the proper form, else it is unenforceable;

3. The verbal sale had no adequate consideration; and

4. Petitioners' right of action to assail Eduardo's title prescribes in one year from date of the issuance of such title and the one-year period has already lapsed.

From the above decision, only petitioners appealed to the CA, their appeal docketed as CA-G.R. CV No. 79680.

The CA Ruling

On December 4, 2006, the appellate court rendered the assailed Decision affirming the RTC decision. The *fallo* reads:

> WHEREFORE, premises considered, the instant appeal is hereby DISMISSED and the 26 May 2003 Decision of the Regional Trial Court, Branch 3 of Baguio City in Civil Case No. 4989-R is hereby AFFIRMED.
>
> SO ORDERED.[25]

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[23] Art. 1356. Contracts shall be obligatory, in whatever form they may have been entered into, provided all the essential requisites for their validity are present. However, when the law requires that a contract be in some form in order that it may be valid or enforceable, or that a contract to be proved in a certain way, that requirement is absolute and indispensable. In such cases, the right of the parties stated in the following article cannot be exercised.

[24] Art. 1358. The following must appear in a public document:

(1) Acts and contracts which have for their object the creation, transmission, modification or extinguishment of real rights over immovable property; sales of real property or of an interest therein are governed by Articles 1403, No. 2, and 1405;

x x x x x x x x x

(4) The cession of actions or rights proceeding from an act appearing in a public document.

All other contracts where the amount involved exceeds Five hundred pesos must appear in writing even a private one. But sales of goods, chattels or things in action are governed by Articles 1403, No. 2 and 1405.

[25] *Supra* note 2 at 34-35.

Hence, the instant petition on the submission that the appellate court committed reversible error of law:

1. x x x WHEN IT HELD THAT THE SALE OF THE SUBJECT LOT BY ARMANDO GABRIEL, SR. AND RESPONDENT ARMANDO GABRIEL, JR. TO THE PETITIONERS IS UNENFORCEABLE.

2. x x x IN NOT FINDING THAT THE SALE OF THE SUBJECT LOT BY RESPONDENT ARMANDO GABRIEL, JR. TO RESPONDENT BERNARD BANTA AND ITS SUBSEQUENT SALE BY THE LATTER TO HIS CO-RESPONDENTS ARE NULL AND VOID.

3. x x x IN NOT FINDING THAT THE RESPONDENTS ARE BUYERS IN BAD FAITH

4. x x x IN FINDING THAT THE SALE OF THE SUBJECT LOT BETWEEN GABRIEL, SR. AND RESPONDENT GABRIEL, JR. AND THE PETITIONERS HAS NO ADEQUATE CONSIDERATION.

5. x x x IN RULING THAT THE INSTANT ACTION HAD ALREADY PRESCRIBED.

6. x x x IN FINDING THAT THE PLAINTIFFS-APPELLANTS ARE LIABLE FOR MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES.[26]

The Court's Ruling

The core issues tendered in this appeal may be reduced to four and formulated as follows, to wit: *first*, whether or not the sale of the subject lot by Gabriel Sr. to Antonita is unenforceable under the Statute of Frauds; *second*, whether or not such sale has adequate consideration; *third*, whether the instant action has already prescribed; and, *fourth*, whether or not respondents are purchasers in good faith.

The petition is meritorious.

Statute of Frauds Inapplicable to Partially Executed Contracts

It is undisputed that Gabriel Sr., during his lifetime, sold the subject property to Antonita, the purchase price payable on

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[26] *Supra* note 1 at 14-15.

installment basis. Gabriel Sr. appeared to have been a recipient of some partial payments. After his death, his son duly recognized the sale by accepting payments and issuing what may be considered as receipts therefor. Gabriel Jr., in a gesture virtually acknowledging the petitioners' dominion of the property, authorized them to construct a fence around it. And no less than his wife, Teresita, testified as to the fact of sale and of payments received.

Pursuant to such sale, Antonita and her two sons established their residence on the lot, occupying the house they earlier constructed thereon. They later declared the property for tax purposes, as evidenced by the issuance of TD 96-04012-111087 in their or Antonita's name, and paid the real estates due thereon, obviously as sign that they are occupying the lot in the concept of owners.

Given the foregoing perspective, Eduardo's assertion in his Answer that "persons appeared in the property"[27] only after "he initiated ejectment proceedings"[28] is clearly baseless. If indeed petitioners entered and took possession of the property after he (Eduardo) instituted the ejectment suit, how could they explain the fact that he sent a demand letter to vacate sometime in May 2000?

With the foregoing factual antecedents, the question to be resolved is whether or not the Statute of Frauds bars the enforcement of the verbal sale contract between Gabriel Sr. and Antonita.

The CA, just as the RTC, ruled that the contract is unenforceable for non-compliance with the Statute of Frauds.

We disagree for several reasons. Foremost of these is that the Statute of Frauds expressed in Article 1403, par. (2),[29] of

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[27] *Rollo*, p. 40.

[28] *Id.*

[29] Art. 1403. The following contracts are unenforceable, unless they are ratified:

x x x x x x x x x

(2) Those that do not comply with the Statute of Frauds as set forth in this number. In the following cases an agreement hereafter made shall be

the Civil Code applies only to executory contracts, *i.e.*, those where no performance has yet been made. Stated a bit differently, the legal consequence of non-compliance with the Statute does not come into play where the contract in question is completed, executed, or **partially consummated.**[30]

The Statute of Frauds, in context, provides that a contract for the sale of real property or of an interest therein shall be unenforceable unless the sale or some note or memorandum thereof is in writing and subscribed by the party or his agent. However, where the verbal contract of sale has been **partially executed through the partial payments** made by one party duly received by the vendor, as in the present case, the contract is taken out of the scope of the Statute.

The purpose of the Statute is to prevent fraud and perjury in the enforcement of obligations depending for their evidence on the unassisted memory of witnesses, by requiring certain enumerated contracts and transactions to be evidenced by a writing signed by the party to be charged.[31] The Statute requires certain contracts to be evidenced by some note or memorandum **in order to be enforceable**. The term "Statute of Frauds" is descriptive of statutes that require certain classes of contracts to be in writing. The Statute does not deprive the parties of the right to contract

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unenforceable by action, unless the same, or some note or memorandum thereof, be in writing, and subscribed by the party charged, or by his agent; evidence, therefore, of the agreement cannot be received without the writing, or a secondary evidence of its contents:

x x x x x x x x x

(e) An agreement for the leasing for a longer period than one year, or **for the sale of real property** or of an interest therein;

x x x x x x x x x

[30] *Arrogante v. Deliarte*, G.R. No. 152132, July 24, 2007, 528 SCRA 63, 74, citing *Averia v. Averia*, G.R. No. 141877, August 13, 2004, 436 SCRA 459, 466.

[31] *Asia Productions Co., Inc. v. Paño*, G.R. No. 51058, January 27, 1992, 205 SCRA 458, 465, citing C.J.S. 513; *Shoemaker v. La Tondeña*, 68 Phil. 24 (1939).

with respect to the matters therein involved, but merely regulates the formalities of the contract necessary **to render it enforceable.**[32]

Since contracts are generally obligatory in whatever form they may have been entered into, provided all the essential requisites for their validity are present,[33] the Statute simply provides the method by which the contracts enumerated in Art. 1403 (2) may be proved but does not declare them invalid because they are not reduced to writing. In fine, the form required under the Statute is for convenience or evidentiary purposes only.

There can be no serious argument about the partial execution of the sale in question. The records show that petitioners had, on separate occasions, given Gabriel Sr. and Gabriel Jr. sums of money as partial payments of the purchase price. These payments were duly receipted by Gabriel Jr. To recall, in his letter of May 1, 1997, Gabriel, Jr. acknowledged having received the aggregate payment of PhP 65,000 from petitioners with the balance of PhP 60,000 still remaining unpaid. But on top of the partial payments thus made, possession of the subject of the sale had been transferred to Antonita as buyer. Owing thus to its partial execution, the subject sale is no longer within the purview of the Statute of Frauds.

Lest it be overlooked, a contract that infringes the Statute of Frauds is ratified by the acceptance of benefits under the contract.[34] Evidently, Gabriel, Jr., as his father earlier, had benefited from the partial payments made by the petitioners. Thus, neither Gabriel Jr. nor the other respondents — successive purchasers of subject lots — could plausibly set up the Statute

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[32] *Rosencor Development Corporation v. Court of Appeals*, G.R. No. 140479, March 8, 2001, 354 SCRA 119, 127.

[33] Art. 1356, Civil Code.

[34] Article 1405, Civil Code, which states:

Contracts infringing the Statute of Frauds, referred to in No. 2 of Article 1403, are ratified by the failure to object to the presentation of oral evidence to prove the same, or **by the acceptance of benefits under them**.

of Frauds to thwart petitioners' efforts towards establishing their lawful right over the subject lot and removing any cloud in their title. As it were, petitioners need only to pay the outstanding balance of the purchase price and that would complete the execution of the oral sale.

There was Adequate Consideration

Without directly saying so, the trial court held that the petitioners cannot sue upon the oral sale since in its own words: "x x x for more than a decade, [petitioners] have not paid in full Armando Gabriel, Sr. or his estate, so that the sale transaction between Armando Gabriel Sr. and [petitioners] [has] no adequate consideration."

The trial court's posture, with which the CA effectively concurred, is patently flawed. For starters, they equated incomplete payment of the purchase price with inadequacy of price or what passes as lesion, when both are different civil law concepts with differing legal consequences, the first being a ground to rescind an otherwise valid and enforceable contract. Perceived inadequacy of price, on the other hand, is not a sufficient ground for setting aside a sale freely entered into, save perhaps when the inadequacy is shocking to the conscience.[35]

The Court to be sure takes stock of the fact that the contracting parties to the 1995 or 1996 sale agreed to a purchase price of PhP 125,000 payable on installments. But the original lot owner, Gabriel Sr., died before full payment can be effected. Nevertheless, petitioners continued remitting payments to Gabriel, Jr., who sold the subject lot to Bernard on June 30, 1999. Gabriel, Jr., as may be noted, parted with the property only for PhP 50,000. On the other hand, Bernard sold it for PhP 80,000 to Marcos and Benjamin. From the foregoing price figures, what is abundantly clear is that what Antonita agreed to pay Gabriel, Sr., albeit in installment, was very much more than what his son, for the same lot, received from his buyer and the latter's

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[35] 4 Paras, *CIVIL CODE OF THE PHILIPPINES ANNOTATED* 723 (13th ed., 1995).

buyer later. The Court, therefore, cannot see its way clear as to how the RTC arrived at its simplistic conclusion about the transaction between Gabriel Sr. and Antonita being without "adequate consideration."

The Issues of Prescription and the Bona Fides of the Respondents as Purchasers

Considering the interrelation of these two issues, we will discuss them jointly.

There can be no quibbling about the fraudulent nature of the conveyance of the subject lot effected by Gabriel Jr. in favor of Bernard. It is understandable that after his father's death, Gabriel Jr. inherited subject lot and for which he was issued TCT No. No. T-71499. Since the Gabriel Sr. — Antonita sales transaction called for payment of the contract price in installments, it is also understandable why the title to the property remained with the Gabriels. And after the demise of his father, Gabriel Jr. received payments from the Orduñas and even authorized them to enclose the subject lot with a fence. In sum, Gabriel Jr. knew fully well about the sale and is bound by the contract as predecessor-in-interest of Gabriel Sr. over the property thus sold.

Yet, the other respondents (purchasers of subject lot) still maintain that they are innocent purchasers for value whose rights are protected by law and besides which prescription has set in against petitioners' action for annulment of title and reconveyance.

The RTC and necessarily the CA found the purchaser-respondents' thesis on prescription correct stating in this regard that Eduardo's TCT No. T-3276 was issued on May 16, 2000 while petitioners filed their complaint for annulment only on July 3, 2001. To the courts below, the one-year prescriptive period to assail the issuance of a certificate of title had already elapsed.

We are not persuaded.

The basic complaint, as couched, ultimately seeks the reconveyance of a fraudulently registered piece of residential land. Having possession of the subject lot, petitioners' right to

the reconveyance thereof, and the annulment of the covering title, has not prescribed or is not time-barred. This is so for an action for annulment of title or reconveyance based on fraud is imprescriptible where the suitor is in possession of the property subject of the acts,[36] the action partaking as it does of a suit for quieting of title which is imprescriptible.[37] Such is the case in this instance. Petitioners have possession of subject lots as owners having purchased the same from Gabriel, Sr. subject only to the full payment of the agreed price.

The prescriptive period for the reconveyance of fraudulently registered real property is 10 years, reckoned from the date of the issuance of the certificate of title, if the plaintiff is not in possession, but imprescriptible if he is in possession of the property.[38] Thus, one who is in actual possession of a piece of land claiming to be the owner thereof may wait until his possession is disturbed or his title is attacked before taking steps to vindicate his right.[39] As it is, petitioners' action for reconveyance is imprescriptible.

This brings us to the question of whether or not the respondent-purchasers, *i.e.*, Bernard, Marcos and Benjamin, and Eduardo, have the status of innocent purchasers for value, as was the thrust of the trial court's disquisition and disposition.

We are unable to agree with the RTC.

It is the common defense of the respondent-purchasers that they each checked the title of the subject lot when it was his turn to acquire the same and found it clean, meaning without

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[36] *Llemos v. Llemos*, G.R. No. 150162, January 26, 2007, 513 SCRA 128, 134; citing *Occeña v. Esponilla*, G.R. No. 156973, June 4, 2004, 431 SCRA 116, 126; and *Delfin v. Billones*, G.R. No. 146550, March 17, 2006, 485 SCRA 38, 47-48.

[37] *Occeña v. Esponilla*, G.R. No. 156973, June 4, 2004, 431 SCRA 116.

[38] *Heirs of Salvador Hermosilla v. Remoquillo*, G.R. No. 167320, January 30, 2007, 513 SCRA 403, 408-409.

[39] *Id.* at 409; citing *Arlegui v. Court of Appeals*, G.R. No. 126437, March 6, 2002, 378 SCRA 322, 324.

annotation of any encumbrance or adverse third party interest. And it is upon this postulate that each claims to be an innocent purchaser for value, or one who buys the property of another without notice that some other person has a right to or interest in it, and who pays therefor a full and fair price at the time of the purchase or before receiving such notice.[40]

The general rule is that one dealing with a parcel of land registered under the Torrens System may safely rely on the correctness of the certificate of title issued therefor and is not obliged to go beyond the certificate.[41] Where, in other words, the certificate of title is in the name of the seller, the innocent purchaser for value has the right to rely on what appears on the certificate, as he is charged with notice only of burdens or claims on the *res* as noted in the certificate. Another formulation of the rule is that (a) in the absence of anything to arouse suspicion or (b) except where the party has actual knowledge of facts and circumstances that would impel a reasonably cautious man to make such inquiry or (c) when the purchaser has knowledge of a defect of title in his vendor or of sufficient facts to induce a reasonably prudent man to inquire into the status of the title of the property,[42] said purchaser is without obligation to look beyond the certificate and investigate the title of the seller.

Eduardo and, for that matter, Bernard and Marcos and Benjamin, can hardly claim to be innocent purchasers for value or purchasers in good faith. For each knew or was at least expected to know that somebody else other than Gabriel, Jr. has a right or interest over the lot. This is borne by the fact that the initial seller, Gabriel Jr., was not in possession of subject property. With respect to Marcos and Benjamin, they knew as buyers

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[40] *Potenciano v. Reynoso*, G.R. No. 140707, April 22, 2003, 401 SCRA 391, 401-402; citing *Tsai v. Court of Appeals*, G.R. No. 120109, October 2, 2001, 366 SCRA 324.

[41] *Republic v. Mendoza, Sr.*, G.R. Nos. 153726 & 154014, March 28, 2007, 519 SCRA 203, 231.

[42] *Sandoval v. Court of Appeals*, G.R. No. 106657, August 1, 1996, 260 SCRA 283, 295.

that Bernard, the seller, was not also in possession of the same property. The same goes with Eduardo, as buyer, with respect to Marcos and Benjamin.

Basic is the rule that a buyer of a piece of land which is in the actual possession of persons other than the seller must be wary and should investigate the rights of those in possession. Otherwise, without such inquiry, the buyer can hardly be regarded as a buyer in good faith. When a man proposes to buy or deal with realty, his duty is to read the public manuscript, *i.e.*, to look and see who is there upon it and what his rights are. A want of caution and diligence which an honest man of ordinary prudence is accustomed to exercise in making purchases is, in contemplation of law, a want of good faith. The buyer who has failed to know or discover that the land sold to him is in adverse possession of another is a buyer in bad faith.[43]

Where the land sold is in the possession of a person other than the vendor, the purchaser must go beyond the certificates of title and make inquiries concerning the rights of the actual possessor.[44] And where, as in the instant case, Gabriel Jr. and the subsequent vendors were not in possession of the property, the prospective vendees are obliged to investigate the rights of the one in possession. Evidently, Bernard, Marcos and Benjamin, and Eduardo did not investigate the rights over the subject lot of the petitioners who, during the period material to this case, were in actual possession thereof. Bernard, *et al*. are, thus, not purchasers in good faith and, as such, cannot be accorded the protection extended by the law to such purchasers.[45] Moreover,

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[43] *Embrado v. Court of Appeals*, G.R. No. 51457, June 27, 1994, 233 SCRA 335, 347; citing *J.M. Tuason & Co., Inc. v. Court of Appeals*, No. L-41233, November 21, 1979, 94 SCRA 413, 422-423 and *Angelo v. Pacheco*, 56 Phil. 70 (1931).

[44] *Heirs of Trinidad De Leon Vda. de Roxas v. Court of Appeals*, G.R. No. 138660, February 5, 2004, 422 SCRA 101, 117; citing *Development Bank of the Philippines v. Court of Appeals*, G.R. No. 129471, April 28, 2000, 331 SCRA 267.

[45] Sec. 32 of Presidential Decree No. 1529, which provides:

not being purchasers in good faith, their having registered the sale, will not, as against the petitioners, carry the day for any of them under Art. 1544 of the Civil Code prescribing rules on preference in case of double sales of immovable property. *Occeña v. Esponilla*[46] laid down the following rules in the application of Art. 1544: (1) knowledge by the first buyer of the second sale cannot defeat the first buyer's rights except when the second buyer first register in good faith the second sale; and (2) knowledge gained by the second buyer of the first sale defeats his rights even if he is first to register, since such knowledge taints his registration with bad faith.

Upon the facts obtaining in this case, the act of registration by any of the three respondent-purchasers was not coupled with good faith. At the minimum, each was aware or is at least presumed to be aware of facts which should put him upon such inquiry and investigation as might be necessary to acquaint him with the defects in the title of his vendor.

The award by the lower courts of damages and attorney's fees to some of the herein respondents was predicated on the

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Section 32. *Review of decree of registration; Innocent purchaser for value.*––The decree of registration shall not be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgments, subject, however, to the right of any person, x x x deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper [RTC] a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein, whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrance for value.

Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other persons responsible for the fraud.

[46] *Supra* note 37.

filing by the original plaintiffs of what the RTC characterized as an unwarranted suit. The basis of the award, needless to stress, no longer obtains and, hence, the same is set aside.

WHEREFORE, the petition is hereby *GRANTED*. The appealed December 4, 2006 Decision and the March 6, 2007 Resolution of the Court of Appeals in CA-G.R. CV No. 79680 affirming the May 26, 2003 Decision of the Regional Trial Court, Branch 3 in Baguio City are hereby *REVERSED* and *SET ASIDE*. Accordingly, petitioner Antonita Orduña is hereby recognized to have the right of ownership over subject lot covered by TCT No. T-3276 of the Baguio Registry registered in the name of Eduardo J. Fuentebella. The Register of Deeds of Baguio City is hereby *ORDERED* to cancel said TCT No. T-3276 and to issue a new one in the name of Armando Gabriel, Jr. with the proper annotation of the conditional sale of the lot covered by said title in favor of Antonita Orduña subject to the payment of the PhP 50,000 outstanding balance. Upon full payment of the purchase price by Antonita Orduña, Armando Gabriel, Jr. is *ORDERED* to execute a Deed of Absolute Sale for the transfer of title of subject lot to the name of Antonita Orduña, within three (3) days from receipt of said payment.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 177511. June 29, 2010]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **FORTUNE SAVINGS AND LOAN ASSOCIATION, INC., represented by PHILIPPINE DEPOSIT INSURANCE CORPORATION,** *respondent.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (CARL); JUST COMPENSATION FOR LANDS TAKEN UNDER CARP; DETERMINED BY THE REGIONAL TRIAL COURT (RTC). — Although the DAR is vested with primary jurisdiction under the Comprehensive Agrarian Reform Law of 1988 or CARL to determine in a preliminary manner the reasonable compensation for lands taken under the CARP, such determination is subject to challenge in the courts. The CARL vests in the RTCs, sitting as Special Agrarian Courts, original and exclusive jurisdiction over all petitions for the determination of just compensation. This means that the RTCs do not exercise mere *appellate* jurisdiction over just compensation disputes. The RTC's jurisdiction is not any less "original and exclusive" because the question is first passed upon by the DAR. The proceedings before the RTC are not a continuation of the administrative determination. Indeed, although the law may provide that the decision of the DAR is final and unappealable, still a resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action. The taking of property under the CARL is a government exercise of the power of eminent domain. Since the determination of just compensation in eminent domain proceedings is a judicial function, such determination cannot be made to depend on the existence of administrative proceedings of a similar nature. Thus, even while the DARAB summary administrative hearing for determination of just compensation is pending, the interested party may file a petition for judicial determination of the same. In another case, the Court allowed the filing with the trial court of a petition to fix just compensation

despite failure of the landowner to seek reconsideration of the DAR's valuation.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Office of the General Counsel for respondent.

D E C I S I O N

ABAD, *J*.:

This case is about the just compensation to which an owner of land taken under the Comprehensive Agrarian Reform Law is entitled, given such owner's failure to adduce evidence at the trial of the case.

The Facts and the Case

Respondent Fortune Savings and Loan Association, Inc. (Fortune Savings) owned a 4,230-square meter agricultural land in San Gregorio, Malvar, Batangas,[1] that it acquired for ₱80,000.00 after foreclosing on the mortgage constituted on the land by one of its borrowers who defaulted on a ₱71,500.00 loan.

Fortune Savings offered to sell the property for ₱100,000.00 to the Department of Agrarian Reform (DAR) for inclusion in the Comprehensive Agrarian Reform Program (CARP). But petitioner Land Bank of the Philippines (Land Bank), the financial intermediary for the CARP,[2] fixed the land's value at only ₱6,796.00. Rejecting this amount, Fortune Savings filed a summary administrative proceeding for the determination of just compensation with the DAR Adjudication Board (DARAB).

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[1] Under Transfer Certificate of Title 33051.

[2] Under Executive Order 405, "Vesting in the Land Bank of the Philippines the primary responsibility to determine land valuation and compensation for all lands covered under Republic Act 6657, known as the Comprehensive Agrarian Reform Law of 1988."

On March 3, 1999 DARAB rendered judgment, finding unreasonable Land Bank's valuation of the land and fixing its value at ₱93,060.00. Since the Land Bank received a copy of the decision on March 17, 1999, it had 15 days from that date or until April 1, 1999 within which to file an action with the appropriate Regional Trial Court (RTC) for judicial determination of just compensation.[3]

But, because April 1 fell on Maundy Thursday, a public holiday, Land Bank was able to file a petition for the determination of just compensation before the RTC of Lipa City in Agrarian Case 99-0214 only on Monday, April 5, 1999. For Land Bank's failure to cause the service of summons, however, the RTC dismissed the case on December 14, 1999 without prejudice. Meanwhile, Fortune Savings ceased operations and was taken over by the Philippine Deposit Insurance Corporation as its liquidator.

On April 7, 2000 or four months after the RTC dismissed Agrarian Case 99-0214, Land Bank filed another petition for the determination of just compensation for the subject land in Agrarian Case 2000-0155. Because Fortune Savings failed to file a responsive pleading, the RTC declared it in default. Land Bank presented its evidence *ex parte* and on May 30, 2002 the RTC rendered a decision, upholding Land Bank's valuation of the property at ₱6,796.00 based on a technical formula adopted by the DAR.

Fortune Savings appealed to the Court of Appeals (CA),[4] arguing that the DARAB decision had already become final and executory and that the Land Bank valuation of ₱6,796.00, adopted by the RTC was erroneous. On August 29, 2006, the CA rendered judgment, reinstating the March 3, 1999 DARAB decision and its ₱93,060.00 valuation.[5] The CA ruled that Land

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[3] Rule XIII, Section 11 of the DARAB Rules of Procedure (DARAB Rules).

[4] CA-G.R. CV 76816.

[5] *Rollo*, pp. 37-45; penned by Associate Justice Roberto A. Barrios, with the concurrence of Associate Justices Mario L. Guariña III and Lucenito N. Tagle.

Bank incurred delay in filing only on April 5, 1999 its petition for the determination of just compensation in Agrarian Case 99-0214 and that, consequently, the DARAB decision became final and executory on April 1, 1999.

After the CA denied Land Bank's motion for reconsideration, the latter came to this Court through a petition for review on *certiorari*.

The Issues Presented

The issues presented in this case are:

1. Whether or not the CA erred in holding that, since Land Bank filed its original judicial action in Agrarian Case 99-0214 beyond the 15-day period set under Rule XIII, Section 11 of the DARAB Rules, the DARAB determination of just compensation became final and executory; and

2. Whether or not the CA erred in adopting the valuation fixed by DARAB for the property at ₱93,060.00 instead of the ₱6,796.00 established by Land Bank.

The Ruling of the Court

One. Land Bank points out that, in ruling that the bank filed Agrarian Case 99-0214 out of time, the CA disregarded the fact that April 1, 1999, the last day for it to file the petition, was a holiday, it being Maundy Thursday.

Fortune Savings, on the other hand, claims in its Comment that, even if Land Bank filed the case on time, the fact remains that the RTC dismissed the same for Land Bank's failure to serve summons. Fortune Savings' filing of another case — Agrarian Case 2000-0155 — cannot operate as a continuance of Agrarian Case 99-0214 because it was an entirely different case altogether. Agrarian Case 2000-0155 did not operate to revive Agrarian Case 99-0214 nor did it give to Land Bank the benefit of having filed on time the action that the DARAB Rules contemplated.

Although the DAR is vested with primary jurisdiction under the Comprehensive Agrarian Reform Law of 1988 or CARL to determine in a preliminary manner the reasonable compensation

for lands taken under the CARP, such determination is subject to challenge in the courts.[6] The CARL vests in the RTCs, sitting as Special Agrarian Courts, original and exclusive jurisdiction over all petitions for the determination of just compensation.[7] This means that the RTCs do not exercise mere *appellate* jurisdiction over just compensation disputes.[8]

The RTC's jurisdiction is not any less "original and exclusive" because the question is first passed upon by the DAR. The proceedings before the RTC are not a continuation of the administrative determination. Indeed, although the law may provide that the decision of the DAR is final and unappealable, still a resort to the courts cannot be foreclosed on the theory that courts are the guarantors of the legality of administrative action.[9]

The taking of property under the CARL is a government exercise of the power of eminent domain. Since the determination of just compensation in eminent domain proceedings is a judicial function, such determination cannot be made to depend on the existence of administrative proceedings of a similar nature. Thus, even while the DARAB summary administrative hearing for determination of just compensation is pending, the interested party may file a petition for judicial determination of the same.[10] In another case, the Court allowed the filing with the trial court of a petition to fix just compensation despite failure of the landowner to seek reconsideration of the DAR's valuation.[11]

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[6] CARL, Section 50.

[7] *Id.*, Section 57.

[8] *Philippine Veterans Bank v. Court of Appeals*, 379 Phil. 141, 148 (2000); see also *Republic of the Philippines v. Court of Appeals*, 331 Phil. 1070 (1996).

[9] *Id.* at 1077-1078.

[10] *Land Bank v. Celada*, G.R. No. 164876, January 23, 2006, 479 SCRA 495, 504-505; see also *Land Bank of the Philippines v. Wycoco*, G.R. Nos. 140160 and 146733, January 13, 2004, 419 SCRA 67, 75.

[11] *Land Bank of the Philippines v. Natividad*, 497 Phil. 738 (2005).

Consequently, Land Bank's filing of Agrarian Case 2000-0155 after the dismissal without prejudice of Agrarian Case 99-0214 cannot be regarded as barred by the filing of the latter case beyond the 15-day period prescribed under Rule XIII, Section 11 of the DARAB Rules. The procedural soundness of Agrarian Case 2000-0155 could not be made dependent on the DARAB case, for these two proceedings are separate and independent.

Two. In the matter of the amount of just compensation to which Fortune Savings is entitled, the Court notes that the latter forfeited by default its right to present evidence of just compensation before the RTC. Thus, the latter court simply accepted the computation and supporting documents that Land Bank adduced at the trial, which computation was at ₱6,796.00 based on the formula provided by Section 17 of the CARL.

But, although the formula found in Section 17 of the CARL may be justly adopted in certain cases, it is by no means the only formula that the court may adopt in determining just compensation. The Court finds too iniquitous the amount of ₱6,796.00 for the land. As Fortune Savings pointed out, ₱6,796.00 is just the price of a 14-inch television set, yet what is at stake in this case is a 4,230-square meter land with 43 coconut-bearing trees and 6 jackfruit trees, certainly with potential for greater productivity than a television set. That Fortune Savings was willing to pay ₱80,000.00 for the property is proof that the property was valued far more than the ₱6,796.00 fixed by the RTC.

The CA adopted the DARAB valuation of ₱93,060.00 for the subject land for a technical reason. But, since DARAB fixed the amount based on its expertise and since that amount is not quite far from the price for which Fortune Savings bought the same at a public auction, the Court is inclined to accept such valuation. Considering the relatively small amount involved, this would be a far better alternative than remanding the case and incurring further delay in its resolution.

WHEREFORE, the Court *PARTIALLY GRANTS* the petition. The August 29, 2006 decision and April 18, 2007 resolution of

the Court of Appeals in CA-G.R. CV 76816 are *REVERSED and SET ASIDE*, except that the valuation of the subject property at ₱93,060.00 as originally contained in the March 3, 1999 decision of the DARAB, and which was adopted by the Court of Appeals, is *AFFIRMED*. For the reasons stated above, petitioner Land Bank of the Philippines is directed to pay the respondent Fortune Savings and Loan Association, Inc. the sum of ₱93,060.00 as just compensation for the taking of its land with legal interest from the time of the finality of this decision until it is paid in full.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Mendoza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 178575. June 29, 2010]

JULIAN FERNANDEZ, *petitioner, vs.* **RUFINO D. FULGUERAS,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; CONFERRED ONLY BY A STATUTE. —** Jurisdiction over a subject matter is conferred by the Constitution or the law, and rules of procedure yield to substantive law. Otherwise stated, jurisdiction must exist as a matter of law. Only a statute can confer jurisdiction on courts and administrative agencies; rules of procedure cannot.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB); JURISDICTION; NO AUTHORITY TO ISSUE WRIT OF *CERTIORARI*. —** The DARAB assumed jurisdiction

over the petition for *certiorari* by virtue of Section 3, Rule VIII of the DARAB New Rules of Procedure, which allows the filing of such petition to assail an interlocutory order of the Provincial Adjudicator. However, a month after the DARAB rendered its decision, the Court, in *DARAB v. Lubrica,* declared that such apparent grant of authority to issue a writ of *certiorari* is not founded on any law. It declared that neither the DARAB's quasi-judicial authority nor its rule-making power justifies the self-conferment of authority. x x x As intimated in *Lubrica*, petitioner should have filed the petition for *certiorari* with the regular courts, and not with the DARAB.

APPEARANCES OF COUNSEL

Arias Law Office for petitioner.
Rexie M. Maristela for respondent.

D E C I S I O N

NACHURA, *J*.:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) dated February 25, 2007 and its Resolution[2] dated June 8, 2007.

Petitioner Julian Fernandez filed with the Department of Agrarian Reform Adjudication Board (DARAB) a complaint for nullification of Emancipation Patent (EP) and reconveyance against respondent Rufino D. Fulgueras over a parcel of land situated in Barangay Nanguma, Mabitac, Laguna, with an area of 1.7 hectares. Petitioner averred that he holds a Certificate of Land Transfer over the said landholding. He claimed that, since 1982, he allowed his cousin, respondent Rufino Fulgueras, to till the land and, in return, the latter shared the harvest with him. He related that the sharing of harvest, however, stopped sometime in 1996, and from then on, respondent failed and refused

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[1] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr., concurring; *rollo*, pp. 99-113.

[2] *Id.* at 119.

to deliver his share of the harvest. Petitioner avowed that, in August 1999, he learned that the property has been registered in the name of respondent under Transfer Certificate of Title No. TEP-436.

In a decision dated July 5, 2000, the Provincial Adjudicator declared respondent's title valid, and dismissed the complaint for lack of cause of action.[3] Petitioner moved for reconsideration. The Provincial Adjudicator denied the motion for lack of merit in an Order dated August 8, 2000.[4]

Thereafter, petitioner filed a petition for relief from judgment[5] under Section 4, Rule IX of the DARAB New Rules of Procedure. In said petition, petitioner's counsel explained that he was not able to file an appeal because he suffered from serious anxieties and deep worries for his wife who was hospitalized due to continuous bleeding.

On August 6, 2002, the Provincial Adjudicator dismissed the petition, stating that the grounds relied upon by petitioner were not extrinsic in nature. The dispositive portion of the resolution states:

> WHEREFORE, the Petition [for] Relief from Judgment is ordered DISMISSED.
>
> Accordingly, all Orders issued relative to and in connection with the instant petition and inconsistent with the final and executory decision rendered are hereby set aside and declared without force and effect.
>
> SO ORDERED.[6]

Petitioner filed a notice of appeal but it was denied due course by the Provincial Adjudicator in an Order dated October 15, 2002 on the ground that an ordinary appeal was not the proper remedy.[7]

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[3] *Rollo,* p. 29.

[4] *Id.* at 43.

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

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

[7] *Id.* at 57.

Petitioner then filed a petition for *certiorari* with the DARAB, praying that it set aside the August 6, 2002 resolution and October 15, 2002 Order, declare respondent's EP as void, and order the issuance of a new EP to petitioner.[8]

On March 30, 2005, the DARAB rendered a decision, finding that the Provincial Adjudicator gravely abused his discretion when he dismissed the complaint based on conclusions not supported by the record. The dispositive portion of its decision reads:

WHEREFORE, in view of the foregoing premises, judgment is hereby rendered SETTING ASIDE the decision of the Hon. Adjudicator *a quo* and entering a new one as follows:

1) Declaring the Emancipation Patent No. 409333 issued to private respondent Rufino Fulgueras as null and void;

2) Ordering the cancellation of the said Emancipation [P]atent issued in favor of respondent, and that a new one be generated and issued in favor of Petitioner, being the legitimate farmer beneficiary of the subject land.

SO ORDERED.[9]

In a resolution[10] dated August 3, 2005, the DARAB denied respondent's motion for reconsideration.

Respondent elevated that case to the CA again, through a petition for *certiorari,* which was treated by the CA as a petition for review under Rule 43 of the Rules of Court.

On February 25, 2007, the CA rendered a Decision in respondent's favor, thus:

WHEREFORE, premises considered, the instant petition is hereby GRANTED. The challenged Decision is REVERSED and SET ASIDE. The PARAD Decision in Reg. Case No. R-0403-0081-99 STANDS.

SO ORDERED.[11]

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[8] *Id.* at 76.

[9] *Id.* at 95.

[10] *Id.* at 97-98.

[11] *Id.* at 112.

On June 8, 2007, the CA denied petitioner's motion for reconsideration;[12] hence, this petition.

The petition is without merit. The CA correctly set aside the DARAB decision, granting the petition for *certiorari,* which is void for having been issued without jurisdiction.

Jurisdiction over a subject matter is conferred by the Constitution or the law, and rules of procedure yield to substantive law. Otherwise stated, jurisdiction must exist as a matter of law.[13] Only a statute can confer jurisdiction on courts and administrative agencies; rules of procedure cannot.[14]

The DARAB assumed jurisdiction over the petition for *certiorari* by virtue of Section 3,[15] Rule VIII of the DARAB New Rules of Procedure, which allows the filing of such petition to assail an interlocutory order of the Provincial Adjudicator. However, a month after the DARAB rendered its decision, the Court, in *DARAB v. Lubrica,*[16] declared that such apparent grant of authority to issue a writ of *certiorari* is not founded on any law. It declared that neither the DARAB's quasi-judicial authority nor its rule-making power justifies the self-conferment of authority.[17] Thus, the Court concluded that the DARAB has no *certiorari* jurisdiction:

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[12] *Id.* at 119.

[13] *Padunan v. DARAB,* 444 Phil. 213, 223 (2003).

[14] *Republic of the Philippines v. CA,* 331 Phil. 1070, 1076 (1996).

[15] SECTION 3. Totality of Case Assigned. When a case is assigned to an Adjudicator, any or all incidents thereto shall be considered assigned to him, and the same shall be disposed of in the same proceedings to avoid multiplicity of suits or proceedings.

The Order or resolution of the Adjudicator on any issue, question, matter or incident raised before them shall be valid and effective until the hearing shall have been terminated and the case is decided on the merits, unless modified and reversed by the Board upon a verified petition for *certiorari* which cannot be entertained without filing a motion for reconsideration with the Adjudicator *a quo* within five (5) days from receipt of the order, subject of the petition. Such interlocutory order shall not be subject of an appeal.

[16] G.R. No. 159145, April 29, 2005, 457 SCRA 800.

[17] *Id.* at 811.

In general, the quantum of judicial or quasi-judicial powers which an administrative agency may exercise is defined in the enabling act of such agency. In other words, the extent to which an administrative entity may exercise such powers depends largely, if not wholly, on the provisions of the statute creating or empowering such agency. The grant of original jurisdiction on a quasi-judicial agency is not implied. There is no question that the legislative grant of adjudicatory powers upon the DAR, as in all other quasi-judicial agencies, bodies and tribunals, is in the nature of a limited and special jurisdiction, that is, the authority to hear and determine a class of cases within the DAR's competence and field of expertise. In conferring adjudicatory powers and functions on the DAR, the legislature could not have intended to create a regular court of justice out of the DARAB, equipped with all the vast powers inherent in the exercise of its jurisdiction. **The DARAB is only a quasi-judicial body, whose limited jurisdiction does not include authority over petitions for *certiorari*, in the absence of an express grant in R.A. No. 6657, E.O. No. 229 and E.O. No. 129-A.**[18]

As intimated in *Lubrica*, petitioner should have filed the petition for *certiorari* with the regular courts, and not with the DARAB. In the absence of a specific statutory grant of jurisdiction, the DARAB, as a quasi-judicial body with limited jurisdiction, cannot exercise jurisdiction over the petition for *certiorari*.

WHEREFORE, the petition is *DENIED*. The Court of Appeals Decision dated February 25, 2007 and Resolution dated June 8, 2007 are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

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[18] *Id.* (Emphasis supplied.)

SECOND DIVISION

[G.R. No. 179549. June 29, 2010]

LIRIO A. DEANON, represented by Attorney-in-Fact JOCELYN D. ASOR, *petitioner, vs.* **MARFELINA C. MAG-ABO,** *respondent.*

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; SALE OF REAL PROPERTY; BUYER IN GOOD FAITH. —** It is settled rule that a buyer of real property that is in the possession of a person other than the seller must be wary and should investigate the rights of the person in possession. Otherwise, without such inquiry, the buyer can hardly be regarded as a buyer in good faith.

2. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; ISSUE FOR RESOLUTION IS POSSESSION ONLY. —** The sole issue for resolution in an unlawful detainer case is physical or material possession. Courts in ejectment cases decide questions of ownership only as it is necessary to decide the question of possession. The reason for this rule is to prevent the defendant from trifling with the summary nature of an ejectment suit by the simple expedient of asserting ownership over the disputed property. The Court's adjudication of ownership in an ejectment case is merely provisional, and it will not bar or prejudice an action between the same parties involving title to the property, if and when such action is brought seasonably before the proper forum.

APPEARANCES OF COUNSEL

Nancy Villanueva Teylan for petitioner.
Miguela Q. Dagalea for respondent.

DECISION

PERALTA, *J*.:

This is a petition for review on *certiorari*[1] of the Decision of the Court of Appeals in CA-G.R. SP No. 97714, dated May 25, 2007, and its Resolution dated August 28, 2007, which denied petitioner's motion for reconsideration. The Decision of the Court of Appeals affirmed the Decision of the Regional Trial Court (RTC) of Pasig City, Branch 161, which held that respondent Marfelina[2] C. Mag-abo has a better right of possession of the property involved in this case.

The facts are as follows:

The property involved in this case is a 74-square-meter lot located at No. 181 Bayabas Extension, NAPICO, Manggahan, Pasig City.[3]

The records show that the lot is part of the 24,406-square-meter property titled to the Metro Manila Commission (now Metro Manila Development Authority [MMDA]) under Transfer Certificate of Title (TCT) No. PT-96040.[4] On October 22, 2002, the MMDA sold the 24,406-square-meter property to the NAPICO Homeowners Association XIII, Inc.[5] and a new title, TCT No. PT-119333, was issued in the name of the NAPICO Homeowners Association XIII, Inc.

It appears that the subject property is under the Community Mortgage Program being implemented by the MMDA, the National Housing Authority and the National Home Mortgage

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

[2] Also referred to as Merfelina in the CA Decision.

[3] Referred to as Lot 32, Block 5, Zone (Lane) 4, Phase 3 in the MeTC Decision (Records, p. 115), while it is identified as Lot No. 37, Block 9 of NAPICO Homeowners Association XIII, Inc., Exhibit "R", records, p. 97.

[4] Exhibit "O", records, p. 91.

[5] Deed of Absolute Sale, Exhibit "P", *id.* at 94.

Finance Corporation under the socialized housing program of the government.[6]

On March 17, 2004, petitioner Lirio A. Deanon filed a Complaint[7] for unlawful detainer and ejectment against respondent Marfelina Mag-abo with the Metropolitan Trial Court (MeTC) of Pasig City, Branch 70 (trial court).

Petitioner alleged that respondent occupied the subject property in the year 2000, when it was still owned by Ma. Imelda Eloisa P. Galvan. The lot was then being used by Felizardo Sasi, the caretaker of Galvan. The rights to the said property were offered for sale by Galvan to Sasi, but the sale did not materialize. By virtue of an Agreement dated November 18, 2000, Sasi vacated the lot.

After Sasi vacated the lot, respondent allegedly used the property as her garage without any permission from Ma. Imelda Eloisa Galvan. Since Galvan was not in need of the premises yet, she allegedly allowed respondent to use the place as a garage. There was no verbal or written lease agreement between Galvan and respondent. Respondent was never charged or assessed for any rental for occupying the property.

On July 28, 2003, Ma. Imelda Eloisa Galvan executed a Waiver[8] of her rights over the subject property in favor of petitioner. It was agreed that petitioner would assume payment of the amortization and other incidental costs of the property, which was mortgaged with the National Home Mortgage Finance Corporation.

In a letter[9] dated July 28, 2003, Galvan informed the NAPICO Homeowners Association XIII, Inc. that she had transferred her right of ownership over the said lot in favor of petitioner.

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[6] Exhibit "R", *id.* at 97.

[7] Docketed as Civil Case No. 10853.

[8] Exhibit "C", records, p. 68.

[9] Exhibit "D", *id.* at 69.

On June 5, 2004, petitioner wrote a letter[10] to the National Home Mortgage Finance Corporation, requesting for the substitution of the right of ownership for Lot No. 37, Block 9, located at No. 181 Bayabas Extension, NAPICO, Manggahan, Pasig City.

On August 14, 2003, the Board of Directors of the NAPICO Homeowners Association XIII, Inc. issued a Board Resolution[11] resolving that the Board would issue a letter of endorsement signed by its President to the National Home Mortgage Finance Corporation for the transfer of rights over the subject property from Galvan to petitioner.

Petitioner alleged that she was required to pay all arrearages of the former owner, Ma. Imelda Eloisa P. Galvan, before the substitution was effected. Such payment was evidenced by a Certification[12] issued by NAPICO Homeowners Association XIII, Inc. on January 13, 2004, stating that the account of Galvan had been updated and/or the arrearages thereof had been paid in full by petitioner for the purpose of substitution.

Also on January 13, 2004, petitioner and NAPICO Homeowners Association XIII, Inc., represented by its President, Wilson S. Baltazar, executed a Lease/Purchase Agreement[13] over the subject property. The term of the lease was 25 years with a monthly rental of ₱374.15. The parties agreed that all rental payments would be considered as installment payment for the purchase price of the unit awarded to the lessee.

Meantime on August 14, 2003, petitioner, through her counsel, sent respondent a notice[14] that the subject property had been purchased from Ma. Imelda Eloisa Galvan and that respondent was being given 90 days from receipt of the notice within which

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[10] Exhibit "F", *id.* at 72.

[11] Exhibit "E", *id.* at 70.

[12] Exhibit "G", *id.* at 73.

[13] Exhibit "H", *id.* at 74.

[14] Exhibit "I", *id.* at 76.

to vacate the property; otherwise, legal action would be taken against her.

Despite receipt of the notice, respondent refused to vacate the subject property. Petitioner sought the intercession of the *Barangay Lupon* of *Barangay* Manggahan, Pasig City, but the parties failed to reach an amicable settlement of the case. On February 20, 2004, the *Barangay Lupon* issued a Certification[15] allowing the parties to file a complaint in the proper court.

Hence, petitioner filed the Complaint against respondent. Petitioner prayed that after notice and hearing, judgment be rendered directing respondent and all persons claiming rights under her to vacate and surrender the subject premises at No. 181 Bayabas Extension, NAPICO, Manggahan, Pasig City, and to pay petitioner attorney's fees in the amount of ₱20,000.00 and ₱2,000.00 per appearance fee and costs of the suit.

In her Answer,[16] respondent countered that petitioner had no cause of action against her. She claimed that she acquired the subject property from Ruth Cabrera through a Deed of Transfer and Assignment of Rights dated February 23, 2001. Ruth Cabrera, on the other hand, acquired the property by virtue of a Certificate of Sale dated February 28, 1998.

The allegations of respondent[17] showed that the former lot claimants and owner of all the improvements on the subject property were the spouses Dominador Galvan and Ma. Imelda Eloisa Galvan. Dominador Galvan was charged with the crime of Attempted Rape before the RTC of Pasig City, Branch 166, but he was found guilty of the crime of Acts of Lasciviousness. After the decision became final, the RTC, on motion of the victim's mother, issued a Writ of Execution against Dominador Galvan to satisfy the civil indemnity in the amount of ₱15,000.00.

The deputy sheriff of the RTC of Pasig City, Branch 166 levied on the subject property, referred to as Lot 32, Block 5,

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[15] Exhibit "J", *id.* at 78.

[16] Records, p. 23.

[17] MeTC Decision, *id.* at 117-119.

Zone 4, Phase 3, located at 181 Bayabas Extension, NAPICO, Manggahan, Pasig City, with Dominador Galvan and his wife Ma. Imelda Eloisa Galvan as lot claimants. At the auction sale conducted by the deputy sheriff, the Galvans' rights over the subject property was purchased by Ruth Cabrera in the amount of ₱15,000.00. A certificate of sale was issued in the name of Ruth Cabrera, and she acquired Galvan's rights over the subject property as no redemption appeared to have been made within the reglementary period provided under Section 33, Rule 39 of the Rules of Court.

Sometime in 1999, Ruth Cabrera filed an unlawful detainer case with the MeTC of Pasig City, Branch 68 against the spouses Galvan, entitled *Ruth Cabrera v. Spouses Dominador Galvan and Ma. Imelda Eloisa P. Galvan, Spouses John Doe Sase and Marissa Sase*.[18]

On August 30, 2000, the MeTC of Pasig City, Branch 68 ruled in favor of Ruth Cabrera. The dispositive portion of the MeTC's Decision states:

> Wherefore, premises considered, judgment is hereby rendered for herein plaintiff and against herein defendants, ordering the latter and all those claiming rights under them to vacate and surrender possession of the subject property; ordering defendants to pay ₱1,000.00 a month as reasonable compensation for their continued occupation of the subject property from April 1999 until the time they and all those claiming rights under them shall have completely vacated the property; to pay attorney's fees in the amount of ₱5,000.00 and the costs of suit.[19]

Defendants spouses Galvan and spouses Sase appealed the Decision of the MeTC of Pasig City, Branch 68 to the RTC of Pasig City, Branch 267. In a Decision dated May 9, 2001, the appellate court affirmed *in toto* the decision of the lower court. No appeal was made; hence, the decision became final and executory.

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[18] Docketed as Civil Case No. 7813.

[19] Records, p. 30.

On November 27, 2003, the MeTC of Pasig City, Branch 68 issued an Order[20] granting the motion for issuance of a writ of execution filed by plaintiff Ruth Cabrera. Hence, defendants spouses Galvan and the spouses Sase were ejected from the subject property.

Meantime, on February 23, 2001, Ruth Cabrera,[21] through a Deed of Transfer and Assignment of Rights,[22] conveyed to respondent all her rights and interest over the Certificate of Sale covering the subject property. Thereafter, respondent took possession and control of the property.

Hence, respondent prayed that the Complaint be dismissed for lack of cause of action.

In a Decision dated December 15, 2005, the trial court ruled in favor of petitioner. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the plaintiff and against defendant Marfelina Mag-abo in the following manner:
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> 1) Ordering the defendant and all persons claiming rights under her to vacate and surrender the peaceful possession of the premises located at No. 181 Bayabas Extension, NAPICO, Manggahan, Pasig City;
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> 2) Ordering the defendant to pay plaintiff the sum of ₱20,000.00 as and by way of attorney's fees; and
>
> 3) Ordering the defendant to pay the costs of suit.[23]

The trial court held that petitioner was able to establish, by preponderance of evidence, a case for repossession. It held that no right was ever transferred to respondent by Ruth Cabrera. It pointed out that petitioner requested for a certified true copy

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[20] Annex "D", *id.* at 35.

[21] Also referred to as Ruth Cabrera-Mendoza.

[22] Annex "A", records, p. 27.

[23] Records, p. 123.

of the Deed of Transfer and Assignment of Rights at the Notarial Section of the Makati Regional Trial Court, but no such copy was submitted, showing that there was no available record of the same.

The trial court stated that the Decisions of the MeTC of Pasig City, Branch 68 and the RTC of Pasig, Branch 267 in the unlawful detainer case entitled *Ruth Cabrera v. Spouses Dominador Galvan and Ma. Imelda Eloisa P. Galvan, Spouses John Doe Sase and Marissa Sase*, which Decisions respondent attached to her Answer, could not be used to conclude that there was a right transferred or assigned to her. When petitioner asked the former owner about the alleged Certificate of Sale in the name of Ruth Cabrera, she was given copies of the appeal papers.

The trial court gave credence to petitioner's evidence showing that the subject lot is part of the property of the MMDA under TCT No. PT-96040, which property was sold to the NAPICO Homeowners Association XIII, Inc., and a new title, TCT No. PT-119333, was subsequently issued in the name of the said association.

The trial court stated that petitioner has never known any other owner of the subject property aside from Ma. Imelda Eloisa Galvan. Moreover, Ma. Imelda Eloisa Galvan was the one registered as owner-awardee by the Association. After the approval of the substitution, the President of the NAPICO Homeowners Association XIII, Inc. issued a Certification dated May 20, 2004, which stated that petitioner, in place of the former owner Ma. Imelda Eloisa Galvan, has acquired the said lot. Hence, the trial court concluded that petitioner may demand that she be placed in possession of the property, because possession is a mere consequence of ownership.

Respondent appealed the trial court's decision to the RTC of Pasig City, Branch 161.

On August 18, 2006, the RTC reversed the trial court's decision. The dispositive portion of the Decision states:

WHEREFORE, in view of all the foregoing, the APPEALED DECISION is hereby REVERSED and SET ASIDE. Civil Case No. 7813 is ordered DISMISSED.[24]

The RTC held that the evidence on record showed that prior to the transfer of rights by Ma. Imelda Eloisa Galvan to petitioner, the subject property was already transferred to respondent through a Deed of Transfer and Assignment of Rights executed by Ruth Cabrera-Mendoza, who was able to obtain the property by virtue of a Certificate of Sale dated February 28, 1998 pursuant to a Writ of Execution dated February 6, 1998. This fact was already established in the Decisions of the MeTC of Pasig City, Branch 68, and the RTC of Pasig City, Branch 267 in the case for ejectment, entitled *Ruth Cabrera v. Spouses Dominador Galvan and Ma. Imelda Eloisa P. Galvan, Spouses John Doe Sase and Marissa Sase*.

The RTC stated that Galvan's failure to file an appeal of the decision of the RTC of Pasig City, Branch 267 rendered the said decision final and executory. By virtue of a Writ of Execution, the spouses Dominador Galvan and Ma. Imelda Eloisa Galvan, and the spouses John Doe Sase and Marissa Sase were ejected from the subject property; thus, Ruth Cabrera was able to gain possession of the same. Ruth Cabrera turned over the possession and control of the property to respondent by virtue of the Deed of Transfer and Assignment of Rights.

The RTC held that respondent's possession of the property is in the concept of an owner, and not by mere tolerance of Ma. Imelda Eloisa Galvan. Galvan did not have any right to transfer the property to petitioner in July 2003, since she knew of the two Decisions of the MeTC of Pasig City, Branch 68 and the RTC of Pasig City, Branch 267.

Further, the RTC held that the case should be dismissed on the ground of *res judicata.* The requisites of *res judicata* are: (1) there must be a former final judgment rendered on the merits; (2) the court must have had jurisdiction over the subject matter

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[24] *Id.* at 272.

and the parties; and (3) there must be identity of parties, subject matter and cause of action between the first and second actions.[25]

The RTC stated that the existence and finality of the decision of the RTC of Pasig City, Branch 267 in the unlawful detainer case entitled *Ruth Cabrera v. Spouses Dominador Galvan and Ma. Imelda Eloisa P. Galvan, Spouses John Doe Sase and Marissa Sase* was not contested by petitioner. The court in the said case had jurisdiction over the subject matter and the parties. The case established the fact that by virtue of the Certificate of Sale dated February 28, 1998 issued in the name of Ruth Cabrera, she was able to acquire Galvan's rights over the subject property, including the right of possession. Thus, the first and second requisites of *res judicata* have been complied with.

As regards the presence of identity of parties, the RTC cited the case of *Taganas v. Emuslan*,[26] which held that there is identity of parties where the parties in both actions are the same or there is privity between them, or they are successors-in-interest by title subsequent to the commencement of the action, litigating for the same thing and under the same title and in the same capacity.

The RTC stated that in this case, petitioner is the successor-in-interest of Ma. Imelda Eloisa Galvan, who was one of the defendants in the first case entitled *Ruth Cabrera v. Spouses Dominador Galvan and Ma. Imelda Eloisa P. Galvan, Spouses John Doe Sase and Marissa Sase*, while respondent is the successor-in-interest of Ruth Cabrera, who was the plaintiff in the first case. Therefore, it is clear that the parties in both actions are substantially the same, representing the very same interest.

Moreover, the RTC averred that the subject of an action is defined as the matter or thing with respect to which the controversy has arisen, concerning which a wrong has been done.[27] There

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[25] *Heirs of the Late Faustina Adalid v. Court of Appeals*, G.R. No. 122202, May 26, 2005, 459 SCRA 27, 38.

[26] 457 Phil. 305 (2003).

[27] *Id.* at 312.

can be no doubt that the subject matter involved in the first case and this case is the lot located at No. 181 Bayabas Extension, NAPICO, Manggahan, Pasig City. Hence, the RTC held that the element of identity of subject matter is also present.

The RTC also ruled that the causes of action in the two cases under consideration are identical. It cited *Dela Rama v. Mendiola*,[28] which held:

> x x x Causes of action are identical when there is an identity in the facts essential to the maintenance of the two actions, or where the same evidence will sustain both actions. If the same facts or evidence can sustain either, the two actions are considered the same, so that the judgment in one is a bar to the other.
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> x x x [T]he difference in form and nature of the two actions is immaterial. The philosophy behind the rule on *res judicata* prohibits the parties from litigating the same issue more than once. x x x.
>
> When material facts or questions in issue in a former action were conclusively settled by a judgment rendered therein, such facts or questions constitute *res judicata* and may not be again litigated in a subsequent action between the same parties or their privies regardless of the form of the latter. This is the essence of *res judicata* or bar by prior judgment. The parties are bound not only as regards every matter offered and received to sustain or defeat their claims or demand but as to any other admissible matter which might have been offered for that purpose and of all other matters that could have been adjudged in that case.

The RTC explained that the issue involved in the first unlawful detainer case was who between Ruth Cabrera and the Spouses Galvan had the right of possession over the subject property. In the present case, the issue is who between Deanon and Mag-abo, the successors-in-interest of the Spouses Galvan and Ruth Cabrera, respectively, has the right of possession over the subject property. The issue of possession over the subject property was already decided upon in the first case, as the parties therein were the predecessors-in-interest of the parties in this case. Thus, the RTC held that the present case is barred by *res judicata*,

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[28] 449 Phil. 754, 763-764 (2003).

because the parties are bound by any other admissible matter which might have been offered for that purpose and all other matters that could have been adjudged in the prior case.

Petitioner appealed the Decision of the RTC to the Court of Appeals via a petition for review.

The Court of Appeals affirmed the Decision of the RTC in its Decision dated May 25, 2007, the dispositive portion of which reads:

> UPON THE VIEW WE TAKE OF THIS CASE, THUS, the petition must be, as it is hereby DENIED, and consequently, DISMISSED. Costs against petitioner.[29]

Petitioner's motion for reconsideration was denied by the Court of Appeals in a Resolution[30] dated August 28, 2007.

Hence, petitioner filed this petition.

The main issue in this case is who among the parties is entitled to possession of the subject property and the structure erected thereon, located at No. 181 Bayabas Street Extension, NAPICO, Manggahan, Pasig City.

The Court upholds the decision of the Court of Appeals that respondent Marfelina Mag-abo is entitled to possession of the subject property.

Petitioner seeks the ejectment of respondent from the subject property on the ground that she acquired the property from its grantee, Ma. Imelda Eloisa P. Galvan, and she is recognized by the lot owner, NAPICO Homeowners Association XIII, Inc., as the claimant in the place of Galvan, and that respondent's occupancy of the property was merely tolerated by Ma. Imelda Eloisa Galvan.

However, evidence on record showed that in the ejectment case entitled *Ruth Cabrera v. Sps. Dominador Galvan and Ma. Imelda Eloisa P. Galvan, and Sps. John Doe Sase and Marissa Sase* involving the same property, the RTC of Pasig City, Branch

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[29] *Rollo*, p. 59.

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

267, in a Decision[31] dated May 9, 2001, held that Ruth Cabrera, who is respondent's predecessor-in-interest, is entitled to the possession of the said property, not the Spouses Galvan, who are petitioner's predecessor-in-interest. It was established that Ruth Cabrera acquired the rights of Ma. Imelda Eloisa Galvan over the subject property by virtue of a Certificate of Sale dated February 28, 1998, after the said property was levied upon and sold in a public auction to satisfy the civil indemnity of ₱15,000.00 imposed upon Dominador Galvan in a criminal case filed with the RTC of Pasig City, Branch 166.

Therefore, when Ma. Imelda Eloisa Galvan waived her rights over the subject property in favor of petitioner on July 28, 2003,[32] the rights to the property had already been transferred to Ruth Cabrera, who, in turn, conveyed her rights to respondent by virtue of the Deed of Transfer and Assignment of Rights dated February 23, 2001.[33]

Petitioner contends that the lawful owner of the subject property should be entitled to actual physical possession of the same. Petitioner asserts that Ruth Cabrera-Mendoza and her successor-in-interest, respondent Mag-abo, failed for an unreasonable length of time to inform the National Home Mortgage Corporation of their rights over the property; hence, they cannot prevail over the right of petitioner, who acquired the property in good faith and for value by virtue of the document entitled *Waiver of Rights on Lot*,[34] which was executed by Ma. Imelda Eloisa P. Galvan in her favor. Petitioner pointed out that Ma. Imelda Eloisa Galvan was a mere awardee of the lot from the NAPICO Homeowners Association XIII, Inc. Petitioner emphasized that she complied with the tedious process in order to perfect her rights over the property, and she was still paying monthly amortization to the NAPICO Homeowners Association

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[31] Records, p. 110.

[32] Annex "C", Waiver of Rights on Lot, *id.* at 10.

[33] Annex "A", *id.* at 27.

[34] Records, p. 10.

XIII, which remits the payment to the National Home Mortgage Corporation.

In short, petitioner claims that she is a buyer in good faith and for value of the rights to the property, and upon notice to the lot owner NAPICO Homeowners Association XIII, Inc. and payment of Ma. Imelda Eloisa Galvan's arrears, the rights of Galvan to purchase the property was transferred to her, and she is still paying the purchase price to the said Association. Thus, she has a better right of possession over respondent, who failed to inform the NAPICO Homeowners Association XIII, Inc. for an unreasonable length of time of her rights over the property.

The contention of petitioner does not persuade.

To reiterate, Ma. Imelda Eloisa Galvan transferred her rights over the subject property to petitioner on July 28, 2003. At that time, she had already lost her rights to the property, as Ruth Cabrera acquired her rights by virtue of the Certificate of Sale dated February 28, 1998. In addition, Ruth Cabrera transferred her rights to the property to respondent through the Deed of Transfer and Assignment of Rights on February 23, 2001, which is two years earlier than the transfer to petitioner.

Consequently, petitioner cannot be considered a buyer in good faith, because respondent was already in possession of the subject property at the time Ma. Imelda Eloisa Galvan conveyed her rights over the property to petitioner. It is settled rule that a buyer of real property that is in the possession of a person other than the seller must be wary and should investigate the rights of the person in possession.[35] Otherwise, without such inquiry, the buyer can hardly be regarded as a buyer in good faith.[36]

Since respondent was already in possession of the subject property at the time Ma. Imelda Eloisa Galvan transferred her

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[35] *Rufloe v. Burgos*, G.R. No. 143573, January 30, 2009, 577 SCRA 264.

[36] *Id.*

rights over the property to petitioner, petitioner was obliged to investigate respondent's rights over the property *vis-à-vis* that of the seller. Petitioner cannot be considered a buyer in good faith for her failure to make such inquiry.

The Court notes that respondent's rights over the property are the same rights, interest and claim of then lot claimant Ma. Imelda Eloisa Galvan to the property as of the time of the levy.[37] It appears that respondent failed to inform the NAPICO Homeowners Association XIII, Inc. of her rights in order to facilitate substitution and assumption of payment of the purchase price, while petitioner accomplished the same. However, this development, insofar as the instant case is concerned, does not detract from the finding that respondent is entitled to the right of possession of the subject property.

The sole issue for resolution in an unlawful detainer case is physical or material possession.[38] Courts in ejectment cases decide questions of ownership only as it is necessary to decide the question of possession.[39] The reason for this rule is to prevent the defendant from trifling with the summary nature of an ejectment suit by the simple expedient of asserting ownership over the disputed property.[40]

The Court's adjudication of ownership in an ejectment case is merely provisional, and it will not bar or prejudice an action between the same parties involving title to the property, if and when such action is brought seasonably before the proper forum.[41]

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[37] Rule 39, Sec. 33. *Deed and possession to be given at expiration of redemption period; by whom executed or given.* — x x x

Under 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.

[38] *Soriente v. Estate of the Late Arsenio E. Concepcion*, G.R. No. 160239, November 25, 2009, 605 SCRA 315.

[39] *Id.*

[40] *Id.*

[41] *Id.*

WHEREFORE, the petition for review on *certiorari* is *DENIED*. The Decision of the Court of Appeals, dated May 25, 2007, in CA-G.R. SP No. 97714 is hereby *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 179710. June 29, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ALDRIN BERDADERO *y* ARMAMENTO,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. —** The elements necessary to establish a case for illegal sale of *shabu* are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* or the illicit drug in evidence.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT THEREON, RESPECTED. —** Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. The trial court in this case, as affirmed by the CA, held that the testimonies of PO3 Balmes and PO2 Villas were unequivocal, straightforward, and consistent in material respects

with each other and with other testimonies and physical evidence. We find no cogent reason to overturn said findings.

3. ID.; ID.; DEFENSE OF FRAME-UP IN DRUG-RELATED CASES, A WEAK EVIDENCE. — The appellant's defense of frame-up must fail. We have previously ruled that frame-up is a banal defense of those accused in drug-related cases that is viewed with disfavor. Like the defense of alibi, frame-up is an allegation that can easily be concocted. For this claim to prosper, the defense must adduce clear and convincing evidence, which the appellant failed to do. There was no proof proffered to overturn the presumption that the arresting police officers regularly performed their duties. The appellant also did not prove that the prosecution witnesses were maliciously motivated, which would put their credibility in doubt. Moreover, the failure to present the appellant's mother to testify and corroborate his defense of frame-up renders the same as self-serving thus unworthy of any weight in evidence.

4. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165) AND IMPLEMENTING RULES; CUSTODY AND HANDLING OF SEIZED DRUGS; FAILURE TO COMPLY WITH THE PROCEDURE, NOT NECESSARILY FATAL AS WHAT IS IMPORTANT IS THE IDENTITY OF EVIDENCE. — The appellant's contention that the buy-bust operation failed to comply with Section 21 of RA 9165 and its implementing rules fails to impress. x x x The failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to said guidelines, is not fatal. Indeed, the implementing rules 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 seizure of and custody over said items*.' Notably, the defense did not raise this issue during trial. Be that as it may, we explained in *People v. Del Monte* that what is of vital importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. The existence of the dangerous drug is a condition *sine qua non* for conviction for the illegal sale of dangerous drugs. The dangerous drug itself constitutes the

very *corpus delicti* of the crime and the fact of its existence is vital to a judgment of conviction. Thus, it is essential that the identity of the prohibited drug be established beyond doubt. The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed. To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.

5. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; NOT REBUTTED IN CASE AT BAR. —** It is evident that the identity of the *corpus delicti* has been properly preserved and established by the prosecution. The appellant in this case has the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits of public officers and a presumption that public officers properly discharge their duties. The appellant was unable to discharge such burden.

6. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); BUY-BUST OPERATION; ABSENT PARTICIPATION OF THE PHILIPPINE DRUG ENFORCEMENT AGENCY (PDEA) THEREIN, NOT CRITICAL. —** The appellant's argument that the evidence against him was obtained in violation of Section 86 of RA 9165 because the buy-bust operation was made without any involvement of the PDEA fails to impress. x x x A perusal of [Section 86 of RA 9165] shows that it is silent as to the consequences of failure on the part of the law enforcers to seek the authority of the PDEA prior to conducting a buy-bust operation, in the same way that the IRR is likewise silent on the matter. However, by no stretch of imagination could this silence be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal or evidence obtained pursuant to such an arrest inadmissible. It is a fundamental rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief

done, such construction must be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words. As we see it, Section 86 is explicit only in saying that the PDEA shall be the "lead agency" in the investigations and prosecutions of drug-related cases. Therefore, other law enforcement bodies still possess authority to perform similar functions as the PDEA as long as illegal drugs cases will eventually be transferred to the latter. Moreover, the same provision states that PDEA, serving as the implementing arm of the Dangerous Drugs Board "shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in the Act." It is only appropriate that drugs cases being handled by other law enforcement authorities be transferred or referred to the PDEA as the "lead agency" in the campaign against the menace of dangerous drugs. Section 86 is more of an administrative provision. By having a centralized law enforcement body, *i.e.*, the PDEA, the Dangerous Drugs Board can enhance the efficacy of the law against dangerous drugs. To be sure, Section 86(a) of the IRR emphasizes this point.

7. **ID.; ID.; ID.; NON-PRESENTATION OF POSEUR-BUYER, FATAL ONLY IF THERE IS NO OTHER EYEWITNESS TO THE ILLICIT TRANSACTION. —** The non-presentation of the poseur-buyer is fatal only if there is no other eyewitness to the illicit transaction. x x x Thus, the fact that the poseur-buyer was not presented does not weaken the evidence for the prosecution.

8. **ID.; ID.; ILLEGAL SALE OF *SHABU*; PROPER PENALTY. —** For the illegal sale of *shabu*, and there being no modifying circumstance alleged in the Information, the trial court, as sustained by the CA, correctly imposed the penalty of life imprisonment in accordance with Article 63(2) of the Revised Penal Code and a fine of ₱500,000.00.

APPEARANCES OF COUNSEL

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

DECISION

DEL CASTILLO, *J*.:

Strict compliance with Section 21 of Republic Act (RA) No. 9165 regarding the custody and disposition of evidence against the accused may be excused under justifiable grounds. If the justifiable reason could no longer be determined due to the defense's failure to raise it in issue during trial, it is of vital importance to establish that the integrity and evidentiary value of the seized items have been preserved since these would be determinative of whether the accused is guilty or not.[1]

Factual Antecedents

On March 28, 2003, an Information[2] was filed against appellant Aldrin Berdadero *y* Armamento (appellant) for violation of Section 5, Article II of RA 9165 which was docketed as Criminal Case No. 12861. The accusatory allegations of the Information read:

That on or about March 25, 2003, at around 2:40 o'clock in the afternoon at Arrieta Subdivision (Brgy. 20), Batangas City, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, not being authorized by law, did then and there willfully, unlawfully and feloniously sell, dispense or deliver 0.04 gram of *shabu*, [also] known as "methamphetamine hydrochloride" a dangerous drug, which is a clear violation of the above-cited law.

Contrary to Law.

On arraignment, the appellant pleaded not guilty to the offense charged. In the trial that ensued, the prosecution and the defense presented different accounts of the events that transpired prior to and during the appellant's arrest.

The Version of the Prosecution

The Investigation Section of the Batangas City Police Station received a report from an informant that the appellant was selling

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[1] *People v. Rivera*, G.R. No. 182347, October 17, 2008, 569 SCRA 879, 898-899.

[2] Records, p. 1.

shabu. Thus, PO3 Danilo F. Balmes (PO3 Balmes) and PO2 Edwalberto M. Villas (PO2 Villas) organized a buy-bust operation and designated the informant as the poseur-buyer.

Thereafter, the two police officers and the informant went to the target area and parked the van they were using in front of appellant's house. After alighting from the vehicle, the informant talked to the appellant. A few minutes later, the appellant went inside his house. When he returned, he handed to the informant two plastic sachets containing white crystalline substance in exchange for the marked money. The informant then gave the pre-arranged signal that the sale was consummated.

The police officers who were observing the transaction from inside the van apprehended the appellant and recovered the marked money from him. They apprised the appellant of his constitutional rights before taking him to the *barangay* hall to record the entrapment operation and the evidence seized from the appellant in the blotter. The informant turned over the plastic sachets to PO3 Balmes. They then proceeded to the police station.

Upon their arrival, the buy-bust operation and the items confiscated from the appellant were recorded in the police blotter. The desk officer, PO1 Arnold delos Reyes (PO1 Delos Reyes), prepared the complaint sheet while PO3 Balmes placed markings on the plastic sachets. The first sachet was marked DFB-1 with the date 3-25-03, while the second sachet was marked DFB-2 with the same date. The sachets were then submitted for laboratory examination, which tested positive for methamphetamine hydrochloride or *shabu*.

The Version of the Defense

The appellant claimed that he was a victim of frame-up. He testified that at around 2:40 in the afternoon of March 25, 2003, two men came to his house and introduced themselves as locksmiths. His mother allowed them to enter and showed them the defective keys. After a while, the men left, but they returned 10 minutes later, kicked the door open and handcuffed him.

He asked why he was being arrested but no explanation was forthcoming. He was instead brought to the police station.

The appellant denied that illicit drugs were recovered from him and that the two men who arrested him were PO3 Balmes and PO2 Villas.

Ruling of the Regional Trial Court

On October 10, 2005, the Regional Trial Court of Batangas City, Branch 4, rendered its Decision[3] convicting the appellant. The dispositive portion reads:

> Wherefore, finding the evidence of the Prosecution satisfying that degree of moral certainty, accused Aldrin Berdadero *y* Armamento is found Guilty beyond a reasonable doubt of having violated Section 5, Article II of Republic Act No. 9165 as set forth in the information filed in this case. He is therefore sentenced to pay a fine of ₱500,000.00 and to undergo life imprisonment pursuant to law. He is however, credited with his preventive imprisonment if he is entitled to any.
>
> The specimens subject of chemistry Report No. D-634-03 (Exhibit "C") made by Forensic Chemist Donna Villa P. Huelgas is confiscated and directed to be proceeded against pursuant to law.
>
> SO ORDERED.[4]

Ruling of the Court of Appeals

Dissatisfied, the appellant appealed before the Court of Appeals (CA). However, in its Decision[5] promulgated on July 3, 2007, the CA denied the appeal for lack of merit and affirmed *in toto* the ruling of the trial court.

Issues

Thus, this appeal with the following assignment of errors:

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[3] *Id.* at 112-115; penned by Judge Conrado R. Antona.

[4] *Id.* at 115.

[5] CA *rollo*, pp. 78-86; penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Martin S. Villarama, Jr. and Noel G. Tijam.

I

THE TRIAL COURT GRAVELY ERRED IN DISREGARDING THE EVIDENCE ADDUCED BY THE DEFENSE.

II

ASSUMING, THAT THE VERSION OF THE PROSECUTION IS CORRECT, THE TRIAL COURT GRAVELY ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT FOR THE CRIME CHARGED HAS BEEN PROVEN BEYOND REASONABLE DOUBT.[6]

The appellant insists that no buy-bust operation ever transpired and that his arrest was unlawful. He also contends that the prosecution failed to prove that the alleged buy-bust operation complied with Section 21 of RA 9165 and its implementing rules since the police authorities neither inventoried nor photographed the seized drugs and marked money in his presence or that of his counsel, a representative from the media and the Department of Justice. The appellant likewise assails the authority of PO3 Balmes and PO2 Villas to conduct the alleged buy-bust operation for failure of the prosecution to prove that they were deputized by the PDEA as required under Section 81 of RA 9165. And even assuming that there was faithful compliance with the mandates of RA 9165, the appellant argues that the poseur-buyer's testimony became material and indispensable due to his denial of having committed the prohibited act of selling the dangerous drug. Thus, it is the appellant's conclusion that the seizure and custody over the seized drugs is void.

Our Ruling

The appeal is unmeritorious.

The elements necessary to establish a case for illegal sale of *shabu* are: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material in a prosecution for illegal sale of dangerous drugs is the proof that the transaction

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[6] *Id.* at 29.

or sale actually took place, coupled with the presentation in court of the *corpus delicti* or the illicit drug in evidence.[7]

The prosecution successfully proved the existence of all the essential elements of the illegal sale of *shabu*. The appellant was positively identified by police officers who conducted the buy-bust operation as the seller of the *shabu* presented in the case. PO3 Balmes and PO2 Villas testified that their confidential informant acted as the buyer of the *shabu* from the appellant. It was likewise established that the sale actually occurred and that two sachets of *shabu* were sold for the price of ₱500.00. The marked money used in the buy-bust operation was duly adduced in evidence. The *shabu* sold by the appellant was also positively and categorically identified during trial.

Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation.[8] The trial court in this case, as affirmed by the CA, held that the testimonies of PO3 Balmes and PO2 Villas were unequivocal, straightforward, and consistent in material respects with each other and with other testimonies and physical evidence. We find no cogent reason to overturn said findings.

The appellant's defense of frame-up must fail. We have previously ruled that frame-up is a banal defense of those accused in drug-related cases that is viewed with disfavor. Like the defense of alibi, frame-up is an allegation that can easily be concocted. For this claim to prosper, the defense must adduce clear and convincing evidence, which the appellant failed to do.[9] There was no proof proffered to overturn the presumption that the arresting police officers regularly performed their duties. The appellant also did not prove that the prosecution witnesses were maliciously motivated, which would put their credibility in doubt. Moreover, the failure to present the appellant's mother to testify and corroborate his defense of frame-up renders the same as self-serving thus unworthy of any weight in evidence.

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[7] *People v. Dilao*, G.R. No. 170359, July 27, 2007, 528 SCRA 427, 442.

[8] *People v. Hajili*, 447 Phil. 283, 295-296 (2003).

[9] *Id.* at 901.

The appellant's contention that the buy-bust operation failed to comply with Section 21 of RA 9165 and its implementing rules fails to impress. Paragraph 1 of Section 21, Article II of said law outlines the procedure to be followed in the custody and handling of the seized drugs. Thus:

> Section 21. *Custody and Disposition of Confiscated, Seized and/or Surrendered Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instrument/ Paraphernalia and/or Laboratory Equipment.* — x x x
>
> (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.
>
> x x x x x x x x x

This provision is implemented by Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of RA 9165, *viz.*:

> (a) 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: 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 seizure of and custody over the said items.

The failure of the prosecution to show that the police officers conducted the required physical inventory and photograph of the evidence confiscated pursuant to said guidelines, is not fatal. Indeed, the implementing rules 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 seizure of and custody over said items'.

Notably, the defense did not raise this issue during trial. Be that as it may, we explained in *People v. Del Monte*[10] that what is of vital importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. The existence of the dangerous drug is a condition *sine qua non* for conviction for the illegal sale of dangerous drugs. The dangerous drug itself constitutes the very *corpus delicti* of the crime and the fact of its existence is vital to a judgment of conviction. Thus, it is essential that the identity of the prohibited drug be established beyond doubt. The chain of custody requirement performs the function of ensuring that the integrity and evidentiary value of the seized items are preserved, so much so that unnecessary doubts as to the identity of the evidence are removed.[11]

To be admissible, the prosecution must show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into possession of the police officers and until it was tested in the laboratory to determine its composition up to the time it was offered in evidence.[12]

Here, the testimonies of prosecution witnesses convincingly show that the integrity and the evidentiary value of the confiscated illegal substance was properly preserved. PO3 Balmes marked the sachets containing *shabu* with his initials and the date of the appellant's arrest.[13] PO2 Villas confirmed that PO3 Balmes marked the same sachets of *shabu* sold by the appellant. PO1 Delos Reyes entered the arrest in the police blotter[14] then referred

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[10] G.R. No. 179940, April 23, 2008, 552 SCRA 627, 636.

[11] *Id.*

[12] *Id.* at 637.

[13] TSN, July 8, 2003, pp. 11-12.

[14] TSN, July 21, 2003, p. 4.

the appellant and the evidence to the Investigation Division.[15] PO3 Sergio del Mundo (PO3 Del Mundo) received the appellant and the evidence from PO1 Delos Reyes and prepared the request for laboratory tests on the specimens.[16] PO2 Villas brought the specimens and said letter request to the crime laboratory[17] and waited for the results.[18] Insp. Donna Villa P. Huelgas conducted the laboratory examination on the same specimens still bearing the markings of PO3 Balmes,[19] and which examination yielded positive for the presence of methamphetamine hydrochloride.[20] The results were given to PO2 Villas, who turned over the same to PO3 Del Mundo.[21]

It is thus evident that the identity of the *corpus delicti* has been properly preserved and established by the prosecution. The appellant in this case has the burden to show that the evidence was tampered or meddled with to overcome a presumption of regularity in the handling of exhibits of public officers and a presumption that public officers properly discharge their duties.[22] The appellant was unable to discharge such burden.

The appellant's next argument that the evidence against him was obtained in violation of Section 86 of RA 9165 because the buy-bust operation was made without any involvement of the PDEA also fails to impress. This provision reads:

SEC. 86. *Transfer, Absorption, and Integration of All Operating Units on Illegal Drugs into the PDEA and Transitory Provisions.* — The Narcotics Group of the PNP, the Narcotics Division of the

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[15] *Id.* at 8.

[16] TSN, March 2, 2005, p. 5.

[17] *Id.* at 9.

[18] TSN, June 15, 2004, p. 10.

[19] TSN, July 28, 2003, p. 8.

[20] *Id.* at 9.

[21] TSN, June 15, 2004, p. 10.

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

NBI and the Customs Narcotics Interdiction Unit are hereby abolished; however they shall continue with the performance of their task as detail service with the PDEA, subject to screening, until such time that the organizational structure of the Agency is fully operational and the number of graduates of the PDEA Academy is sufficient to do the task themselves: Provided, That such personnel who are affected shall have the option of either being integrated into the PDEA or remain with their original mother agencies and shall, thereafter, be immediately reassigned to other units therein by the head of such agencies. Such personnel who are transferred, absorbed and integrated in the PDEA shall be extended appointments to positions similar in rank, salary, and other emoluments and privileges granted to their respective positions in their original mother agencies.

The transfer, absorption and integration of the different offices and units provided for in this Section shall take effect within eighteen (18) months from the effectivity of this Act: *Provided*, That personnel absorbed and on detail service shall be given until five (5) years to finally decide to join the PDEA.

Nothing in this Act shall mean a diminution of the investigative powers of the NBI and the PNP on all other crimes as provided for in their respective organic laws: *Provided*, *however*, That when the investigation being conducted by the NBI, PNP or any *ad hoc* anti-drug task force is found to be a violation of any of the provisions of this Act, the PDEA shall be the lead agency. The NBI, PNP or any of the task force shall immediately transfer the same to the PDEA: *Provided*, *further*, That the NBI, PNP and the Bureau of Customs shall maintain close coordination with the PDEA on all drug related matters.

A perusal of the foregoing provision shows that it is silent as to the consequences of failure on the part of the law enforcers to seek the authority of the PDEA prior to conducting a buy-bust operation, in the same way that the IRR is likewise silent on the matter. However, by no stretch of imagination could this silence be interpreted as a legislative intent to make an arrest without the participation of PDEA illegal or evidence obtained pursuant to such an arrest inadmissible.[23]

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[23] *People v. Sta. Maria*, G.R. No. 171019, February 23, 2007, 516 SCRA 621, 631.

It is a fundamental rule of statutory construction that where great inconvenience will result from a particular construction, or great public interests would be endangered or sacrificed, or great mischief done, such construction must be avoided, or the court ought to presume that such construction was not intended by the makers of the law, unless required by clear and unequivocal words.[24]

As we see it, Section 86 is explicit only in saying that the PDEA shall be the "lead agency" in the investigations and prosecutions of drug-related cases. Therefore, other law enforcement bodies still possess authority to perform similar functions as the PDEA as long as illegal drugs cases will eventually be transferred to the latter. Moreover, the same provision states that PDEA, serving as the implementing arm of the Dangerous Drugs Board "shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in the Act." It is only appropriate that drugs cases being handled by other law enforcement authorities be transferred or referred to the PDEA as the "lead agency" in the campaign against the menace of dangerous drugs. Section 86 is more of an administrative provision. By having a centralized law enforcement body, *i.e.*, the PDEA, the Dangerous Drugs Board can enhance the efficacy of the law against dangerous drugs. To be sure, Section 86(a) of the IRR emphasizes this point by providing:

Section 86. x x x

(a) *Relationship/Coordination between PDEA and Other Agencies* — The PDEA shall be the lead agency in the enforcement of the Act, while the PNP, the NBI and other law enforcement agencies shall continue to conduct anti-drug operations in support of the PDEA x x x. *Provided, finally*, that nothing in the IRR shall deprive the PNP, the NBI, other law enforcement personnel and the personnel of the Armed Forces of the Philippines (AFP) from effecting lawful arrests and seizures in consonance with the provisions of Section 5, Rule 113 of the Rules of Court.

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[24] *Id.*

It is therefore clear that PO3 Balmes and PO2 Villas possessed and acted with authority to conduct the buy-bust operation, making the same valid.

The appellant's final contention that the failure to present the poseur-buyer is fatal and entitles him to an acquittal, again fails to impress. The non-presentation of the poseur-buyer is fatal only if there is no other eyewitness to the illicit transaction.[25] The testimonies of PO3 Balmes and PO2 Villas sufficiently established that the appellant is guilty of selling a dangerous drug. Their referral to the *shabu* handed by the appellant to the poseur-buyer as "something" merely indicates that at the time of the sale, they could only presume that the specimen sold by the appellant was *shabu* since they were conducting a buy-bust operation. They still had to submit the specimen to the crime laboratory for testing which later tested positive for *shabu*. Thus, the fact that the poseur-buyer was not presented does not weaken the evidence for the prosecution.

For the illegal sale of *shabu*, and there being no modifying circumstance alleged in the Information, the trial court, as sustained by the CA, correctly imposed the penalty of life imprisonment in accordance with Article 63(2) of the Revised Penal Code and a fine of ₱500,000.00.

WHEREFORE, the appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR-HC No. 01774 sustaining in all respects the Decision of the Regional Trial Court of Batangas City, Branch 4, convicting appellant Aldrin Berdadero *y* Armamento for violation of Section 5, Article II of Republic Act No. 9165, and sentencing him to suffer the penalty of life imprisonment and a fine of ₱500,000.00 is *AFFIRMED*.

SO ORDERED.

Corona (Chairperson), Velasco, Jr., Leonardo-de Castro, and *Perez, JJ.,* concur.

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[25] *People v. Orteza*, G.R. No. 173051, July 31, 2007, 528 SCRA 750, 759.

FIRST DIVISION

[G.R. No. 180505. June 29, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARIO MIGUEL *Y* BERNABE, and AMALIA DIZON *Y* REGACHELO,** *defendant-appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT ON THE CREDIBILITY OF POLICE OFFICERS WHO CONDUCTED A BUY-BUST OPERATION, RESPECTED. —** It is a well-settled rule that prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation. Hence, the evaluation by the trial court of the credibility of witnesses is entitled to the highest respect and will not be disturbed on appeal unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case. The reason for this is that the trial court is in a better position to decide thereon, having personally heard the witnesses and observed their deportment and manner of testifying during the trial. This is explained by the fact that this Court has access only to the cold and impersonal records of the proceedings, thus, it relies heavily on the rule that the weighing of evidence, particularly when there are conflicts in the testimonies of witnesses, is best left to the trial court, which had the unique opportunity to observe their demeanor, conduct and manner while testifying.

2. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS. —** In order to successfully prosecute an accused for illegal sale of drugs, the prosecution must be able to prove the following elements: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor. Material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale had actually taken place, coupled with the presentation in court

of evidence of *corpus delicti*. The term *corpus delicti* means the actual commission by someone of the particular crime charged.

3. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS. —** [I]n illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond doubt.

4. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF DUTY; UPHELD IN THE ABSENCE OF IMPROPER MOTIVE. —** In arriving at the appealed decision, both the trial court and the appellate court accorded to the testimony of the police officers the presumption of regularity in the performance of official duty and noted the absence of malice, ill-will, or ill-motive on their part to trump up charges against accused-appellants. As held in *People v. Sariol,* accused-appellants have not shown that the prosecution witnesses were motivated by any improper motive other than that of accomplishing their mission.

5. **ID.; ID.; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES. —** The establishment of the crimes of which the accused were charged is not weakened by the alleged inconsistencies cited by accused-appellants. The cited inconsistencies pertain to minor details. Inconsistencies referring to minor details strengthen rather than weaken the witness' credibility for they give the impression of rehearsed testimony. As a matter of fact, discrepancies referring only to minor details and collateral matters — not to the central fact of the crime — do not affect the veracity or detract from the essential culpability of witnesses' declarations as long as these are coherent and intrinsically believable on the whole.

6. **ID.; ID.; DENIAL; CANNOT PREVAIL OVER POSITIVE TESTIMONIES. —** The defense of accused-appellants that there was no buy-bust operation deserves scant consideration. Having been caught in *flagrante delicto*, his identity as seller of the *shabu* can no longer be doubted. Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.

7. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF *SHABU*; PENALTY. —** Under the law, the illegal sale of *shabu* carries with it 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), regardless of the quantity and purity of the substance involved.

8. **ID.; ID.; ILLEGAL POSSESSION OF LESS THAN FIVE (5) GRAMS OF DANGEROUS DRUG; PENALTY. —** The illegal possession of less than five (5) grams of said dangerous drug is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00).

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for defendants-appellants.

D E C I S I O N

PEREZ, *J*.:

Assailed in this appeal *via* Notice of Appeal is the 9 May 2007 Decision[1] of the Court of Appeals in CA-G.R. CR H.C. No. 02115 which affirmed the 16 January 2006 Decision[2] promulgated by the Regional Trial Court (RTC) of Pasig City, Branch 70, in Criminal Case Nos. 12364-D and 12365-D, finding accused-appellants Mario Miguel *y* Bernabe (Miguel) and Amalia Dizon *y* Regachelo (Dizon), guilty beyond reasonable doubt of violating Sections 5 and 11, Article II, of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.[3]

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[1] Penned by Associate Justice Vicente S.E. Veloso with Associate Justices Juan Q. Enriquez, Jr., and Ricardo R. Rosario concurring. *Rollo,* pp. 2-22.

[2] Penned by Judge Pablito M. Rojas. CA *rollo,* 53-61.

[3] **Section 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled*

Accused-appellants were arrested and charged following a buy-bust operation conducted by the drug enforcement operatives of the Pasig City Police.

On 25 April 2003, two separate Informations were filed against accused-appellants charging them with violating Republic Act No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

The first Information, docketed as Criminal Case No. 12364-D, was filed against Miguel for violation of Section 5 (illegal sale of *shabu*), Article II, Republic Act No. 9165, the accusatory portions thereof reading:

Criminal Case No. 12364-D

x x x x x x x x x

On or about April 24, 2003 in Pasig City, and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized

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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. x x x.

Section 11. *Possession of Dangerous Drugs*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy", PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana x x x.

by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO3 Amilassan M. Salissa, a police *poseur-buyer*, one (1) heat-sealed transparent plastic sachet containing sixteen (16) decigrams (0.16 gram) of white crystalline substance, which was found positive to the test for *methamphetamine hydrochloride*, a dangerous drug, in violation of the said law.[4]

The second Information, docketed as Criminal Case No. 12365-D, accused Dizon of violating Section 11 (illegal possession of *shabu*), Article II, of the same law, charging her as follows:

Criminal Case No. 12365-D

x x x x x x x x x

On or about April 24, 2003, in Pasig City and within the jurisdiction of this Honorable Court, the accused, not being lawfully authorized to possess any dangerous drug, did then and there willfully, unlawfully and feloniously have in her possession and under her custody and control one (1) heat-sealed transparent plastic sachet containing twenty six (26) decigrams (0.26 gram), of white crystalline substance, which was found positive to the test for *methamphetamine hydrochloride*, a dangerous drug, in violation of the said law.[5]

The two cases were raffled to Branch 70 of the RTC of Pasig City. When arraigned, albeit on separate dates, accused-appellants, with the assistance of counsel, both entered 'NOT GUILTY' pleas to the charges.[6]

During the pre-trial conference, the defense and the prosecution entered into a stipulation of facts mutually agreeing to dispense with the testimony of Forensic Chemist Inspector Joseph Perdido.[7]

On trial proper, the prosecution presented the following witnesses to adduce evidence against accused-appellants: PO3 Amilassan Salisa (PO3 Salisa), PO1 Janet Sabo (PO1 Sabo)

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[4] Records, pp. 1-2.

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

[6] *Id.* at 46 and 59.

[7] *Id.* at 67-68.

and PO2 Arturo San Andres (PO2 San Andres), all police officers from the Pasig City Police Station.

Observing the demeanor of the witnesses during the hearings for the two criminal cases, the trial court summarized the evidence adduced by the prosecution in this manner:

> PO3 AMILASSAN SALISA testified that on April 24, 2003, at about 5:00 o'clock in the afternoon, a confidential informant arrived in their office at the Pasig City Mayor's Special Action Team, City Hall Detachment, Pasig City Police Station, where he was then detailed and reported that one, *alias* 'Moluk', was engaged in the sale of illegal drugs in Floodway, Purok 4, Barangay Sta. Lucia, Pasig City. Following his receipt of the report, he informed their Chief, Police Senior Inspector Rodrigo Villaruel who immediately caused the formation of a team to conduct a buy-bust operation composed of himself, who was designated as the *poseur-buyer*, PO1 Janet Sabo, PO2 Arturo San Andres and PO1 Aldrin Mariano. As the *poseur-buyer*, he was provided with two (2) pieces of One Hundred Peso (₱100.00) bills (Exhs. 'D' and 'E') upon which he placed the markings 'AMS' representing his initials (Exhs. 'D-1' and 'E-1', respectively) for identification purposes. After a briefing, the team, together with the informant, proceeded to the target area, as abovementioned, arriving there at about 6:00 o'clock in the evening of the aforementioned date. Upon arrival at the target area, and after parking their vehicle, he and the informant alighted first and proceeded by walking to the house of *alias* 'Moluk' while the other team members positioned themselves nearby to observe the projected buy-bust operation. After he and the informant saw Moluk, they approached him and thereafter, the informant introduced his companion (herein witness) as one who wanted to buy *shabu*. After a brief conversation, he handed to 'Moluk' the two (2) PHP 100.00 bills and in turn, the latter handed to him one (1) heat-sealed transparent plastic sachet containing white crystalline substance (Exh. 'C-1') upon which, he later placed the markings 'AMS-4/24/03' representing his initials and the date of the buy-bust operation. The buy-bust transaction having been consummated, he immediately gave the pre-arranged signal for his teammates to approach and assist him in the operation. PO1 Janet Sabo who was the first to arrive at the scene of the buy-bust operation, apprehended a female person to whom 'Moluk' also handed a sachet of suspected *shabu* earlier. PO1 Sabo allegedly recovered from the woman the plastic sachet (Exh. 'C-2') after she

opened her hand upon instructions of PO1 Sabo. As to the two (2) One Hundred Peso bills (Exhs. 'D' and 'E'), he was able to recover the same from 'Moluk' right after the buy-bust operation. Both 'Moluk' and the female person who turned out to be Mario Miguel *y* Bernabe (accused in Criminal Case No. 12364-D), and Amalia Dizon *y* Regachelo (accused in Criminal Case No. 12365-D), respectively, were subsequently brought to the Pasig Police Station for investigation and filing of the appropriate charge/charges. As part of the investigation, both herein witness as well as PO1 Janet Sabo, executed a '*Pinagsamang Salaysay*' consisting of two (2) pages (Exhs. 'F' and 'F-1') narrating the circumstances leading to the arrest of the accused.

PO1 JANET SABO corroborated the above testimony of PO3 Salisa. In addition, PO1 Sabo testified that while PO3 Salisa, the *poseur-buyer*, was talking with a male person, who was with a female companion, at the place of the buy-bust operation, PO1 Sabo saw PO3 Salisa hand something to the male person and in turn, the latter handed something to Salisa. At this point, Salisa scratched his nape which was the pre-arranged signal indicating the completion of the buy-bust transaction. Upon seeing the signal, she, together with the other team members, immediately rushed to where PO3 Salisa was situated to give him assistance. Upon instructions of PO3 Salisa, she immediately held the female companion of the male person and after introducing herself as a police officer told the female person to bring out the sachet of suspected *shabu* which according to PO3 Salisa the male person had earlier handed the female person. At first, the female person refused, but eventually gave in to the demand and brought a plastic sachet containing suspected *shabu* (Exh. 'C-2'). Thereafter, she placed the markings 'JAS-4/24/03' on the plastic sachet representing her initials and the date of the buy-bust operation (Exhibit "C-2-A"), for identification purposes. Later, they brought the male and female persons, who turned out to be the accused Mario Miguel (in Criminal Case No. 12364-D) and accused Amalia Dizon (in Criminal Case No. 12365-D), respectively, first to the Rizal Medical Center for medical examination and then to the Pasig Police Station. In the course of the investigation conducted, she and PO3 Salisa executed a Joint Affidavit entitled *'Pinagsamang Salaysay'* (Exhs. 'F' and 'F-1').

For his part, PO2 ARTURO SAN ANDRES testified that being a member of the team which was formed to conduct a buy-bust operation against a suspected drug trafficker at Purok 4, East Bank Road, Floodway, Pasig City, on April 24, 2003, he was with the

team when they proceeded to the area on said date. Aside from being a back-up which was his assigned role, he was the one who delivered the request for Laboratory examination (Exh. 'A') together with the specimen subject matter of these cases, to the PNP Crime Laboratory, St. Francis Street, Mandaluyong City, on 24 April 2003, as shown by the Rubber Stamp (Exh. 'A-1') appearing at the bottom left-hand corner of the Request.[8]

Expectedly, accused-appellants Miguel and Dizon presented an entirely different version as they were testifying on the witness stand. Nida Miguel, wife of accused-appellant Miguel, was also presented to corroborate his testimony. After careful observation, the trial court summarized the evidence for the defense as follows:

The first defense witness, accused AMALIA DIZON testified that on April 24, 2003, at about 2:00 o'clock in the afternoon, while she was then outside her house (691 Purok 4, Floodway, Sta. Lucia, Pasig City) sweeping, a male person approached her asking for the whereabouts of one by the name of 'Lyn.' In response, she told the male person that she did not know the person he was looking for. After a while, three (3) male persons in civilian clothes arrived in a vehicle and held the male person who was looking for Lyn. One of the three (3) male persons also held her and when she asked why, she was told to just go with them telling her that they were policemen. Thereafter, she and the male person who was handcuffed were forcibly brought to a vehicle. Once inside the vehicle, one of the three (3) male persons allegedly asked her for PHP5,000.00 in order that she can be released, but she told him that she did not have that amount. While still inside the vehicle, she also told them that she did not know the male person who was taken together with her and when asked by the three (3) male persons, why she was talking with the male person, she told them that at that time, the male person was just looking for somebody. They were brought to the Pasig City Hall where she was detained. After twelve (12) days, she posted bail and was released.

The next defense witness, accused MARIO MIGUEL, testified that on April 23, 2003, at about 3:00 o'clock in the afternoon, while he and his wife were on board a jeepney being then driven by his '*compadre*,' a lady by the name of 'Lyn,' who happened to be riding

[8] CA *rollo*, pp. 55-57.

also (in) the same jeepeney, asked him if he knows somebody who has a vehicle which can be rented. He answered in the affirmative and then asked the lady where she lived because he will see her the following day and the lady said that she lived along Floodway where, according to her, she is well known. The following day, April 24, 2003, at about 3:00 o'clock in the afternoon, he went to the said place where he met one Amalia Dizon and asked her if she knew Lyn, but Amalia told him she did not know Lyn. It was at this point that he was suddenly arrested by persons whom he concluded were policemen because they had guns. He was frisked, but nothing was recovered from him. Thereafter, he was brought to the vehicle used by the policemen and after a while, Amalia Dizon was likewise brought there. He said he did not know Amalia Dizon personally prior to the above incident. Then, he and Amalia were brought to the Pasig Police Station and detained.

The third and last defense witness, NIDA MIGUEL, wife of accused Mario Miguel, testified that on April 23, 2003, at about 3:00 in the afternoon, they were on board a jeepney driven by their *compadre* on their way home. While they were seated at the back of the driver's seat, her husband and the driver were talking about their lives as drivers. Along the way, a female person hailed the jeepney and seated herself in front of them. Having heard the conversation between her husband and the driver, the female passenger asked them if they knew of someone who has a vehicle that can be rented. Her husband Mario then asked the lady passenger, *'Bakit po kayo aarkila ng sasakyan?'* and the lady replied, 'For purposes of transferring residence.' (T.S.N., August 9, 2005, p.4) Then her husband asked the lady where she was transferring. In reply, the lady told Mario that she will discuss it first with her husband and asked Mario to visit her in her house. Before alighting from the jeepney, the lady told Mario to 'Go to my house tomorrow and my name is Lyn.' x x x. Accordingly, the following day, after lunch, her husband went to the place mentioned by the lady passenger to look for her which is in front of the MMDA station. Before her husband left, he told her that he will return immediately after she talked with the lady. She waited until evening that day, but her husband never returned. Later, she learned from her husband's aunt that Mario Miguel had been detained at the Pasig Police Station.[9]

On 16 January 2006, the RTC rendered a Decision convicting accused-appellants for illegal sale and illegal possession of *shabu*

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

under Republic Act No. 9165, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> In **Criminal Case No. 12364-D** filed against accused **Mario Miguel *y* Bernabe** for Violation of Section 5, Article II, Republic Act 9165 (Illegal Sale of *Shabu*), he is hereby sentenced to LIFE IMPRISONMENT and to pay a FINE of Five Hundred Thousand Pesos (PHP 500,000.00).
>
> In **Criminal Case No. 12365-D** filed against accused **Amalia Dizon *y* Regachelo** for Violation of Section 11, Article II, Article II, (*sic*) Republic Act 9165 (Illegal Possession of *Shabu*), said accused is hereby sentenced to Twelve (12) Years and One (1) Day to Twenty (20) Years and to pay a FINE of Three Hundred Thousand Pesos (PHP300,000.00).
>
> Considering the penalty imposed upon accused Mario Miguel, his immediate commitment to the National Penitentiary, New Bilibid Prison, Muntinlupa City, is hereby ordered.
>
> Pursuant to Section 20 of Republic Act 9165, the amount of Two Hundred Pesos recovered from accused Mario Miguel representing the proceeds of the illegal sale of the plastic sachet of *shabu* is hereby ordered forfeited in favor of the government.
>
> Again, pursuant to Section 21 of the same law, representatives from the Philippine Drug Enforcement Agency (PDEA) is (*sic*) hereby ordered to take charge and have custody over the sachets of *shabu* object of these cases, for proper disposition.[10]

The trial court accorded full faith and credence to the testimonies of the police officers and found no clear showing of malice, bad faith or ill-will on their part, applying the presumption of regularity in the performance of official duty.

Raising inconsistencies in the testimonies of the police operatives who conducted the buy-bust operation, accused-appellants elevated the case to the Court of Appeals, which affirmed the RTC decision. The appellate court sustained accused-appellants' conviction in this wise:

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

WHEREFORE, the instant appeal is DISMISSED and the assailed decision dated January 16, 2006 of the Regional Trial Court of Pasig City, Branch 70, is AFFIRMED *in toto.*[11]

Hence, accused-appellants are now before this Court assailing said decision on a lone assignment of error, *viz.*:

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT MARIO MIGUEL GUILTY OF VIOLATING SECTION 5, ARTICLE II OF REPUBLIC ACT 9165 AND ACCUSED-APPELLANT AMALIA DIZON GUILTY OF VIOLATING SECTION 11, ARTICLE II OF REPUBLIC ACT 9165.

Essentially, the defense prays for the acquittal of accused-appellants Miguel and Dizon by impugning the credibility of the prosecution witnesses. It argues that inconsistencies in the statements of the police operatives during the trial cast serious doubt as to the guilt of accused-appellants. Against this, the Solicitor General relies on the regularity in the performance of duty of the police officers who produced the evidence that proved the elements of illegal sale and illegal possession of dangerous drugs, or particularly *shabu* in this instance.

We find that the guilt of accused-appellants for the crime of illegal sale and illegal possession of *shabu* has been proven beyond reasonable doubt, and is well-supported by evidence, law and jurisprudence.

It is a well-settled rule that prosecutions involving illegal drugs depend largely on the credibility of the police officers who conducted the buy-bust operation.[12] Hence, the evaluation by the trial court of the credibility of witnesses is entitled to the highest respect and will not be disturbed on appeal unless certain facts of substance and value were overlooked which, if considered, might affect the result of the case. The reason for this is that the trial court is in a better position to decide thereon, having personally heard the witnesses and observed their deportment and manner of testifying during the trial. This is explained by

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[11] *Id.* at 22.

[12] *People v. Almendras,* 449 Phil. 587, 604 (2003).

the fact that this Court has access only to the cold and impersonal records of the proceedings, thus, it relies heavily on the rule that the weighing of evidence, particularly when there are conflicts in the testimonies of witnesses, is best left to the trial court, which had the unique opportunity to observe their demeanor, conduct and manner while testifying.[13] We find no reason to deviate from this rule in the case before us.

In order to successfully prosecute an accused for illegal sale of drugs, the prosecution must be able to prove the following elements: (1) identities of the buyer and seller, the object, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[14] Material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale had actually taken place, coupled with the presentation in court of evidence of *corpus delicti*.[15] The term *corpus delicti* means the actual commission by someone of the particular crime charged.

On the other hand, in illegal possession of dangerous drugs, the elements are: (1) the accused is in possession of an item or object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the said drug. Similarly, in this case, the evidence of the *corpus delicti* must be established beyond doubt.

In arriving at the appealed decision, both the trial court and the appellate court accorded to the testimony of the police officers the presumption of regularity in the performance of official duty and noted the absence of malice, ill-will, or ill-motive on their part to trump up charges against accused-appellants. As held in *People v. Sariol,*[16] accused-appellants have not shown that

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[13] *People v. Sy,* 438 Phil. 383, 397-398 (2002).

[14] *People v. Villanueva*, G.R. No. 172116, 30 October 2006, 506 SCRA 280, 287.

[15] *Valdez v. People*, G.R. No. 170180, 23 November 2007, 538 SCRA 611, 629.

[16] G.R. No. 83809, 22 June 1989, 174 SCRA 237, 243.

the prosecution witnesses were motivated by any improper motive other than that of accomplishing their mission.

Evidence presented for the prosecution showed that at around 6:00 o'clock in the evening of 24 April 2003, Miguel and Dizon were arrested in a buy-bust operation conducted in *Purok* 4, Sta. Lucia, Pasig City. In the course of the buy-bust operation, Miguel sold and delivered to PO3 Salisa, the *poseur-buyer*, one transparent plastic sachet containing white crystalline substance for ₱200.00. Upon a qualitative examination conducted by Forensic Chemist P/Insp. Joseph Perdido of the Eastern Police District Crime Laboratory in Mandaluyong City, the substance contained in the plastic sachet tested positive for *Methamphetamine Hydrochloride*, or *shabu*, a dangerous drug.[17]

The principal witnesses clearly established the elements of the crime: that an illegal sale of the dangerous drug actually took place, and that accused-appellant Miguel was the perpetrator of the crime, while accused-appellant Dizon was caught in the possession of a sachet of *shabu*, weighing 0.26 grams. Contrary to allegations of inconsistencies, the testimony of PO3 Salisa, the *poseur-buyer*, was clear and straightforward and narrated the circumstances leading to the buy-bust operation, to wit:

Q. Will you please state in brief what was that assignment given to you?

A. On April 24, at about 5:00 p.m., a confidential informant went to our office and informed us regarding (the) activities of *alias* Moluk, selling drugs, sir.

Q. Would you know who received that information from the confidential informant?

A. Me (*sic*) personally, sir. And after I got the information, I informed our chief, P(olice) Sr. Insp(ector) Villaruel.

Q. When you informed your Chief Villaruel regarding this information given by the confidential informant, what did your office do, if any?

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[17] Records, p. 10.

A. Our Chief conducted a briefing and instruction, sir. And he designated me as a *poseur-buyer* and he furnished me (with) two (2) One Hundred Peso (₱100.00) bills to be used as a buy-bust money, sir.

x x x x x x x x x

Q. And after the briefing, what else happened thereafter, (M)r. Witness, if any?

A. We proceeded to the given area, sir.

Q. Where is that given area?

A. Purok 4, Brgy. Sta. Lucia, Pasig City, sir.

Q. Did you in fact proceed to said area?

A. Yes, sir.

Q. And that was on April 24, 2003, Mr. Witness?

A. Yes, sir.

Q. And what time did you arrive at the said area?

A. On or about 6:00 p.m., sir.

Q. What happened when you arrived in said Purok 4, Brgy. Sta. Lucia, Pasig City?

A. We parked our service vehicle and I alighted first, together with the informant. And then, we started to locate the residence of *alias* Moluk, sir.

x x x x x x x x x

Q. And after you have located the residence of *alias* Moluk, what happened next, if any?

A. The informant pointed to me *alias* Moluk, sir.

Q. And after that, what happened next?

A. We approached him, sir.

Q. And what happened next after you approached him?

A. The informant introduced me to him and then, he asked what do we need, so, we replied, '*iiskor,*' sir.

Q. How were you introduced by the informant?

A. I was introduced as one who will score, *shabu*, sir.

Q. What do you mean by 'score,' (M)r. witness?

A. I will buy *shabu*, sir.

Q. In other words, you were introduced by the informant to *alias* Moluk as the one interested in buying *shabu*?

A. Yes, sir.

Q. What was the reaction or what was the response of *alias* Moluk when the confidential informant informed him that you were interested in buying *shabu* from him?

A. He looked at me and then, I handed to him the two (2) One Hundred Peso bills, which he accepted, sir.

Q. And after that, what happened next, (M)r. witness?

A. He pulled out from his pocket and then, handed to me one (1) heat-sealed transparent plastic sachet containing white crystalline substance, sir.

Q. And after receiving this one (1) plastic sachet of white crystalline substance, what happened next?

x x x x x x x x x

A. I looked at it, sir. And while looking at it, I sent to my companions my pre-arranged signal.

Q. What happened next, after that?

A. After I have confirmed that it was a suspected *shabu*, I held his hand and told him of his constitutional rights, sir.

Q. Did you find out later what is the true identity of this *alias* Moluk?

A. When we were already in the office, we learned of his identity, sir.

Q. What was his real identity?

A. Mario Miguel, sir.[18]

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[18] TSN, 5 January 2004, pp. 4-7.

As for the participation of accused-appellant Dizon, the following testimony of PO3 Salisa is convincing:

Q. After you give (sic) your pre-arranged signal, would you know what did (sic) your companion do after that?

A. After I have sent my pre-arranged signal, PO1 Sabo suddenly arrived. And when she came, I also pointed to her a female person and I told PO1 Sabo that this woman was also handed a *shabu*, sir.

Q. Do I understand that *alias* Moluk gave *shabu* to this woman?

x x x x x x x x x

A. While we were approaching *alias* Moluk, we saw him talking with a lady, and I saw that he personally handed to her a plastic sachet containing white crystalline substance, sir.

Q. And as you said earlier, this is the reason why you informed Sabo about the fact that Moluk handed one (1) plastic sachet to this woman?

A. Yes, sir.

Q. And when you pointed this woman to Police Officer Sabo, what did you or PO1 Sabo do, if any?

A. I heard PO1 Sabo instructed the lady to open her hand and there, I saw one (1) plastic sachet containing white crystalline substance, sir.

Q. And when you and PO1 Sabo found out that this woman was in possession of one (1) plastic sachet, what did you do with her, if any?

A. It was PO1 Sabo who told her that, "You are holding a *shabu*, so, I am arresting you."

Q. Did you find out later on who is this woman, from whom Police Officer Sabo recovered this plastic sachet?

A. Yes, sir. When we reached our office, we learned that her true identity is Amy. I cannot recall her last name, sir.

Q. At any rate, Mr. Witness, you stated earlier that you found out later that *alias* Moluk's real name is Mario Miguel, is that correct?

A. Yes, sir.

Q. If ever you will see him again, will you be able to identify him?

A. Yes, sir.

Q. Will you please look inside the courtroom and if he is present, will you please step down and approach him, and identify him?

A. Yes, sir.

COURT INTERPRETER

Witness tapped the shoulder of a male person, who when asked, identified himself as Mario Miguel.

Q. Although, Mr. Witness, you cannot recall the surname of this woman, whom you can only remember as one who has the name Amy. If ever you will see her again, will you be able to recognize her?

A. Yes, sir.

Q. If ever she is present inside this courtroom, will you please step down from the witness stand and identify her?

A. Yes, sir.

COURT INTERPRETER

Witness tapped the shoulder of a woman who when asked, identified herself as Amy.

PROSECUTOR CRISOLOGO:

May I request the said person be asked the full name, Your Honor?

AMALIA DIZON:

Amalia Dizon, Your Honor.

Q. What happened to the plastic sachet that you bought from Mario Miguel, *alias* Moluk?

A. After I have informed him of his constitutional rights, I handcuffed him and then, I put markings on the sachet, sir.

Q. What markings did you place, Mr. Witness?

A. Exh. A, AMS 4/24/2003, sir.

Q. As you have described, Mr. Witness, I am showing to you one (1) plastic sachet with said markings, Exh. A, AMS 4/24/03. Will you please look at the same and tell this Honorable Court if this is the very same plastic sachet whom you alleged that Mario Miguel *alias* Moluk, sold to you?

A. The same plastic sachet, sir.

PROSECUTOR CRISOLOGO:

May I make it of record, Your Honor, that this plastic sachet has been previously marked as Exhibit C-1 for the prosecution.

Q. You also mentioned earlier that Sabo, when she requested the woman, now identified as Amalia Dizon, to open her hand, you and Sabo saw that she is also in possession of one (1) plastic sachet, is that correct?

A. Yes, sir.

Q. What did you do with this plastic sachet?

A. It was PO1 Sabo who marked the other sachet, sir.[19]

The establishment of the crimes of which the accused were charged is not weakened by the alleged inconsistencies cited by accused-appellants. The cited inconsistencies pertain to minor details. Inconsistencies referring to minor details strengthen rather than weaken the witness' credibility for they give the impression of rehearsed testimony.[20] As a matter of fact, discrepancies referring only to minor details and collateral matters — not to the central fact of the crime — do not affect the veracity or detract from the essential culpability of witnesses' declarations as long as these are coherent and intrinsically believable on the whole.[21]

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[19] *Id.* at 7-11.

[20] *People v. Barriga,* G.R. No. 178545, 29 September 2008, 567 SCRA 65, 78.

[21] *People v. Fernando,* G.R. No. 170836, 4 April 2007, 520 SCRA 675, 683-684.

Substantiating the charges against accused-appellants, the collective testimonies of all three prosecution witnesses were corroborated by the physical evidence on record as contained in Chemistry Report No. D-745-03E issued by Forensic Chemist Police Inspector Joseph Perdido. Upon laboratory examination, the white crystalline substance confiscated from accused-appellants were positively identified as *methamphetamine hydrochloride*.[22]

Finally, the defense of accused-appellants that there was no buy-bust operation deserves scant consideration. Having been caught in *flagrante delicto*, his identity as seller of the *shabu* can no longer be doubted. Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence, must simply fail.

Under the law, the illegal sale of *shabu* carries with it 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), regardless of the quantity and purity of the substance involved. On the other hand, the illegal possession of less than five (5) grams of said dangerous drug is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00).

Reviewing the penalties imposed by the trial court, as affirmed by the Court of Appeals, we find them to be in order.

WHEREFORE, premises considered, the instant appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02115 dated 9 May 2007 which affirmed the decision of the Regional Trial Court of Pasig City, Branch 70, convicting accused-appellant *MARIO MIGUEL y BERNABE* of Violation of Section 5, Article II, Republic Act No. 9165 in Criminal Case No. 12364-D, and accused-appellant *AMALIA DIZON y REGACHELO* for Violation of Section 11, Article II,

[22] Records, p. 10.

Republic Act No. 9165 in Criminal Case No. 12365-D is hereby *AFFIRMED*. No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *del Castillo, JJ.,* concur.

SECOND DIVISION

[G.R. No. 180639. June 29, 2010]

LEPANTO CONSOLIDATED MINING COMPANY, *petitioner, vs.* **HON. MAURICIO B. AMBANLOC, in his capacity as the Provincial Treasurer of Benguet,** *respondent.*

SYLLABUS

TAXATION; REVISED BENGUET REVENUE CODE; TAX ON SAND, GRAVEL AND OTHER QUARRY RESOURCES; APPLICANTS FOR SPECIAL PERMITS NEEDED TO PAY THE TAX, REGARDLESS OF EXTRACTING MATERIALS FOR COMMERCIAL PURPOSES. — The question of Lepanto's liability for tax should be determined based on the revenue measure itself, which in this case, was the Revised Benguet Revenue Code (the revenue code). x x x The provincial revenue code provides that the subject tax had to be paid prior to the issuance of the permit to extract sand and gravel. Its Article D, Section 2, enumerates four kinds of permits: commercial, industrial, special, and gratuitous. Special permits covered only personal use of the extracted materials and did not allow the permitees to sell materials coming from his concession. Among applicants for permits, however, only gratuitous permits were exempt from the sand and gravel tax. It follows that persons who applied for special permits needed

to pay the tax, even though they did not extract materials for commercial purposes. Thus, the tax needed to be paid regardless of the applicability of the administrative and reportorial requirements of that revenue code. x x x And it is settled that provincial governments can levy excise taxes on quarry resources independently from the national government.

APPEARANCES OF COUNSEL

Vladimir B. Bumatay for petitioner.
Cruzaldo B. Bacduyan for respondent.

D E C I S I O N

ABAD, *J.*:

This case is about the liability of a mining corporation for taxes imposed by a province for the extraction of sand and gravel from areas covered by its mining lease with the national government and used exclusively in its mining operations.

The Facts and the Case

The national government issued to petitioner Lepanto Consolidated Mining Company (Lepanto) a mining lease contract covering, among others, its "TIKEM" leased mining claim at Sitio Nayak, Barrio Palasan (Suyoc), Municipality of Mankayan, Benguet. The contract granted Lepanto the right to extract and use for its purposes all mineral deposits within the boundary lines of its mining claim. Upon inquiry, the Mines and Geo-sciences Bureau of the Department of Environment and Natural Resources (DENR) advised Lepanto that, under its contract, it did not have to get a permit to extract and use sand and gravel from within the mining claim for its operational and infrastructure needs. Based on this advice, Lepanto proceeded to extract and remove sand, gravel, and other earth materials from the mining site.

Lepanto used the quarried materials to back-fill stopes—portions of the earth excavated as a result of mining—replacing what had been mined to maintain the integrity of the ground. It also used sand and gravel to construct and maintain concrete

structures needed in its mining operation, such as a tailings dam, access roads, and offices. Its use of quarry resources, readily available within its mining claim, was more practical and cheaper than having to outsource them.

Respondent Mauricio Ambanloc, the provincial treasurer of Benguet, sent a demand letter to Lepanto, asking it to pay the province ₱1,901,893.22 as sand and gravel tax, for the quarry materials that it extracted from its mining site from 1997 to 2000. Lepanto sent a letter-protest to the provincial treasurer, but the latter denied the same, insisting on payment.

Lepanto filed a petition with the Regional Trial Court (RTC) of Benguet to question the assessment.[1] The RTC ruled that Lepanto was liable for the amount assessed, with interest at the rate of 2 percent per month from the time the tax should have been paid. Lepanto appealed the RTC decision to the Court of Tax Appeals (CTA) where it was raffled to its Second Division.[2] The Second Division affirmed the ruling of the RTC with the modification that the interest of 2 percent per month shall not exceed 36 months.[3]

Lepanto appealed the decision of the Second Division to the CTA *En Banc*.[4] Three justices of the CTA voted to affirm the decision but three justices dissented. Because the needed vote of four members could not be obtained, the *En Banc* dismissed the appeal, resulting in the affirmance of the decision of the Second Division. Lepanto's motion for reconsideration met the same fate, hence, this appeal.

The Issue Presented

The sole issue presented in this case is whether or not Lepanto is liable for the tax imposed by the Province of Benguet on the

[1] Docketed as Civil Case 01-CV-1652.

[2] Docketed as CTA AC 13.

[3] In a Decision dated February 27, 2006, penned by Associate Justice Olga Palanca-Enriquez and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy.

[4] Docketed as CTA EB 201.

sand and gravel that it extracted from within the area of its mining claim and used exclusively in its mining operations.

The Court's Rulings

One. Lepanto claims that the tax on sand and gravel applied only to commercial extractions. In its case, it extracted these materials for use solely in its mining operations. Lepanto did not supply other users for some profit. Thus, its extractions were not commercial and should not be subject to provincial tax.

The CTA's Second Division held, however, that sand and gravel taxes may be imposed even on non-commercial extractions. Since Section 138 of the Local Government Code (Republic Act 7160) authorized provinces to impose a tax on the extraction of sand and gravel from public lands, without distinguishing between personal and commercial uses, then the tax should be deemed to cover extractions for both purposes. The provision reads:

> **Sec. 138. Tax on Sand, Gravel and Other Quarry Resources. — The province may levy and collect not more than ten percent (10%) fair market value in the locality per cubic meter of ordinary stones, sand gravel, earth, and other quarry resources, as defined under the National Internal Revenue Code, as amended, extracted from public lands or from the beds of seas, lakes, rivers, streams, creeks, and other public waters within its territorial jurisdiction.**

But the CTA Second Division ruling overlooks the fact that Republic Act 7160 is not the provincial government's basis for taxing Lepanto's extraction. It is but the general law that delegates to provinces the power to impose taxes on the extraction of quarry resources. As it happens, the scope and validity of such delegation is not the issue in this case. The question of Lepanto's liability for tax should be determined based on the revenue measure itself, which in this case, was the Revised Benguet Revenue Code (the revenue code).[5] The relevant provisions of this provincial revenue code reads:

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[5] Provincial Ordinance No. 01, Series of 1993.

Article D. Tax on Sand, Gravel and Other Quarry Resources.

x x x x x x x x x

SECTION 3. ***Imposition of Tax.*** **There shall be levied a tax of ten (10) percent of fair market value in the locality per cubic meter of ordinary stones, sand, gravel, earth, and other quarry resources, x x x applied for and expected to be extracted or removed from public lands x x x within the territorial jurisdiction of Benguet Province.**

This provision may not apply in case of gratuitous permits for government projects within Benguet Province.

SECTION 4. ***Conditions for the Issuance of Permit.***

x x x x x x x x x

(g) The permittee shall within ten (10) days after the end of each month submit to the Provincial Treasurer, the Municipal Treasurer and Barangay Treasurer where the materials are extracted, copies of sworn statement stating the quantity in terms of cubic meter and kind of materials extracted or removed by him; the amount of tax or fees paid; the quantity and kind of materials sold or disposed of during the period covered by said report; the selling price per cubic meter; the names and addresses of the buyers; and the quantity and kind of materials left in stock.

x x x x x x x x x

SECTION 5. ***Mode, Time and Place of Payment.*** **The tax shall be paid to the Provincial Treasurer or his duly authorized representative before the approval by the Provincial Governor of the permit to extract or remove the materials applied for and before the said materials are extracted or removed. x x x**

SECTION 6. ***Surcharges and Interests.*** **Failure to pay the tax as provided herein shall subject the permittee to a surcharge of Twenty-five (25%) percent of the original amount of tax due plus Two (2%) percent per month of the unpaid amount including the surcharges until such amount is fully paid, but in no case shall the total amount or portion thereof exceed thirty-six (36) months. x x x**

Lepanto insists that the subject tax intended to cover only commercial extractions since the provincial revenue code referred to "fair market value of the resources," "quantity sold or disposed," "amount left in stock," "selling price," and "buyers' information."

Not necessarily. The provincial revenue code provides that the subject tax had to be paid prior to the issuance of the permit to extract sand and gravel. Its Article D, Section 2, enumerates four kinds of permits: commercial, industrial, special, and gratuitous. Special permits covered only personal use of the extracted materials and did not allow the permitees to sell materials coming from his concession.[6] Among applicants for permits, however, only gratuitous permits were exempt from the sand and gravel tax. It follows that persons who applied for special permits needed to pay the tax, even though they did not extract materials for commercial purposes. Thus, the tax needed to be paid regardless of the applicability of the administrative and reportorial requirements of that revenue code.

Two. Lepanto claims that the tax can only be levied against extractions by persons or entities required to apply for permits to remove quarry resources. Since the mining lease contract with the national government granted it the right to extract and utilize all mineral deposits from within its mining claim, Lepanto claims that it did not need to apply for a separate permit from the local government. Paragraph 9 of its Mining Lease Contract provides that:

> **This Lease hereby grants unto the LESSEE, his successors or assigns, the right to extract and utilize for their own benefit all mineral deposits within the boundary lines of the mining claim/s covered by this Lease continued vertically downward.**

But this merely declares that Lepanto's extraction and use of mineral deposits bears the consent of the national government,

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[6] Provincial Ordinance No. 01, Series of 1993, Article D, Section 9. *Penal Clause*.

(d) Any person issued gratuitous permit or special permit for personal use, who sells sand, gravel and other quarry resources extracted from his concession.

in line with the principle that exploration of natural resources can only be done under the control and supervision of the State. The contract makes no mention of any exemption from securing government permits.

Lepanto invokes the Bureau of Mines and Geo-Sciences' view that the mining company did not require it to get any of the permits that Mines Administrative Order MRD-27 might require.[7] But that Bureau's view applied only to permits under MRD-27. The Bureau has no authority to determine the applicability of local ordinances. Besides, even the Bureau itself states that the exemption from MRD-27 is not absolute as it shall not apply if the sand and gravel were to be disposed of commercially. An exemption from the requirements of the provincial government should have a clear basis, whether in law, ordinance, or even from the contract itself. Unfortunately for Lepanto, it failed to show its entitlement to such exemption.

Three. Lepanto relies on the principle that when a company is taxed on its main business, it is no longer taxable for engaging in an activity that is but a part of, incidental to, and necessary to such main business. Lepanto points out that, since it did not extract and use sand and gravel as independent activities but as integral parts of its mining operations, it should not be subjected to a separate tax on the same.

But in the cases where this principle has been applied, the taxes which were stricken down were in the nature of business taxes. The reasoning behind those cases was that the incidental activity could not be treated as a business separate and distinct from the main business of the taxpayer. Here the tax is an excise tax imposed on the privilege of extracting sand and gravel. And it is settled that provincial governments can levy excise taxes on quarry resources independently from the national government.[8]

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[7] *Rollo*, pp. 201-203.

[8] *Province of Bulacan v. Court of Appeals*, 359 Phil. 779, 793 (1998).

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the decision of the Court of Tax Appeals *En Banc* in CTA EB 201 dated May 17, 2007.

SO ORDERED.

Carpio, Nachura, Peralta, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 181112. June 29, 2010]

INTERORIENT MARITIME ENTERPRISES, INC., INTERORIENT ENTERPRISES, INC., and LIBERIA AND DOROTHEA SHIPPING CO., LTD., *petitioners, vs.* **LEONORA S. REMO,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ALLOWED; EXCEPTIONS. —** As a rule, only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure, because the Court, not being a trier of facts, is not duty-bound to reexamine and calibrate the evidence on record. In exceptional cases, however, we may delve into and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties, or when the lower courts come up with conflicting positions.

2. **LABOR AND SOCIAL LEGISLATION; OVERSEAS EMPLOYMENT; ON DISABILITY CLAIMS AND DEATH COMPENSATION; IMPORTANCE OF POST-EMPLOYMENT MEDICAL EXAMINATION. —** Section

20(B)1 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels made pursuant to POEA Memorandum Circular No. 055-96 and Department Order No. 33, Series of 1996, clearly provides: The liabilities of the employer when the seafarer suffers injury or illness during the term of his contract are as follows: x x x 2. If the injury or illness requires medical and/ or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated. **However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.** For disability claims, the post-employment medical examination is meant to verify the medical condition of the seafarer when he signs off from the vessel. On the other hand, in the cases involving death compensation, our rulings in *Gau Sheng Phils., Inc. v. Joaquin* and *Rivera v. Wallem Maritime Services, Inc.* stressed the importance of a post-employment medical examination or its equivalent, *i.e.,* it is a basis for the award of death compensation. In these cited cases, however, death benefits were not awarded because the seafarers and/or their representatives failed to abide by the POEA-SEC wherein it was stated that the seafarer must report to his employer for a post-employment medical examination within three working days from the date of arrival, otherwise, benefits under the POEA-SEC would be nullified.

3. **ID.; ID.; ID.; ID.; ABSENCE OF POST-EMPLOYMENT CONTRACT DUE TO THE FAULT OF EMPLOYER WHO IS MANDATED TO PROVIDE THE SAME, CANNOT BE TAKEN AGAINST THE SEAFARER. —** What if the seafarer reported to his employer but despite his request for a post-employment medical examination, the employer, who is mandated to provide this service under POEA Memorandum Circular No. 055-96, did not do so? Would the absence of a post-employment medical examination be taken against the seafarer? Both parties in this case admitted that Lutero was confined in a hospital in Dubai for almost one week due to atrial fibrillation and congestive heart failure. Undeniably, Lutero suffered a heart ailment while under the employ of

petitioners. This fact is duly established. Respondent has also consistently asserted that 2-3 days immediately after his repatriation on April 19, 1999, Lutero reported to the office of Interorient, requesting the required post-employment medical examination. However, it appears that, instead of heeding Lutero's request, Interorient conveniently prioritized the execution of the Acknowledgment and Undertaking which were purportedly notarized on April 20, 1999, thus leaving Lutero in the cold. In their pleadings, petitioners never traversed this assertion and did not meet this issue head-on. This self-serving act of petitioners should not be condoned at the expense of our seafarers. Therefore, the absence of a post-employment medical examination cannot be used to defeat respondent's claim since the failure to subject the seafarer to this requirement was not due to the seafarer's fault but to the inadvertence or deliberate refusal of petitioners.

4. **ID.; TERMINATION OF EMPLOYMENT; ON QUITCLAIMS, WAIVERS AND RELEASES; REQUIREMENTS. —** As a rule, quitclaims, waivers, or releases are looked upon with disfavor and are largely ineffective to bar claims for the measure of a worker's legal rights. To be valid, a Deed of Release, Waiver and/or Quitclaim must meet the following requirements: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is credible and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law. Courts have stepped in to annul questionable transactions, especially where there is clear proof that a waiver, for instance, was obtained from an unsuspecting or a gullible person; or where the agreement or settlement was unconscionable on its face. A quitclaim is ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel. Moreover, a quitclaim in which the consideration is scandalously low and inequitable cannot be an obstacle to the pursuit of a worker's legitimate claim.

5. **ID.; EMPLOYMENT; ON CONTROVERSIES BETWEEN LABORER AND EMPLOYER, DOUBTS RESOLVED IN FAVOR OF THE LABORER. —** It is a time-honored rule that in controversies between a laborer and his employer, doubts

reasonably arising from the evidence or from the interpretation of agreements and writings should be resolved in the former's favor in consonance with the avowed policy of the State to give maximum aid and protection to labor.

APPEARANCES OF COUNSEL

Nolasco & Associates Law Offices for petitioners.
Puracan & Associates Law Office for respondent.

D E C I S I O N

NACHURA, *J.*:

Before this Court is Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Civil Procedure, seeking the reversal of the Court of Appeals (CA) Decision[2] dated September 26, 2007, which reversed and set aside the resolution[3] of the National Labor Relations Commission (NLRC) dated June 23, 2006.

This case stems from the claim for death benefits filed by respondent Leonora S. Remo (respondent), surviving spouse of Lutero Remo (Lutero), against petitioners Interorient Maritime Enterprises, Inc. (Interorient), Interorient Enterprises, Inc., and Liberia and Dorothea Shipping Co., Ltd. (petitioners).

Culled from the records, the facts are as follows:

Lutero was deployed by Interorient on November 10, 1998 to serve as Cook-Steward on board the foreign principal's vessel, *"M/T Captain Mitsos L"* (the vessel), under a Philippine Overseas Employment Administration (POEA) Standard Employment

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[1] *Rollo*, pp. 3-30.

[2] Docketed as CA-G.R. SP No. 97336, penned by Associate Justice Vicente S.E. Veloso, with Associate Justices Juan Q. Enriquez, Jr. and Marlene Gonzales-Sison, concurring; *id.* at 33-44.

[3] *Rollo*, pp. 62-70.

Contract (SEC) with a duration of 12 months and a monthly salary of US$400.00.[4]

Respondent alleged that Lutero was repeatedly contracted and deployed by Interorient for employment on board various vessels of its principals from September 1994 to April 1999;[5] that prior to his last employment contract on October 29, 1998, he underwent a pre-employment medical examination (PEME) and was declared fit to work; that on his fifth month of employment, while on board the vessel, Lutero experienced severe abdominal and chest pains, fainting spells and difficulty in breathing; that he was brought to a hospital in Dubai where he was confined for one (1) week until his repatriation on April 19, 1999; that he was diagnosed with atrial fibrillation and congestive heart failure; that within 2-3 days from arrival, Lutero reported to Interorient and requested that he be given a post-employment medical examination and assistance; that Interorient assured Lutero that he would be given a medical examination and assistance which did not, however, materialize; that Lutero, after waiting for about two weeks for the examination, went home to his province but, two weeks thereafter, he was again confined in a hospital after experiencing another episode of difficulty in breathing, abdominal and chest pains, dyspnea, and irregular cardiac breathing; that for the period of May 3 to December 9, 1999, he underwent treatment for the ailment he contracted during his overseas employment; that Lutero was diagnosed with Chronic Atrial Fibrillation, Cardiomegaly, Essential Hypertension, and Schistosomiasis;[6] that sometime thereafter, he received notice from Interorient, requiring him to report as there was supposedly a vessel available for him to join; that he tried to persuade his attending doctor, Dr. Efren Ozaraga (Dr. Ozaraga), to declare him fit to work because he wanted to resume his work, but the doctor refused; that Lutero reported to Interorient, but failed in his PEME; that on August

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[4] CA *rollo*, p. 90.

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

[6] *Id.* at 91-93.

28, 2000, he died at the age of 47 of hypertensive cardio-vascular disease,[7] leaving behind respondent and their three (3) children;[8] that from the time of his discharge from the vessel, Lutero did not receive any sickness benefit or medical assistance from petitioners; and that respondent is entitled to death compensation as the death of her husband was due to an illness contracted during the latter's employment, as well as sickness benefit, moral and exemplary damages, and attorney's fees.

Petitioners denied liability and averred that, at the time of his application, Lutero expressly declared in his application form that he did not, in the past and at that time, have any illness; that during his PEME, he answered "no" to the listed medical conditions and to the question if he was taking any medication;[9] that on the basis of his representation, he was declared fit to work and subsequently commenced employment; that after his repatriation, Lutero reported to Interorient's office on April 20, 1999, and when asked about the circumstances of his illness, he admitted that he had a preexisting ailment at the time of his application and deployment, and discharged petitioners from liabilities arising from said preexisting illness by virtue of his Acknowledgment[10] and Undertaking;[11] that thereafter, nothing was heard from Lutero until February 2000, when he submitted to Interorient a medical certificate[12] of fitness to work issued by his private doctor, Dr. Ozaraga; that respondent was not entitled to her claims because Lutero died after the expiration of the term of the contract; that Lutero failed to disclose his preexisting illness at the time of his engagement; and that, following his repatriation, he acknowledged his preexisting illness.

On January 13, 2004, the Labor Arbiter (LA) denied respondent's claims, holding that she was not entitled thereto

[7] *Id.* at 94.

[8] *Id.* at 95-98.

[9] *Id.* at 112-114.

[10] *Id.* at 115.

[11] *Id.* at 116.

[12] *Id.* at 117.

because Lutero's death did not occur during the term of the contract; that Lutero failed to disclose his medical condition prior to his deployment; and that he acknowledged his preexisting illness following his repatriation. Aggrieved, respondent appealed to the NLRC which, however, affirmed the LA's ruling.

Undaunted, respondent went to the CA on *certiorari*,[13] alleging grave abuse of discretion on the part of the NLRC in not ruling that Lutero's death was due to an illness contracted during his employment, or that said employment contributed to the development of his illness.

On September 26, 2007, the CA decided in favor of respondent, finding that the nature of Lutero's employment contributed to the aggravation of his illness. Invoking our rulings in *Seagull Shipmanagement and Transport, Inc. v. NLRC*[14] and *Wallem Maritime Services, Inc. v. NLRC*,[15] the CA disposed of the case in this wise:

> WHEREFORE, the petition is **GRANTED**. The assailed Resolutions of the National Labor Relations Commission are **REVERSED** and **SET ASIDE**. Private respondents are ordered to pay, jointly and severally, the following amounts to petitioner for herself and in her capacity as guardian of her minor children: US$50,000.00 as death benefit; US$7,000.00 to each child under the age of twenty-one (21), as allowances; and US$1,000.00 as burial expenses. Costs against the private respondents.
>
> SO ORDERED.[16]

On October 15, 2007, petitioners filed their Motion for Reconsideration,[17] which was, however, denied by the CA in its Resolution[18] dated December 20, 2007.

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[13] *Id.* at 6-48.

[14] G.R. No. 123619, June 8, 2000, 333 SCRA 236.

[15] 376 Phil. 738 (1999).

[16] *Supra* note 2, at 43-44.

[17] *Rollo*, pp. 75-82.

[18] *Id.* at 46.

Hence, this Petition based on the following grounds:

1) THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT IS NOT ENTITLED TO DEATH BENEFITS UNDER THE POEA STANDARD EMPLOYMENT CONTRACT FOR THE DEATH OF HER HUSBAND OCCUR[R]ING ONE YEAR AFTER THE TERM OF HIS CONTRACT;

2) THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT IS NOT ENTITLED TO DEATH BENEFITS UNDER THE POEA STANDARD EMPLOYMENT CONTRACT FOR THE DEATH OF HER HUSBAND AS THE LATTER'S DEATH WAS DUE TO [A] PRE-EXISTING ILLNESS[; and]

3) THE HONORABLE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE RESPONDENT IS NOT ENTITLED TO DEATH BENEFITS UNDER THE POEA STANDARD EMPLOYMENT CONTRACT FOR THE DEATH OF HER HUSBAND AS THE LATTERADMITTED CONCEALING HIS TRUE MEDICAL CONDITION AT THE TIME OF HIS PRE-EMPLOYMENT MEDICAL EXAMINATION.[19]

Petitioners rely on the findings of both the LA and the NLRC that the death of Lutero is not compensable because it happened outside the term of his contract. Petitioners claim that the medical certificate issued by Dr. Ozaraga, certifying that Lutero was already fit to resume work, belies respondent's assertion that Lutero continued to be ill after his repatriation until his death. Petitioners also rely on the undertaking executed by Lutero, stating that, before he joined the vessel, he already had hypertension, and that he took medication prior to his medical examination. Thus, petitioners submit that Lutero committed material misrepresentation, disqualifying him from claiming the benefits provided for under the POEA-SEC.[20]

On the other hand, respondent argues that petitioners failed to attach the pertinent documents and pleadings to the Petition,

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[19] *Supra* note 1, at 10.

[20] *Id.*

and that the petition raises factual issues in violation of Rule 45 of the Rules of Civil Procedure. Respondent asseverates that petitioners' stance that the employer is liable only if the death of the seafarer occurs exactly during the term of the contract violates the nature of the POEA-SEC and is contrary to the avowed policy of the State to accord utmost protection and justice to labor. Invoking our ruling in *Wallem*,[21] respondent maintains that "it is enough that the employment had contributed, even in a small degree, to the development of the disease and in bringing about (the seafarer's) death." Respondent stresses that this Court allowed the award of death benefits in *Wallem* even if the seafarer therein died after the contract term. In the instant case, Lutero suffered a heart ailment while on board the vessel — the illness manifested itself during the term of the contract — and was the very reason of his repatriation. Respondent submits that Lutero died of a heart ailment which he incurred during the term of the contract, thus, making his death compensable. Respondent also denies that the heart ailment of Lutero was a preexisting illness because, while it is true that the PEME is not exploratory, the ailment would have been easily detected because Lutero had been continuously under petitioners' employ for almost four years. Lastly, respondent highlights her claim that Lutero, after his repatriation, immediately reported to Interorient and asked for post-medical examination and assistance, but none was given to him. She bewails the fact that, instead of the conduct of said examination, petitioners induced Lutero to execute the Acknowledgment and Undertaking, releasing petitioners from any liability.[22]

The ultimate issue in this case is whether the CA committed a reversible error in rendering the assailed Decision.

The Petition is bereft of merit.

As a rule, only questions of law may be raised in and resolved by this Court on petitions brought under Rule 45 of the Rules of Civil Procedure, because the Court, not being a trier of facts,

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[21] *Supra* note 15.

[22] Comment; *rollo*, pp. 97-140.

is not duty-bound to reexamine and calibrate the evidence on record. In exceptional cases, however, we may delve into and resolve factual issues when there is insufficient or insubstantial evidence to support the findings of the tribunal or court below, or when too much is concluded, inferred or deduced from the bare or incomplete facts submitted by the parties, or when the lower courts come up with conflicting positions.[23] This case constitutes an exception inasmuch as the CA's findings contradict those of the LA and the NLRC.

Section 20(B)1 of the Standard Terms and Conditions Governing the Employment of Filipino Seafarers On-Board Ocean-Going Vessels made pursuant to POEA Memorandum Circular No. 055-96 and Department Order No. 33, Series of 1996, clearly provides:

> The liabilities of the employer when the seafarer suffers injury or illness during the term of his contract are as follows:
>
> x x x x x x x x x
>
> 2. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, serious dental, surgical and hospital treatment as well as board and lodging until the seafarer is declared fit to work or to be repatriated.
>
> **However, if after repatriation, the seafarer still requires medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.**[24]

For disability claims, the post-employment medical examination is meant to verify the medical condition of the seafarer when he signs off from the vessel.[25] On the other hand, in the cases involving death compensation, our rulings in *Gau Sheng Phils.,*

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[23] *Pascua v. NLRC,* 351 Phil. 48, 61 (1998).

[24] Emphasis supplied.

[25] *Nisda v. Sea Serve Maritime Agency*, G.R. No. 179177, July 23, 2009, 593 SCRA 668.

Inc. v. Joaquin[26] and *Rivera v. Wallem Maritime Services, Inc.*[27] stressed the importance of a post-employment medical examination or its equivalent, *i.e.,* it is a basis for the award of death compensation. In these cited cases, however, death benefits were not awarded because the seafarers and/or their representatives failed to abide by the POEA-SEC wherein it was stated that the seafarer must report to his employer for a post-employment medical examination within three working days from the date of arrival, otherwise, benefits under the POEA-SEC would be nullified.[28]

In light of this ruling, the following questions may be asked: What if the seafarer reported to his employer but despite his request for a post-employment medical examination, the employer, who is mandated to provide this service under POEA Memorandum Circular No. 055-96, did not do so? Would the absence of a post-employment medical examination be taken against the seafarer?

Both parties in this case admitted that Lutero was confined in a hospital in Dubai for almost one week due to atrial fibrillation and congestive heart failure. Undeniably, Lutero suffered a heart ailment while under the employ of petitioners. This fact is duly established. Respondent has also consistently asserted that 2-3 days immediately after his repatriation on April 19, 1999, Lutero reported to the office of Interorient, requesting the required post-employment medical examination. However, it appears that, instead of heeding Lutero's request, Interorient conveniently prioritized the execution of the Acknowledgment and Undertaking which were purportedly notarized on April 20, 1999, thus leaving Lutero in the cold. In their pleadings, petitioners never traversed this assertion and did not meet this issue head-on. This self-serving act of petitioners should not be condoned at the expense of our seafarers. Therefore, the absence of a post-employment medical examination cannot be used to defeat respondent's claim

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[26] G.R. No. 144665, September 8, 2004, 437 SCRA 608.

[27] G.R. No. 160315, November 11, 2005, 474 SCRA 714.

[28] Section 20(B) 3 of POEA Memorandum Circular No. 055-96.

since the failure to subject the seafarer to this requirement was not due to the seafarer's fault but to the inadvertence or deliberate refusal of petitioners.

Moreover, we attach little evidentiary value to the Acknowledgment and Undertaking purportedly executed by Lutero, which is in the nature of a waiver and/or quitclaim. As a rule, quitclaims, waivers, or releases are looked upon with disfavor and are largely ineffective to bar claims for the measure of a worker's legal rights.[29]

To be valid, a Deed of Release, Waiver and/or Quitclaim must meet the following requirements: (1) that there was no fraud or deceit on the part of any of the parties; (2) that the consideration for the quitclaim is credible and reasonable; and (3) that the contract is not contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.[30] Courts have stepped in to annul questionable transactions, especially where there is clear proof that a waiver, for instance, was obtained from an unsuspecting or a gullible person; or where the agreement or settlement was unconscionable on its face. A quitclaim is ineffective in barring recovery of the full measure of a worker's rights, and the acceptance of benefits therefrom does not amount to estoppel. Moreover, a quitclaim in which the consideration is scandalously low and inequitable cannot be an obstacle to the pursuit of a worker's legitimate claim.[31]

Based on the foregoing disquisition, we find the Acknowledgment and Undertaking to be void, as contrary to public policy. Other than the fact that the Acknowledgment and Undertaking did not provide for any consideration given in favor

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[29] *Phil. Employ Services and Resources, Inc. v. Paramio,* G.R. No. 144786, April 15, 2004, 427 SCRA 732, 755.

[30] *Danzas Intercontinental, Inc. v. Daguman,* G.R. No. 154368, April 15, 2005, 456 SCRA 382, 397-398.

[31] *R & E Transport, Inc. v. Latag,* G.R. No. 155214, February 13, 2004, 422 SCRA 698, 708.

of Lutero, it is likewise evident that the terms thereof are unconscionable and that petitioners merely wangled them from the unsuspecting Lutero who, at that time, just arrived in the country after having been confined in a hospital in Dubai for a heart ailment.

It is a time-honored rule that in controversies between a laborer and his employer, doubts reasonably arising from the evidence or from the interpretation of agreements and writings should be resolved in the former's favor in consonance with the avowed policy of the State to give maximum aid and protection to labor.[32] This principle gives us even greater reason to affirm the findings of the CA which aptly and judiciously held:

> It was established on record that before the late Lutero Remo signed his last contract with private respondents as Cook-Steward of the vessel "M/T Captain Mitsos L," he was required to undergo a series of medical examinations. Yet, he was declared "fit to work" by private respondents' company designated-physician. On April 19, 1999, Remo was discharged from his vessel after he was hospitalized in Fujairah for *atrial fibrillation* and *congestive heart failure*. His death on August 28, 2000, even if it occurred months after his repatriation, due to *hypertensive cardio-vascular disease*, could clearly have been work related. Declared as "fit to work" at the time of hiring, and hospitalized while on service on account of "atrial fibrillation and congestive heart failure," his eventual death due to "hypertensive cardio-vascular disease" could only be work related. The death due to "hypertensive cardio-vascular disease" could in fact be traced to Lutero Remo's being the "Cook-Steward." As Cook-Steward of an ocean going vessel, Remo had no choice but to prepare and eat hypertension inducing food, a kind of food that eventually caused his "hypertensive cardio-vascular disease," a disease which in turn admittedly caused his death.
>
> Private respondents cannot deny liability for the subject death by claiming that the seafarer's death occurred beyond the term of his employment and worsely, that there has been misrepresentation on the part of the seafarer. For, as employer, the private respondents had all the opportunity to pre-qualify, thoroughly screen and choose

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[32] *Metropolitan Bank and Trust Company v. National Labor Relations Commission,* G.R. No. 152928, June 18, 2009, 589 SCRA 376.

their applicants to determine if they are medically, psychologically and mentally fit for employment. That the seafarer here was subjected to the required pre-qualification standards before he was admitted as Cook-Steward, it thus has to be safely presumed that the late Remo was in a good state of health when he boarded the vessel.[33]

In sum, we find no reversible error on the part of the CA in rendering the assailed Decision which would warrant the reversal and/or modification of the same.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. SP No. 97336 dated September 26, 2007 is *AFFIRMED*. No costs.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.*, concur.

THIRD DIVISION

[G.R. No. 181532. June 29, 2010]

LUIS M. RIVERA, *petitioner, vs.* **PARENTS-TEACHERS COMMUNITY ASSOCIATION-FLORENCIO UROT MEMORIAL NATIONAL HIGH SCHOOL, ESTER YASE, ALL MEMBERS OF THE BOARD,** *respondents.*

SYLLABUS

LEGAL ETHICS; LAWYER-CLIENT RELATIONSHIP; CLIENT BOUND BY THE NEGLIGENCE OF COUNSEL; CASE AT BAR. — Petitioner pleads for the relaxation of the Rules in the interest of substantial justice and consistent with

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[33] *Supra* note 2, at 41-43.

the "view" that the Court should decide labor cases in favor of the working man. He posits that his case falls under the exception to the rule that the negligence of counsel binds the client. The petition fails. Petitioner's problems stemmed from his counsel's failure to file position paper before the Labor Arbiter not just once but twice. His situation was compounded when he filed a motion to recall order of dismissal, a prohibited pleading, albeit gratuitously glossed over by the Labor Arbiter which treated it as an appeal; and when he belatedly paid the appeal fee. Not having learned his lesson, petitioner's counsel filed a motion for reconsideration of the NLRC dismissal of his appeal, which is also prohibited, instead of interposing an appeal before the Court of Appeals. Said motion for reconsideration not having tolled the running of the reglementary period for the filing of a petition for *certiorari* under Rule 65, petitioner's petition before the appellate court was filed out of time — three months late.

APPEARANCES OF COUNSEL

Arguedo & Associates for petitioner.

D E C I S I O N

CARPIO MORALES, *J.*:

Luis M. Rivera (petitioner), who was hired by respondent Parents-Teachers Community Association as school guard at the Florencio Urot Memorial National High School in Cebu City, filed on April 27, 2005 a complaint for illegal dismissal.

For failure to file his position paper, the Labor Arbiter dismissed petitioner's complaint without prejudice.

Petitioner subsequently re-filed his complaint which was again, by Order of April 30, 2005, dismissed, this time with prejudice, also for failure to file his position paper.

Petitioner thereupon filed a Motion to Recall Order of Dismissal which the Labor Arbiter, by Order of November 16, 2005, treated as an appeal, the motion being a prohibited pleading, and

accordingly elevated the case to the National Labor Relations Commission (NLRC).

By Resolution of May 30, 2006, the NLRC dismissed the appeal for non-compliance with the requirements for the perfection of an appeal, particularly the payment of the appeal fee. Petitioner filed a Motion for Reconsideration with which it submitted an official receipt dated December 5, 2005 showing payment of the appeal fee. The NLRC denied the motion, however, by Resolution of August 31, 2006, noting that petitioner's counsel received copy of the November 16, 2005 Order of the Labor Arbiter on November 22, 2005, hence, petitioner had only until December 2, 2005 to perfect the appeal.

Petitioner filed a Motion for Reconsideration of the NLRC August 31, 2006 Resolution which was, by Resolution of November 26, 2006, denied, the NLRC holding that a *second* motion for reconsideration is not allowed under the Rules.

On petitioner's appeal to the Court of Appeals, the appellate court denied the same as having been filed out of time. It explained that petitioner's filing of the *second* motion for reconsideration of the NLRC August 31, 2006 Resolution did not toll the running of the reglementary period for filing an appeal, hence, petitioner, who received a copy of such Resolution on November 22, 2006, had until November 19, 2006 to appeal, but filed his appeal only on February 19, 2007.

Petitioner's motion for reconsideration of the appellate court's denial of his appeal was denied by Resolution[1] of October 26, 2007, hence, the present petition.

Petitioner pleads for the relaxation of the Rules in the interest of substantial justice and consistent with the "view" that the Court should decide labor cases in favor of the working man. He posits that his case falls under the exception to the rule that the negligence of counsel binds the client.

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[1] CA *rollo,* pp. 115-116. Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Francisco P. Acosta and Stephen C. Cruz.

The petition fails.

Petitioner's problems stemmed from his counsel's failure to file position paper before the Labor Arbiter not just once but twice. His situation was compounded when he filed a motion to recall order of dismissal, a prohibited pleading, albeit gratuitously glossed over by the Labor Arbiter which treated it as an appeal; and when he belatedly paid the appeal fee.

Not having learned his lesson, petitioner's counsel filed a motion for reconsideration of the NLRC dismissal of his appeal, which is also prohibited, instead of interposing an appeal before the Court of Appeals. Said motion for reconsideration not having tolled the running of the reglementary period for the filing of a petition for *certiorari* under Rule 65, petitioner's petition before the appellate court was filed out of time — three months late.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 182353. June 29, 2010]

ST. JOSEPH'S COLLEGE, SR. JOSEPHINI AMBATALI, SFIC, and ROSALINDA TABUGO, *petitioners, vs.* **JAYSON MIRANDA, represented by his father, RODOLFO S. MIRANDA,** *respondent.*

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[*] Additional member per Special Order No. 843 dated May 17, 2010.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF FACTS, NOT PROPER; EXCEPTIONS.** — Jurisprudence dictates that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are considered conclusive between the parties. A review of such findings by this Court is not warranted except for highly meritorious circumstances when: (1) the findings of a trial court are grounded entirely on speculation, surmises or conjectures; (2) a lower court's inference from its factual findings is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion in the appreciation of facts; (4) the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (5) there is a misappreciation of facts; (6) the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record. None of the foregoing exceptions which would warrant a reversal of the assailed decision obtains in this instance.

2. **CIVIL LAW; FAMILY CODE; SPECIAL PARENTAL AUTHORITY; SCHOOL AND TEACHERS OVER MINOR CHILDREN WHILE UNDER THEIR SUPERVISION.** — Article 218 of the Family Code, in relation to Article 2180 of the Civil Code, bestows special parental authority on the following persons with the corresponding obligation, thus: Art. 218. The school, its administrators and teachers, or the individual, entity or institution engaged in child care shall have special parental authority and responsibility over the minor child while under their supervision, instruction or custody. Authority and responsibility shall apply to all authorized activities whether inside or outside the premises of the school, entity or institution. Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible. x x x Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

3. ID.; SPECIAL CONTRACTS; QUASI-DELICTS; THAT TEACHERS OR HEADS OF ART/TRADE ESTABLISHMENTS LIABLE FOR DAMAGES CAUSED BY STUDENTS IN THEIR CUSTODY; DAMAGE IN CASE AT BAR CAUSED BY NEGLIGENCE OF SCHOOL HEADS. — As found by both lower courts, the proximate cause of Jayson's injury was the concurrent failure of petitioners to prevent the foreseeable mishap that occurred during the conduct of the science experiment. Petitioners were negligent by failing to exercise the higher degree of care, caution and foresight incumbent upon the school, its administrators and teachers. x x x [P]etitioners cannot simply deflect their negligence and liability by insisting that petitioner Tabugo gave specific instructions to her science class not to look directly into the heated compound. x x x Both the lower courts similarly concluded that the mishap which happened during the science experiment was foreseeable by the school, its officials and teachers. This neglect in preventing a foreseeable injury and damage equates to neglect in exercising the utmost degree of diligence required of schools, its administrators and teachers, and, ultimately, was the proximate cause of the damage and injury to Jayson. As we have held in *St. Mary*'s, "for petitioner [St. Mary's Academy] to be liable, there must be a finding that the act or omission considered as negligent was the proximate cause of the injury caused because the negligence must have a causal connection to the accident."

APPEARANCES OF COUNSEL

Padilla Law Office for petitioners.
Cesar B. Brillantes & Associates for respondent.

DECISION

NACHURA, *J*.:

This petition for review on *certiorari* seeks to set aside the Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No.

[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Martin S. Villarama, Jr. (now a member of this Court) and Ramon A. Garcia, concurring; *rollo*, pp. 49-60.

68367, which affirmed *in toto* the decision[2] of the Regional Trial Court (RTC), Branch 221, Quezon City, in Civil Case No. Q-95-22889.

The facts, as found by the CA, follow:

On November 17, 1994, at around 1:30 in the afternoon inside St. Joseph College's [SJC's] premises, the class to which [respondent Jayson Val Miranda] belonged was conducting a science experiment about fusion of sulphur powder and iron fillings under the tutelage of [petitioner] Rosalinda Tabugo, she being the subject teacher and employee of [petitioner] SJC. The adviser of [Jayson's] class is x x x Estefania Abdan.

Tabugo left her class while it was doing the experiment without having adequately secured it from any untoward incident or occurrence. In the middle of the experiment, [Jayson], who was the assistant leader of one of the class groups, checked the result of the experiment by looking into the test tube with magnifying glass. The test tube was being held by one of his group mates who moved it close and towards the eye of [Jayson]. At that instance, the compound in the test tube spurted out and several particles of which hit [Jayson's] eye and the different parts of the bodies of some of his group mates. As a result thereof, [Jayson's] eyes were chemically burned, particularly his left eye, for which he had to undergo surgery and had to spend for his medication. Upon filing of this case [in] the lower court, [Jayson's] wound had not completely healed and still had to undergo another surgery.

Upon learning of the incident and because of the need for finances, [Jayson's] mother, who was working abroad, had to rush back home for which she spent ₱36,070.00 for her fares and had to forego her salary from November 23, 1994 to December 26, 1994, in the amount of at least ₱40,000.00.

Then, too, [Jayson] and his parents suffered sleepless nights, mental anguish and wounded feelings as a result of his injury due to [petitioners'] fault and failure to exercise the degree of care and diligence incumbent upon each one of them. Thus, they should be held liable for moral damages. Also, [Jayson] sent a demand letter to [petitioners] for the payment of his medical expenses as well as

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[2] Penned by Judge Noel G. Tijam (now an Associate Justice of the CA); *rollo*, pp. 73-88.

other expenses incidental thereto, which the latter failed to heed. Hence, [Jayson] was constrained to file the complaint for damages. [Petitioners], therefore, should likewise compensate [Jayson] for litigation expenses, including attorney's fees.

On the other hand, [petitioners SJC, Sr. Josephini Ambatali, SFIC, and Tabugo] alleged that [Jayson] was a grade six pupil of SJC in the school year 1994-1995. On November 17, 1994, at about 1:30 in the afternoon, the class to which [Jayson] belong[s] was conducting a science experiment under the guidance and supervision of Tabugo, the class science teacher, about fusion of sulphur powder and iron fillings by combining these elements in a test tube and heating the same. Before the science experiment was conducted, [Jayson] and his classmates were given strict instructions to follow the written procedure for the experiment and not to look into the test tube until the heated compound had cooled off. [Jayson], however, a person of sufficient age and discretion and completely capable of understanding the English language and the instructions of his teacher, without waiting for the heated compound to cool off, as required in the written procedure for the experiment and as repeatedly explained by the teacher, violated such instructions and took a magnifying glass and looked at the compound, which at that moment spurted out of the test tube, a small particle hitting one of [Jayson's] eyes.

Jayson was rushed by the school employees to the school clinic and thereafter transferred to St. Luke's Medical Center for treatment. At the hospital, when Tabago visited [Jayson], the latter cried and apologized to his teacher for violating her instructions not to look into the test tube until the compound had cooled off.

After the treatment, [Jayson] was pronounced ready for discharge and an eye test showed that his vision had not been impaired or affected. In order to avoid additional hospital charges due to the delay in [Jayson's] discharge, Rodolfo S. Miranda, [Jayson's] father, requested SJC to advance the amount of ₱26,176.35 representing [Jayson's] hospital bill until his wife could arrive from abroad and pay back the money. SJC acceded to the request.

On December 6, 1994, however, the parents of [Jayson], through counsel, wrote SJC a letter demanding that it should shoulder all the medical expenses of [Jayson] that had been incurred and will be incurred further arising from the accident caused by the science experiment. In a letter dated December 14, 1994, the counsel for SJC, represented by Sr. Josephini Ambatali, SFIC, explained that

the school cannot accede to the demand because "the accident occurred by reason of [Jayson's] failure to comply with the written procedure for the experiment and his teacher's repeated warnings and instruction that no student must face, much less look into, the opening of the test tube until the heated compound has cooled.[3]

Since SJC did not accede to the demand, Rodolfo, Jayson's father, on Jayson's behalf, sued petitioners for damages.

After trial, the RTC rendered judgment, to wit:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of [Jayson] and against [petitioners]. This Court orders and holds the [petitioners] joint[ly] and solidarily liable to pay [Jayson] the following amount:
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> 1. To pay [Jayson] the amount of ₱77,338.25 as actual damages; However, [Jayson] is ordered to reimburse [petitioner] St. Joseph College the amount of ₱26,176.36 representing the advances given to pay [Jayson's] initial hospital expenses or in the alternative to deduct said amount of ₱26,176.36 from the ₱77,338.25 actual damages herein awarded by way of legal compensation;
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> 2. To pay [Jayson] the sum of ₱50,000.00 as mitigated moral damages;
>
> 3. To pay [Jayson] the sum of ₱30,000.00 as reasonable attorney's fees;
>
> 4. To pay the costs of suit.
>
> SO ORDERED.[4]

Aggrieved, petitioners appealed to the CA. However, as previously adverted to, the CA affirmed *in toto* the ruling of the RTC, thus:

> WHEREFORE, in view of the foregoing, the assailed decision of the RTC of Quezon City, Branch 221 dated September 6, 2000 is hereby ***AFFIRMED IN TOTO***. Costs against [petitioners].[5]

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[3] *Rollo*, pp. 50-52.

[4] *Id.* at 87.

[5] *Id.* at 59.

Undaunted, petitioners appealed by *certiorari* to this Court, adamant that the CA grievously erred, thus:

I. THE COURT OF APPEALS GRIEVOUSLY ERRED IN NOT FINDING THAT THE PROXIMATE CAUSE OF JAYSON'S INJURY WAS HIS OWN ACT OF LOOKING AT THE HEATED TEST TUBE BEFORE THE COMPOUND HAD COOLED IN COMPLETE DISREGARD OF INSTRUCTIONS GIVEN PRIOR TO THE EXPERIMENT.

II. THE COURT OF APPEALS FAILED TO APPRECIATE THAT, IN LIGHT OF THE RULING IN THE CASE OF *ST. MARY'S COLLEGE V. WILLIAM CARPITANOS*, x x x JAYSON'S CONTRIBUTORY NEGLIGENCE OF PEEKING INTO THE TEST TUBE WAS IN FACT THE PROXIMATE CAUSE OF HIS INJURY FOR WHICH THE PETITIONERS SHOULD NOT BE HELD LIABLE.

III. THE COURT OF APPEALS GRIEVOUSLY ERRED IN AFFIRMING THE AWARD OF ACTUAL DAMAGES DESPITE THE ABSENCE OF PROOF TO SUPPORT THE SAME.

IV. THE LOWER COURT GRIEVOUSLY ERRED IN AWARDING MORAL DAMAGES TO [JAYSON].

V. THE COURT OF APPEALS GRIEVOUSLY ERRED IN AFFIRMING THE AWARD OF ATTORNEY'S FEES TO [JAYSON].

VI. THE LOWER COURT GRIEVOUSLY ERRED IN DENYING THE PETITIONERS' COUNTERCLAIM.[6]

We find no reason to depart from the uniform rulings of the lower courts that petitioners were "negligent since they all failed to exercise the required reasonable care, prudence, caution and foresight to prevent or avoid injuries to the students."

Jurisprudence dictates that factual findings of the trial court, especially when affirmed by the appellate court, are accorded the highest degree of respect and are considered conclusive between the parties.[7] A review of such findings by this Court

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[6] *Id.* at 17.

[7] *Titan Construction Corporation v. Uni-Field Enterprises, Inc.*, G.R. No. 153874, March 1, 2007, 517 SCRA 180, 186; *Sigaya v. Mayuga*, G.R. No. 143254, August 18, 2005, 467 SCRA 341, 353.

is not warranted except for highly meritorious circumstances when: (1) the findings of a trial court are grounded entirely on speculation, surmises or conjectures; (2) a lower court's inference from its factual findings is manifestly mistaken, absurd or impossible; (3) there is grave abuse of discretion in the appreciation of facts; (4) the findings of the appellate court go beyond the issues of the case, or fail to notice certain relevant facts which, if properly considered, will justify a different conclusion; (5) there is a misappreciation of facts; (6) the findings of fact are conclusions without mention of the specific evidence on which they are based, are premised on the absence of evidence, or are contradicted by evidence on record.[8] None of the foregoing exceptions which would warrant a reversal of the assailed decision obtains in this instance.

Yet, petitioners maintain that the proximate cause of Jayson's injury was his own negligence in disregarding the instructions given by Tabugo prior to the experiment and peeking into the test tube. Petitioners invoke our ruling in *St. Mary's Academy v. Carpitanos*[9] which absolved St. Mary's Academy from liability for the untimely death of its student during a school sanctioned activity, declaring that "the negligence of petitioner St. Mary's Academy was only a remote cause of the accident."

We are not convinced.

Contrary to petitioners' assertions, the lower courts' conclusions are borne out by the records of this case. Both courts correctly concluded that the immediate and proximate cause of the accident which caused injury to Jayson was the sudden and unexpected explosion of the chemicals, independent of any intervening cause. The assailed Decision of the CA quotes with favor the RTC decision, thus:

> In this case, [petitioners] failed to show that the negligence of [Jayson] was the proximate cause of the latter's injury. We find

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[8] *Ilao-Quianay v. Mapile*, G.R. No. 154087, October 25, 2005, 474 SCRA 246, 253; *see Child Learning Center, Inc. v. Tagorio*, G.R. No. 150920, November 25, 2005, 476 SCRA 236, 241-242.

[9] G.R. No. 143363, February 6, 2002, 376 SCRA 473, 479.

that the immediate cause of the accident was not the negligence of [Jayson] when he curiously looked into the test tube when the chemicals suddenly exploded which caused his injury, but the sudden and unexpected explosion of the chemicals independent of any intervening cause. [Petitioners] could have prevented the mishap if they exercised a higher degree of care, caution and foresight. The court *a quo* correctly ruled that:

> "All of the [petitioners] are equally at fault and are liable for negligence because all of them are responsible for exercising the required reasonable care, prudence, caution and foresight to prevent or avoid injuries to the students. The individual [petitioners] are persons charged with the teaching and vigilance over their students as well as the supervision and ensuring of their well-being. Based on the facts presented before this Court, these [petitioners] were remiss in their responsibilities and lacking in the degree of vigilance expected of them. [Petitioner] subject teacher Rosalinda Tabugo was inside the classroom when the class undertook the science experiment although [Jayson] insisted that said [petitioner] left the classroom. No evidence, however, was presented to establish that [petitioner] Tabugo was inside the classroom for the whole duration of the experiment. It was unnatural in the ordinary course of events that [Jayson] was brought to the school clinic for immediate treatment not by [petitioner] subject teacher Rosalinda Tabugo but by somebody else. The Court is inclined to believe that [petitioner] subject teacher Tabugo was not inside the classroom at the time the accident happened. The Court is also perplexed why none of the other students (who were eyewitnesses to the incident) testified in Court to corroborate the story of the [petitioners]. The Court, however, understands that these other students cannot testify for [Jayson] because [Jayson] is no longer enrolled in said school and testifying for [Jayson] would incur the ire of school authorities. Estefania Abdan is equally at fault as the subject adviser or teacher in charge because she exercised control and supervision over [petitioner] Tabugo and the students themselves. It was her obligation to insure that nothing would go wrong and that the science experiment would be conducted safely and without any harm or injury to the students. [Petitioner] Sr. Josephini Ambatali is likewise culpable under the doctrine of command responsibility because the other individual [petitioners] were under her direct control and supervision. The negligent acts

of the other individual [petitioners] were done within the scope of their assigned tasks.

x x x x x x x x x

"The defense of due diligence of a good father of a family raised by [petitioner] St. Joseph College will not exculpate it from liability because it has been shown that it was guilty of inexcusable laxity in the supervision of its teachers (despite an apparent rigid screening process for hiring) and in the maintenance of what should have been a safe and secured environment for conducting dangerous experiments. [Petitioner] school is still liable for the wrongful acts of the teachers and employees because it had full information on the nature of dangerous science experiments but did not take affirmative steps to avert damage and injury to students. The fact that there has never been any accident in the past during the conduct of science experiments is not a justification to be complacent in just preserving the *status quo* and do away with creative foresight to install safety measures to protect the students. Schools should not simply install safety reminders and distribute safety instructional manuals. More importantly, schools should provide protective gears and devices to shield students from expected risks and anticipated dangers.

"Ordinarily, the liability of teachers does not extend to the school or university itself, although an educational institution may be held liable under the principle of RESPONDENT SUPERIOR. It has also been held that the liability of the employer for the [tortuous] acts or negligence of its employees is primary and solidary, direct and immediate and not conditioned upon the insolvency of or prior recourse against the negligent employee."[10]

Under the foregoing circumstances, we are hard pressed to disturb the findings of the RTC, which the CA affirmed.

Nonetheless, petitioners make much of the fact that Tabugo specifically instructed her students, including Jayson, at the start of the experiment, not to look into the heated test tube before the compound had cooled off. Petitioners would allocate

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[10] *Rollo*, pp. 54-56.

all liability and place all blame for the accident on a twelve (12)-year-old student, herein respondent Jayson.

We disagree.

As found by both lower courts, the proximate cause of Jayson's injury was the concurrent failure of petitioners to prevent the foreseeable mishap that occurred during the conduct of the science experiment. Petitioners were negligent by failing to exercise the higher degree of care, caution and foresight incumbent upon the school, its administrators and teachers.

Article 218 of the Family Code, in relation to Article 2180 of the Civil Code, bestows special parental authority on the following persons with the corresponding obligation, thus:

> Art. 218. The school, its administrators and teachers, or the individual, entity or institution engaged in child care shall have special parental authority and responsibility over the minor child while under their supervision, instruction or custody.
>
> Authority and responsibility shall apply to all authorized activities whether inside or outside the premises of the school, entity or institution.
>
> Art. 2180. The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible.
>
> x x x x x x x x x
>
> Lastly, teachers or heads of establishments of arts and trades shall be liable for damages caused by their pupils and students or apprentices, so long as they remain in their custody.

Petitioners' negligence and failure to exercise the requisite degree of care and caution is demonstrated by the following:

1. Petitioner school did not take affirmative steps to avert damage and injury to its students although it had full information on the nature of dangerous science experiments conducted by the students during class;

2. Petitioner school did not install safety measures to protect the students who conduct experiments in class;

3. Petitioner school did not provide protective gears and devices, specifically goggles, to shield students from expected risks and dangers; and

4. Petitioner Tabugo was not inside the classroom the whole time her class conducted the experiment, specifically, when the accident involving Jayson occurred. In any event, the size of the class—fifty (50) students— conducting the experiment is difficult to monitor.

Moreover, petitioners cannot simply deflect their negligence and liability by insisting that petitioner Tabugo gave specific instructions to her science class not to look directly into the heated compound. Neither does our ruling in *St. Mary's* preclude their liability in this case.

Unfortunately for petitioners, *St. Mary's* is not in point. In that case, respondents thereat admitted the documentary exhibits establishing that the cause of the accident was a mechanical defect and not the recklessness of the minor, James Daniel II, in driving the jeep. We held, thus:

> Significantly, respondents did not present any evidence to show that the proximate cause of the accident was the negligence of the school authorities, or the reckless driving of James Daniel II. x x x.
>
> Further, there was no evidence that petitioner school allowed the minor James Daniel II to drive the jeep of respondent Vivencio Villanueva. It was Ched Villanueva, grandson of respondent Vivencio Villanueva, who had possession and control of the jeep. He was driving the vehicle and he allowed James Daniel II, a minor, to drive the jeep at the time of the accident.
>
> Hence, liability for the accident, whether caused by the negligence of the minor driver or mechanical detachment of the steering wheel guide of the jeep, must be pinned on the minor's parents primarily. The negligence of petitioner St. Mary's Academy was only a remote cause of the accident. Between the remote cause and the injury, there intervened the negligence of the minor's parents or the detachment of the steering wheel guide of the jeep.[11]

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[11] *St. Mary's Academy v. Carpitanos*, *supra* note 9, at 479.

In marked contrast, both the lower courts similarly concluded that the mishap which happened during the science experiment was foreseeable by the school, its officials and teachers. This neglect in preventing a foreseeable injury and damage equates to neglect in exercising the utmost degree of diligence required of schools, its administrators and teachers, and, ultimately, was the proximate cause of the damage and injury to Jayson. As we have held in *St. Mary's*, "for petitioner [St. Mary's Academy] to be liable, there must be a finding that the act or omission considered as negligent was the proximate cause of the injury caused because the negligence must have a causal connection to the accident."[12]

As regards the contributory negligence of Jayson, we see no need to disturb the lower courts' identical rulings thereon:

> As earlier discussed, the proximate cause of [Jayson's] injury was the explosion of the heated compound independent of any efficient intervening cause. The negligence on the part of [petitioner] Tabugo in not making sure that the science experiment was correctly conducted was the proximate cause or reason why the heated compound exploded and injured not only [Jayson] but his classmates as well. However, [Jayson] is partly responsible for his own injury, hence, he should not be entitled to recover damages in full but must likewise bear the consequences of his own negligence. [Petitioners], therefore, should be held liable only for the damages actually caused by their negligence.[13]

Lastly, given our foregoing ruling, we likewise affirm the lower courts' award of actual and moral damages, and grant of attorney's fees. The denial of petitioners' counterclaim is also in order.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CV No. 68367 is *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

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[12] *Id.* at 478, citing *Sanitary Steam Laundry, Inc. v. CA*, 360 Phil. 199, 208 (1998).

[13] *Rollo*, p. 58.

FIRST DIVISION

[G.R. No. 182497. June 29, 2010]

NURHIDA JUHURI AMPATUAN, *petitioner, vs.* **JUDGE VIRGILIO V. MACARAIG, REGIONAL TRIAL COURT, MANILA, BRANCH 37, DIRECTOR GENERAL AVELINO RAZON, JR., DIRECTOR GEARY BARIAS, PSSUPT. CO YEE M. CO, JR. and POLICE CHIEF INSPECTOR AGAPITO QUIMSON,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL PROCEEDINGS; *HABEAS CORPUS*; OBJECTIVE OF THE WRIT; WRIT SHOULD NOT BE ISSUED WHEN THE CUSTODY OVER THE PERSON IS BY VIRTUE OF A JUDICIAL PROCESS OR A VALID JUDGMENT. —** Essentially, a writ of *habeas corpus* applies to all cases of illegal confinement or detention by which any person is deprived of his liberty. Rule 102 of the 1997 Rules of Court sets forth the procedure to be followed in the issuance of the writ. x x x The objective of the writ is to determine whether the confinement or detention is valid or lawful. If it is, the writ cannot be issued. What is to be inquired into is the legality of a person's detention as of, at the earliest, the filing of the application for the writ of *habeas corpus*, for even if the detention is at its inception illegal, it may, by reason of some supervening events, such as the instances mentioned in Section 4 of Rule 102, be no longer illegal at the time of the filing of the application. Plainly stated, the writ obtains immediate relief for those who have been illegally confined or imprisoned without sufficient cause. The writ, however, should not be issued when the custody over the person is by virtue of a judicial process or a valid judgment.

2. **ID.; ID.; ID.; CRITERION FOR THE ISSUANCE OF THE WRIT. —** The most basic criterion for the issuance of the writ, therefore, is that the individual seeking such relief is illegally deprived of his freedom of movement or placed under some form of illegal restraint. If an individual's liberty is restrained *via* some legal process, the writ of *habeas corpus*

is unavailing. Fundamentally, in order to justify the grant of the writ of *habeas corpus*, the restraint of liberty must be in the nature of an illegal and involuntary deprivation of freedom of action.

3. **ID.; ID.; ID.; A PRIME SPECIFICATION OF AN APPLICATION FOR A WRIT IS AN ACTUAL AND EFFECTIVE, AND NOT MERELY NOMINAL OR MORAL, ILLEGAL RESTRAINT OF LIBERTY. —** In general, the purpose of the writ of *habeas corpus* is to determine whether or not a particular person is legally held. A prime specification of an application for a writ of *habeas corpus*, in fact, is an actual and effective, and not merely nominal or moral, illegal restraint of liberty. The writ of *habeas corpus* was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom. A prime specification of an application for a writ of *habeas corpus* is restraint of liberty. The essential object and purpose of the writ of *habeas corpus* is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient.

4. **ID.; ID.; ID.; WRIT WILL BE REFUSED ABSENT PROOF THAT THE PETITIONER IS BEING RESTRAINED OF HIS LIBERTY. —** In passing upon a petition for *habeas corpus*, a court or judge must first inquire into whether the petitioner is being restrained of his liberty. If he is not, the writ will be refused. Inquiry into the cause of detention will proceed only where such restraint exists. If the alleged cause is thereafter found to be unlawful, then the writ should be granted and the petitioner discharged. Needless to state, if otherwise, again the writ will be refused.

5. **ID.; ID.; ID.; WRIT WILL NOT ISSUE AS A MATTER OF COURSE OR AS MERE PERFUNCTORY OPERATION ON THE FILING OF THE PETITION; JUDICIAL DISCRETION IS REQUIRED. —** While *habeas corpus* is a writ of right, it will not issue as a matter of course or as a mere perfunctory operation on the filing of the petition. Judicial discretion is called for in its issuance and it must be clear to the judge to whom the petition is presented that, *prima facie*, the petitioner is entitled to the writ. It is only if the court is satisfied that a person is being unlawfully restrained of his

liberty will the petition for *habeas corpus* be granted. If the respondents are not detaining or restraining the applicant or the person in whose behalf the petition is filed, the petition should be dismissed.

6. **ID.; ID.; ID.; A RESTRICTIVE CUSTODY AND MONITORING OF MOVEMENTS OR WHEREABOUTS OF POLICE OFFICERS UNDER INVESTIGATION BY THEIR SUPERVISORS IS NOT A FORM OF ILLEGAL DETENTION OR RESTRAINT OF LIBERTY. —** In this case, PO1 Ampatuan has been placed under Restrictive Custody. Republic Act No. 6975 (also known as the Department of Interior and Local Government Act of 1990), as amended by Republic Act No. 8551 (also known as the Philippine National Police Reform and Reorganization Act of 1998), clearly provides that members of the police force are subject to the administrative disciplinary machinery of the PNP. Section 41(b) of the said law enumerates the disciplinary actions, *including restrictive custody* that may be imposed by duly designated supervisors and equivalent officers of the PNP as a matter of internal discipline. x x x. Given that PO1 Ampatuan has been placed under restrictive custody, such constitutes a valid argument for his continued detention. This Court has held that a restrictive custody and monitoring of movements or whereabouts of police officers under investigation by their superiors is not a form of illegal detention or restraint of liberty.

7. **ID.; ID.; ID.; RESTRICTIVE CUSTODY IS BEYOND THE AMBIT THEREOF. —** Restrictive custody is, at best, nominal restraint which is beyond the ambit of *habeas corpus*. It is neither actual nor effective restraint that would call for the grant of the remedy prayed for. It is a permissible precautionary measure to assure the PNP authorities that the police officers concerned are always accounted for. Since the basis of PO1 Ampatuan's restrictive custody is the administrative case filed against him, his remedy is within such administrative process.

APPEARANCES OF COUNSEL

Roberto B. Awid for petitioner.
The Solicitor General for respondents.

DECISION

PEREZ, *J.*:

Before this Court is a Petition for *Certiorari* under Rule 65[1] of the Rules of Court assailing the Order dated 25 April 2008 of the Regional Trial Court (RTC) of Manila, Branch 37, in Special Proceeding No. 08-119132 which denied the petition for *Habeas Corpus* filed by herein Petitioner Nurhida Juhuri Ampatuan in behalf of her husband Police Officer 1 Basser B. Ampatuan[2] (PO1 Ampatuan).

Petitioner alleged in her petition that her husband PO1 Ampatuan was assigned at Sultan Kudarat Municipal Police Station. On 14 April 2008, he was asked by his Chief of Police to report to the Provincial Director of Shariff Kabunsuan, Superintendent Esmael Pua Ali (Supt. Ali). The latter brought PO1 Ampatuan to Superintendent Piang Adam, Provincial Director of the Philippine National Police (PNP) Maguindanao. PO1 Ampatuan was directed to stay at the Police Provincial Office of Maguindanao without being informed of the cause of his restraint. The next day, 15 April 2008, PO1 Ampatuan was brought to the General Santos City Airport and was made to board a Philippine Airlines plane bound for Manila. Upon landing at the Manila Domestic Airport, PO1 Ampatuan was turned over to policemen of Manila and brought to Manila Mayor Alfredo Lim by Police Director Geary Barias and General Roberto Rosales. A press briefing was then conducted where it was announced that PO1 Ampatuan was arrested for the killing of two Commission on Elections (COMELEC) Officials. He was then detained at the Police Jail in United Nations Avenue, Manila. Thereafter, PO1 Ampatuan was brought to inquest Prosecutor Renato Gonzaga of the Office of the City Prosecutor of Manila due to the alleged murder of Atty. Alioden D. Dalaig, head of the Law Department of the COMELEC. On 20 April 2008,

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[1] *Certiorari,* Prohibition and *Mandamus*.

[2] Also spelled as Busser B. Ampatuan in some parts of the records.

PO1 Ampatuan was turned-over to the Regional Headquarters Support Group in Camp *Bagong Diwa*, Taguig City.[3]

Petitioner continues that on 21 April 2008, Chief Inquest Prosecutor Nelson Salva ordered the release for further investigation of PO1 Ampatuan.[4] The Order was approved by the City Prosecutor of Manila. But Police Senior Superintendent Co Yee Co, Jr., and Police Chief Inspector Agapito Quimson refused to release PO1 Ampatuan.

This prompted Petitioner to file the petition for writ of *habeas corpus* in the RTC of Manila, Branch 37.[5]

Private respondents had another version of the antecedent facts. They narrated that at around 7:08 o'clock in the evening of 10 November 2007, a sixty-four-year-old man, later identified as Atty. Alioden D. Dalaig, Head of the COMELEC Legal Department, was killed at the corner of M. H. Del Pilar and Pedro Gil Streets, Ermita, Manila. Investigation conducted by the Manila Police District (MPD) Homicide Section yielded the identity of the male perpetrator as PO1 Ampatuan. Consequently, PO1 Ampatuan was commanded to the MPD District Director for proper disposition. Likewise, inquest proceedings were conducted by the Manila Prosecutor's Office.

On 18 April 2008, Police Senior Superintendent Atty. Clarence V. Guinto, rendered his Pre-Charge Evaluation Report against PO1 Ampatuan, finding probable cause to charge PO1 Ampatuan with Grave Misconduct (Murder) and recommending that said PO1 Ampatuan be subjected to summary hearing.

On even date, a charge sheet for Grave Misconduct was executed against PO1 Ampatuan, the accusatory portion of which reads:

CHARGE SHEET

THE UNDERSIGNED NOMINAL COMPLAINANT hereby charges above-named respondent of the administrative offense of

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[3] *Rollo,* p. 3.

[4] Records, p. 9.

[5] *Id.* at 1.

Grave Misconduct (murder) pursuant to Section 52 of R.A. 8551[6] in relation to NAPOLCOM Memorandum Circular 93-024, committed as follows:

> That on or about 7:08 in the evening of November 10, 2007, in M.H. Del Pilar and Pedro Gil St., Ermita, Manila, above-named respondent while being an active member of the PNP and within the jurisdiction of this office, armed with a cal .45 pistol, with intent to kill, did then and there willfully, unlawfully and feloniously, shot Atty. Alioden D. Dalaig, Jr., COMELEC official on the different parts of his body, thereby inflicting upon the latter mortal gunshot wounds which directly cause (*sic*) his death.
>
> Acts contrary to the existing PNP Laws rules and Regulations.[7]

Also, through a Memorandum dated 18 April 2008, Police Director General Avelino I. Razon, Jr. directed the Regional Director of the National Capital Regional Police Office (NCRPO) to place PO1 Ampatuan under restrictive custody, thus:

> 1. Reference: Memo from that Office dated April 15, 2008 re Arrest of PO1 Busser Ampatuan, suspect in the killing of Atty. Alioden Dalaig and Atty. Wynee Asdala, both COMELEC Legal Officers.
> 2. This pertains to the power of the Chief, PNP embodied in Section 52 of RA 8551, to place police personnel under restrictive custody during the pendency of a grave administrative case filed against him or even after the filing of a criminal complaint, grave in nature, against such police personnel.
> 3. In this connection, you are hereby directed to place PO1 Busser Ampatuan, suspect in the killing of Atty. Alioden Dalaig and Atty. Wynee Asdala, both COMELEC Legal Officers, under your restrictive custody.
> 4. For strict compliance.[8]

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[6] *Philippine National Police Act of 1990.*

[7] Records, p. 9.

[8] *Rollo,* p. 75.

On 19 April 2008, through a Memorandum Request dated 18 April 2008, respondent Police Director Geary L. Barias requested for the creation of the Summary Hearing Board to hear the case of PO1 Ampatuan.[9]

On 20 April 2008, Special Order No. 921 was issued by Police Director Edgardo E. Acuña, placing PO1 Ampatuan under restrictive custody of the Regional Director, NCRPO, effective 19 April 2008. Said Special Order No. 921, reads:

Restrictive Custody

PO1 Basser B. Ampatuan 128677, is placed under restrictive custody of the Regional Director, NCRPO effective April 19, 2008. (Reference: Memorandum from CPNP dated 18 April 2008).

BY COMMAND OF POLICE DIRECTOR GENERAL RAZON:[10]

Meanwhile, on 21 April 2008, the City Prosecutor of Manila recommended that the case against PO1 Ampatuan be set for further investigation and that the latter be released from custody unless he is being held for other charges/legal grounds.[11]

Armed with the 21 April 2008 recommendation of the Manila City's Prosecution Office, petitioner, who is the wife of PO1 Ampatuan, filed a Petition for the Issuance of a Writ of *Habeas Corpus* before the RTC of Manila on 22 April 2008. The petition was docketed as Special Proceeding No. 08-119132 and was raffled to Branch 37.

On 24 April 2008, finding the petition to be sufficient in form and substance, respondent Judge Virgilio V. Macaraig ordered the issuance of a writ of *habeas corpus* commanding therein respondents to produce the body of PO1 Ampatuan and directing said respondents to show cause why they are withholding or restraining the liberty of PO1 Ampatuan.[12]

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[9] *Id.* at 76.

[10] *Id.* at 77.

[11] *Id.* at 78.

[12] Records, p. 24.

On 25 April 2008, the RTC resolved the Petition in its Order which reads:

Essentially, counsels for petitioner insists that PO1 Basser Ampatuan is being illegally detained by the respondents despite the order of release of Chief Inquest Prosecutor Nelson Salva dated April 21, 2008. They further claim that as of April 23, 2008, no administrative case was filed against PO1 Ampatuan.

Respondents, while admitting that to date no criminal case was filed against PO1 Ampatuan, assert that the latter is under restrictive custody since he is facing an administrative case for grave misconduct. They submitted to this Court the Pre-charge Evaluation Report and Charge Sheet. Further, in support of their position, respondents cited the case of *SPO2 Manalo, et al. v. Hon. Calderon*, G.R. No. 178920 claiming that *habeas corpus* will not lie for a PNP personnel under restrictive custody. They claim that this is authorized under Section 52, Par. 4 of R.A. 8551 authorizing the Chief of PNP to place the PNP personnel under restrictive custody during the pendency of administrative case for grave misconduct.

Petitioner countered that the administrative case filed against PO1 Ampatuan was ante-dated to make it appear that there was such a case filed before April 23, 2008.

The function of *habeas corpus* is to determine the legality of one's detention, meaning, if there is sufficient cause for deprivation or confinement and if there is none to discharge him at once. For *habeas corpus* to issue, the restraint of liberty must be in the nature of illegal and involuntary deprivation of freedom which must be actual and effective, not nominal or moral.

Granting *arguendo* that the administrative case was ante-dated, the Court cannot simply ignore the filing of an administrative case filed against PO1 Ampatuan. It cannot be denied that the PNP has its own administrative disciplinary mechanism and as clearly pointed out by the respondents, the Chief PNP is authorized to place PO1 Ampatuan under restrictive custody pursuant to Section 52, Par. 4 of R.A. 8551.

The filing of the administrative case against PO1 Ampatuan is a process done by the PNP and this Court has no authority to order the release of the subject police officer.

Lastly, anent the contention of the petitioner that the letter resignation of PO1 Ampatuan has rendered the administrative case moot and academic, the same could not be accepted by this Court. It must be stressed that the resignation has not been acted (sic) by the appropriate police officials of the PNP, and that the administrative case was filed while PO1 Ampatuan is still in the active status of the PNP.

WHEREFORE, premises considered, the petition for *habeas corpus* is hereby DISMISSED.[13]

Distressed, petitioner is now before this Court *via* a Petition for *Certiorari* under Rule 65 of the Rules of Court to question the validity of the RTC Order dated 25 April 2008. The issues are:

I. THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION WHEN IT FAILED TO CONSIDER THAT THE ARREST AND DETENTION OF PO1 BASSER B. AMPATUAN WAS MADE WITHOUT ANY WARRANT AND THEREFORE, ILLEGAL;

II. THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION WHEN IT CONCEDED THE AUTHORITY OF RESPONDENT AVELINO RAZON, JR. UNDER SEC. 52, PAR. 4, R.A. 8551 TO PLACE AMPATUAN UNDER RESTRICTIVE CUSTODY FOR ADMINISTRATIVE PROCEEDINGS;

III. THE RESPONDENT COURT GRAVELY ABUSED ITS DISCRETION WHEN IT SHIRKED FROM ITS JUDICIAL DUTY TO ORDER THE RELEASE OF PO1 AMPATUAN FROM THE CUSTODY OF RESPONDENTS *MAMANG PULIS.*[14]

Essentially, a writ of *habeas corpus* applies to all cases of illegal confinement or detention by which any person is deprived of his liberty.[15]

Rule 102 of the 1997 Rules of Court sets forth the procedure to be followed in the issuance of the writ. The Rule provides:

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[13] *Rollo,* pp. 17-18.

[14] *Id.* at 10.

[15] *Moncupa v. Enrile,* 225 Phil. 191, 197 (1986).

RULE 102

HABEAS CORPUS

SECTION 1. *To what habeas corpus extends*. — Except as otherwise expressly provided by law, the writ of *habeas corpus* shall extend to all cases of illegal confinement or detention by which any person is deprived of his liberty, or by which the rightful custody of any person is withheld from the person entitled thereto.

SEC 2. *Who may grant the writ*. — The writ of *habeas corpus* may be granted by the Supreme Court, or any member thereof, on any day and at any time, or by the Court of Appeals or any member thereof in the instances authorized by law, and if so granted it shall be enforceable anywhere in the Philippines, and may be made returnable before the court or any member thereof, or before a Court of First Instance, or any judge thereof for hearing and decision on the merits. It may also be granted by a Court of First Instance, or a judge thereof, on any day and at any time, and returnable before himself, enforceable only within his judicial district.

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SEC. 4. *When writ not allowed or discharge authorized*. – If it appears that the person alleged to be restrained of his liberty is in the custody of an officer under process issued by a court or judge or by virtue of a judgment or order of a court of record, and that the court or judge had jurisdiction to issue the process, render the judgment, or make the order, the writ shall not be allowed; or if the jurisdiction appears after the writ is allowed, the person shall not be discharged by reason of any informality or defect in the process, judgment, or order. Nor shall anything in this rule be held to authorize the discharge of a person charged with or convicted of an offense in the Philippines, or of a person suffering imprisonment under lawful judgment.

The objective of the writ is to determine whether the confinement or detention is valid or lawful. If it is, the writ cannot be issued. What is to be inquired into is the legality of a person's detention as of, at the earliest, the filing of the application for the writ of *habeas corpus*, for even if the detention is at its inception illegal, it may, by reason of some supervening events, such as the instances mentioned in Section 4

of Rule 102, be no longer illegal at the time of the filing of the application.[16]

Plainly stated, the writ obtains immediate relief for those who have been illegally confined or imprisoned without sufficient cause. The writ, however, should not be issued when the custody over the person is by virtue of a judicial process or a valid judgment.[17]

The most basic criterion for the issuance of the writ, therefore, is that the individual seeking such relief is illegally deprived of his freedom of movement or placed under some form of illegal restraint. If an individual's liberty is restrained *via* some legal process, the writ of *habeas corpus* is unavailing.[18] Fundamentally, in order to justify the grant of the writ of *habeas corpus*, the restraint of liberty must be in the nature of an illegal and involuntary deprivation of freedom of action.[19]

In general, the purpose of the writ of *habeas corpus* is to determine whether or not a particular person is legally held. A prime specification of an application for a writ of *habeas corpus*, in fact, is an actual and effective, and not merely nominal or moral, illegal restraint of liberty. The writ of *habeas corpus* was devised and exists as a speedy and effectual remedy to relieve persons from unlawful restraint, and as the best and only sufficient defense of personal freedom. A prime specification of an application for a writ of *habeas corpus* is restraint of liberty. The essential object and purpose of the writ of *habeas corpus* is to inquire into all manner of involuntary restraint as distinguished from voluntary, and to relieve a person therefrom

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[16] *Go, Sr. v. Ramos,* G.R. No. 167569, 4 September 2009, 598 SCRA 266, 301.

[17] *Id.*

[18] *In Re: The Writ of Habeas Corpus for Reynaldo De Villa,* G.R. No. 158802, 17 November 2004, 442 SCRA 706, 719.

[19] *Veluz v. Villanueva,* G.R. No. 169482, 29 January 2008, 543 SCRA 63, 67-68.

if such restraint is illegal. Any restraint which will preclude freedom of action is sufficient.[20]

In passing upon a petition for *habeas corpus*, a court or judge must first inquire into whether the petitioner is being restrained of his liberty. If he is not, the writ will be refused. Inquiry into the cause of detention will proceed only where such restraint exists. If the alleged cause is thereafter found to be unlawful, then the writ should be granted and the petitioner discharged. Needless to state, if otherwise, again the writ will be refused.[21]

While *habeas corpus* is a writ of right, it will not issue as a matter of course or as a mere perfunctory operation on the filing of the petition. Judicial discretion is called for in its issuance and it must be clear to the judge to whom the petition is presented that, *prima facie*, the petitioner is entitled to the writ. It is only if the court is satisfied that a person is being unlawfully restrained of his liberty will the petition for *habeas corpus* be granted. If the respondents are not detaining or restraining the applicant or the person in whose behalf the petition is filed, the petition should be dismissed.[22]

Petitioner contends that when PO1 Ampatuan was placed under the custody of respondents on 20 April 2008, there was yet no administrative case filed against him. When the release order of Chief Inquest Prosecutor Nelson Salva was served upon respondents on 21 April 2008, there was still no administrative case filed against PO1 Ampatuan. She also argues that the arrest on 14 April 2008 of PO1 Ampatuan in Shariff Kabunsuan was illegal because there was no warrant of arrest issued by any judicial authority against him.

On the other hand, respondents, in their Comment[23] filed by the Office of the Solicitor General, argue that the trial court correctly denied the subject petition. Respondents maintain that

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[20] *Id.* at 68.

[21] *Id.*

[22] *Id.* at 68-69.

[23] *Rollo,* pp. 45-70.

while the Office of the City Prosecutor of Manila had recommended that PO1 Ampatuan be released from custody, said recommendation was made only insofar as the criminal action for murder that was filed with the prosecution office is concerned and is without prejudice to other legal grounds for which he may be held under custody. In the instant case, PO1 Ampatuan is also facing administrative charges for Grave Misconduct. They cited the case of *Manalo v. Calderon*,[24] where this Court held that a petition for *habeas corpus* will be given due course only if it shows that petitioner is being detained or restrained of his liberty unlawfully, but a restrictive custody and monitoring of movements or whereabouts of police officers under investigation by their superiors is not a form of illegal detention or restraint of liberty.[25]

The Solicitor General is correct.

In this case, PO1 Ampatuan has been placed under Restrictive Custody. Republic Act No. 6975 (also known as the Department of Interior and Local Government Act of 1990), as amended by Republic Act No. 8551 (also known as the Philippine National Police Reform and Reorganization Act of 1998), clearly provides that members of the police force are subject to the administrative disciplinary machinery of the PNP. Section 41(b) of the said law enumerates the disciplinary actions, *including restrictive custody* that may be imposed by duly designated supervisors and equivalent officers of the PNP as a matter of internal discipline. The pertinent provision of Republic Act No. 8551 reads:

Sec. 52 – x x x.

x x x x x x x x x

4. The Chief of the PNP shall have the power to impose the disciplinary punishment of dismissal from the service; suspension or forfeiture of salary; or any combination thereof for a period not exceeding one hundred eighty (180) days. ***Provided, further,*** **That the Chief**

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[24] G.R. No. 178920, October 15, 2007, 536 SCRA 290.

[25] *Id.* at 294.

of the PNP shall have the authority to place police personnel under restrictive custody during the pendency of a grave administrative case filed against him or even after the filing of a criminal complaint, grave in nature, against such police personnel. [Emphasis ours].

Given that PO1 Ampatuan has been placed under restrictive custody, such constitutes a valid argument for his continued detention. This Court has held that a restrictive custody and monitoring of movements or whereabouts of police officers under investigation by their superiors is not a form of illegal detention or restraint of liberty.[26]

Restrictive custody is, at best, nominal restraint which is beyond the ambit of *habeas corpus*. It is neither actual nor effective restraint that would call for the grant of the remedy prayed for. It is a permissible precautionary measure to assure the PNP authorities that the police officers concerned are always accounted for.[27]

Since the basis of PO1 Ampatuan's restrictive custody is the administrative case filed against him, his remedy is within such administrative process.

We likewise note that PO1 Ampatuan has been under restrictive custody since 19 April 2008. To date, the administrative case against him should have already been resolved and the issue of his restrictive custody should have been rendered moot and academic, in accordance with Section 55 of Republic Act No. 8551, which provides:

SEC. 55. Section 47 of Republic Act No. 6975 is hereby amended to read as follows:

Sec. 47. *Preventive Suspension Pending Criminal Case*. — Upon the filing of a complaint or information sufficient in form and substance against a member of the PNP for grave felonies where the penalty imposed by law is six (6) years and one (1) day or more,

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[26] *Manalo v. Calderon*, *supra* note 24 at 294.

[27] *Id.* at 307.

the court shall immediately suspend the accused from office for a period not exceeding ninety (90) days from arraignment: *Provided, however*, That if it can be shown by evidence that the accused is harassing the complainant and/or witnesses, the court may order the preventive suspension of the accused PNP member even if the charge is punishable by a penalty lower than six (6) years and one (1) day: *Provided, further*, That the preventive suspension shall not be more than ninety (90) days except if the delay in the disposition of the case is due to the fault, negligence or petitions of the respondent: *Provided, finally*, That such preventive suspension may be sooner lifted by the court in the exigency of the service upon recommendation of the Chief, PNP. **Such case shall be subject to continuous trial and shall be terminated within ninety (90) days from arraignment of the accused**. (Emphasis supplied.)

Having conceded that there is no grave abuse of discretion on the part of the trial court, we have to dismiss the petition.

In sum, petitioner is unable to discharge the burden of showing that she is entitled to the issuance of the writ prayed for in behalf of her husband, PO1 Ampatuan. The petition fails to show on its face that the latter is unlawfully deprived of his liberty guaranteed and enshrined in the Constitution.

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

Costs against petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *del Castillo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 183374. June 29, 2010]

MARSMAN DRYSDALE LAND, INC., *petitioner, vs.* **PHILIPPINE GEOANALYTICS, INC. and GOTESCO PROPERTIES, INC.,** *respondents.*

[G.R. No. 183376. June 29, 2010]

GOTESCO PROPERTIES, INC., *petitioner, vs.* **MARSMAN DRYSDALE LAND, INC. and PHILIPPINE GEOANALYTICS, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW; EXAMINATION OF FACTS IS BEYOND THE AMBIT THEREOF; THE SUPREME COURT IS NOT A TRIER OF FACTS; EXCEPTIONS; NOT APPLICABLE TO CASE AT BAR. —** On the issue of whether PGI was indeed entitled to the payment of services it rendered, the Court sees no imperative to re-examine the congruent findings of the trial and appellate courts thereon. Undoubtedly, the exercise involves an examination of facts which is normally beyond the ambit of the Court's functions under a petition for review, for it is well-settled that this Court is not a trier of facts. While this judicial tenet admits of exceptions, such as when the findings of facts of the appellate court are contrary to those of the trial court's, or when the judgment is based on a misapprehension of facts, or when the findings of facts are contradicted by the evidence on record, these extenuating grounds find no application in the present petitions.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; JOINT AND SOLIDARY OBLIGATION; SOLIDARY OBLIGATION, WHEN PRESENT; LIABILITY OF MARSMAN DRYSDALE AND GOTESCO TO PGI IS JOINT. —** The Court finds Marsman Drysdale and Gotesco ***jointly*** liable to PGI. PGI executed a technical service contract with the joint venture and was never a party to the JVA. While the JVA clearly spelled

out, *inter alia*, the capital contributions of Marsman Drysdale (land) and Gotesco (cash) as well as the funding and financing mechanism for the project, the same cannot be used to defeat the lawful claim of PGI against the two joint venturers-partners. The TSC clearly listed the joint venturers Marsman Drysdale and Gotesco as the beneficial owner of the project, and all billing invoices indicated the consortium therein as the client. As the appellate court held, Articles 1207 and 1208 of the Civil Code, which respectively read: Art. 1207. The concurrence of two or more creditors or of **two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestations**. There is a solidary liability only when the obligation expressly so states, or when the law or nature of the obligation requires solidarity. Art. 1208. If from the law, or the nature or the wording of the obligations to which the preceding article refers the contrary does not appear, **the credit or debt shall be presumed to be divided into as many equal shares as there are creditors or debtors**, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits. presume that the obligation owing to PGI is joint between Marsman Drysdale and Gotesco.

3. **ID.; ID.; PARTNERSHIP; JOINT VENTURE IS A FORM OF PARTNERSHIP; DIVISION OF LOSSES, RULE. —** The only time that the JVA may be made to apply in the present petitions is when the liability of the joint venturers to each other would set in. A joint venture being a form of partnership, it is to be governed by the laws on partnership. Article 1797 of the Civil Code provides: Art. 1797. The losses and profits shall be distributed in conformity with the agreement**. If only the share of each partner in the profits has been agreed upon, the share of each in the losses shall be in the same proportion.** x x x. In the JVA, Marsman Drysdale and Gotesco agreed on a 50-50 ratio on the proceeds of the project. They did not provide for the splitting of losses, however. Applying the above-quoted provision of Article 1797 then, the same ratio applies in splitting the ₱535,353.50 obligation-loss of the joint venture.

4. **ID.; ID.; ID.; ID.; ID.; ALLOWING RECOVERY OF WHAT HAS BEEN PAID IS NOT ONLY CONTRARY TO THE RULE ON DIVISION OF LOSSES BUT ALSO PARTAKES**

OF UNJUST ENRICHMENT. — The appellate court's decision must be modified, however. Marsman Drysdale and Gotesco being jointly liable, there is no need for Gotesco to reimburse Marsman Drysdale for "50% of the aggregate sum due" to PGI. Allowing Marsman Drysdale to recover from Gotesco what it paid to PGI would not only be contrary to the law on partnership on division of losses but would partake of a clear case of unjust enrichment at Gotesco's expense. The grant by the lower courts of Marsman Drysdale cross-claim against Gotesco was thus erroneous.

5. **ID.; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF, UNWARRANTED. —** Marsman Drysdale's supplication for the award of attorney's fees in its favor must be denied. It cannot claim that it was compelled to litigate or that the civil action or proceeding against it was clearly unfounded, for the JVA provided that, in the event a party advances funds for the project, the joint venture shall repay the advancing party. Marsman Drysdale was thus not precluded from advancing funds to pay for PGI's contracted services to abate any legal action against the joint venture itself. It was in fact hardline insistence on Gotesco having sole responsibility to pay for the obligation, despite the fact that PGI's services redounded to the benefit of the joint venture, that spawned the legal action against it and Gotesco.

6. **ID.; ID.; INTEREST; 12% INTEREST PER ANNUM ON THE OUTSTANDING OBLIGATION IMPOSED FROM THE TIME OF DEMAND. —** An interest of 12% per annum on the outstanding obligation must be imposed from the time of demand as the delay in payment makes the obligation one of forbearance of money, conformably with this Court's ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals.* Marsman Drysdale and Gotesco should bear legal interest on their respective obligations.

APPEARANCES OF COUNSEL

Chavez Miranda Aseoche Law Offices for Marsman Drysdale Land, Inc.

Pacheco Law Offices for Gotesco Properties, Inc.

*Yorac Arroyo Chua Caedo & Coronel Law Offi*ces for Geoanalytics, Inc.

D E C I S I O N

CARPIO MORALES, *J.*:

On February 12, 1997, Marsman Drysdale Land, Inc. (Marsman Drysdale) and Gotesco Properties, Inc. (Gotesco) entered into a Joint Venture Agreement (JVA) for the construction and development of an office building on a land owned by Marsman Drysdale in Makati City.[1]

The JVA contained the following pertinent provisions:

SECTION 4. CAPITAL OF THE JV

It is the desire of the Parties herein to implement this Agreement by **investing in the PROJECT on a FIFTY (50%) PERCENT-FIFTY (50%) PERCENT basis**.

4.1. Contribution of [Marsman Drysdale] — **[Marsman Drysdale] shall contribute the Property.**

The total appraised value of the Property is PESOS: FOUR HUNDRED TWENTY MILLION (₱420,000,000.00).

For this purpose, [Marsman Drysdale] shall deliver the Property in a buildable condition within ninety (90) days from signing of this Agreement barring any unforeseen circumstances over which [Marsman Drysdale] has no control. Buildable condition shall mean that the old building/structure which stands on the Property is demolished and taken to ground level.

4.2. Contribution of [Gotesco] — **[Gotesco] shall contribute the amount of PESOS: FOUR HUNDRED TWENTY MILLION (₱420,000,000.00) in cash** which shall be payable as follows:

4.2.1. The amount of PESOS: FIFTY MILLION (₱50,000,000.00) upon signing of this Agreement.

4.2.2. The balance of PESOS: THREE HUNDRED SEVENTY MILLION (₱370,000,000.00) shall be paid based on progress billings, relative to the development and

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[1] I Records, pp. 101-120.

construction of the Building, but shall in no case exceed ten (10) months from delivery of the Property in a Buildable condition as defined in section 4.1.

A joint account shall be opened and maintained by both Parties for handling of said balance, among other Project concerns.

4.3. Funding and Financing

4.3.1 Construction funding for the Project shall be obtained from the cash contribution of [Gotesco].

4.3.2 Subsequent funding shall be obtained from the pre-selling of units in the Building or, when necessary, from loans from various banks or financial institutions. [Gotesco] shall arrange the required funding from such banks or financial institutions, under such terms and conditions which will provide financing rates favorable to the Parties.

4.3.3 [Marsman Drysdale] shall not be obligated to fund the Project as its contribution is limited to the Property.

4.3.4 If the cost of the Project exceeds the cash contribution of [Gotesco], the proceeds obtained from the pre-selling of units and proceeds from loans, the Parties shall agree on other sources and terms of funding such excess as soon as practicable.

4.3.5 x x x.

4.3.6 x x x.

4.3.7 x x x.

4.3.8 All funds advanced by a Party (or by third parties in substitution for advances from a Party) **shall be repaid by the JV**.

4.3.9 If any Party agrees to make an advance to the Project but fails to do so (in whole or in part) the other party may advance the shortfall and the Party in default shall indemnify the Party making the substitute advance on demand for all of its losses, costs and

> **expenses incurred in so doing**. (emphasis supplied; underscoring in the original)

Via Technical Services Contract (TSC) dated July 14, 1997,[2] the joint venture engaged the services of Philippine Geoanalytics, Inc. (PGI) to provide subsurface soil exploration, laboratory testing, seismic study and geotechnical engineering for the project. PGI, was, however, able to drill only four of five boreholes needed to conduct its subsurface soil exploration and laboratory testing, justifying its failure to drill the remaining borehole to the failure on the part of the joint venture partners to clear the area where the drilling was to be made.[3] PGI was able to complete its seismic study though.

PGI then billed the joint venture on November 24, 1997 for ₱284,553.50 representing the cost of partial subsurface soil exploration; and on January 15, 1998 for ₱250,800 representing the cost of the completed seismic study.[4]

Despite repeated demands from PGI,[5] the joint venture failed to pay its obligations.

Meanwhile, due to unfavorable economic conditions at the time, the joint venture was cut short and the planned building project was eventually shelved.[6]

PGI subsequently filed on November 11, 1999 a complaint for collection of sum of money and damages at the Regional Trial Court (RTC) of Quezon City against Marsman Drysdale and Gotesco.

In its Answer with Counterclaim and Cross-claim, Marsman Drysdale passed the responsibility of paying PGI to Gotesco

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[2] *Id.* at pp. 6-31.

[3] *Id.* at p. 2.

[4] *Id.* at pp. 33 and 36. Covered by Billing Invoice Nos. 437 and 526, respectively.

[5] *Id.* at pp. 222, 224, and 225; Exhibits "E"; "F" and "G".

[6] II Records, pp. 397-398. See also Transcript of Stenographic Notes, August 21, 2001, p. 8.

which, under the JVA, was solely liable for the monetary expenses of the project.[7]

Gotesco, on the other hand, countered that PGI has no cause of action against it as PGI had yet to complete the services enumerated in the contract; and that Marsman Drysdale failed to clear the property of debris which prevented PGI from completing its work.[8]

By Decision of June 2, 2004,[9] Branch 226 of the Quezon City RTC rendered judgment in favor of PGI, disposing as follows:

> WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of plaintiff [PGI].
>
> The defendants [Gotesco] and [Marsman Drysdale] are ordered to pay plaintiff, **jointly**:
>
> (1) the sum of ₱535,353.50 with legal interest from the date of this decision until fully paid;
>
> (2) the sum of ₱200,000.00 as exemplary damages;
>
> (3) the sum of ₱200,000.00 as and for attorney's fees; and
>
> (4) costs of suit.
>
> The cross-claim of defendant [Marsman Drysdale] against defendant [Gotesco] is hereby GRANTED as follows:
>
> a) Defendant [Gotesco] is ordered to reimburse co-defendant [Marsman Drysdale] in the amount of ₱535,353.[50] in accordance with the [JVA].
>
> b) Defendant [Gotesco] is further ordered to pay co-defendant [Marsman Drysdale] the sum of ₱100,000.00 as and for attorney's fees.
>
> SO ORDERED. (underscoring in the original; emphasis supplied)

Marsman Drysdale moved for partial reconsideration, contending that it should not have been held jointly liable with

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[7] I Records, pp. 92-94.

[8] *Id.* at p. 70.

[9] II Records, pp. 505-530. Penned by Judge Leah S. Domingo Regala.

Gotesco on PGI's claim as well as on the awards of exemplary damages and attorney's fees. The motion was, by Resolution of October 28, 2005, denied.

Both Marsman Drysdale and Gotesco appealed to the Court of Appeals which, by Decision of January 28, 2008,[10] **affirmed with modification** the decision of the trial court. Thus the appellate court disposed:

WHEREFORE, premises considered, the instant appeal is **PARTLY GRANTED**. The assailed Decision dated June 2, 2004 and the Resolution dated October 28, 2005 of the RTC of Quezon City, Branch 226, in Civil Case No. Q99-39248 are hereby **AFFIRMED with MODIFICATION** deleting the award of exemplary damages in favor of [PGI] and the ₱100,000.00 attorney's fees in favor of [Marsman Drysdale] and ordering defendant-appellant [Gotesco] to **REIMBURSE** [Marsman Drysdale] 50% of the aggregate sum due [PGI], instead of the lump sum ₱535,353.00 awarded by the RTC. The rest of the Decision stands.

SO ORDERED. (capitalization and emphasis in the original; underscoring supplied)

In partly affirming the trial court's decision, the appellate court ratiocinated that notwithstanding the terms of the JVA, the joint venture cannot avoid payment of PGI's claim since "[the JVA] could not affect third persons like [PGI] because of the basic civil law principle of relativity of contracts which provides that contracts can only bind the parties who entered into it, and it cannot favor or prejudice a third person, even if he is aware of such contract and has acted with knowledge thereof."[11]

Their motions for partial reconsideration having been denied,[12] Marsman Drysdale and Gotesco filed separate petitions for review with the Court which were docketed as G.R. Nos. 183374 and

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[10] CA *rollo*, pp. 274-282. Penned by Associate Justice Estela M. Perlas-Bernabe with Associate Justices Portia Aliño-Hormachuelos and Lucas P. Bersamin (now a member of the Court).

[11] *Id.* at p. 278.

[12] *Id.* at p. 322.

183376, respectively. By Resolution of September 8, 2008, the Court consolidated the petitions.

In G.R. No. 183374, Marsman Drysdale imputes error on the appellate court in

A. …ADJUDGING [MARSMAN DRYSDALE] WITH JOINT LIABILITY AFTER CONCEDING THAT [GOTESCO] SHOULD ULTIMATELY BE SOLELY LIABLE TO [PGI].

B. …AWARDING ATTORNEY'S FEES IN FAVOR OF [PGI]…

C. …IGNORING THE FACT THAT [PGI] DID NOT COMPLY WITH THE REQUIREMENT OF "SATISFACTORY PERFORMANCE" OF ITS PRESTATION WHICH, PURSUANT TO THE TECHNICAL SERVICES CONTRACT, IS THE CONDITION *SINE QUA NON* TO COMPENSATION.

D. …DISREGARDING CLEAR EVIDENCE SHOWING [MARSMAN DRYSDALE'S] ENTITLEMENT TO AN AWARD OF ATTORNEY'S FEES.[13]

On the other hand, in G.R. No. 183376, Gotesco peddles that the appellate court committed error when it

…ORDERED [GOTESCO] TO PAY ₱535,353.50 AS COST OF THE WORK PERFORMED BY [PGI] AND ₱100,000.00 [AS] ATTORNEY'S FEES …[AND] TO REIMBURSE [MARSMAN DRYSDALE] 50% OF ₱535,353.50 AND PAY [MARSMAN DRYSDALE] ₱100,000.00 AS ATTORNEY'S FEES.[14]

On the issue of whether PGI was indeed entitled to the payment of services it rendered, the Court sees no imperative to re-examine the congruent findings of the trial and appellate courts thereon. Undoubtedly, the exercise involves an examination of facts which is normally beyond the ambit of the Court's functions under a petition for review, for it is well-settled that this Court is not a trier of facts. While this judicial tenet admits of exceptions, such as when the findings of facts of the appellate court are contrary to those of the trial court's, or when the judgment is

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[13] *Rollo* (G.R. No. 183374), pp. 19-20.

[14] *Rollo* (G.R. No. 183376), p. 19.

based on a misapprehension of facts, or when the findings of facts are contradicted by the evidence on record,[15] these extenuating grounds find no application in the present petitions.

AT ALL EVENTS, the Court is convinced that PGI had more than sufficiently established its claims against the joint venture. In fact, Marsman Drysdale had long recognized PGI's contractual claims when it (PGI) received a Certificate of Payment[16] from the joint venture's project manager[17] which was endorsed to Gotesco for processing and payment.[18]

The *core issue* to be resolved then is which between joint venturers Marsman Drysdale and Gotesco bears the liability to pay PGI its unpaid claims.

To Marsman Drysdale, it is Gotesco since, under the JVA, construction funding for the project was to be obtained from Gotesco's cash contribution, as its (Marsman Drysdale's) participation in the venture was limited to the land.

Gotesco maintains, however, that it has no liability to pay PGI since it was due to the fault of Marsman Drysdale that PGI was unable to complete its undertaking.

The Court finds Marsman Drysdale and Gotesco ***jointly*** liable to PGI.

PGI executed a technical service contract with the joint venture and was never a party to the JVA. While the JVA clearly spelled out, *inter alia*, the capital contributions of Marsman Drysdale (land) and Gotesco (cash) as well as the funding and financing mechanism for the project, the same cannot be used to defeat the lawful claim of PGI against the two joint venturers-partners.

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[15] *La Rosa v. Ambassador Hotel*, G.R. No. 177059, March 13, 2009, 581 SCRA 340, 345-346.

[16] I Records, pp. 218-221; Exhibits "B", "C" and "D".

[17] Lawrence Campbell.

[18] I Records, p. 223; Exhibit "E-2".

The TSC clearly listed the joint venturers Marsman Drysdale and Gotesco as the beneficial owner of the project,[19] and all billing invoices indicated the consortium therein as the client.

As the appellate court held, Articles 1207 and 1208 of the Civil Code, which respectively read:

> Art. 1207. The concurrence of two or more creditors or of **two or more debtors in one and the same obligation does not imply that each one of the former has a right to demand, or that each one of the latter is bound to render, entire compliance with the prestations**. There is a solidary liability only when the obligation expressly so states, or when the law or nature of the obligation requires solidarity.
>
> Art. 1208. If from the law, or the nature or the wording of the obligations to which the preceding article refers the contrary does not appear, **the credit or debt shall be presumed to be divided into as many equal shares as there are creditors or debtors**, the credits or debts being considered distinct from one another, subject to the Rules of Court governing the multiplicity of suits. (emphasis and underscoring supplied)

presume that the obligation owing to PGI is joint between Marsman Drysdale and Gotesco.

The only time that the JVA may be made to apply in the present petitions is when the liability of the joint venturers to each other would set in.

A joint venture being a form of partnership, it is to be governed by the laws on partnership.[20] Article 1797 of the Civil Code provides:

> Art. 1797. The losses and profits shall be distributed in conformity with the agreement**. If only the share of each partner in the profits has been agreed upon, the share of each in the losses shall be in the same proportion.**

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[19] In the Technical Services Contract's SC-1 Definitions portion, it was stated that "OWNER means Marsman-Drysdale Land, Inc./Gotesco Properties, Inc., a Joint Venture and its authorized representatives and successors in interest."

[20] *Aurbach v. Sanitary Wares Manufacturing Corp.*, G.R. No. 75875, December 15, 1989, 180 SCRA 130, 146-147.

In the absence of stipulation, the share of each in the profits and losses shall be in proportion to what he may have contributed, but the industrial partner shall not be liable for the losses. As for the profits, the industrial partner shall receive such share as may be just and equitable under the circumstances. If besides his services he has contributed capital, he shall also receive a share in the profits in proportion to his capital. (emphasis and underscoring supplied)

In the JVA, Marsman Drysdale and Gotesco agreed on a 50-50 ratio on the proceeds of the project.[21] They did not provide for the splitting of losses, however. Applying the above-quoted provision of Article 1797 then, the same ratio applies in splitting the ₱535,353.50 obligation-loss of the joint venture.

The appellate court's decision must be modified, however. Marsman Drysdale and Gotesco being jointly liable, there is no need for Gotesco to reimburse Marsman Drysdale for "50% of the aggregate sum due" to PGI.

Allowing Marsman Drysdale to recover from Gotesco what it paid to PGI would not only be contrary to the law on partnership on division of losses but would partake of a clear case of unjust enrichment at Gotesco's expense. The grant by the lower courts of Marsman Drysdale cross-claim against Gotesco was thus erroneous.

Marsman Drysdale's supplication for the award of attorney's fees in its favor must be denied. It cannot claim that it was compelled to litigate or that the civil action or proceeding against it was clearly unfounded, for the JVA provided that, in the event a party advances funds for the project, the joint venture shall repay the advancing party.[22]

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[21] I Records, p. 107. Section 8 of the JVA states that: "x x x. a) proceeds from the JV shall be shared equally on a 50:50 ratio between the Parties unless such ratio is changed due to additional investments as provided in Section 4.3; x x x."

[22] I Records, p. 105. The JVA states that: "x x x. 4.3.8. All funds advanced by a Party (or by third parties in substitution for advances from a Party) shall be repaid by the [joint venture]. x x x."

Marsman Drysdale was thus not precluded from advancing funds to pay for PGI's contracted services to abate any legal action against the joint venture itself. It was in fact hardline insistence on Gotesco having sole responsibility to pay for the obligation, despite the fact that PGI's services redounded to the benefit of the joint venture, that spawned the legal action against it and Gotesco.

Finally, an interest of 12% per annum on the outstanding obligation must be imposed from the time of demand[23] as the delay in payment makes the obligation one of forbearance of money, conformably with this Court's ruling in *Eastern Shipping Lines, Inc. v. Court of Appeals.*[24] Marsman Drysdale and Gotesco should bear legal interest on their respective obligations.

WHEREFORE, the assailed Decision and Resolution of the Court of Appeals are *AFFIRMED with MODIFICATION* in that the order for Gotesco to reimburse Marsman Drysdale is *DELETED*, and interest of 12% per annum on the respective obligations of Marsman Drysdale and Gotesco is imposed, computed from the last demand or on January 5, 1999 up to the finality of the Decision.

If the adjudged amount and the interest remain unpaid thereafter, the interest rate shall be 12% per annum computed from the time the judgment becomes final and executory until it is fully satisfied. The appealed decision is, in all other respects, affirmed.

Costs against petitioners Marsman Drysdale and Gotesco.

SO ORDERED.

Carpio,[*] *Brion, Abad,*[**] and *Villarama, Jr., JJ.,* concur.

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[23] *Vide*: I Records, p. 40. The last demand letter from PGI is dated January 5, 1999.

[24] G.R. No. 97412, July 12, 1994, 234 SCRA 78.

[*] Additional member per Raffle dated June 16, 2010.

[**] Additional member per Special Order No. 843 dated May 17, 2010.

EN BANC

[G.R. No. 183479. June 29, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **JERRY R. PEPINO and DAISY M. BALAAN,** *appellants.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; JUDGMENTS; ACCUSED'S APPEAL SHALL BE DISMISSED WHERE HE FAILED TO ATTEND THE PROMULGATION OF JUDGMENT WITHOUT ANY JUSTIFIABLE CAUSE AND CONTINUES TO BE A FUGITIVE FROM JUSTICE. —** Since Daisy, without proferring any justifiable cause, failed to attend the promulgation of judgment and continues to be a fugitive from justice to date, her appeal must be dismissed. So Section 6 of Rule 120 of the Revised Rules of Court instructs: SEC. 6. Promulgation of judgment. — The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court. x x x. **If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest.** Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice.

2. **ID.; ID.; ARREST; ANY IRREGULARITY ATTENDING THE ARREST OF AN ACCUSED SHOULD BE TIMELY RAISED IN A MOTION TO QUASH THE INFORMATION AT ANY TIME BEFORE ARRAIGNMENT. —** As to the alleged illegality of Pepino's arrest, it is settled that any irregularity attending the arrest of an accused should be timely

raised in a motion to quash the Information at any time before arraignment, failing which he is deemed to have waived. Since Pepino did not raise such alleged irregularity early on, he is now estopped.

3. **ID.; EVIDENCE; IDENTIFICATION OF THE ACCUSED; IN-COURT IDENTIFICATION OF THE ACCUSED BY THE VICTIM WAS SUFFICIENT TO ESTABLISH HIS IDENTITY AS ONE OF THE MALEFACTORS. —** Pepino belatedly harps on the victim's alleged failure to immediately identify him in a line-up at the National Bureau of Investigation. He draws attention to the victim's *Sinumpaang Salaysay* reflecting that she only pointed to Pelenio and Daisy in the line-up. Pepino's position fails to persuade. The victim's *in-court identification* was more than sufficient to establish his identity as one of the malefactors. The victim's *Sinumpaang Salaysay* is generally considered inferior to that she gave in open court. Anyway, she satisfactorily explained why she failed to point to Pepino in the 30-person line-up x x x.

4. **CRIMINAL LAW; KIDNAPPING FOR RANSOM; ELEMENTS; ESTABLISHED IN CASE AT BAR. —** The elements of kidnapping for ransom under Article 267 of the Revised Penal Code (RPC), as amended, are as follows: (a) intent on the part of the accused to deprive the victim of his liberty; (b) actual deprivation of the victim of his liberty; and (c) motive of the accused, which is extorting ransom for the release of the victim. The prosecution established all these elements.

5. **ID.; ID.; IMPOSABLE PENALTY. —** With the passage of RA No. 9346 which amended RA No. 7659, the penalty of *reclusion perpetua* without eligibility for parole, in lieu of death, should be imposed on Pepino.

6. **ID.; ID.; CIVIL LIABILITIES OF THE ACCUSED-APPELLANT. —** While the Court sustains the imposition of moral damages, the victim having undoubtedly suffered serious anxiety and fright when she was kidnapped and detained, the Court sees the need to increase the amount awarded from ₱50,000.00 to ₱200,000.00 in light of the circumstances of the case. While actual damages may be awarded corresponding to the amount of ransom paid, the Court is constrained to delete the amount awarded for failure to prove the same with reasonable degree of certainty, premised upon competent proof and the

best evidence available. Aside from the testimony of the victim that a ₱500,000 pay-off was made, there is no data on who actually handed the ransom, who received it, and under what circumstances the pay-off was made, thus leaving nagging doubts about the tale. Nonetheless, under Article 2221 of the Civil Code, nominal damages may be granted in order that a right of the victim which has been violated may be vindicated. The Court thus awards ₱200,000.00 as nominal damages to the victim. The Court additionally awards exemplary damages to the victim in view of the qualifying circumstance of demand for ransom. x x x. The award of exemplary damages is justified, the lowering of the penalty to *reclusion perpetua* in view of the prohibition of the imposition of the death penalty notwithstanding, it not being dependent on the actual imposition of the death penalty but on the fact that a qualifying circumstance warranting the imposition of the death penalty attended the kidnapping. Based on prevailing jurisprudence, the Court awards ₱100,000.00 as reasonable for the purpose.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Ed Vincent A. Albano, Jr. and Reinaldo S.P. Lazaro for Jerry R. Pepino.
Edgardo S. Layno for Daisy Balaan.

D E C I S I O N

CARPIO MORALES, *J.*:

By Amended Information of February 9, 1998, appellants Jerry R. Pepino (Pepino) and Daisy M. Balaan (Daisy), along with Alfredo R. Pelenio (Pelenio),[1] were indicted before the Quezon City Regional Trial Court (RTC) for Kidnapping for

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[1] Also referred to as PELINIO or PELIÑO as indicated in some parts of the records.

Ransom with Serious Illegal Detention, as amended by Republic Act (RA) No. 7659,[2] allegedly committed as follows:

That on or about October 18, 1997 in Quezon City, Metro Manila and within the jurisdiction of this Honorable Court, the said accused conspiring and confederating together and mutually helping each other, did then and there willfully, unlawfully and feloniously kidnap ANITA D. CHING, a businesswoman, and brought her to a safehouse for the purpose of demanding ransom in the amount of ₱500,000.00 thereby detaining her and depriving her of personal liberty from October 18 to November 6, 1997, until the said amount was paid.

CONTRARY TO LAW.[3]

Culled from the evidence is the following version of the prosecution:

At 10:00 p.m. of October 18, 1997, Anita Ching (the victim) left her Goldline Tours office in Quezon City on board her car driven by Alejandro Soriano, together with her other employees Policarpio Guinto (Guinto) and Eva Guinto. The victim and company had barely left the office when they were blocked by a vehicle from which alighted four armed men who poked their firearms at them.[4]

The armed men, two of whom — Pepino and Pelenio — were recognized by the victim and Guinto, forcibly took the victim and boarded her on their vehicle. The victim was 30 minutes later transferred to another vehicle and taken to a safehouse where she was to be detained for 19 days.[5]

During the victim's captivity, ten persons alternately guarded her. Daisy, one of two female cohorts of the group, warned her

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[2] AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS AND AND FOR OTHER PURPOSES.

[3] Records I, p. 20.

[4] Transcript of Stenographic Notes (TSN), January 15, 1999, pp. 2-3; TSN, May 20, 1998, p. 4.

[5] TSN, January 15, 1999, pp. 3-5.

not to escape, otherwise, she would be hanged.[6] The group initially asked for a ₱30 million ransom but the amount was eventually negotiated down to ₱500,000.00 which was paid to the group.

The victim was on November 6, 1997 released and dropped near a drugstore along Bonifacio Avenue in Quezon City by Pelenio and Daisy.[7]

Pelenio escaped from detention.[8] He was eventually recaptured in Cebu City but was killed in a shootout with the police on February 3, 2000.[9] Before his death, however, Pelenio sent a letter to the presiding judge of the trial court asking for forgiveness for his escape and admitting his complicity with Pepino in the crime.[10]

Sr./Insp. Vicente Arnado, who was called as a hostile witness for the defense, identified Pepino as the leader of a notorious kidnap-for-ransom group.[11]

Without presenting evidence, Pepino merely challenged his warrantless arrest for kidnapping as illegal, insisting that he was arrested not for said crime but as an incident of his arrest for illegal possession of firearms.

As for Daisy who claimed to have been arrested on December 6, 1997 with her uncle Pelenio, she denied having met the victim at the safehouse, alleging that it was only on December 18,

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

[7] *Id.* at pp. 5-7.

[8] Records I, p. 132.

[9] Per report of the Presidential Anti-Organized Crime Task Force; RTC Records II, p. 298.

[10] Records II, pp. 274-275. The RTC Decision noted Pelenio's letter, viz: x x x. It may be worth mentioning, however, that he sent a letter dated November 19, 1999 asking the Court for forgiveness for having escaped from his escorts from the Quezon City Jail. He admitted that he and accused Jerry Pepino participated in the kidnapping of Mrs. Ching. He, however, insisted that Daisy Balaan has nothing to do with the crime.

[11] TSN, April 7, 1999, p. 7.

1997 when she was presented at the Department of Justice that she met the victim for the first time.[12]

Branch 86 of the Quezon City RTC, by Decision of October 9, 2000,[13] found Pepino and Daisy guilty beyond reasonable doubt as principal and accomplice, respectively, of the crime charged, disposing as follows:

> WHEREFORE, PREMISES CONSIDERED, JUDGMENT is hereby rendered finding the accused **Jerry Pepino guilty beyond reasonable doubt of the crime** of kidnapping for ransom with serious illegal detention and hereby sentences him **to suffer the supreme penalty of death** and to indemnify the private complainant actual damages in the amount of ₱500,000.00 and moral damages in the amount of ₱50,000.00, plus costs.
>
> Accused **Daisy Balaan is hereby found guilty as an accomplice in the crime** of kidnapping for ransom with serious illegal detention and the Court hereby sentences her to suffer the indeterminate penalty of six years and one day of *prision mayor* to twelve years and one day of *reclusion temporal*, and to indemnify the private complainant, jointly and severally, with Jerry Pepino to the extent of one-third, the amounts mentioned above.
>
> The case against **Alfredo Pelinio, who appears to have died during the pendency of this case, is hereby considered closed**.
>
> SO ORDERED. (emphasis and underscoring supplied)

Daisy having failed to attend the promulgation of judgment, a warrant for her arrest was issued.[14] It appears that she has remained at-large.[15] Despite her flight, she moved for reconsideration of the decision which the trial court, by Order of January 9, 2001,[16] denied. She thereafter filed a notice of appeal which was given due course by the trial court.[17]

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[12] TSN, January 18, 2000, pp. 3-4.

[13] Records II, pp. 342-350; Penned by Judge Teodoro A. Bay.

[14] *Id.* at 352.

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

[16] Records II, p. 378.

[17] *Id.* at p. 381.

In view of the imposition of the death penalty on Pepino, the case was brought to the Court for automatic review.[18] By Resolution of February 1, 2005,[19] the Court referred the case to the Court of Appeals for action and disposition pursuant to *People v. Mateo*.[20] It appears that Pepino's appeal was consolidated with that of Daisy's.

By Decision of May 29, 2006,[21] the Court of Appeals affirmed the trial court's decision, noting that

> **<u>Pepino did not testify, and for that matter presented no evidence to defeat or attenuate the charge or evidence brought against him</u>**. All he did in his defense was to raise the constitutional presumption of innocence, and to present his kins Renato Pepino, Larex Pepino [and] Zeny Pepino to testify that they and Pepino were illegally arrested in the latter's house in Lahug, Cebu City on December 7, 1997.
>
> x x x x x x x x x
>
> Just like Pepino, [Daisy] claims that the evidence against her did not prove her guilt and overcome the constitutional presumption of innocence. But as said, **<u>the prosecution evidence was ample and clear and established her guilt beyond reasonable doubt.</u>** Clearly Anita [Ching] was cited out of context. The kidnapping covered a period of nineteen (19) days and what she said obviously referred to Day One when she was abducted by four (4) armed men. The testimony of a witness must be considered and calibrated in its entirety and not by truncated portions thereof or isolated passages therein (citation omitted). **Thus it must be considered too that Anita [Ching] said [Daisy] was among the persons she had seen in her place of captivity and had even warned her that she would be hanged if she tried to escape. She said too that after ransom was paid, [Daisy] was one of two who brought her to a place and**

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[18] CA *rollo*, p. 33. The instant case was initially docketed as G.R. No. 146589.

[19] *Id.* at 191.

[20] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[21] CA *rollo*, pp. 194-207. Penned by Associate Justice Roberto A. Barrios with Associate Justices Mario L. Guariña III and Santiago Javier Ranada.

released her. These proved that **[Daisy]** was one of those in conspiracy to commit the felony, and hers was not a mere passive and innocuous hovering presence while Anita [Ching] was in captivity.

x x x x x x x x x
(emphasis and underscoring supplied)

The appellate court having denied the motions for reconsideration of Pepino and Daisy by Resolution of October 9, 2006,[22] their cases were brought to the Court.

Pepino assails his conviction on, in the main, the following grounds: lack of positive proof that he actually participated in the crime; error in appreciating against him the alleged confession-letter of the now deceased Pelinio; and the illegality of his arrest.[23]

Daisy, for her part, contends, in the main, that the prosecution failed to prove her guilt beyond reasonable doubt.[24]

Appellants' separate appeals fail.

Since Daisy, without proferring any justifiable cause, failed to attend the promulgation of judgment and continues to be a fugitive from justice to date, her appeal must be dismissed. So Section 6 of Rule 120 of the Revised Rules of Court instructs:

SEC. 6. Promulgation of judgment. — The judgment is promulgated by reading it in the presence of the accused and any judge of the court in which it was rendered. However, if the conviction is for a light offense, the judgment may be pronounced in the presence of his counsel or representative. When the judge is absent or outside the province or city, the judgment may be promulgated by the clerk of court.

x x x x x x x x x.

If the judgment is for conviction and the failure of the accused to appear was without justifiable cause, he shall lose the remedies available in these Rules against the judgment and the court shall order his arrest. Within fifteen (15) days from promulgation of judgment, however, the accused may surrender and file a motion

[22] *Id.* at 331-332.

[23] *Id.* at 79-102.

[24] *Id.* at 42.

for leave of court to avail of these remedies. He shall state the reasons for his absence at the scheduled promulgation and if he proves that his absence was for a justifiable cause, he shall be allowed to avail of said remedies within fifteen (15) days from notice. (emphasis and underscoring supplied)

On to the appeal of Pepino. That he was positively identified by the victim is clear.

Q After they blocked your car, what happened?
A Four armed men alighted.

Q What did this [sic] armed men do?
A They opened our car and they were forcing me to alight.

Q Kindly look around this courtroom and can you tell us if you can identify any of the men that blocked your car?
A Jerry Pepino (Witness pointing to accused Jerry Pepino)

Q Who was carrying the armalite?
A (Witness pointing to accused Jerry Pepino)

Q There is another accused here. I am showing to you a picture of another person, can you tell us what is the relationship of this male person in the list of the accused?
A This is Pelenio, Alfredo, he was the one who took me and he was there on the car.

Q May we request that this particular photo of Alfredo Pelinio be marked as Exhibit A. Pelenio escaped while in the custody of the police.

x x x x x x x x x.

Q How was [sic] the five of you seated in the car?
A I was between the two persons who were carrying armalite.

Q Who was beside the driver?
A Alfredo Pelenio.

Q Who was beside you on the right side?
A Jerry Pepino.

x x x x x x x x x[25]
(emphasis and underscoring supplied)

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[25] TSN, January 15, 1999, pp. 3-4.

Pepino was identified too by Guinto as one of the armed men who abducted the victim.

Fiscal: While you were driving on at Manotok, was there any unusual incident that happened?
A Yes, sir. We were blocked by a car.

Q What kind of a car?
A Toyota, Corolla.

Q After that what happened?
A The four doors were forcibly opened and four men went out of a car. And then two men approached us. One of the men poked a gun at us and the other man also poked a gun at the driver.

x x x x x x x x x

Q If you see this [sic] people or this [sic] men who approached you and who poked their firearm[s] at you and the driver, will you be able to identify them.
A Yes, sir.

Fiscal: Kindly look around and step down and tap the shoulder of those two people[.]
Witness:
(Witness pointing to the accused Alfredo Pelenio and Jerry Pepino)

Q What did the other two persons do?
A They just stand [sic] at their vehicle, near their vehicle.

Q How far is that vehicle from your vehicle?
A It was near, about 3 meters.

x x x x x x x x x[26]
(emphasis and underscoring supplied)

That Guinto did not err in identifying Pepino as one of the malefactors, there is no doubt.

Q. And this place is well lighted?
A. There was light.

x x x x x x x x x

[26] TSN, May 20, 1998, pp. 4-5.

Q. When these kidnappers tried to kidnap Mrs. Anita Ching[,] were they not wearing bonnet or mask?
A. No, sir.

Q. So you could really identify them because they were not wearing masks?
A. Yes, sir.[27] (emphasis and underscoring supplied)

The damaging evidence against him notwithstanding, Pepino did *not* at all offer any controverting evidence. He merely relied on the alleged illegality of his arrest to escape criminal liability.

Pepino now belatedly harps on the victim's alleged failure to immediately identify him in a line-up at the National Bureau of Investigation. He draws attention to the victim's *Sinumpaang Salaysay*[28] reflecting that she only pointed to Pelenio and Daisy in the line-up.

Pepino's position fails to persuade. The victim's *in-court identification* was more than sufficient to establish his identity as one of the malefactors.[29] The victim's *Sinumpaang Salaysay* is generally considered inferior to that she gave in open court.[30] Anyway, she satisfactorily explained why she failed to point to Pepino in the 30-person line-up, *viz*:

Atty. Chua: We noticed that under par. 17 of this particular affidavit[,] you only identified Alfredo Pelenio and Daisy Balaan, and in the courtroom, you identified Jerry Pepino[.] [C]an you tell us why you didn't identify Jerry Pepino at the time you executed this affidavit?

Witness: **While I was at the NBI, they showed me about thirty (30) persons there, and thru that mirror, I was not able to see Jerry Pepino.**

Q: When were you able to point to Jerry Pepino?

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[27] TSN, June 22, 1998, p. 7.

[28] Records I, pp. 8-9.

[29] Vide: *People v. Jalosjos*, G.R. No. 132875-76, 421 Phil. 43, 74 (2001).

[30] *People v. Lenantud*, G.R. No. 128629, 405 Phil. 189, 203 (2001).

A: **When we saw each other at the Department of Justice (DOJ).**[31] (emphasis and underscoring supplied)

Pepino's assertion that the trial court credited the confession-letter of Pelenio in convicting him is misleading. The trial court merely *noted* the contents of Pelenio's letter which letter did not even form part of the evidence for the prosecution. Nowhere in the decision of the trial court is it reflected that the letter was used as basis in convicting him. What is clear is that the trial court relied on the testimonies of the prosecution witnesses.

As to the alleged illegality of Pepino's arrest, it is settled that any irregularity attending the arrest of an accused should be timely raised in a motion to quash the Information at any time before arraignment, failing which he is deemed to have waived.[32] Since Pepino did not raise such alleged irregularity early on, he is now estopped.

The elements of kidnapping for ransom under Article 267[33] of the Revised Penal Code (RPC), as amended, are as follows: (a) intent on the part of the accused to deprive the victim of his liberty; (b) actual deprivation of the victim of his liberty; and (c) motive of the accused, which is extorting ransom for

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[31] TSN, January 15, 1999, pp. 7-8.

[32] *Eugenio v. People*, G.R. No. 168163, March 26, 2008, 549 SCRA 433.

[33] Art. 267. *Kidnapping and Serious Illegal Detention* — Any private individual who shall kidnap or detain another or in any manner deprive him of his liberty shall suffer the penalty of *reclusion perpetua* to death;

1. If the kidnapping or detention shall have lasted for 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 detained or kidnapped shall be a minor, except when the accused is any of the parents, female, or public officer.

The penalty of death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense. x x x

the release of the victim.[34] The prosecution established all these elements. Consider the following testimony of the victim:

Q You said that you were kidnapped on October 18, 1997, up to when were you kidnapped?
A Up to November 6, 1997.

[Q] How long was that?
[A] Nineteen days.

Q During the duration of your detention, in that house, were you able to use the telephone?
A Yes, sir.

Q How many times?
A Three.

x x x x x x x x x

Q Whom are you talking to during those three times or three occasions that you used the telephone?
A I was calling my husband.

Q What did you talk about with your husband during those occasions?
A About the ransom money to be given.

Q How many [sic] <u>ransom money</u> were they initially asking?
A Thirty Million.

x x x x x x x x x

[Q] You said that you were able to talk to any of the ten people while you were in captivity?
A Yes, sir.

Q Did this include Daisy Balaan?
A Yes, sir.

Q What did Daisy Balaan tell you?
A She told me that I will be "*bibitayin*" or to be hanged.

Q Why did she tell you this?
A Because I have the intention to escape.

xxx xxx xxx

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[34] *People v. Bisda,* 454 Phil. 194, 234 (2003).

COURT: Were you blindfolded or tied?
A No, sir.

Atty. Chua: You said that you were detained for nineteen days and you were released sometime on November 6, 1997, can you tell the Court how you were released?

A After our family gave the ransom money.

Q How much ransom was paid by your family?

A ₱500,000.00.

x x x x x x x x x[35]
(emphasis and underscoring supplied)

The conviction of Pepino must thus be affirmed.

With the passage of RA No. 9346[36] which amended RA No. 7659, the penalty of *reclusion perpetua* without eligibility for parole, in lieu of death, should be imposed on Pepino.

While the Court sustains the imposition of moral damages, the victim having undoubtedly suffered serious anxiety and fright when she was kidnapped[37] and detained, the Court sees the need to increase the amount awarded from ₱50,000.00 to ₱200,000.00 in light of the circumstances of the case.

While actual damages may be awarded corresponding to the amount of ransom paid,[38] the Court is constrained to delete the amount awarded for failure to prove the same with reasonable degree of certainty, premised upon competent proof and the best evidence available.[39] Aside from the testimony of the victim that a ₱500,000 pay-off was made, there is no data on who

[35] TSN, January 15, 1999, pp. 4-6.

[36] AN ACT PROHIBITING THE IMPOSITION OF THE DEATH PENALTY IN THE PHILIPPINES.

[37] *People v. Baldogo,* G.R. No. 128106-07, 444 Phil. 35, 66 (2003) citing Article 2219 of the Civil Code and *People v. Garcia*, G.R. No. 133489, 424 Phil. 158 (2002).

[38] *People v. Ejandra*, G.R. No. 134203, 429 SCRA 364, 383 (2004).

[39] *People v. Silongan*, G.R. No. 137182, 449 Phil. 478, 498 (2003).

actually handed the ransom, who received it, and under what circumstances the pay-off was made, thus leaving nagging doubts about the tale.

Nonetheless, under Article 2221[40] of the Civil Code, nominal damages may be granted in order that a right of the victim which has been violated may be vindicated. The Court thus awards ₱200,000.00 as nominal damages to the victim.

The Court additionally awards exemplary damages to the victim in view of the qualifying circumstance of demand for ransom. *People v. Catubig*[41] enlightens:

> The term "aggravating circumstances" used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. **In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code**. (emphasis and underscoring supplied)

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[40] Art. 2221. Nominal damages are adjudicated in order that a right of the plaintiff, which has been violated or invaded by the defendant, may be vindicated or recognized, and not for the purpose of indemnifying the plaintiff for any loss suffered by him.

[41] G.R. No. 137842, 416 Phil. 102, 119-120 (2001).

The award of exemplary damages is justified, the lowering of the penalty to *reclusion perpetua* in view of the prohibition of the imposition of the death penalty notwithstanding, it not being dependent on the actual imposition of the death penalty but on the fact that a qualifying circumstance warranting the imposition of the death penalty attended the kidnapping.[42] Based on prevailing jurisprudence,[43] the Court awards ₱100,000.00 as reasonable for the purpose.

WHEREFORE, the Decision dated May 29, 2006 of the Court of Appeals convicting appellants of the crime charged is *AFFIRMED* with *MODIFICATION* in light of the foregoing disquisitions.

Appellant JERRY R. PEPINO is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole pursuant to RA No. 9346 and to pay the amounts of ₱200,000.00 as moral damages, ₱200,000.00 as nominal damages, and ₱100,000.00 as exemplary damages. The award of actual damages is DELETED for insufficiency of evidence.

The appeal of appellant DAISY M. BALAAN is *DENIED* in accordance with Section 6, Rule 120 of the Revised Rules of Criminal Procedure.

Costs against appellant Jerry Pepino.

SO ORDERED.

Corona, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Nachura, J., no part; signed pleading as Sol. Gen.

Brion, J., on leave.

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[42] *Cf. People v. Quiachon*, G.R. No. 170236, 500 SCRA 704,719 (2006) In this qualified rape case, the Court ruled that even if the death penalty was not imposed pursuant to R.A. No. 9346, the imposition of civil indemnity and exemplary damages was still proper since such awards are dependent on the qualifying circumstances that attended the commission of the offense, and not on the actual imposition of the death penalty.

[43] *People v. Mamantak*, G.R. No. 174659, 560 SCRA 298, 310 citing *People v. Solangon*, G.R. No. 172693, 537 SCRA 746 (2007); *People v. Baldogo*, 444 Phil. 35, 66 (2003); *People v. Garcia*, 424 Phil. 158, 194 (2002).

THIRD DIVISION

[G.R. No. 183616. June 29, 2010]

JULIETA PANOLINO, *petitioner, vs.* **JOSEPHINE L. TAJALA,** *respondent.*[1]

SYLLABUS

1. REMEDIAL LAW; APPEALS; PERIOD OF APPEAL; ISSUE ON THE APPLICABILITY OF THE "FRESH PERIOD RULE" IS A QUESTION OF LAW. — The issue before the Court of Appeals was whether the "fresh period rule" laid down in *Neypes* applies to petitioner's case, *i.e.*, that he had a fresh period of 15 days to appeal RD Sampulna's October 16, 2007 Order to the DENR Secretary, counted from her notice on September 12, 2007 of the RD's Order of September 6, 2007 denying her motion for reconsideration of the decision. The issue raised by petitioner before the appellate court is one of law because **it can be resolved by merely determining what the law is under the undisputed facts**. The appellate court's ruling that such issue raises a question of fact which "entails an examination of the probative value of the evidence presented by the parties" is thus erroneous. Instead, however, of remanding this case to the Court of Appeals for it to resolve the legal issue of whether the "fresh period rule" in *Neypes* is applicable to petitioner's case, the Court opts to resolve it to obviate further delay.

2. ID.; ID.; ID.; FRESH PERIOD RULE; APPLIES TO JUDICIAL PROCEEDINGS. — As reflected in the decision in *Neypes,* the "fresh period rule" shall apply to Rule 40 (appeals from the Municipal Trial Courts to the Regional Trial Courts); Rule 41 (appeals from the Regional Trial Courts to the Court of Appeals or Supreme Court); Rule 42 (appeals from the Regional Trial Courts to the Court of Appeals); Rule 43 (appeals from quasi-judicial agencies to the Court of Appeals); and Rule 45

[1] The other respondents named in the petition, namely, Regional Executive Director Jim O. Sampulna, DENR Region XII, Koronadal City, and the Court of Appeals, are deleted pursuant to Rule 45, Section 4(a) of the 1997 Rules of Civil Procedure, as amended.

(appeals by *certiorari* to the Supreme Court). Obviously, these Rules cover *judicial* proceedings under the 1997 Rules of Civil Procedure.

3. ID.; ID.; ID.; ID.; NOT APPLICABLE TO CASE AT BAR; PETITIONER'S APPEAL IS GOVERNED BY SECTION 1 OF ADMINISTRATIVE ORDER NO. 87, SERIES OF 1990. — Petitioner's present case is *administrative* in nature involving an appeal from the decision or order of the DENR regional office to the DENR Secretary. Such appeal is indeed governed by Section 1 of Administrative Order No. 87, Series of 1990. As earlier quoted, Section 1 clearly provides that if the motion for reconsideration is ***denied,*** the movant shall perfect his appeal "during the remainder of the period of appeal, reckoned from receipt of the resolution of denial"; whereas if the decision is ***reversed,*** the adverse party has a fresh 15-day period to perfect his appeal. Rule 41, Section 3 of the Rules of Court, as clarified in *Neypes,* being inconsistent with Section 1 of Administrative Order No. 87, Series of 1990, it may not apply to the case of petitioner whose motion for reconsideration was *denied*.

APPEARANCES OF COUNSEL

Herculano T. Tagaloguin for petitioner.
Eduardo Pescadero for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

The Department of Environment and Natural Resources (DENR) Regional Executive Director Jim O. Sampulna (RD Sampulna), by Decision[2] of June 19, 2007, (1) denied for lack of merit the application[3] of Julieta Panolino (petitioner), which was opposed by herein respondent Josephine L. Tajala, for a free patent over a parcel of land located in Kinayao, Bagumbayan,

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[2] *Rollo*, pp. 63-66.

[3] Docketed as RED Claim No. 002-07, CENRO Case No. XII-5A-003.

Sultan Kudarat, (2) directed petitioner to vacate the contested property and remove at her expense whatever improvements she may have introduced thereon, and (3) advised respondent to file her free patent application over the contested property within sixty days.[4]

Petitioner received a copy of the decision on June 27, 2007, of which she filed a motion for reconsideration on July 11, 2007. Her motion was denied by Order[5] of September 6, 2007, copy of which she received on September 12, 2007.

On September 19, 2007, petitioner filed a Notice of Appeal[6] before the Office of RD Sampulna, stating that she was appealing the decision and order to the Office of the DENR Secretary. By Order[7] of October 16, 2007, RD Sampulna denied the notice of appeal, holding that it was filed beyond the reglementary period. The RD explained that petitioner should have filed her appeal on September 13, 2007 as she had only one day left of the 15-day reglementary period for the purpose, pursuant to DENR Administrative Order No. 87, Series of 1990,[8] the pertinent portions of which provide:

SECTION 1. Perfection of Appeals.

(a) Unless otherwise provided by law or executive order, appeals from the decisions/orders of the DENR Regional Offices shall be perfected within fifteen (15) days after receipt of a copy of the decision/order complained of by the party adversely affected, by filing with the Regional Office which adjudicated the case a notice of appeal, serving copies thereof upon the prevailing party and the Office of the Secretary, and paying the required fees.

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

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

[6] *Id.* at 77-79.

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

[8] "Regulations Governing Appeals to the Office of the [DENR] Secretary from the Decisions/Orders of the Regional Offices."

(b) **If a motion for reconsideration of the decision/order of the Regional Office is filed and such motion for reconsideration is *denied*, the movant shall have the right to perfect his appeal during the remainder of the period for appeal, reckoned from receipt of the resolution of denial**. If the decision is ***reversed*** on reconsideration, the aggrieved party shall have fifteen (15) days from receipt of the resolution of reversal within which to perfect his appeal.

(c) The Regional office shall, upon perfection of the appeal, transmit the records of the case to the Office of the Secretary with each page numbered consecutively and initialed by the custodian of the records.

x x x x x x x x x

SECTION 6. Applicability of the Rules of Court. — **The Rules of Court shall apply when not inconsistent with the provisions hereof.** (emphasis and underscoring supplied)

Invoking the rule enunciated by this Court in the 2005 case of *Neypes, et al. v. Court of Appeals, et al.*,[9] petitioner argued in her motion for reconsideration of RD Sampulna's October 16, 2007 Order that she still had a fresh period of fifteen days from her receipt on September 12, 2007 of copy of the September 6, 2007 Order denying her motion for reconsideration of the June 19, 2007 Decision of the RD or until September 27, 2007. Her motion was denied by Order[10] of November 28, 2007.

Petitioner elevated the matter via *certiorari* before the Court of Appeals which, by Resolution[11] of January 25, 2008, dismissed it on the ground that petitioner failed to exhaust administrative remedies, she having bypassed the Office of the DENR Secretary and the Office of the President before resorting to judicial action.

Petitioner moved for reconsideration, arguing that her petition for *certiorari* raised a purely legal issue. By Resolution of June

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[9] G.R. No. 141524, September 14, 2005, 469 SCRA 633, 644-646.

[10] *Id.* at 88-89. *Rollo*, pp. 88-89.

[11] Penned by Associate Justice Jane Aurora C. Lantion and concurred in by Associate Justices Edgardo A. Camello and Elihu A. Ybanez; *id.* at 90-91.

25, 2008, the appellate court, holding that "the issue raised is clearly a question of fact,"[12] denied petitioner's motion. Hence, the present petition for review on *certiorari*.

The issue before the Court of Appeals was whether the "fresh period rule" laid down in *Neypes* applies to petitioner's case, *i.e.*, that he had a fresh period of 15 days to appeal RD Sampulna's October 16, 2007 Order to the DENR Secretary, counted from her notice on September 12, 2007 of the RD's Order of September 6, 2007 denying her motion for reconsideration of the decision.

The "fresh period rule" in *Neypes* declares:

> **To standardize the appeal periods provided in the Rules** and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal **in the Regional Trial Court**,[13] counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.
>
> **Henceforth, this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the Court of Appeals; Rule 43 on appeals from quasi-judicial agencies to the Court of Appeals; and Rule 45 governing appeals by *certiorari* to the Supreme Court.** The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.
>
> x x x. **This pronouncement is not inconsistent with Rule 41,[14] Section 3 of the Rules which states that the appeal shall be taken within 15 days from notice of judgment *or* final order appealed**

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[12] *Id.* at 98.

[13] Referring to Rule 41 of the 1997 Rules of Civil Procedure; *supra* note 9 at 639.

[14] Appeal from the **Regional Trial Courts** (RTC) through (1) ordinary appeal to the **Court of Appeals** (CA) in cases decided by the RTC in the exercise of its original jurisdiction [Section 2(a), Rule 41]; (2) petition for review to the **CA** in cases decided by the RTC in the exercise of its appellate

from. The use of the disjunctive word "or" signifies disassociation and independence of one thing from another. It should, as a rule, be construed in the sense in which it ordinarily implies. Hence, the use of "or" in the above provision supposes that the notice of appeal may be filed within 15 days from notice of judgment or within 15 days from notice of the "final order," which we already determined to refer to the x x x order denying the motion for a new trial or reconsideration.

Neither does this new rule run counter to the spirit of <u>Section 39</u> <u>of</u> <u>BP</u> <u>129</u>[15] which shortened the appeal period from 30 days to 15 days to hasten the disposition of cases. The original period of appeal x x x remains and the requirement for strict compliance still applies. *The fresh period of 15 days becomes significant only when a party opts to file a motion for reconsideration.* In this manner, the trial court which rendered the assailed decision is given another opportunity to review the case and, in the process, minimize and/ or rectify any error of judgment. While we aim to resolve cases with dispatch and to have judgments of courts become final at some definite time, we likewise aspire to deliver justice fairly.

In this case, the new period of 15 days eradicates the confusion as to when the 15-day appeal period should be counted–from receipt of notice of judgment x x x or from receipt of notice of "final order" appealed from x x x.

To recapitulate, a party litigant may either file his notice of appeal within 15 days from receipt of the Regional Trial Court's decision or file it within 15 days from receipt of the order (the "final order") denying his motion for new trial or motion for reconsideration. Obviously, the new 15-day period may be availed of *only* if either motion is filed; otherwise, the decision becomes final and executory after the lapse of the original appeal period provided in **Rule 41, Section 3**.[16] (emphasis and underscoring supplied; italics in the original)

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jurisdiction, in accordance with Rule 42 [Section 2(b), *id.*]; and (3) <u>appeal by *certiorari*</u> to the **Supreme Court** in cases where only questions of law are raised, in accordance with Rule 45 [Section 2(c), *id.*].

[15] The Judiciary Reorganization Act of 1980.

[16] *Supra* note 9 at 644-646.

The issue raised by petitioner before the appellate court is one of law because **it can be resolved by merely determining what the law is under the undisputed facts**.[17] The appellate court's ruling that such issue raises a question of fact which "entails an examination of the probative value of the evidence presented by the parties"[18] is thus erroneous.

Instead, however, of remanding this case to the Court of Appeals for it to resolve the legal issue of whether the "fresh period rule" in *Neypes* is applicable to petitioner's case, the Court opts to resolve it to obviate further delay.

As reflected in the above-quoted portion of the decision in *Neypes,* the "fresh period rule" shall apply to Rule 40 (appeals from the Municipal Trial Courts to the Regional Trial Courts); Rule 41 (appeals from the Regional Trial Courts to the Court of Appeals or Supreme Court); Rule 42 (appeals from the Regional Trial Courts to the Court of Appeals); Rule 43 (appeals from quasi-judicial agencies to the Court of Appeals); and Rule 45 (appeals by *certiorari* to the Supreme Court). Obviously, these Rules cover *judicial* proceedings under the 1997 Rules of Civil Procedure.

Petitioner's present case is *administrative* in nature involving an appeal from the decision or order of the DENR regional office to the DENR Secretary. Such appeal is indeed governed by Section 1 of Administrative Order No. 87, Series of 1990. As earlier quoted, Section 1 clearly provides that if the motion for reconsideration is ***denied,*** the movant shall perfect his appeal "during the remainder of the period of appeal, reckoned from receipt of the resolution of denial;" whereas if the decision is ***reversed,*** the adverse party has a fresh 15-day period to perfect his appeal.

Rule 41, Section 3 of the Rules of Court, as clarified in *Neypes,* being inconsistent with Section 1 of Administrative Order

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[17] *Ericsson Telecommunications, Inc. v. City of Pasig*, G.R. No. 176667, November 22, 2007, 538 SCRA 99, 108-109.

[18] Resolution dated June 25, 2008, *rollo*, p. 98.

No. 87, Series of 1990, it may not apply to the case of petitioner whose motion for reconsideration was *denied*.

WHEREFORE, the assailed issuances of the Court of Appeals are *AFFIRMED*, *not* on the ground advanced therein but on the ground reflected in the foregoing discussion. No costs.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 184595. June 29, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **SAPIA ANDONGAN *y* SANDIGANG,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; CHAIN OF CUSTODY RULE; NOT ESTABLISHED; PROCEDURAL REQUIREMENTS; NOT COMPLIED WITH. — The testimony of prosecution witness PO2 Garcia, upon which the prosecution mainly anchored its case and which both the trial and appellate courts accorded credence, sheds light on appellant's claim that the chain of custody of the 0.146 grams of *shabu* allegedly seized from her was not properly established. x x x. It bears noting from the x x x testimony that there is no claim or indication that the *shabu* allegedly seized from appellant was the same *shabu* subjected to laboratory examination. As a method of authenticating evidence, **the chain of custody rule requires** that the admission of an exhibit be preceded by evidence

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[*] Additional member per Special Order No. 843 dated May 17, 2010.

sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence,** in such a way that every person who touched the exhibit would describe **how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.** These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same. Parenthetically, there is also no showing that the buy-bust team complied with the procedural requirements of Section 21, paragraph 1 of Article II of R.A. No. 9165.

2. **ID.; ID.; IT IS INCREDIBLE FOR A KNOWN DRUG-PEDDLER TO HAVE IN HIS POSSESSION ONLY ONE SACHET OF *SHABU* CONTAINING 0.146 GRAMS. —** [T]he testimony of the prosecution witness on the circumstances surrounding the alleged buy-bust during which only one sachet of *shabu* containing 0.146 grams was seized from appellant additionally spawns doubts on the case for the prosecution. x x x. For, among other things, it is incredible for an allegedly known drug-peddler to be standing at a corner of a street at 7:50 in the evening instead of plying her trade secretly, and with only a 0.146-gram sachet worth ₱500.00 of prohibited drugs in her possession the value of which happens to be what a poseur-buyer wants to buy.

3. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTY DOES NOT ARISE WHERE THE EVIDENCE FOR THE PROSECUTION IS FLAWED. —** With the flawed evidence for the prosecution, the presumption of regularity in the performance of official duty by the prosecution witness-police officer does not arise. *People v. Santos* instructively tells us that the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt. Without the presumption of regularity, the evidentiary gap in identifying the seized evidence from its turnover by the *poseur-buyer*, its

handling and custody, until its turnover to the forensic laboratory for analysis, stands out in bold relief. This gap renders the case for the prosecution less than complete in terms of proving the guilt of the accused beyond reasonable doubt.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO MORALES, *J.*:

Following her arrest during an alleged drug buy-bust operation conducted on June 25, 2004, Sapia Andongan *y* Sandigang (appellant) was charged for violation of Section 5, Article II of Republic Act (R.A.) No. 9165[1] before the Regional Trial Court (RTC) of Manila in Criminal Case No. 04-227859.

The accusatory portion of the June 29, 2004 Information[2] filed against appellant reads:

That on or about June 25, 2004 in the City of Manila, Philippines, the said accused, not being authorized by law to sell, trade, deliver, or give away to another any dangerous drug, did then and there willfully, unlawfully and knowingly sell or offer for sale ZERO POINT ONE HUNDRED FORTY SIX (0.146) grams of white crystalline substance known as "*shabu*" placed in a transparent plastic sachet marked as "SSA" containing methylamphetamine hydrochloride, which is a dangerous drug.

CONTRARY TO LAW. (underscoring supplied)

Culled from the evidence for the prosecution consisting, in the main, of the testimony of PO2 Elymar Garcia (PO2 Garcia), a police officer assigned at the Station Anti-Illegal Drugs (SAID)

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[1] Otherwise known as "The Comprehensive Dangerous Drugs Act of 2002," which took effect on July 4, 2002.

[2] Records, p. 1.

Office of the Moriones, Tondo Police Station, is the following version:

On the information of a confidential informant, the SAID Office formed a team to conduct a buy-bust operation against appellant for her alleged illegal drugs trade. With a ₱500.00 bill on which "RR," representing the initials of team leader SPO3 Rolando del Rosario (SPO3 del Rosario), was marked. The team, together with the confidential informant, met appellant at Abad Santos Avenue along Bambang Street at around 7:50 p.m. of June 25, 2004.

Informed that PO2 Garcia wanted to buy *shabu,* appellant inquired how much, to which PO2 Garcia replied ₱500.00 worth. As PO2 Garcia handed that amount to appellant, the latter drew from her pocket a plastic sachet of white crystalline substance which she gave to him. At that instant, PO2 Garcia introduced himself as a police officer, apprised appellant of her constitutional rights and, together with the team members, arrested her.

The seized item was submitted for laboratory examination and found positive for *shabu* (Exhibit "C"), hence, appellant's indictment.

At the Pre-trial, the defense counsel from the Public Attorney's Office (PAO) declared that it was interposing a negative defense and that it was not entering into any stipulation other than on the trial court's jurisdiction and appellant's identity.[3]

During the trial, the parties stipulated on the qualification of forensic chemist, P/Insp. Elisa G. Reyes (Elisa), and on the genuineness and due execution of the documents brought over by her. The prosecution admitted though that Elisa had no personal knowledge as to the source of the specimen which she subjected to laboratory examination. Her testimony was thereupon dispensed with.[4]

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[3] *Id.* at 40.

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

By Decision dated June 5, 2006, Branch 2 of the Manila RTC convicted appellant as charged, penalizing her with life imprisonment and a fine of ₱500,000.00. Thus it disposed:

> WHEREFORE, finding accused, Sapia Andongan *y* Sandigang, GUILTY beyond reasonable doubt of the crime charged, she is hereby sentenced to life imprisonment and to pay a fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.
>
> The specimen is forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.
>
> SO ORDERED.[5]

On appeal, the Court of Appeals, by Decision[6] of March 31, 2008, *affirmed* the trial court's decision and, by Resolution dated May 13, 2008, it elevated the case to this Court for further review.[7]

Both parties adopted their briefs filed before the appellate court as theirs before this Court.

Appellant, an *ukay-ukay* clothing vendor married to one Sammy Sapak who worked as a security guard, gave the following version:

At about 6:00 p.m. on the day she was arrested, she was at her husband's workplace along Bambang St., Tondo, Manila where she brought him dinner. After her husband partook of his dinner, six armed men suddenly arrived, apprehended her, and forced her to go along with them to the police precinct where the policemen emptied her bag and took her ₱600.00.

Assailing her conviction, on the basis of the testimony of the sole prosecution witness-PO2 Garcia, appellant questions why the buy-bust team leader, SPO3 del Rosario, was not presented

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[5] *Id.* at 45.

[6] *Rollo*, pp. 2-12.

[7] *Id.* at 1.

to corroborate PO2 Garcia's testimony. Appellant goes on and argues:

> Granting *arguendo* that the accused-appellant was a drug pusher **peddling** along Bambang St., how come only one (1) sachet containing 0.146 grams of *shabu* was confiscated from her by the five (5) police officers who arrested her? If the accused-appellant was indeed caught in a legitimate entrapment operation, then the policemen had every right and all the opportunity to search her person, even including the premises. The fact, however, is that the policemen could only present a single 0.146-gram sachet of *shabu*, the **source of which was not even clearly established**.[8] (emphasis and underscoring supplied)

Further, appellant questions the chain of custody of the *shabu* as not properly established.[9]

The Court finds for appellant.

The following testimony of prosecution witness PO2 Garcia, upon which the prosecution mainly anchored its case and which both the trial and appellate courts accorded credence, sheds light on appellant's claim that the chain of custody of the 0.146 grams of *shabu* allegedly seized from her was not properly established.

ASSISTANT PROSECUTOR YAP:

Q **Upon receipt of the *shabu*, what did you do with that?**

WITNESS:

A I introduced myself as (sic) police officer.

Q Now, tell us you said *shabu*, how did you know that that it is *shabu*?

A **After** submitting it to the Crime Lab. for examination, sir.

Q At that time when you received the same, describe to us the physical appearance of what was given to you? (sic)

A It is containing (sic) white crystalline substance, sir.

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[8] CA *rollo*, p. 37.

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

Q What was the container?

A Transparent plastic, sir.

Q So, what was your conclusion upon examining the same?

A I believe it was *shabu*, sir.

Q What follows next?

A I informed her of her violation, sir, then I appraised (sic) her constitutional rights.

Q Then what did you do with the body of the accused?

A After taking care (sic) into custody I saw SPO3 Del Rosario together with the team rushing for assistance, sir.

Q What was recovered from the person of the accused?

A After requesting to empty her pocket, sir, we recovered the marked money, sir.

Q You mean the ₱500.00 bill?

A Yes, sir.

Q Now, where did you bring the accused as well as the specimen, the evidence you confiscated?

A We brought the accused at *(sic)* the Station Anti-Illegal Drugs Office then we made a request for laboratory exam. then we submitted the evidence recovered to the Crime Lab. for examination.

x x x x x x x x x

Q Now, you mentioned also a transparent plastic sachet given to you by the accused. Could you still recognize the same if shown to you again?

A Yes, sir.

Q How were you able to recognize the same?

A I put an initial marked in the evidence, sir. The initial is SSA, sir.

Q What is the meaning of SSA?

A The initial of the subject Sapia Andongan Sandigang.

Q **What was the time you made the marking on the specimen?**

A After bringing the suspect at (sic) the station.

Q Who was present at that time?

A SPO3 Del Rosario, sir.

Q At the station?

A Yes, sir.[10] (emphasis and underscoring supplied)

It bears noting from the foregoing testimony that there is no claim or indication that the *shabu* allegedly seized from appellant was the same *shabu* subjected to laboratory examination.

As a method of authenticating evidence, **the chain of custody rule requires** that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. **It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence,** in such a way that every person who touched the exhibit would describe **how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain.** These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[11] (emphasis and underscoring supplied)

Parenthetically, there is also no showing that the buy-bust team complied with the procedural requirements of Section 21, paragraph 1 of Article II of R.A. No. 9165.[12]

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[10] TSN, March 15, 2005, pp. 7-9.

[11] *Malillin v. People*, G.R. No. 172953, April 30, 2008, 553 SCRA 619, 632-633.

[12] **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

With the flawed evidence for the prosecution, the presumption of regularity in the performance of official duty by the prosecution witness-police officer does not arise.[13]

People v. Santos instructively tells us that the presumption of regularity in the performance of official duty cannot by itself overcome the presumption of innocence nor constitute proof beyond reasonable doubt.

Without the presumption of regularity, the evidentiary gap in identifying the seized evidence from its turnover by the *poseur-buyer*, its handling and custody, until its turnover to the forensic laboratory for analysis, stands out in bold relief. This gap renders the case for the prosecution less than complete in terms of proving the guilt of the accused beyond reasonable doubt.[14] (emphasis and underscoring supplied)

In another vein, the following testimony of the prosecution witness on the circumstances surrounding the alleged buy-bust during which only one sachet of *shabu* containing 0.146 gram was seized from appellant additionally spawns doubts on the case for the prosecution.

CROSS-EXAMINATION:

Q When you first saw the accused in this case Sapia Andongan, where was she?

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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;

x x x x x x x x x

(emphasis supplied)

[13] *People v. Kamad*, G.R. No. 174198, January 19, 2010.

[14] *People v. Sanchez,* G.R. No. 175832, October 15, 2008, 569 SCRA 194.

A She was along Bambang, sir.

Q What was she doing then at that time?

A **<u>She was just standing, sir.</u>**

Q Merely standing in Bambang. (sic*)* Was she beside of (sic) Bambang at 7:40 in the evening?

A Yes, sir.

Q Were there still people at the vicinity?

A That's crossing the parking area. There were no people around at the parking area but on the other side of Sapia there were so many people there, sir.

Q Then you approached the accused?

A Yes, sir.

x x x x x x x x x

Q And when you approached this accused, did you talk to the accused?

A The informant introduced me as a prospective buyer, sir.

Q The informant was with you when you approached?

A Yes, sir.

Q **What did the informant do? How was** *(*sic) **the informant introduced** (sic) **you to the accused?**

A **According to her –** ***ako daw ay kukuha*****.**

Q **And then, what was the response of the accused?**

A **The subject asked me –** ***ilan ang kukunin mo*****.** (sic)

Q That was the only words that were given by the accused to you? She did not inquire who you are?

A I was already introduced as a prospective buyer, sir.[15] (emphasis supplied)

For, among other things, it is incredible for an allegedly known drug-peddler to be standing at a corner of a street at 7:50 in the

[15] TSN, March 15, 2005, pp. 15-16.

evening instead of plying her trade secretly, and with only a 0.146-gram sachet worth ₱500.00 of prohibited drugs in her possession the value of which happens to be what a poseur-buyer wants to buy.

WHEREFORE, the assailed Decision of the Court of Appeals dated March 31, 2008 in CA-G.R. CR.-H.C. No. 02467 is *REVERSED* and *SET ASIDE*. Appellant, Sapia Andongan *y* Sandigang, is *ACQUITTED* of the crime charged and her immediate release from custody is ordered, unless she is being lawfully held for another cause.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 185269. June 29, 2010]

ELSA S. MALIG-ON, *petitioner, vs.* **EQUITABLE GENERAL SERVICES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE QUASI-JUDICIAL AND ADMINISTRATIVE BODIES GIVEN GREAT WEIGHT AND RESPECT EXCEPT WHEN THEY ARE IN CONFLICT WITH EACH OTHER. — True, courts give great weight and respect to the facts as found by quasi-judicial and administrative bodies. But when, as in this case, such bodies have conflicting factual findings, the Court has reason to go over both findings to ascertain which one has support in the evidence.

[*] Additional member per Special Order No. 843 dated May 17, 2010.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; BURDEN OF PROVING THAT THE EMPLOYEE WILLINGLY RESIGNED FROM WORK RESTS WITH THE EMPLOYER. — The rule in termination cases is that the employer bears the burden of proving that he dismissed his employee for a just cause. And, when the employer claims that the employee resigned from work, the burden is on the employer to prove that he did so willingly. Whether that is the case would largely depend on the circumstances surrounding such alleged resignation. Those circumstances must be consistent with the employee's intent to give up work. Here, the company claims that Malig-on voluntarily resigned, gave a letter of resignation that she wrote with her own hand, used the vernacular language, and signed it. But these are not enough. They merely prove that she wrote that letter, a thing that she did not deny. She was quick to point out that she wrote it after being told that she needed to resign so she could be cleared for her next assignment.

3. ID.; ID.; ID.; THE EMPLOYEE'S FILING OF A COMPLAINT FOR UNJUST DISMISSAL AFTER TENDERING A RESIGNATION IS INCONSISTENT WITH GENUINE RESIGNATION. — [T]hat Malig-on went to the NLRC to file a complaint for unjust dismissal just three days after she filed her alleged resignation letter is inconsistent with genuine resignation. It would make sense only if, as Malig-on claims, the company tricked her into filing for resignation upon a promise to give her a new work assignment and failed to deliver such promise.

4. ID.; ID.; ID.; THE ACT OF "OFF-DETAILING" AN EMPLOYEE IS EQUIVALENT TO CONSTRUCTIVE DISMISSAL WHERE HIS FLOATING STATUS EXCEEDS SIX MONTHS. — The company evidently placed Malig-on on floating status after being relieved as janitress in a client's workplace. But, as the Court has repeatedly ruled, such act of "off-detailing" Malig-on was not the equivalent of dismissal so long as her floating status did not continue beyond a reasonable time. But, when it ran up to more than six months, the company may be considered to have constructively dismissed her from work, that is, as of August 16, 2002. Thus, her purported resignation on October 15, 2002 could not have been legally possible.

5. **ID.; ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO BACKWAGES AND REINSTATEMENT; GRANT OF SEPARATION PAY IN LIEU OF REINSTATEMENT, WHEN PROPER. —** An illegally dismissed employee is entitled to two reliefs: backwages and reinstatement. Still, the Court has held that the grant of separation pay, rather than reinstatement, may be proper especially when the latter is no longer practical or will be for the best interest of the parties, as in this case. Here, after her last work, Malig-on did not appear persistent in getting rehired. Indeed, she did not file any action for constructive dismissal after being placed in a floating status for more than six months. If she were to be believed, it was only eight months later that she showed keen interest in being taken back by following an advice that she first tender her resignation in order to clear up her record prior to being rehired.

6. **ID.; ID.; ID.; ID.; PAYMENT OF BACKWAGES AND SEPARATION PAY TO THE PETITIONER, WARRANTED; COMPUTATION THEREOF.—** After just three days from tendering her resignation, Malig-on hastened to the NLRC and accused her employer of illegal dismissal. Under the circumstances, her reinstatement to her former position would only result in a highly hostile work environment for the parties and might further worsen their relations which are already scarred by the present case. The NLRC should have just awarded Malig-on separation pay instead of ordering the company to reinstate her. Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal. Malig-on can be said to be entitled to reinstatement from the time she was constructively dismissed in August 2002 until the NLRC ordered her immediate reinstatement in February 2005, a period of two years and six months. For this she is entitled to backwages. But since, as already stated, the circumstances already rule out actual reinstatement, she is entitled to separation pay at the rate of one month for every year of service from 1996, when she began her employment to 2005, when she is deemed to have been actually separated from work, a period of nine years, both amounts—the backwages and the separation pay—to bear interest of 6 percent per annum until fully paid.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Apolinario N. Lomabao, Jr. for respondent.

D E C I S I O N

ABAD, *J*.:

This case is about an employee who was considered illegally dismissed notwithstanding the fact that she filed a written resignation from her work.

<u>The Facts and the Case</u>

Petitioner Elsa Malig-on (Malig-on) claimed that on March 4, 1996 respondent Equitable General Services, Inc. (the company) hired her as janitress in its janitorial services. The company paid her ₱250.00 per day for a nine-hour work. After six years or on February 15, 2002 Malig-on's immediate supervisor told her that the company would be assigning her to another client. But it never did despite several follow-ups that she made. Eight months later or on October 15, 2002 the company told Malig-on that she had to file a resignation letter before it would reassign her. She complied but the company reneged on its undertaking, prompting Malig-on to file a complaint against it for illegal dismissal.

The company denied Malig-on's allegations. It claimed that she just stopped reporting for work on February 16, 2002 without giving any reason. Consequently, the company wrote her two letters, first on August 23, 2002 and again on September 2, 2002, asking her to explain her continued absence. On October 15, 2002 Malig-on showed up at the company's office and submitted her resignation letter.

On January 26, 2004 the Labor Arbiter (LA) rendered a decision, finding Malig-on's resignation valid and binding. But the LA ordered the company to pay her emergency cost of living allowance and the balance of her 13th month pay.

On February 28, 2005 the National Labor Relations Commission (NLRC) reversed the LA's decision and ruled that the company had constructively dismissed Malig-on. The NLRC ordered the company to reinstate Malig-on with full backwages from the time the company illegally dismissed her up to the date of the finality of its decision.

The respondent company went up to the Court of Appeals (CA) to challenge the NLRC decision. On July 16, 2008 the CA reversed the NLRC's ruling and reinstated that of the LA, hence, this petition by Malig-on.

The Issue Presented

The issue in this case is whether or not the CA erred in holding that petitioner Malig-on abandoned her work and eventually resigned from it rather than that respondent company constructively dismissed her.

The Rulings of the Court

True, courts give great weight and respect to the facts as found by quasi-judicial and administrative bodies. But when, as in this case, such bodies have conflicting factual findings, the Court has reason to go over both findings to ascertain which one has support in the evidence.[1]

The rule in termination cases is that the employer bears the burden of proving that he dismissed his employee for a just cause.[2] And, when the employer claims that the employee resigned from work, the burden is on the employer to prove that he did so willingly.[3] Whether that is the case would largely depend on the circumstances surrounding such alleged resignation. Those

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[1] *Emcor Incorporated v. Sienes*, G.R. No. 152101, September 8, 2009, 598 SCRA 617, 631-632.

[2] *Polymedic General Hospital v. National Labor Relations Commission*, G.R. No. 64190, January 31, 1985, 134 SCRA 420, 424.

[3] *Mobile Protective & Detective Agency v. Ompad*, 497 Phil. 621, 634-635 (2005).

circumstances must be consistent with the employee's intent to give up work.[4]

Here, the company claims that Malig-on voluntarily resigned, gave a letter of resignation that she wrote with her own hand, used the vernacular language, and signed it. But these are not enough. They merely prove that she wrote that letter, a thing that she did not deny. She was quick to point out that she wrote it after being told that she needed to resign so she could be cleared for her next assignment.

According to the company, Malig-on simply dropped out of sight one day on February 16, 2002 for no reason at all. Eight months later or on October 15, 2002 she appeared at the company's office and tendered her resignation. To the company's surprise, three days later or on October 18, 2002 she went to the NLRC office and filed her complaint against the company for illegal dismissal. Clearly, however, these circumstances do not sound consistent with resignation freely made.

First, when Malig-on reportedly dropped out of sight and the company had no idea about the reason for it, the natural and right thing for it to do was investigate why she had suddenly vanished. Indeed, the company needed to write Malig-on **immediately** and ask her to explain in writing why she should not be considered to have abandoned her job so the company may be cleared of its responsibility as employer. This did not happen here.

Second, if Malig-on had abandoned her work and had no further interest in it, there was no reason for her to suddenly show up at her former place of work after eight months and file her resignation letter. Her action would make sense only if, as she claimed, she had been on floating status for over six months and the company promised to give her a new assignment if she would go through the process of resigning and reapplying.

And, third, that Malig-on went to the NLRC to file a complaint for unjust dismissal just three days after she filed her alleged

[4] *Fortuny Garments v. Castro*, G.R. No. 150668, December 15, 2005, 478 SCRA 125, 130.

resignation letter is inconsistent with genuine resignation.[5] It would make sense only if, as Malig-on claims, the company tricked her into filing for resignation upon a promise to give her a new work assignment and failed to deliver such promise.

The company evidently placed Malig-on on floating status after being relieved as janitress in a client's workplace. But, as the Court has repeatedly ruled, such act of "off-detailing" Malig-on was not the equivalent of dismissal so long as her floating status did not continue beyond a reasonable time. But, when it ran up to more than six months, the company may be considered to have constructively dismissed her from work, that is, as of August 16, 2002.[6] Thus, her purported resignation on October 15, 2002 could not have been legally possible.

The company of course claims that it gave Malig-on notices on August 23, 2002 and September 2, 2002, asking her to explain her failure to report for work and informing her that the company would treat such failure as lack of interest in it, respectively. But these notices cannot possibly take the place of the notices required by law. They came more than six months after the company placed her on floating status and, consequently, the company gave her those notices after it had constructively dismissed her from work.

An illegally dismissed employee is entitled to two reliefs: backwages and reinstatement.[7] Still, the Court has held that the grant of separation pay, rather than reinstatement, may be proper especially when the latter is no longer practical or will be for the best interest of the parties, as in this case.[8] Here, after her last work, Malig-on did not appear persistent in getting

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[5] *Villar v. National Labor Relations Commission*, 387 Phil. 706, 714 (2000).

[6] *Veterans Security Agency, Inc. v. Gonzalvo, Jr.*, G.R. No. 159293, December 16, 2005, 478 SCRA 298, 308.

[7] *Macasero v. Southern Industrial Gases Philippines*, G.R. No. 178524, January 30, 2009, 577 SCRA 500, 507.

[8] *Velasco v. National Labor Relations Commission*, G.R. No. 161694, June 26, 2006, 492 SCRA 686, 699.

rehired. Indeed, she did not file any action for constructive dismissal after being placed in a floating status for more than six months. If she were to be believed, it was only eight months later that she showed keen interest in being taken back by following an advice that she first tender her resignation in order to clear up her record prior to being rehired.

After just three days from tendering her resignation, Malig-on hastened to the NLRC and accused her employer of illegal dismissal. Under the circumstances, her reinstatement to her former position would only result in a highly hostile work environment for the parties and might further worsen their relations which are already scarred by the present case. The NLRC should have just awarded Malig-on separation pay instead of ordering the company to reinstate her.

Backwages represent compensation that should have been earned but were not collected because of the unjust dismissal.[9] Malig-on can be said to be entitled to reinstatement from the time she was constructively dismissed in August 2002 until the NLRC ordered her immediate reinstatement in February 2005, a period of two years and six months. For this she is entitled to backwages. But since, as already stated, the circumstances already rule out actual reinstatement, she is entitled to separation pay at the rate of one month for every year of service from 1996, when she began her employment to 2005, when she is deemed to have been actually separated from work, a period of nine years, both amounts—the backwages and the separation pay—to bear interest of 6 percent per annum until fully paid.[10]

WHEREFORE, the Court *GRANTS* the petition and *REVERSES* the decision of the Court of Appeals dated July 16, 2008 and its resolution dated November 7, 2008 in CA-G.R. SP 100811, and *REINSTATES* the decision of the National Labor Relations Commission dated February 28, 2005 and its resolution dated July 24, 2007 in NLRC NCR CA 039509-04, with the

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[9] *Golden Ace Builders v. Talde*, G.R. No. 187200, May 5, 2010.

[10] *Id*.

following *MODIFICATION*: respondent Equitable General Services, Inc. is directed to pay petitioner Elsa S. Malig-on backwages inclusive of allowances, other benefits or their monetary equivalent, from the time she was constructively dismissed in August 2002 until the NLRC ordered her immediate reinstatement in February 2005, a period of two years and six months and, in addition, separation pay at the rate of one month for every year of service from 1996 when she began her employment to 2005, when her service to the company technically ended, a period of nine years, both amounts—the backwages and the separation pay—to bear interest of 6 percent per annum from February 2005 until fully paid.

SO ORDERED.

Carpio, Nachura, Peralta, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 185840. June 29, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **PEDRO BASADA *y* DEL MONTE, RICARDO BASADA *y* QUIMADA, CRISANTO BASADA *y* QUIMADA, and REYNALDO BASADA *y* QUIMADA,** *appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURT'S ASSESSMENT THEREOF IS ENTITLED TO GREAT WEIGHT; EXCEPTION; PRESENT IN CASE AT BAR. —** As a general rule, a trial court's assessment of the credibility of a witness is entitled to great weight. But this is true only if the trial court had not overlooked some fact or circumstance of great weight and

persuasiveness, which if taken into account, could affect the outcome of the case. Here, there are several telltale signs that the prosecution witnesses did not tell the truth.

2. **ID.; ID.; ID.; TESTIMONIES OF THE WITNESSES WHO HAD IMPROPER MOTIVES CANNOT BE GIVEN CREDENCE. —** Moreover, it was apparent that Eutiquio and Noel had improper motives for trying to implicate the other Basadas. Eutiquio wanted Reynaldo's entire family to suffer for the killing of his brother Jill. Noel, on the other hand, admittedly entertained a grudge against Crisanto prior to the stabbing incident. What should be given credence are the testimonies of those witnesses who had no motive or reason to lie.

3. **ID.; ID.; DEFENSE OF ALIBI; CANNOT PREVAIL IN THE FACE OF POSITIVE IDENTIFICATION; RULE NOT APPLICABLE WHERE THE STORIES OF THOSE WHO IDENTIFIED THE ASSAILANTS WERE DUBIOUS. —** Domingo Catalo testified that he was part of the drinking party. He did not see the other Basadas there and it was only Reynaldo who fought with Jill on that occasion. Concepcion Cristobal, another witness, testified that Ricardo was her stay-in worker on the day of the stabbing incident. Finally, Tirso Ramiscal corroborated the alibis of Pedro and Crisanto that they were at that time at the San Mateo cockpit. Although ordinarily the defense of alibi cannot prevail in the face of positive identification, that rule cannot apply in this case because of the utterly dubious stories of those who identified the supposed assailants.

4. **ID.; ID.; BURDEN OF PROOF AND PRESUMPTIONS; THE PROSECUTION HAS THE BURDEN OF PROVING THE GUILT OF THE ACCUSED BEYOND REASONABLE DOUBT. —** The prosecution has the burden of proving the guilt of the accused beyond reasonable doubt. The overriding consideration is not whether the court doubts the innocence of the accused but whether it entertains a reasonable doubt as to his guilt. Here, the prosecution amply proved that Reynaldo stabbed Jill but utterly failed to show the involvement of the others in the offense.

5. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY; ELEMENTS; NOT PROVED IN CASE AT BAR. —** Despite proof of Reynaldo's guilt, however, the

evidence is lacking as to the existence of the qualifying circumstance of treachery. The CA was correct in holding that treachery was not present in this case. For treachery to qualify Jill's killing to murder, the prosecution had to prove (1) that Reynaldo used means to ensure his safety from Jill's defensive or retaliatory acts; and (2) that Reynaldo deliberately adopted such means. Here, the prosecution had been unable to prove that Reynaldo used means of attack that prevented Jill from defending himself. One witness, Catalo, testified that it was actually Jill who struck first, precluding any notion of treachery on Reynaldo's part. Under the circumstances, the Court finds Reynaldo guilty merely of the lesser offense of homicide and acquits the rest of the accused.

6. **ID.; HOMICIDE; PROPER PENALTY; CIVIL LIABILITY OF THE ACCUSED-APPELLANT. —** For his crime, Reynaldo should suffer the penalty of *reclusion temporal*. As regards his civil liability, he should pay his victim's heirs ₱50,000.00 as death indemnity, another ₱50,000.00 as moral damages because of the physical suffering and mental anguish that the crime brought about, ₱25,000.00 as temperate damages, and ₱840,000.00 as indemnity for the victim's loss of earning capacity. The Court bases the indemnity for loss of earning capacity on Jill's income at the time of death and his probable life expectancy. His wife, Evelyn, testified that Jill's annual gross income was ₱48,000.00. Deducting from this his necessary and incidental expenses, estimated at 50%, the net balance of his income would be ₱24,000.00 per annum. Using the following formula: 2/3 x 80 – 27 (age of the victim at time of death), Jill's life expectancy would be 35 more years. Multiplying the net balance of his annual income by his life expectancy, Jill's loss of his earning is ₱840,000.00.

APPEARANCES OF COUNSEL

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

DECISION

ABAD, *J*.:

This case is about the failed attempt of prosecution witnesses to implicate the other members of the assailant's family in the crime of homicide.

The Facts and the Case

The Assistant Provincial Prosecutor of Marikina charged the accused Pedro, Ricardo *alias* Carding, Reynaldo *alias* Rene, Crisanto *alias* Totoy, and Buyo, all surnamed Basada, and Elmer Apelado before the Regional Trial Court (RTC) of San Mateo, Rizal, in Criminal Case 2929 with the crime of murder.

Upon arraignment, all of the accused pleaded not guilty to the charge, except Reynaldo and Buyo, who were then both at large. The prosecution presented Eutiquio Alea who testified that his brother, Jill, lived next to his house in Vista Rio Village in San Jose, Montalban, Rizal. On May 19, 1996, at about 2 p.m., Eutiquio was at his house when he heard Reynaldo invite Jill to a drinking session at Eddie Basada's house, which was about 300 meters away. At first, Jill did not agree but he eventually gave in to Reynaldo's request. So at about 3 p.m., Jill and Reynaldo left for Eddie's place.

Noel Aneri testified that those present at the drinking session were, aside from himself, his brother Celso, Jill, Reynaldo, Elmer, and Jill's brothers-in-law. At about 5 p.m., an altercation broke out between Jill and Reynaldo because the latter thought that Jill's brothers-in-law might talk too much. Reynaldo boxed Jill on the body, prompting the latter to run outside. Reynaldo went after Jill and hurled a stone at him to slow him down. When Reynaldo reached Jill, he stabbed him at the back with a *balisong*. While Reynaldo and Jill grappled for the knife, Pedro, Crisanto, Buyo, Ricardo, and Elmer came to Reynaldo's aid.

Noel, who allegedly watched the fight from about a distance of three meters, saw Ricardo stab Jill at the back. Elmer, who was behind Jill, stabbed the latter, too. Pedro held Jill's shorts

while boxing him. Buyo and Crisanto, who were also throwing punches, held Jill's right and left arms, respectively.

Eutiquio said that he saw all these happen because he went out of his house when a child screamed, "*Pinagtulung-tulungan ng Basada*." He immediately turned around, however, and returned to his house out of fear of what he saw. Subsequently, the accused left Jill and ran towards a forested area. Noel brought Jill to a hospital where the latter died.

The autopsy report on Jill's cadaver showed that he sustained a contusion on the head, multiple abrasions, and six stab wounds, all on the left part of his body, three of which were fatal. It seemed probable to the medico-legal examiner that only one weapon was used in stabbing Jill.

On April 16, 1999 the RTC rendered a decision acquitting Elmer but finding Pedro, Ricardo, and Crisanto guilty beyond reasonable doubt of the crime charged. It sentenced them to suffer the capital punishment of death.

After the promulgation of the decision, Reynaldo was apprehended and tried. On June 15, 2004 the RTC rendered a decision, finding him likewise guilty beyond reasonable doubt of murder, sentencing him to also suffer the penalty of death.

The Court of Appeals (CA) rendered judgment[1] in CA-G.R. CR-HC 01343 on February 21, 2008, affirming the decision of the RTC but reducing the death penalty imposed on Reynaldo to *reclusion perpetua.* The CA found Pedro, Ricardo, and Crisanto guilty beyond reasonable doubt as mere accomplices and sentenced each of them to suffer the indeterminate penalty of 10 years and 1 day of *prision mayor*, as minimum, to 18 years of *reclusion temporal*, as maximum.

The CA ordered all of the accused to solidarily pay the heirs of Jill Alea ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱25,000.00 as temperate damages; and ₱25,000.00

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[1] *Rollo*, pp. 2-23, penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

as exemplary damages. Pedro, Ricardo, Crisanto, and Reynaldo appealed to this Court from that decision.

The Issue Presented

The only issue presented in this case is whether or not the CA erred in holding that Reynaldo murdered Jill by stabbing him with the aid, as accomplices, of Pedro, Ricardo, and Crisanto.

The Rulings of the Court

As a general rule, a trial court's assessment of the credibility of a witness is entitled to great weight.[2] But this is true only if the trial court had not overlooked some fact or circumstance of great weight and persuasiveness, which if taken into account, could affect the outcome of the case.[3] Here, there are several telltale signs that the prosecution witnesses did not tell the truth.

Eutiquio claims that he came out of his house on hearing a child scream, "*Pinagtulung-tulungan ng Basada*" and that he then went to the place where the reported commotion was taking place. But the spot where his brother was attacked, just outside the house where they were drinking, was about 300 meters from Eutiquio's house. Given that the child saw what was taking place, he had to travel some 300 meters to get near Eutiquio's house and shout the alarm. For his part, Eutiquio had to get out of his house and travel the same 300 meters to get to the place that the child described. Under the circumstances, what the child saw—Eutiquio's brother being ganged up on by the Basadas—would have long come to pass.

Besides, it is quite unbelievable that, as Eutiquio saw his brother being attacked, he would turn back and go home, mindless of what his brother was going through. Although Eutiquio may have been afraid, it was unnatural for him not to do anything to help his brother. He could have shouted or ran for help. And, if he really saw the stabbing, he would have at least stayed to take his brother to the hospital.

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[2] *Soriano v. People*, G.R. No. 148123, June 30, 2008, 556 SCRA 595, 611.

[3] *Arceno v. People*, 326 Phil. 576, 588 (1996).

What is more, Eutiquio and Noel testified that they saw all six accused swarm over Jill, either stabbing or throwing punches at him. If Eutiquio and Noel were to be believed, Reynaldo was the first to stab his brother, followed by Ricardo who pulled the knife from Jill's back and stabbed him again with it. But it is most unlikely for Reynaldo who was the main assailant to stand aside so Ricardo could take over the attack, pull out the knife, and use it again against Jill. Even more incredible is Noel's claim that Ricardo also stood aside to let Elmer himself get the knife and stab Jill a third time. Indeed, the trial court acquitted Elmer since the autopsy report did not show the stab wound he allegedly inflicted on Jill's body.

Moreover, it was apparent that Eutiquio and Noel had improper motives for trying to implicate the other Basadas. Eutiquio wanted Reynaldo's entire family to suffer for the killing of his brother Jill. Noel, on the other hand, admittedly entertained a grudge against Crisanto prior to the stabbing incident. What should be given credence are the testimonies of those witnesses who had no motive or reason to lie.

Domingo Catalo testified that he was part of the drinking party. He did not see the other Basadas there and it was only Reynaldo who fought with Jill on that occasion. Concepcion Cristobal, another witness, testified that Ricardo was her stay-in worker on the day of the stabbing incident. Finally, Tirso Ramiscal corroborated the alibis of Pedro and Crisanto that they were at that time at the San Mateo cockpit. Although ordinarily the defense of alibi cannot prevail in the face of positive identification,[4] that rule cannot apply in this case because of the utterly dubious stories of those who identified the supposed assailants.

The prosecution has the burden of proving the guilt of the accused beyond reasonable doubt.[5] The overriding consideration is not whether the court doubts the innocence of the accused

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[4] *People v. Aure*, G.R. No. 180451, October 17, 2008, 569 SCRA 836, 852.

[5] *People v. Magaro*, 353 Phil. 862, 867 (1998).

but whether it entertains a reasonable doubt as to his guilt.[6] Here, the prosecution amply proved that Reynaldo stabbed Jill but utterly failed to show the involvement of the others in the offense.

Despite proof of Reynaldo's guilt, however, the evidence is lacking as to the existence of the qualifying circumstance of treachery. The CA was correct in holding that treachery was not present in this case. For treachery to qualify Jill's killing to murder, the prosecution had to prove (1) that Reynaldo used means to ensure his safety from Jill's defensive or retaliatory acts; and (2) that Reynaldo deliberately adopted such means.[7]

Here, the prosecution had been unable to prove that Reynaldo used means of attack that prevented Jill from defending himself. One witness, Catalo, testified that it was actually Jill who struck first, precluding any notion of treachery on Reynaldo's part.[8] Under the circumstances, the Court finds Reynaldo guilty merely of the lesser offense of homicide and acquits the rest of the accused.

For his crime, Reynaldo should suffer the penalty of *reclusion temporal*.[9] As regards his civil liability, he should pay his victim's heirs ₱50,000.00 as death indemnity,[10] another ₱50,000.00 as moral damages because of the physical suffering and mental anguish that the crime brought about,[11] ₱25,000.00 as temperate damages, and ₱840,000.00 as indemnity for the victim's loss of earning capacity.

The Court bases the indemnity for loss of earning capacity on Jill's income at the time of death and his probable life expectancy. His wife, Evelyn, testified that Jill's annual gross

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[6] *People v. Parel*, 330 Phil. 453, 471 (1996).

[7] *People v. Bermas*, 369 Phil. 191, 234 (1999).

[8] *Id*.

[9] Revised Penal Code, Article 249.

[10] *People v. Satonero*, G.R. No. 186233, October 2, 2009.

[11] *Id*.

income was ₱48,000.00. Deducting from this his necessary and incidental expenses, estimated at 50%, the net balance of his income would be ₱24,000.00 per annum. Using the following formula: 2/3 x 80 – 27 (age of the victim at time of death), Jill's life expectancy would be 35 more years. Multiplying the net balance of his annual income by his life expectancy, Jill's loss of his earning is ₱840,000.00.

WHEREFORE, the Court *PARTLY REVERSES and MODIFIES* the decision of the Court of Appeals in CA-G.R. CR-HC 01343 dated February 21, 2008 and finds Reynaldo Basada GUILTY beyond reasonable doubt of the crime of homicide, *SENTENCES* him to suffer the penalty of *reclusion temporal*, and *ORDERS* him to indemnify the heirs of Jill Alea in the amounts of ₱50,000.00 as civil indemnity; ₱50,000.00 as moral damages; ₱25,000.00 as temperate damages; and ₱840,000.00 for loss of earning capacity. The Court also orders him to pay the costs.

On the other hand, the Court *ACQUITS* Ricardo Basada, Pedro Basada, and Crisanto Basada of the crime of which they are charged for failure of the prosecution to prove their guilt beyond reasonable doubt and *ORDERS* their *IMMEDIATE RELEASE* from prison, unless they are detained for some other lawful or valid cause.

SO ORDERED.

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

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[*] Designated as additional members in lieu of Associate Justices Antonio Eduardo B. Nachura and Diosdado M. Peralta per raffle dated June 2, 2010.

THIRD DIVISION

[G.R. No. 185906. June 29, 2010]

LOURDES AZARCON,[1] *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and MARCOSA GONZALES,** *respondents.*

SYLLABUS

1. **CRIMINAL LAW; *BATAS PAMBANSA* 22; ELEMENTS; PRESENT IN CASE AT BAR. —** Liability for violation of B.P. 22 attaches when the prosecution establishes proof beyond reasonable doubt of the existence of the following elements: 1. The accused makes, draws or issues any check to apply to account or for value; 2. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, the drawee bank for the payment of the check in full upon its presentment; and 3. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or it would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment. The evidence clearly demonstrates the presence of all three elements. It is not the function of this Court to undertake a review of the factual findings of the trial court, which were sustained by the RTC and the Court of Appeals.
2. **ID.; ID.; ID.; KNOWLEDGE OF INSUFFICIENCY OF FUNDS, PROOF THEREOF. —** What constitutes proof of knowledge of insufficiency of funds, *Dico v. Court of Appeals* enlightens: x x x This knowledge of insufficiency of funds or credit at the time of the issuance of the check . . . involves a state of mind of the person making, drawing or issuing the check which is difficult to prove. [Thus] Section 2 of B.P. Blg. 22 creates a *prima facie* presumption of such knowledge. x x x In other words, the presumption is brought into existence only after it is proved **that the issuer had received a notice of dishonor** and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment. The presumption or *prima facie* evidence as

[1] Petitioner passed away on April 23, 2009 during the pendency of this petition; *vide* Manifestation of September 15, 2009, *rollo*, pp. 114-117.

provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period. A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue. The notice of dishonor may be sent by the offended party or the drawee bank. **The notice must be in writing**. A mere oral notice to pay a dishonored check will not suffice. The lack of a written notice is fatal for the prosecution. The requirement of notice, its sending to, and its actual receipt by, the drawer or maker of the check gives the latter the option to prevent criminal prosecution if he pays the holder of the check the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that the check has not been paid. All that the Bouncing Checks Law thus requires is that the accused must be **notified in writing** of the fact of dishonor. Petitioner admittedly received the December 1, 1993 demand letter of Marcosa. In fact, in her reply letter of December 17, 1993, petitioner sought a reconciliation of accounts and expressed willingness to settle — an indication of her awareness of what checks Marcosa was referring to in the December 1, 1993 letter.

3. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATION; NOVATION; ELUCIDATED. —** *Iloilo Traders Finance, Inc. v. Heirs of Oscar Soriano, Jr.* on novation teaches: Novation may either be extinctive or modificatory, much being dependent on the nature of the change and the intention of the parties. Extinctive novation is **never presumed**; there must be an express intention to novate; in cases **where it is implied**, the acts of the parties must clearly demonstrate their intent to dissolve the old obligation as the moving consideration for the emergence of the new one. Implied novation necessitates that the incompatibility between the old and new obligation be total on every point such that the old obligation is completely superseded by the new one. The test of incompatibility is whether they can stand together, each one having an independent existence; if they cannot and are irreconcilable, the subsequent obligation would also extinguish the first. An extinctive novation would thus have the twin effects of, *first*, extinguishing an existing

obligation and, *second*, creating a new one in its stead. This kind of novation presupposes a confluence of four essential requisites: (1) a previous valid obligation; (2) an agreement of all parties concerned to a new contract; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation. Novation is merely modificatory where the change brought about by any subsequent agreement is merely incidental to the main obligation (*e.g.,* a change in interest rates or an extension of time to pay); in this instance, the new agreement will not have the effect of extinguishing the first but would merely supplement it or supplant some but not all of its provisions.

4. ID.; ID.; ID.; ID.; NO NOVATION OF PETITIONER'S CIVIL LIABILITY. — As for petitioner's assertion that novation of her civil liability occurred, it is likewise unavailing. The novation which petitioner suggests as having taken place, whereby Manuel was supposed to assume her obligations as debtor, is neither express nor implied. There is no showing of Marcosa explicitly agreeing to such a substitution, nor of any act of her from which an inference may be drawn that she had agreed to absolve petitioner from her financial obligations and to instead hold Manuel fully accountable.

APPEARANCES OF COUNSEL

Domingo Dizon Leonardo & Rodillas for petitioner.
The Solicitor General for public respondent.
Quiambao Alfajora Reyes & Associates for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

On petition for review are the Court of Appeals September 30, 2008 Decision[2] and January 6, 2009 Resolution[3] affirming with modification the September 15, 2006 Decision of Branch

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[2] Penned by Associate Justice Marlene Gonzales-Sison, with the concurrence of Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicdican; CA *rollo,* pp. 391-402.

[3] *Id.* at 464-465.

224 of the Regional Trial Court (RTC) of Quezon City in Criminal Case Nos. Q-38-021202 to 021288 which upheld the November 15, 2005 Decision of Branch 38 of the Metropolitan Trial Court (MeTC) of Quezon City convicting Lourdes Azarcon (petitioner) of eighty-four (84) counts of violation of *Batas Pambansa* (B.P.) Bilang 22,[4] otherwise known as the Bouncing Checks Law.

Since 1990, petitioner, a businesswoman, had been borrowing money from Marcosa Gonzales (Marcosa) who was engaged in informal money-lending. Between the months of August to December 1992, as was usual in the normal course of their transactions, petitioner issued several Premiere Bank checks payable to Marcosa, dated at ten-day intervals, in exchange for cash received. Due to business reverses suffered by petitioner, however, the checks were, on maturity, dishonored for the reason "Account Closed."

Marcosa, through counsel, thus demanded, by letter[5] of December 1, 1993 to petitioner, the settlement of her ₱749,000.00 obligation for which she issued "several Premium Bank checks, with [the] assurance that all will be honored" but that they were all dishonored due to "Account Closed."

Replying, petitioner, by letter[6] of December 17, 1993, sought a "reconciliation of her accountability since [she] has also some receipt payments covering the checks she has issued." She, in the same letter, expressed willingness to settle her outstanding account. Petitioner's husband, Manuel Azarcon (Manuel), later paid on February 15, 1994 the amount of ₱200,000.00 representing "initial payment on the account of [petitioner]" with the undertaking to settle the balance within one year via monthly installments.[7]

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[4] Entitled AN ACT PENALIZING THE MAKING OR DRAWING AND ISSUANCE OF A CHECK WITHOUT SUFFICIENT FUNDS OR CREDIT AND FOR OTHER PURPOSES.

[5] Exhibit "A", records, p. 538.

[6] Exhibit "A-2", *id.* at 539.

[7] *Vide* Exhibit "33", *id.* at 755.

More than two and a half years later, as petitioner had not settled her outstanding obligation, Marcosa filed on September 4, 1996 a complaint[8] for violation of B.P. 22 before the Quezon City Prosecutor's Office against her involving 120 dishonored checks amounting to ₱746,250.00, 87 of which were made the basis of 87 Informations filed against her.

Except for the numbers, dates and amounts (ranging from ₱1,500.00 to ₱6,250.00) of the checks[9] issued by petitioner subject of the 87 Informations filed against her, each Information uniformly charged as follows:

That on or about the ____________ in Quezon City, Philippines, the said accused, did then and there willfully, unlawfully and feloniously make or draw and issue to MARCOSA GONZALES to apply on account or for value PREMIERE BANK check no. 000367 dated ___________ payable to the order of MARCOSA GONZALES in the amount of _____________ Philippine Currency, said accused well knowing that at the time of issue she did not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment which check when presented for payment was subsequently dishonored by the drawee bank for insufficiency of funds/Account Closed and despite receipt of notice of such dishonor, said accused failed to pay said MARCOSA GONZALES the amount of said check or to make arrangement for full payment of the same within five (5) banking days after receiving said notice.

CONTRARY TO LAW.

Petitioner maintained that her obligations under the various checks had been released, superseded and novated by her husband's assumption of her liabilities.[10] Brushing this position

[8] Exhibit "1", *id.* at 711-713.

[9] *Vide* Exhibits "D" to "D-83", *id.* at 544-564, exclusive of three (3) Premiere Bank checks, to wit:

Check Number	Date	Amount	Criminal Case No.
152348	October 9, 1992	₱ 2,500.00	21248
152316	September 20, 1992	₱ 3,000.00	21262
000377	December 4, 1992	₱ 5,500.00	21278

[10] TSN, August 12, 2003. pp. 20-29.

aside, the trial court convicted petitioner. It, however, deducted from the total amount of the face value of the 87 checks the sum of ₱11,000.00 representing the face value of three checks[11] which the prosecution failed to offer in evidence, and another sum of ₱20,000.00 claimed to have been paid to Marcosa which she failed to dispute.

Thus, the trial court, by Decision[12] of November 15, 2005, disposed:

WHEREFORE, premises considered, this Court finds accused LOURDES AZARCON guilty, beyond reasonable doubt, of eighty-four (84) counts of violation of the *Batas Pambansa Blg.* 22 in Criminal Case Nos. 21202 to 21247, 21249 to 21261, 21263 to 21277 and 21279 to 21288, and hereby sentences her to suffer a penalty of SIX (6) MONTHS IMPRISONMENT for each count of violation; to restitute to the private complainant the amount of TWO HUNDRED NINETY FIVE THOUSAND TWO HUNDRED FIFTY PESOS (₱295,250.00) representing the value of the checks less the payment of ₱20,000.00 plus 12% per annum interest from the date of final demand until said amount is fully paid. The accused is also ordered to pay the complainant the reasonable sum of ₱20,000.00 as attorney's fees.

Further, pursuant to Sec. 34, Rule 132 of the Revised Rules on Criminal Procedure which provides that the court shall consider no evidence which has not been formally offered, Criminal Cases Nos. 21248, 21262 and 21278 are hereby DISMISSED, for insufficiency of evidence.

SO ORDERED.

On appeal, the Quezon City RTC, Br. 224[13] *affirmed* the trial court's judgment by Decision[14] of September 15, 2006.

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[11] Covered by Criminal Cases Nos. 21248, 21267 and 21278.

[12] Rendered by Acting Presiding Judge Catherine P. Manodon; records, pp. 946-961.

[13] The case was originally raffled off to Branch 219 but subsequently re-raffled to Branch 224 after the former's presiding judge voluntarily inhibited himself upon petitioner's motion; *vide* Order of May 5, 2006, *id.* at 1513.

[14] *Id.* at 1542-1545.

At the Court of Appeals before which petitioner appealed, she questioned 1) the lack of prior demand for the settlement of the checks after their dishonor, the December 1, 1993 demand letter[15] for the payment of her outstanding balance having failed to mention or enumerate any particular check involved therein, and (2) the lower courts' failure to appreciate that novation had taken place with respect to her civil liability.[16]

By the challenged decision, the appellate court affirmed the appellant's conviction but found the imposition of the penalty of imprisonment (six months for each of the 84 checks) too harsh, citing SC Administrative Circular 12-2000[17] and *Lim v. People*.[18] It thus *modified* the RTC decision, disposing as follows:

> WHEREFORE, premises considered, the assailed Judgment of the Regional Trial Court of Quezon City is hereby modified, to wit: This Court finds Petitioner Lourdes Azarcon guilty of having violated the provisions of *Batas Pambansa Bilang* 22 and hereby sentences her to pay a **fine double** the amount stated on each of the 84 checks, to suffer subsidiary imprisonment in case of non-payment or insolvency and to restitute to the Private Respondent the amount of TWO HUNDRED NINETY FIVE THOUSAND TWO HUNDRED FIFTY PESOS (₱295,250.00) representing the value of the checks less the payment of ₱20,000.00, plus 12% per annum interest from the date of final demand until said amount is fully paid. The accused is also ordered to pay the complainant the reasonable sum of ₱20,000.00 as attorney's fees.
>
> SO ORDERED. (emphasis supplied; underscoring in the original)

Reconsideration having been denied by Resolution of January 6, 2009, petitioner echoes before this Court substantially the same issues proffered before the appellate court.

Petitioner's conviction stands.

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[15] *Vide* note 5.

[16] CA *rollo*, pp. 15-27.

[17] Re: Penalty for Violation of BP Blg. 22, November 21, 2000.

[18] G.R. No. 130038, September 18, 2000, 340 SCRA 497.

Liability for violation of B.P. 22 attaches when the prosecution establishes proof beyond reasonable doubt of the existence of the following elements:

1. The accused makes, draws or issues any check to apply to account or for value;

2. The accused knows at the time of the issuance that he or she does not have sufficient funds in, or credit with, the drawee bank for the payment of the check in full upon its presentment; and

3. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or it would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.[19]

The evidence clearly demonstrates the presence of all three elements. It is not the function of this Court to undertake a review of the factual findings of the trial court, which were sustained by the RTC and the Court of Appeals.

Petitioner argues, however, that acquittal is in order as the second element of the crime is wanting, citing lack of knowledge of the insufficiency of her credit due to Marcosa's failure to specify or enumerate the dishonored checks in her December 1, 1993 demand letter. Petitioner's argument fails.

What constitutes proof of knowledge of insufficiency of funds, *Dico v. Court of Appeals*[20] enlightens:

x x x x x x x x x

<u>This knowledge of insufficiency of funds or credit at the time of the issuance of the check</u> . . . <u>involves a state of mind of the person making, drawing or issuing the check which is difficult to prove.</u>

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[19] *Ruiz v. People,* G.R. No. 160893, November 18, 2005, 475 SCRA 476, 489 citing *Yu Oh v. Court of Appeals*, G.R. No. 125297, June 6, 2002, 403 SCRA 300.

[20] G.R. No. 141669, February 28, 2005, 452 SCRA 441, 456-457 citing *Lao v. Court of Appeals*, G.R. No. 119178, June 20, 1997, 274 SCRA 572, 584.

[Thus] Section 2 of B.P. Blg. 22 creates a *prima facie* presumption of such knowledge. Said section reads:

SEC. 2. *Evidence of knowledge of insufficient funds.* — The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be *prima facie* evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that such check has not been paid by the drawee.

x x x In other words, the presumption is brought into existence only after it is proved **that the issuer had received a notice of dishonor** and that within five days from receipt thereof, he failed to pay the amount of the check or to make arrangements for its payment. The presumption or *prima facie* evidence as provided in this section cannot arise, if such notice of nonpayment by the drawee bank is not sent to the maker or drawer, or if there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5-day period.

A notice of dishonor received by the maker or drawer of the check is thus indispensable before a conviction can ensue. The notice of dishonor may be sent by the offended party or the drawee bank. **The notice must be in writing**. A mere oral notice to pay a dishonored check will not suffice. The lack of a written notice is fatal for the prosecution.

The requirement of notice, its sending to, and its actual receipt by, the drawer or maker of the check gives the latter the option to prevent criminal prosecution if he pays the holder of the check the amount due thereon, or makes arrangements for payment in full by the drawee of such check within five (5) banking days after receiving notice that the check has not been paid. (emphasis and underscoring supplied)

All that the Bouncing Checks Law thus requires is that the accused must be **notified in writing** of the fact of dishonor.[21]

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[21] *Domagsang v. Court of Appeals*, G.R. No. 139292, December 5, 2000, 347 SCRA 75, 83.

Petitioner admittedly received the December 1, 1993 demand letter of Marcosa. In fact, in her reply letter of December 17, 1993, petitioner sought a reconciliation of accounts and expressed willingness to settle — an indication of her awareness of what checks Marcosa was referring to in the December 1, 1993 letter.

As for petitioner's assertion that novation of her civil liability occurred, it is likewise unavailing.

Iloilo Traders Finance, Inc. v. Heirs of Oscar Soriano, Jr.[22] on novation teaches:

> Novation may either be extinctive or modificatory, much being dependent on the nature of the change and the intention of the parties. Extinctive novation is **never presumed**; there must be an express intention to novate; in cases **where it is implied**, the acts of the parties must clearly demonstrate their intent to dissolve the old obligation as the moving consideration for the emergence of the new one. Implied novation necessitates that the incompatibility between the old and new obligation be total on every point such that the old obligation is completely superseded by the new one. The test of incompatibility is whether they can stand together, each one having an independent existence; if they cannot and are irreconcilable, the subsequent obligation would also extinguish the first.
>
> An extinctive novation would thus have the twin effects of, *first*, extinguishing an existing obligation and, *second*, creating a new one in its stead. This kind of novation presupposes a confluence of four essential requisites: (1) a previous valid obligation; (2) an agreement of all parties concerned to a new contract; (3) the extinguishment of the old obligation; and (4) the birth of a valid new obligation. Novation is merely modificatory where the change brought about by any subsequent agreement is merely incidental to the main obligation (*e.g.,* a change in interest rates or an extension of time to pay); in this instance, the new agreement will not have the effect of extinguishing the first but would merely supplement it or supplant some but not all of its provisions. (emphasis and underscoring supplied)

The novation which petitioner suggests as having taken place, whereby Manuel was supposed to assume her obligations as

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[22] G.R. No. 149683, June 16, 2003, 404 SCRA 67, 71-72.

debtor, is neither express nor implied. There is no showing of Marcosa explicitly agreeing to such a substitution, nor of any act of her from which an inference may be drawn that she had agreed to absolve petitioner from her financial obligations and to instead hold Manuel fully accountable.

It bears pointing out that the February 15, 1994 receipt[23] acknowledging payment of ₱200,000, apparently that given by Manuel, reads:

February 15, 1994

Received the sum of TWO HUNDRED THOUSAND PESOS only (₱200,000.00) covered by two separate checks — BPI Check No. 390971 dated February 15, 1994 and BPI Check No. 390970 dated March 15, 1994 representing initial payment on the account of Mrs. Lourdes N. Azarcon with Mrs. Marcosa Gonzales. The balance of Mrs. Azarcon's account shall be payable in one year through monthly payments until her indebtedness is fully settled. This is without prejudice to whatever legal action Mrs. Marcosa Gonzales may undertake in case of failure of the spouses Manuel and Lourdes Azarcon to settle in full their obligation, as provided above.

x x x (underscoring supplied)

Finally, practically all the other receipts[24] thereafter issued by Marcosa acknowledging installment payments invariably disclose that they were either made by petitioner herself, or received for "the account of Mrs. Lourdes Azarcon."

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

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[23] Vide note 7.

[24] Exhibits "33-A" to "33-K", *id.* at 756-765.

[*] Additional member per Special Order No. 843 dated May 17, 2010.

FIRST DIVISION

[G.R. No. 186289. June 29, 2010]

ORIENTAL SHIPMANAGEMENT CO., INC., *petitioner, vs.* **ROMY B. BASTOL,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICE; VERIFICATION AND CERTIFICATION OF NON-FORUM SHOPPING; STRICT APPLICATION OF THE RULES ON VERIFICATION DOES NOT APPLY TO LABOR COMPLAINTS FILED BEFORE THE NLRC REGIONAL ARBITRATION BOARD (RAB). —** For the expeditious and inexpensive filing of complaints by employees, the Regional Arbitration Branch (RAB) of the NLRC provides pro-forma complaint forms. This is to facilitate the exercise and protection of employees' rights by the convenient assertion of their claims against employers untrammeled by procedural rules and complexities. To comply with the certification against forum shopping requirement, a simple question embodied in the Complaint form answerable by "yes" or "no" suffices. Employee-complainants are not even required to have a counsel before they can file their complaint. An officer of the RAB, duly authorized to administer oaths, is readily available to facilitate the execution of the required subscription or *jurat* of the complaint. This can be seen in the case at bar. Bastol, assisted by counsel, filled out the Complaint form, line No. 11 of which is a question on anti-forum shopping which he answered by underlining the word "No." It is thus clear that the strict application of Sec. 4, Rule 7 of the Rules of Court does not apply to labor complaints filed before the NLRC RAB.

2. **ID.; ID.; ID.; ID.; MANIFESTATION/COMPLIANCE NOT REQUIRED TO BE VERIFIED; VERIFICATION BY THE COMPLAINANT'S COUNSEL IS SUFFICIENT COMPLIANCE WITH THE RULE ON VERIFICATION. —** Anent the issue of verification, we have scrutinized both the Position Paper and the Manifestation/Compliance filed by Bastol and we fail to see any violation thereof. *First*, there is no law or rule requiring verification for the Manifestation/

Compliance. *Second*, the counsel's verification in Bastol's Position Paper substantially complies with the rule on verification. The second paragraph of Sec. 4, Rule 7 of the Rules of Court provides: "A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records." On the other hand, the actual verification of counsel in Bastol's Position Paper states: "That I am the counsel of record for the complainant in the above-entitled case; that I caused the preparation of the foregoing Position Paper; that I have read and understood the contents thereof; and that **I confirm that all the allegations therein contained are true and correct based on recorded evidence**." Appended to the position paper were Bastol's contract of employment, counsel's letter to OSCI, and various medical certifications issued by several doctors with similar findings and diagnosis of Bastol's heart ailment. Evidently, the verification is proper as based on, and evidenced, by the appended documents, which were not disputed save the contents of the medical certificate issued by Dr. Vicaldo.

3. **ID.; JUDGMENTS; *RES JUDICATA*; DOCTRINE; NOT APPLICABLE TO CASE AT BAR. —** We agree with OSCI that the CA committed double *faux pas* by (1) ruling on the remand of the case by the NLRC to the Labor Arbiter which was not the subject of Bastol's appeal before it; and (2) reinstating the January 28, 1999 Decision of Labor Arbiter Mayor, Jr. which had earlier been set aside and was not the object of OSCI's appeal to the NLRC. But these lapses do not adversely affect the CA's determination of the propriety of the disability indemnity awarded to Bastol, as will be discussed here. Suffice it to say that the July 30, 1999 NLRC Decision cannot and does not constitute *res judicata* to the instant case. In *Estate of the Late Encarnacion Vda. de Panlilio v. Dizon*, extensively quoting from the earlier case of *Vda. de Cruzo v. Carriaga, Jr.*, we explained the nature of *res judicata*, as now embodied in Sec. 47, Rule 39 of the Rules of Court, in its two concepts of "bar by former judgment" and "conclusiveness of judgment." These concepts of the doctrine of *res judicata* are applicable to second actions involving substantially the same parties, the same subject matter, and cause or causes of action. In the instant case, there is no second action to speak of, involving as it is

the very same action albeit the NLRC remanded it to the Labor Arbiter for further proceedings.

4. **ID.; APPEALS; LAW OF THE CASE; DEFINED; PRINCIPLE INAPPLICABLE TO CASE AT BAR. —** "Law of the case" has been defined as the opinion delivered on a former appeal— it is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. OSCI's application of the **law of the case** principle to the instant case, as regards the remand of the case to the Labor Arbiter for clarificatory hearings, is misplaced. The only matter settled in the July 30, 1999 NLRC Decision, which can be regarded as law of the case, was the undisputed fact that Bastol was suffering from a heart ailment. As it is, the issue on the degree of disability of Bastol's heart ailment and his entitlement to disability indemnity, as viewed by the NLRC through said decision, has yet to be resolved. Precisely, the NLRC remanded the case to Labor Arbiter Mayor, Jr. "for conduct of further approximate proceedings and to terminate the same with dispatch."

5. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; NLRC RULES OF PROCEDURE; THE LABOR ARBITER HAS FULL DISCRETION TO DETERMINE, *MOTU PROPRIO*, ON WHETHER TO CONDUCT HEARINGS OR NOT. —** While it can be argued that the NLRC through its July 30, 1999 Decision skewed to have clarificatory hearings for the presentation of evidence, it cannot be gainsaid that with the remand of the case, the Labor Arbiter must proceed in accordance to the Rules governing proceedings before him provided under the prevailing Rules of Procedure of the NLRC. We fully agree with Bastol's arguments that the NLRC, while having appellate jurisdiction over decisions and resolutions of the Labor Arbiter, may not dictate to the latter how to conduct the labor case before him. Sec. 9 of Rule V of the then prevailing NLRC Rules of Procedure, issued on December 10, 1999, provided for the nature of proceedings before the Labor Arbiter, thus: Section 9. Nature of Proceedings. — The proceedings before a Labor Arbiter shall be **non-litigious in nature**. Subject to the requirements of due process, the **technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly apply thereto**. The Labor Arbiter may avail

himself of all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well-informed persons. And the Labor Arbiter is given full discretion to determine, *motu proprio*, on whether to conduct hearings or not.

6. **ID.; ID.; ID.; ID.; RATIONALE; PROCEEDINGS BEFORE THE LABOR ARBITER IS NON-LITIGIOUS AND SUMMARY IN NATURE. —** [Secs. 3 and 4 of Rule V of the then prevailing NLRC Rules of Procedure] manifestly show the non-litigious and the summary nature of the proceedings before the Labor Arbiter, who is given full discretion whether to conduct a hearing or not and to decide the case before him through position papers. In *Iriga Telephone Co., Inc. v. National Labor Relations Commission*, the Court discussed the reason why it is discretionary on the part of the Labor Arbiter, who, *motu proprio*, determines whether to hold a hearing or not. Consequently, a hearing cannot be demanded by either party as a matter of right. The parties are required to file their corresponding position papers and all the documentary evidence and affidavits to prove their cause of action and defenses. The rationale behind this is to avoid delay and curtail the pernicious practice of withholding of evidence. In *Pepsi Cola Products Philippines, Inc. v. Santos*, the Court reiterated the Labor Arbiter's discretion not to conduct formal or clarificatory hearings which is not violative of due process, thus: The holding of a formal hearing or trial is discretionary with the Labor Arbiter and is something that the parties cannot demand as a matter of right. The requirements of due process are satisfied when the parties are given the opportunity to submit position papers wherein they are supposed to attach all the documents that would prove their claim in case it be decided that no hearing should be conducted or was necessary.

7. **ID.; ID.; ID.; THE LABOR ARBITER IS ALLOWED TO ADMIT AFFIDAVITS AS EVIDENCE DESPITE THE NON-PRESENTATION OF THE AFFIANTS FOR CROSS-EXAMINATION BY THE ADVERSE PARTY. —** In sum, it can be properly said that the proceedings before the Labor Arbiter are non-litigious in nature and the technicalities of law and procedure, and the rules obtaining in the courts of law are not applicable. Thus, the rules allow the admission of affidavits by the Labor Arbiter as evidence despite the fact

that the affiants were not presented for cross-examination by the counsel for the adverse party. To require otherwise would be to negate the rationale and purpose of the summary nature of the administrative proceedings and to make mandatory the application of the technical rules of evidence. What the other party should do is to present counter-affidavits instead of merely objecting on the ground that the affidavits are hearsay.

8. **ID.; ID.; ID.; CLARIFICATORY HEARINGS, WHEN REQUIRED. —** The Court, however, has recognized specific instances of the impracticality for the Labor Arbiter to follow the position paper method of disposing cases; thus, formal or clarificatory hearings must be had in cases of termination of employment: such as, when claims are not properly ventilated for lack of proper determination whether complainant employee was a rank-and-file or a managerial employee, that the Labor Arbiter cannot rely solely on the parties' bare allegations when the affidavits submitted presented conflicting factual issues, and considering the dearth of evidence presented by complainants the Labor Arbiter should have set the case for hearing. In the instant case, we find substantial evidence to support the decision of Labor Arbiter Lustria. Substantial evidence is such amount of evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.

9. **ID.; ID.; ID.; BELATED SUBMISSION OF ADDITIONAL DOCUMENTARY EVIDENCE AFTER THE CASE WAS ALREADY SUBMITTED FOR DECISION NOT CONSIDERED IMPROPER; REASON. —** The nature of the proceedings before the Labor Arbiter is not only non-litigious and summary, but the Labor Arbiter is also given great leeway to resolve the case; thus, he may "avail himself of all reasonable means to ascertain the facts of the controversy." The belated submission of additional documentary evidence by Bastol after the case was already submitted for decision did not make the proceedings before the Labor Arbiter improper. The basic reason is that technical rules of procedure are not binding in labor cases.

10. **ID.; ID.; ID.; ESSENCE OF DUE PROCESS IS SIMPLY AN OPPORTUNITY TO BE HEARD, AND NOT THAT AN ACTUAL HEARING SHOULD INDISPENSABLY BE HELD. —** And neither can OSCI rely on lack of due process.

The essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably he held. Considering that OSCI indeed contested the late submission of Bastol by filing its most vehement objection thereto on November 27, 2001, it cannot complain of not being accorded the opportunity to be heard and much less can it demand for the setting of an actual hearing. What OSCI could have and ought to have done was to present its own counter-affidavits. But it did not.

11. **ID.; EMPLOYEES' COMPENSATION; REVISED 1994 AND 1996 STANDARD EMPLOYMENT CONTRACT; PERMANENT DISABILITY CLAIM, REQUIREMENTS; COMPLIED WITH IN CASE AT BAR. —** [I]t is thus clear—in either the revised 1994 and the 1996 SEC—that Bastol, suffering from a heart ailment and repatriated on March 7, 1997, must comply with two requirements: *first*, to submit himself to a post-employment medical examination by a company-designated physician within three working days from his repatriation; *second*, he must allow himself to be treated until he is either declared fit to work or be assessed the degree of permanent disability by the company-designated physician. Most importantly, the mandatory compliance of the second requirement is qualified by the limitation or condition that **<u>in no case shall this period exceed one hundred twenty (120) days</u>**. The 120-day limitation refers to the period of medical attention or treatment by the company-designated physician, who must either declare the seafarer fit to work or assess the degree of permanent disability. The undisputed facts clearly show Bastol complying with the two mandatory requirements.

12. **ID.; ID.; ID.; PERMANENT DISABILITY, DEFINED; IN DISABILITY COMPENSATION, IT IS NOT THE INJURY WHICH IS COMPENSATED BUT RATHER THE INCAPACITY TO WORK RESULTING IN THE IMPAIRMENT OF ONE'S EARNING CAPACITY. —** In all, after his repatriation on March 7, 1997, Bastol went to see Dr. Peralta on March 8, 1997, and until the last examination by Dr. Lim on October 28, 1997, he had been treated by these company-designated doctors for a period spanning around **seven months and 20 days** or for approximately **230 days**. Clearly then, the **maximum period of 120 days stipulated in the SEC for medical treatment and the declaration or assessment**

by the company-designated physician of either being fit to work or the degree of permanent disability had already lapsed. Thus, by law, **if Bastol's condition was with the lapse of the 120 days of post-employment medical examination and treatment, which actually lasted as the records show for at least over eight months** and for over a year by the time the complaint was filed, **without his being employed at his usual job**, then it was certainly total permanent disability. It has been held that disability is intimately related to one's earning capacity. It should be understood less on its medical significance but more on the loss of earning capacity. Total disability does not mean absolute helplessness. In disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one's earning capacity. Thus, permanent disability is the **inability of a worker to perform his job for more than 120 days**, regardless of whether or not he loses the use of any part of his body. This is the case of Bastol, aptly held by the CA.

13. ID.; ID.; ID.; DISABILITY, WHEN CONSIDERED PERMANENT. — We explained in *Wallem Maritime Services, Inc.* that the lapse of the 120-day threshold period is not the benchmark for considering a permanent disability due to injury or illness, "rather, the true test of whether respondent suffered from a permanent disability is whether there is evidence that he was unable to perform his customary work as messman for more than 120 days." Applying the foregoing considerations, it is clear that Bastol was not only under the treatment of company-designated physicians for over seven months, but it is likewise undisputed that he had not been employed as bosun for said time. Note again upon his repatriation on March 7, 1997, Bastol was treated by company-designated physician Dr. Peralta who found him unfit for sea duty on March 8 and April 1, 1997. Thereafter, he was confined at the Metropolitan Hospital under company-designated physician Dr. Lim for almost a month, *i.e.*, from April 10, 1997 until May 7, 1997. After confinement, Dr. Lim treated him until October 28, 1997. In all these seven months and 20 days of treatment, Bastol was not employed at his usual job as bosun. In fact, the Court notes that Bastol was never able to work as bosun thereafter on account of his poor health. Thus, the declaration by Dr. Vicaldo of Bastol's disability as Disability Impediment Grade 1 Degree (120%) constituting total permanent disability on November

28, 1997 or eight months and 20 days (approximately 260 days) from March 8, 1997 when he submitted himself to company-designated physician Dr. Peralta merely echoed what the law provides.

14. **ID.; ID.; ID.; SEEKING MEDICAL TREATMENT FROM A PHYSICIAN OTHER THAN THE COMPANY-DESIGNATED PHYSICIAN AFTER THE LAPSE OF THE 120-DAY PERIOD, NOT VIOLATIVE OF 1994 REVISED STANDARD EMPLOYMENT CONTRACT. —** Thus, we can say that Bastol had the right to seek medical treatment other than the company-designated physician after the lapse of the 120-day considering that said physician, within the **maximum 120-day period stipulated in the SEC** neither declared him fit to work or gave the assessment of the degree of his permanent disability which he is incumbent to do. Moreover, as the CA aptly noted, Dr. Vicaldo's diagnosis and assessment should be accorded greater weight considering that he is a Cardiologist and Congenital Heart Disease Specialist of the Philippine Heart Center. It is undisputed that Dr. Lim, the company-designated physician, is not a cardiology expert being a Diplomate in Rehabilitation Medicine and who seemed to be not the attending physician of Bastol in the Metropolitan Hospital as shown in his September 16, 1997 letter to PPI stating "his cardiologist opines that he has to continue taking his maintenance medications."

15. **ID.; ID.; ID.; ID.; MYOCARDIAL INFARCTION IS COMPENSABLE. —** OSCI also erroneously contends that the illness of Bastol is not compensable under the SEC. It has already been settled in *Heirs of the Late R/O Reynaldo Aniban v. National Labor Relations Commission* that **myocardial infarction** as a disease or cause of death is compensable, such being occupational. x x x. We are not blind to the needs of our seafarers who, when getting sick in the line of duty, are given the run around by unscrupulous employers and manning agencies. The instant case has spanned a dozen years with the disability indemnity benefit not granted. Alas, the sad reality is that Romy B. Bastol succumbed to his illness and died on December 13, 2009 of acute *myocardial infarction* and cannot now enjoy the fruits of his long protracted struggle for what is right and what has accrued to him.

APPEARANCES OF COUNSEL

Vergel De Dios Maritime Law Offices for petitioner.
Romulo P. Valmores for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

In a Petition for Review[1] on *Certiorari* under Rule 45 of the Rules of Court, petitioner Oriental Shipmanagement Co., Inc. (OSCI) assails the Decision[2] dated August 12, 2008 and the Resolutions dated January 7, 2009[3] and February 6, 2009[4] of the Court of Appeals (CA) in CA-G.R. SP No. 100090, which annulled and set aside the July 31, 2006 Decision[5] and May 30, 2007 Resolution of the National Labor Relations Commission (NLRC), and reinstated the January 28, 1999 Decision[6] of the Labor Arbiter.

The Facts

OSCI is a domestic manning agency engaged in the recruitment and placement of Filipino seafarers abroad. Paterco Shipping Ltd. (PSL) is a foreign shipping company which owned and operated the vessel MV Felicita and a client of OSCI. Protection & Indemnity Club (PIC) was the insurer of PSL covering

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[1] *Rollo*, pp. 10-33, dated March 11, 2009.

[2] *Id.* at 200-229. Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal.

[3] *Id.* at 243-244.

[4] *Id.* at 249-251.

[5] *Id.* at 145-151, per Presiding Commissioner Benedicto Ernesto R. Bitonio, Jr., concurred in by Commissioners Perlita B. Velasco and Romeo L. Go.

[6] *Id.* at 66-78, per Labor Arbiter Jovencio Ll. Mayor, Jr.

contingencies like illness claims and benefits of seamen. Pandiman Philippines, Inc. (PPI) is the local representative of PIC.

As agent of PSL, OSCI hired Romy B. Bastol (Bastol) as bosun on November 29, 1995 evidenced by a Contract of Employment.[7] On December 5, 1995, Bastol was deployed on board the vessel MV Felicita.

The genesis of the instant case emerged when, on February 17, 1997, while on board the vessel, Bastol suffered chest pains and cold clammy perspiration. He was hospitalized in Algiers and found to be suffering from anterior myocardial infarction.[8] In short, he had a heart attack. He was subsequently repatriated due to his illness on March 7, 1997.

Upon arrival here in the Philippines, on March 8, 1997, he was referred to the Jose L. Gutierrez Clinic in Malate, Manila for a follow-up examination where Dr. Achilles J. Peralta examined and found him to be suffering from "T/C Ischemic Heart Disease. Ant. Myocardial Infection." Dr. Peralta issued a Medical Report[9] certifying that he was "Unfit for Sea Duty." In a follow-up medical examination on April 1, 1997, Dr. Peralta still found Bastol "Unfit for Sea Duty."[10]

Thus, PPI referred Bastol for medical treatment to the Metropolitan Hospital under the care of company-designated physician Dr. Robert D. Lim, a Diplomate in Rehabilitation Medicine. On April 10, 1997, Bastol was confined and treated at said hospital until May 7, 1997. Dr. Lim certified that Bastol had "Coronary artery dse; S/P Ant. wall MP; Hypercholesterolemia; Hyperglycemia."[11] Thereafter, Bastol had regular laboratory and medical examinations with the company-designated physician.

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[7] *Id.* at 44.

[8] *Id.* at 45-46, Rapport Medical dated February 26, 1997.

[9] *Id.* at 47.

[10] *Id.* at 48.

[11] *Id.* at 49, Medical Certificate dated May 7, 1997 issued by Dr. Robert D. Lim.

Unsatisfied with the treatment by Dr. Lim and seeking a second opinion, he went to Dr. Efren R. Vicaldo, a Cardiologist and Congenital Heart Disease Specialist of the Philippine Heart Center, who diagnosed him to be suffering from "Coronary Artery Disease and Extensive Anteriorseptalmia" with the corresponding remarks: "For Disability, Impediment Grade 1 (120%)."[12]

Feeling abandoned and aggrieved with OSCI and PSL, Bastol, through counsel, sent a November 27, 1997 letter on December 2, 1997 to Capt. Rosendo C. Herrera, the President of OSCI, for a possible settlement of his claim for disability benefits.[13] He attached the Medical Certificate issued by Dr. Vicaldo. His letter did not merit a response from OSCI.

Thus, Bastol was compelled to file a Complaint[14] before the Labor Arbiter on May 8, 1988 for: (a) medical disability benefit (Grade 1) of USD 60,000; (b) illness allowance until he is deemed fit to work again; (c) medical benefits for the treatment of his ailment; (d) moral damages of PhP 100,000; and (e) attorney's fee of 10% of the total monetary award.

OSCI countered that Bastol is not entitled to his indemnity claims, among others, for disability benefits on account of non-compliance with the requirements of the 1994 revised Standard Employment Contract (SEC) by failing to properly submit himself for treatment and examination by the company-designated physician who is the only one authorized to set the degree of disability, *i.e.*, disability grade. Submitting documentary evidence, OSCI maintained that Bastol submitted to the examination and treatment by the company-designated physician only on April 25, 1997,[15] May 23, 1997,[16] September 16, 1997,[17]

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[12] *Id.* at 51.

[13] *Id.* at 50, dated November 27, 1997.

[14] *Id.* at 35-36, dated May 8, 1998.

[15] *Id.* at 61, letter dated April 25, 1997.

[16] *Id.* at 62, letter dated May 24, 1997.

[17] *Id.* at 63, letter dated September 16, 1997.

and October 28, 1997,[18] but he voluntarily discontinued said treatment and did not show up for the follow-up examination on December 2, 1997. Thus, the company-designated physician was not given ample opportunity to properly treat Bastol's ailment and did not have sufficient chance to assess and determine his disability grade, if any.

On January 28, 1999, Labor Arbiter Mayor, Jr. rendered a Decision based on the parties' respective position papers[19] and the documentary evidence presented in NLRC NCR OFW Case No. 98-05-0501, the decretal portion reading:

WHEREFORE, in view of all the foregoing, respondents Oriental Shipmanagement Co., Inc. and Paterco Shipping Ltd. are hereby ordered to jointly and severally pay complainant the sum of US$60,000.00 or its peso equivalent at the time of payment plus the sum equivalent to ten (10%) percent of the award or in the amount of US$6,000.00 as and by way of attorney's fee.

SO ORDERED.[20]

The Labor Arbiter saw no need to conduct formal hearings. He found that Bastol was healthy when deployed in December 1995 but subsequently contracted or suffered heart ailment during his period of employment with OSCI and PSL. He also found that Bastol did not show any appreciable improvement despite treatment by the company-designated physician, thus ruling that the fact that Dr. Lim had not issued a certification as to Bastol's condition did not negate his claim for disability indemnity, as the determination of the degree thereof by Dr. Vicaldo of the Philippine Heart Center sufficed.

OSCI immediately assailed the above Labor Arbiter decision before the NLRC.[21] Subsequently, on July 30, 1999, the NLRC

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[18] *Id.* at 64, letter dated October 28, 1997.

[19] *Id.* at 37-43, Position Paper of Bastol, dated September 21, 1998; *id.* at 52-59, Respondents' Position Paper dated November 24, 1998.

[20] *Id.* at 78.

[21] *Id.* at 79-88, Notice of Appeal with Memorandum of Appeal, dated March 9, 1999.

issued a Resolution[22] in NLRC NCR CA No. 019238-99, vacating and setting aside the January 28, 1999 Decision of the Labor Arbiter and remanding the case back to the Labor Arbiter for further proceedings, the dispositive portion ordering, thus:

> WHEREFORE, for the reasons [above discussed], the decision appealed from is hereby vacated and set aside and the records of this case Remanded to the Labor Arbiter of origin for conduct of further approximate proceedings and to terminate the same with dispatch.
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> SO ORDERED.[23]

In remanding the case back to the Labor Arbiter, the NLRC ruled that Bastol should have presented himself before the Labor Arbiter for the latter to properly assess his condition, and that Dr. Lim and Dr. Vicaldo should be presented to determine with certainty the status of Bastol's heart ailment.

This prompted both parties to file their respective motions for reconsideration which were rejected by the NLRC through its Resolution[24] of October 29, 1999. With the remand, Labor Arbiter Mayor, Jr. proceeded to hear the case. However, upon OSCI's motion for inhibition, Labor Arbiter Mayor, Jr. inhibited himself, and the case was re-raffled to Labor Arbiter Joel S. Lustria.

Subsequently, on May 10, 2001, the case was deemed submitted for decision. Thereafter, on July 25, 2001, OSCI filed before the Labor Arbiter a Motion to Dismiss for failure to prosecute for an unreasonable length of time and insufficiency of evidence. OSCI argued that through the July 30, 1999 Resolution, the NLRC found that Bastol failed to prove his causes of action, and despite numerous hearings conducted before the Labor Arbiter after the remand of the case, Bastol still failed to present further evidence.

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[22] *Id.* at 90-96, per Presiding Commissioner Rogelio I. Rayala, concurred in by Commissioners Vicente S.E. Veloso and Alberto R. Quimpo.

[23] *Id.* at 95.

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

On October 26, 2001, however, Bastol filed a Manifestation/ Compliance[25] submitting the following documents: (1) Affidavit[26] of Dr. Vicaldo executed on May 10, 2001; (2) Conforme[27] for disability benefit settlement in the amount of USD 25,000; (3) Special Power of Attorney (SPA)[28] executed by Bastol in favor of Martin Jarmin, Jr. of OSCI; (4) Medical Disability Grading[29] of Bastol issued by Dr. Lim, the company-designated physician, on June 26, 1997; and (5) Assessment and disability grading determined by Dr. H.R. Varwig,[30] company-designated physician of PPI.

Bastol's manifestation and the documents he presented showed that prior to filing the instant case on May 8, 1998, Bastol, assisted by counsel, entered into a settlement with PPI through Mrs. Corazon C. Tabuena in the amount of USD 25,000 as disability indemnity. Said settlement was based on the suggested disability grading of Grade 50–60% issued by the company-designated physician Dr. Lim on June 26, 1997 and that of Dr. H. R. Varwig, company-designated physician of PPI, embodied in a letter dated August 7, 1997 sent to PPI with the assessment of Bastol's disability at Grade 6 according to the Department of Labor and Employment (DOLE) and the Philippine Overseas Employment Administration (POEA) Schedule of Disability or Impediment. Bastol, assisted by counsel, signed the settlement conforme with PPI on January 22, 1998. The settlement, however, did not materialize due to the cancellation of the coverage by PIC of PSL's vessel M/V Felicita.

Even after Bastol already filed the instant case on May 8, 1998, Jarmin, Jr. of OSCI instructed him to execute a SPA to authorize them to represent him (Bastol) in the auction sale of

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[25] *Id.* at 103-105, dated October 23, 2001.

[26] *Id.* at 106-107, dated May 10, 2001.

[27] *Id.* at 108, Notes to File of Martin Jarmin, Jr. of OSCI.

[28] *Id.* at 109, executed on August 12, 1998.

[29] *Id.* at 110.

[30] *Id.* at 111, letter dated August 7, 1997.

SPL's vessel M/V Felicita. Forthwith, Bastol executed an SPA in favor of Jarmin, Jr. on August 12, 1998. Unfortunately, Bastol was later informed by Jarmin, Jr. that the amount they recovered from the auction sale of PSL's vessel was not enough to cover his disability claim. Thus, with the collapse of the settlement agreement, Bastol was left with no option than to pursue the instant action. And in support of his medical finding of Grade 1 (120%) disability, Dr. Vicaldo executed an Affidavit on May 10, 2001.

OSCI vehemently objected[31] to Bastol's Manifestation/ Compliance and the documentary evidence appended thereto.

The Ruling of Labor Arbiter Lustria in Case No. NLRC NRC OFW Case No. 98-05-0501

On January 31, 2003, Labor Arbiter Lustria rendered a Decision[32] similar to that of Labor Arbiter Mayor, Jr. The dispositive portion reads:

> WHEREFORE, in view of all the foregoing, let a judgment be, as it is hereby rendered, ordering respondents Oriental Shipmanagement Co., Inc. and Paterco Shipping, Ltd., to jointly and severally pay complainant Romy Bastol, the sum of US$60,000.00 or its peso equivalent prevailing at the time of payment plus the sum equivalent to ten (10%) percent of the award, or in the amount of US$6,000.00 or its peso equivalent prevailing at the time of payment, as and by way of attorney's fee.
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> SO ORDERED.[33]

Labor Arbiter Lustria found that Bastol indeed suffered from a heart ailment for which he is pursuing disability indemnity which was duly proved by the concurring diagnosis of Dr. Peralta, Dr. Lim, Dr. Varwig and Dr. Vicaldo. He found that the settlement

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[31] *Id.* at 112-116, Most Vehement Objection to Complainant's Manifestation/Compliance with Reiteration of Motion to Dismiss, dated November 26, 2001.

[32] *Id.* at 118-125.

[33] *Id.* at 125.

agreement with PPI was pursuant to the medical findings and assessments of both company-designated physicians, Dr. Lim and Dr. Varwig. Thus, the reiteration of the award of Labor Arbiter Mayor, Jr.

Aggrieved, OSCI promptly filed its Memorandum of Appeal[34] before the NLRC.

The Ruling of the NLRC in NLR NCR CA No. 019238-99 (NLRC NCR OCW No. 98-05-0501)

On July 31, 2006, the NLRC First Division rendered its Decision reversing and setting aside Labor Arbiter Lustria's January 31, 2003 Decision and dismissed the instant case, the *fallo* reading:

WHEREFORE, the appeal is GRANTED. The Decision of Labor Arbiter Joel S. Lustria dated January 31, 2003 is hereby REVERSED AND SET ASIDE and a new one entered dismissing the complaint.

SO ORDERED.[35]

In dismissing the case, the NLRC held that the sworn affidavit of Dr. Vicaldo and the manifestations of Bastol could not substitute for their presence and testimony, and that of Dr. Lim. It ruled that since not one clarificatory hearing was conducted, the sworn affidavit of Dr. Vicaldo is reduced to mere hearsay sans a cross-examination by OSCI. Moreover, it noted that the reliance by the LA on the certificates of Dr. Lim and Dr. Varwig is misplaced, for the disability ratings indicated therein do not appear to be final for they were merely suggested ones. Besides, it pointed out that the records show that Bastol was still under treatment and being re-evaluated by Dr. Lim when the purported certificate was issued by Dr. Lim on June 26, 1997. It concluded that the purpose for which the case was remanded had not been served and the true state of Bastol's health not adequately established. In fine, it ruled that even if Bastol's disability has been determined with certainty, still it will not serve to indemnify

[34] *Id.* at 126-143, dated March 20, 2003.

[35] *Id.* at 150-151.

Bastol for his violation of the SEC when he prematurely sought the medical help of Dr. Vicaldo, emphasizing that the 1994 revised SEC is clear in that **it is only the company-designated physician who could declare the fitness of the seafarer to work; or establish the degree of his disability**.

Undaunted, Bastol went to the CA questioning the reversal of Labor Arbiter Lustria's Decision via a Petition[36] for *Certiorari* under Rule 65 of the Rules of Court, which was docketed as CA-G.R. SP No. 100090.

The Ruling of the Court of Appeals

On August 12, 2008, the appellate court rendered the assailed Decision reversing the July 31, 2006 Decision and May 30, 2007 Resolution of the NLRC, and reinstated the January 28, 1999 Decision of Labor Arbiter Mayor, Jr. The decretal portion reads:

> WHEREFORE, the premises considered, the petition is GRANTED. The Assailed Decision and Resolution of the NLRC, First Division dated July 31, 2006 and May 30, 2007, respectively are hereby ANNULLED and SET ASIDE for having been issued with grave abuse of discretion and the January 28, 1999 Decision of the Labor Arbiter, REINSTATED.
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> SO ORDERED.[37]

In reinstating the Labor Arbiter's January 28, 1999 Decision, the appellate court ruled, *first*, that the NLRC gravely abused its discretion in remanding the case back to the Labor Arbiter on the mistaken notion that the determination of Bastol's health ailment and entitlement to disability benefits under the 1994 revised SEC cannot be ascertained without conducting a formal trial. It ratiocinated that Art. 221 of the Labor Code as amended by Sec. 11 of Republic Act No. (RA) 6715 in relation to Sec. 4, Rule V of the NLRC Rules of Procedure then prevailing granted the Labor Arbiter **discretion** to determine the necessity for a formal hearing or investigation. In the instant case, the CA found that the Labor Arbiter acted properly and ruled

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[36] *Id.* at 152-168, dated August 27, 2007.

[37] *Id.* at 228-229.

appropriately on the evidence on record without need for formal hearings. Thus, the NLRC gravely abused its discretion when it dismissed the instant case.

Second, relying on and applying the principles enunciated in *Remigio v. National Labor Relations Commission*[38] together with the application of Sec. 20 in relation to Secs. 30 and 30-A of the SEC, the appellate court appreciated and found **total and permanent disability** of Bastol, considering the undisputed fact that he could not pursue his usual work as a seaman for a period of more than 120 days. Moreover, it noted that no less than four doctors—Dr. Peralta, Dr. Lim, Dr. Varwig and Dr. Vicaldo—found Bastol to be suffering from a heart ailment which prevented him from being employed at his usual job as a seafarer or seaman.

Third, the CA viewed no violation of Sec. 20, B, 3 of the SEC, for said proviso in its third paragraph does not prohibit a second medical opinion, but, in fact, provides for the seafarer the right to seek a second opinion and even a third opinion in cases where the seafarer's doctor disagrees with the assessment of the company-designated doctor. Thus, the CA ruled that the NLRC gravely erred in construing the proviso that it is only the company-designated physician who could declare the fitness of the seafarer to work or establish the degree of his disability. In fine, the CA pointed out that the SEC does not serve to be a limitation but is a guarantee of protection to overseas contract workers and must, therefore, be construed and applied fairly, reasonably and liberally in favor of and for the benefit of seamen and their dependents.

OSCI moved for reconsideration[39] of the above assailed CA Decision but the appellate court denied the same through the first assailed January 7, 2009 Resolution. While affirming its Decision, the CA held in its Resolution:

Finding no cogent or justifiable reason to set aside the Decision of this Court dated August 12, 2008 ***dismissing the instant petition,***

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[38] G.R. No. 159887, April 12, 2006, 487 SCRA 190.

[39] *Rollo*, pp. 284-287, Motion for Reconsideration dated May 18, 2007.

the motion for reconsideration filed by the petitioners is hereby not given due course.

WHEREFORE, the aforementioned decision is hereby AFFIRMED and REITERATED.

SO ORDERED.[40]

OSCI then filed a Motion for Clarification[41] considering that Bastol, the petitioner in CA-G.R. SP No. 100090, did not file a motion for reconsideration of the assailed Decision which did not dismiss Bastol's petition, but instead annulled the NLRC dismissal of the instant case and reinstated the January 28, 1999 Labor Arbiter Decision.

On February 6, 2009, the CA issued the second assailed Resolution rectifying the first assailed Resolution of January 7, 2009.

Thus, the instant appeal before us.

The Issues

OSCI raises the following issues for our consideration:

a. Whether or not it is contrary to the principles of *res judicata* for the Court of Appeals to have ordered the reinstatement of Labor Arbiter Mayor's Decision dated 28 January 1999 which was already vacated and set aside by the NLRC's Resolution dated 30 July 1999 which in turn has become final and executory without respondent questioning the same.

b. Whether or not it is contrary to the legal principles of the "law of the case" for the Court of Appeals to have disregarded the findings of the NLRC in the latter's Resolution dated 30 July 1999 which by law is already final and executory.

c. Whether or not it was grave and reversible error on the part of the Court of Appeals to have sanctioned Labor Arbiter Lustria's departure from accepted procedure in admitting into evidence the gravely belated submissions of respondent without any justifiable reason being advanced for said belated filing.

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[40] *Id.* at 243-244.

[41] *Id.* at 245-247, dated January 20, 2009.

d. Whether or not the Court of Appeals erred in recognizing in favor of respondent a declaration of disability grade 1 by an alleged doctor who is not the company-designated physician and whose competence was not established.

e. Whether or not the lack of a proper verification of the Position Paper and/or Manifestation/Compliance filed by respondent before Labor Arbiter Lustria rendered said pleadings without legal effect as an unsigned pleading provided by Sec. 4 in relation to Sec. 3, both of Rule 7.

f. Whether or not respondent's complaint for disability filed with the Labor Arbiter should have been dismissed for failure to be supported by a certification of non-forum shopping as required under Sec. 5, Rule 7 of the Rules of Court in relation to Sec. 3, rule 1 of the NLRC Rules of Procedure.[42]

The foregoing issues can be summarized into three: *first*, on procedural grounds, whether the Complaint filed before the Labor Arbiter ought to be dismissed for lack of certification against forum shopping as required by the Rules and whether the verification by counsel is sufficient for Bastol's Position Paper and Manifestation/Compliance; *second*, whether the July 30, 1999 NLRC Decision constitutes *res judicata* and serves as the "law of the case"; and *third*, whether the belated submissions are allowed by the Rules, and the Affidavit of Dr. Vicaldo sufficient.

In the meantime, pending resolution of the instant case, Romy B. Bastol died on December 13, 2009 from his undisputed ailment of acute *myocardial infarction*.[43]

The Court's Ruling

We deny the appeal for lack of merit.

Procedural Issues

In its bid to overturn the assailed Decision and Resolutions, OSCI foisted several procedural issues all based on the Rules of Court, the application of which it anchors on Sec. 3, Rule I

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[42] *Id.* at 361-363, Petitioner's Memorandum dated February 8, 2010.

[43] *Id.* at 373, Certificate of Death of Romy B. Bastol.

of the NLRC Rules of Procedure then prevailing, which pertinently provided:

> Section 3. *Suppletory application of Rules of Court and jurisprudence*. — In the absence of any applicable provision in these Rules, and in order to effectuate the objectives of the Labor Code, the pertinent provisions of the Revised Rules of Court of the Philippines and prevailing jurisprudence may, in the interest of expeditious dispensation of labor justice and whenever practicable and convenient, be applied by analogy or in a suppletory character and effect.[44]

OSCI argues that the Complaint of Bastol ought to have been dismissed at the outset, *i.e.*, before the labor arbiter level, since it is an initiatory pleading which lacked the mandatorily required certification of non-forum shopping under Sec. 5,[45] Rule 7 of the Rules of Court.

In the same vein, OSCI contends that Bastol's Position Paper and Manifestation/Compliance ought to have been considered as unsigned pleadings which produce no legal effect under Sec. 3,[46]

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[44] The New Rules of Procedure of the National Labor Relations Commission, issued on August 31, 1990 at Cebu City by NLRC Chairman Bartolome S. Carale.

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

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. x x x

[46] SEC. 3. *Signature and address*. — Every pleading must be signed by the party or counsel representing him, stating in either case his address which should not be a post office box.

Rule 7 of the Rules of Court for violation of Sec. 4,[47] Rule 7, requiring verification to be made upon personal knowledge or based on authentic records, because said pleadings were verified only by counsel, which verification is clearly not based on personal knowledge or based on authentic records.

Pro-forma Complaint Forms Used in the RAB

The foregoing arguments are untenable. For the expeditious and inexpensive filing of complaints by employees, the Regional Arbitration Branch (RAB) of the NLRC provides pro-forma complaint forms. This is to facilitate the exercise and protection of employees' rights by the convenient assertion of their claims against employers untrammeled by procedural rules and complexities. To comply with the certification against forum shopping requirement, a simple question embodied in the Complaint form answerable by "yes" or "no" suffices. Employee-complainants are not even required to have a counsel before they can file their complaint. An officer of the RAB, duly authorized to administer oaths, is readily available to facilitate the execution of the required subscription or *jurat* of the complaint.

The signature of counsel constitutes a certificate by him that he has read the pleading; that to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

An unsigned pleading produces no legal effect. However, the court may, in its discretion, allow such deficiency to be remedied if it shall appear that the same was due to mere inadvertence and not intended for delay. Counsel who deliberately files an unsigned pleading, or signs a pleading in violation of this Rule, or alleges scandalous or indecent matter therein, or fails to promptly report to the court a change of his address, shall be subject to appropriate disciplinary action.

[47] SEC. 4. *Verification*. — Except when otherwise specifically required by law or rule, pleadings need not be under oath, verified or accompanied by affidavit.

A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records.

A pleading required to be verified which contains a verification based on "information and belief" or upon "knowledge, information and belief," or lacks a proper verification, shall be treated as an unsigned pleading. (*As amended, A.M. No. 00-2-10, May 1, 2000.*)

This can be seen in the case at bar. Bastol, assisted by counsel, filled out the Complaint form, line No. 11 of which is a question on anti-forum shopping which he answered by underlining the word "No."[48] It is thus clear that the strict application of Sec. 4, Rule 7 of the Rules of Court does not apply to labor complaints filed before the NLRC RAB.

Verification by Counsel Sufficient

Anent the issue of verification, we have scrutinized both the Position Paper and the Manifestation/Compliance filed by Bastol and we fail to see any violation thereof. *First*, there is no law or rule requiring verification for the Manifestation/Compliance. *Second*, the counsel's verification in Bastol's Position Paper substantially complies with the rule on verification. The second paragraph of Sec. 4, Rule 7 of the Rules of Court provides: "A pleading is verified by an affidavit that the affiant has read the pleading and that the allegations therein are true and correct of his personal knowledge or based on authentic records."

On the other hand, the actual verification of counsel in Bastol's Position Paper states: "That I am the counsel of record for the complainant in the above-entitled case; that I caused the preparation of the foregoing Position Paper; that I have read and understood the contents thereof; and that **I confirm that all the allegations therein contained are true and correct based on recorded evidence**."[49] Appended to the position paper were Bastol's contract of employment, counsel's letter to OSCI, and various medical certifications issued by several doctors with similar findings and diagnosis of Bastol's heart ailment. Evidently, the verification is proper as based on, and evidenced, by the appended documents, which were not disputed save the contents of the medical certificate issued by Dr. Vicaldo.

First Substantive Issue: *Res Judicata* and "Law of the Case"

OSCI strongly argues that the July 30, 1999 NLRC Decision remanding the case has become final and executory, thus the

[48] *Rollo*, p. 35.

[49] *Id.* at 42.

applicability of the doctrine of *res judicata* and the principle of the "law of the case" thereto. There being *res judicata* between the parties, the NLRC's setting aside of the January 28, 1999 Decision of Labor Arbiter Mayor, Jr. has become final. Thus, OSCI maintains that the CA gravely erred in reinstating the January 28, 1999 Decision of Labor Arbiter Mayor, Jr.

And relying on the Court's pronouncement in *Cucueco v. Court of Appeals*[50] on the principle of the "law of the case," OSCI asserts that the ruling of the July 30, 1999 NLRC Decision, remanding the case to the Labor Arbiter for clarificatory hearings requiring the personal appearance of Bastol and the testimonies of Dr. Lim and Dr. Vicaldo, may no longer be disturbed and must be complied with. Thus, it argues that the non-compliance thereof and the belated submission of an alleged affidavit by Dr. Vicaldo are clear contraventions of the prevailing "law of the case" as embodied in the final and executory July 30, 1999 NLRC Decision.

The foregoing arguments of OSCI are tenuous at best.

Doctrine of *res judicata* inapplicable

We agree with OSCI that the CA committed double *faux pas* by (1) ruling on the remand of the case by the NLRC to the Labor Arbiter which was not the subject of Bastol's appeal before it; and (2) reinstating the January 28, 1999 Decision of

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[50] G.R. No. 139278, October 25, 2004, 441 SCRA 290, 300-301, which states:

"Law of the case" has been defined as the opinion delivered on a former appeal. It is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal. It means that whatever is once irrevocably established as the controlling legal rule or decision between the parties in the same case continues to be the law of the case, *whether correct on general principles or not*, so long as the facts on which such decision was predicated continue to be the facts of the case before the court. As a general rule, a decision on a prior appeal of the same case is held to be the law of the *case whether that question is right or wrong*, the remedy of the party deeming himself aggrieved being to seek a rehearing.

Labor Arbiter Mayor, Jr. which had earlier been set aside and was not the object of OSCI's appeal to the NLRC. But these lapses do not adversely affect the CA's determination of the propriety of the disability indemnity awarded to Bastol, as will be discussed here.

Suffice it to say that the July 30, 1999 NLRC Decision cannot and does not constitute *res judicata* to the instant case. In *Estate of the Late Encarnacion Vda. de Panlilio v. Dizon*,[51] extensively quoting from the earlier case of *Vda. de Cruzo v. Carriaga, Jr.*,[52] we explained the nature of *res judicata*, as now embodied in Sec. 47, Rule 39 of the Rules of Court, in its two concepts of "bar by former judgment" and "conclusiveness of judgment." These concepts of the doctrine of *res judicata* are applicable to second actions involving substantially the same parties, the same subject matter, and cause or causes of action.[53] In the instant case, there is no second action to speak of, involving as it is the very same action albeit the NLRC remanded it to the Labor Arbiter for further proceedings.

Principle of "Law of the Case" inapplicable

"Law of the case" has been defined as the opinion delivered on a former appeal—it is a term applied to an established rule that when an appellate court passes on a question and remands the case to the lower court for further proceedings, the question there settled becomes the law of the case upon subsequent appeal.[54]

OSCI's application of the **law of the case** principle to the instant case, as regards the remand of the case to the Labor Arbiter for clarificatory hearings, is misplaced. The only matter settled in the July 30, 1999 NLRC Decision, which can be regarded as law of the case, was the undisputed fact that Bastol

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[51] G.R. No. 148777, October 18, 2007, 536 SCRA 565.

[52] G.R. Nos. 75109-10, June 28, 1989, 174 SCRA 330.

[53] I Regalado, *REMEDIAL LAW COMPENDIUM* 472-473 (6th rev. ed.).

[54] *Meralco Industrial Engineering Services Corporation v. National Labor Relations Commission*, G.R. No. 145402, March 14, 2008, 548 SCRA 315, 329-330.

was suffering from a heart ailment. As it is, the issue on the degree of disability of Bastol's heart ailment and his entitlement to disability indemnity, as viewed by the NLRC through said decision, has yet to be resolved. Precisely, the NLRC remanded the case to Labor Arbiter Mayor, Jr. "for conduct of further approximate proceedings and to terminate the same with dispatch."[55]

Second Substantive Issue: Sufficiency of Sworn Affidavit

And the primordial reason why the argument of OSCI for the mandatory conduct of clarificatory hearings requiring the personal appearance of Bastol and the testimonies of Dr. Lim and Dr. Vicaldo is erroneous is that the law and the rules do not require such mandatory clarificatory hearings.

Labor Arbiter Has Discretion on the Propriety of Conducting Clarificatory Hearings

While it can be argued that the NLRC through its July 30, 1999 Decision skewed to have clarificatory hearings for the presentation of evidence, it cannot be gainsaid that with the remand of the case, the Labor Arbiter must proceed in accordance to the Rules governing proceedings before him provided under the prevailing Rules of Procedure of the NLRC.[56]

We fully agree with Bastol's arguments that the NLRC, while having appellate jurisdiction over decisions and resolutions of the Labor Arbiter, may not dictate to the latter how to conduct the labor case before him. Sec. 9 of Rule V of the then prevailing NLRC Rules of Procedure, issued on December 10, 1999, provided for the nature of proceedings before the Labor Arbiter, thus:

> Section 9. Nature of Proceedings. — The proceedings before a Labor Arbiter shall be **non-litigious in nature**. Subject to the requirements of due process, the **technicalities of law and procedure and the rules obtaining in the courts of law shall not strictly**

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[55] *Supra* note 22.

[56] As amended by Resolution 3-99, Series of 1999, issued on December 10, 1999 by the NLRC *En Banc*.

apply thereto. The Labor Arbiter may avail himself of all reasonable means to ascertain the facts of the controversy speedily, including ocular inspection and examination of well-informed persons. (Emphasis supplied.)

And the Labor Arbiter is given full discretion to determine, *motu proprio*, on whether to conduct hearings or not. Secs. 3 and 4 of Rule V of the then prevailing NLRC Rules of Procedure also pertinently provided:

Section 3. Submission of Position Papers/Memorandum. — x x x

These verified position papers shall cover those claims and causes of action raised in the complaint excluding those that may have been amicably settled, and shall be accompanied by **all supporting documents including the affidavits of their respective witnesses which shall take the place of the latter's direct testimony**. x x x

Section 4. Determination of Necessity of Hearing. — Immediately after the submission by the parties of their position papers/ memorandum, the **Labor Arbiter shall *motu proprio* determine whether there is a need for a formal trial or hearing**. At this stage, he may, at his discretion and for the purpose of making such determination, ask clarificatory questions to further elicit facts or information, including but not limited to the subpoena of relevant documentary evidence, if any from any party or witness. (Emphasis supplied.)

The foregoing provisos manifestly show the non-litigious and the summary nature of the proceedings before the Labor Arbiter, who is given full discretion whether to conduct a hearing or not and to decide the case before him through position papers. In *Iriga Telephone Co., Inc. v. National Labor Relations Commission*,[57] the Court discussed the reason why it is discretionary on the part of the Labor Arbiter, who, *motu proprio*, determines whether to hold a hearing or not. Consequently, a hearing cannot be demanded by either party as a matter of right. The parties are required to file their corresponding position papers and all the documentary evidence and affidavits to prove their cause of action and defenses. The rationale behind this is to

[57] G.R. No. 119420, February 27, 1998, 286 SCRA 600.

avoid delay and curtail the pernicious practice of withholding of evidence. In *Pepsi Cola Products Philippines, Inc. v. Santos*,[58] the Court reiterated the Labor Arbiter's discretion not to conduct formal or clarificatory hearings which is not violative of due process, thus:

> The holding of a formal hearing or trial is discretionary with the Labor Arbiter and is something that the parties cannot demand as a matter of right. The requirements of due process are satisfied when the parties are given the opportunity to submit position papers wherein they are supposed to attach all the documents that would prove their claim in case it be decided that no hearing should be conducted or was necessary.[59]

In sum, it can be properly said that the proceedings before the Labor Arbiter are non-litigious in nature and the technicalities of law and procedure, and the rules obtaining in the courts of law are not applicable. Thus, the rules allow the admission of affidavits by the Labor Arbiter as evidence despite the fact that the affiants were not presented for cross-examination by the counsel for the adverse party. To require otherwise would be to negate the rationale and purpose of the summary nature of the administrative proceedings and to make mandatory the application of the technical rules of evidence. What the other party should do is to present counter-affidavits instead of merely objecting on the ground that the affidavits are hearsay.

The Court, however, has recognized specific instances of the impracticality for the Labor Arbiter to follow the position paper method of disposing cases; thus, formal or clarificatory hearings must be had in cases of termination of employment: such as, when claims are not properly ventilated for lack of proper determination whether complainant employee was a rank-and-file or a managerial employee,[60] that the Labor Arbiter cannot

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[58] G.R. No. 165968, April 14, 2008, 551 SCRA 245.

[59] *Id.* at 252-253; citing *Shoppes Manila, Inc. v. National Labor Relations Commission*, G.R. No. 147125, January 14, 2004, 419 SCRA 354, 361.

[60] *Batongbacal v. Associated Bank*, No. 72977, December 21, 1988, 168 SCRA 600.

rely solely on the parties' bare allegations when the affidavits submitted presented conflicting factual issues,[61] and considering the dearth of evidence presented by complainants the Labor Arbiter should have set the case for hearing.[62]

In the instant case, we find substantial evidence to support the decision of Labor Arbiter Lustria. Substantial evidence is such amount of evidence which a reasonable mind might accept as adequate to support a conclusion, even if other equally reasonable minds might conceivably opine otherwise.[63]

Late submission of documentary evidence admissible

OSCI asserts that Labor Arbiter Lustria gravely abused his discretion in admitting as evidence the belated submissions of Bastol through his Manifestation/Compliance filed on October 26, 2001 or five months after the instant case was deemed submitted for decision on May 10, 2001. It considers suspicious the submission of the Affidavit of Dr. Vicaldo, as Bastol never provided any explanation for such late submission and much less did the Labor Arbiter require Bastol for such explanation. OSCI also rues said admission when Labor Arbiter Lustria did not act on its Motion to Dismiss filed on July 25, 2001 on the ground of Bastol's failure to present additional evidence. Neither did Labor Arbiter Lustria give it an opportunity to submit contrary evidence by setting, at the very least, another hearing. Thus, OSCI concludes that Labor Arbiter Lustria acted wantonly, whimsically and capriciously to its grave prejudice by admitting and using the late submission of Bastol as basis for his decision, and the CA, in turn, gravely erred in sanctioning the Labor Arbiter by granting Bastol's petition for *certiorari*.

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[61] *Greenhills Airconditioning and Services, Inc. v. National Labor Relations Commission*, G.R. No. 112850, June 27, 1995, 245 SCRA 384.

[62] *Progress Homes v. National Labor Relations Commission*, G.R. No. 106212, March 7, 1997, 269 SCRA 274.

[63] *Bughaw, Jr. v. Treasure Island Industrial Corporation*, G.R. No. 173151, March 28, 2008, 550 SCRA 307, 316; citing *Vertudes v. Buenaflor*, G.R. No. 153166, December 16, 2005, 478 SCRA 210, 230.

We cannot agree.

The nature of the proceedings before the Labor Arbiter is not only non-litigious and summary, but the Labor Arbiter is also given great leeway to resolve the case; thus, he may "avail himself of all reasonable means to ascertain the facts of the controversy."[64] The belated submission of additional documentary evidence by Bastol after the case was already submitted for decision did not make the proceedings before the Labor Arbiter improper. The basic reason is that technical rules of procedure are not binding in labor cases.

In *Dacut v. Court of Appeals*, we held that the fact that the Labor Arbiter admitted the company's reply after the case had been submitted for decision did not make the proceedings before him irregular.[65] In *Sasan, Sr. v. National Labor Relations Commission*, we also held that the submission of additional evidence on appeal before the NLRC is not prohibited by its New Rules of Procedure; after all, rules of evidence prevailing in courts of law or equity are not controlling in labor cases.[66] Indeed, technical rules of evidence do not apply if the decision to grant the petition proceeds from an examination of its sufficiency as well as a careful look into the arguments contained in position papers and other documents.[67]

And neither can OSCI rely on lack of due process. The essence of due process lies simply in an opportunity to be heard, and not that an actual hearing should always and indispensably be held.[68] Considering that OSCI indeed contested the late submission

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[64] Sec. 9, Rule V of the NLRC Rules of Procedure, issued on December 10, 1999.

[65] *Dacut v. Court of Appeals*, G.R. No. 169434, March 28, 2008, 550 SCRA 260, 267.

[66] G.R. No. 176240, October 17, 2008, 569 SCRA 670, 686.

[67] *Id.* at 688.

[68] *Asian Terminals, Inc. v. Sallao*, G.R. No. 166211, July 14, 2008, 558 SCRA 251, 259; citing *Metropolitan Bank and Trust Company v. Barrientos*, G.R. No. 157028, January 31, 2006, 481 SCRA 311, 321-322.

of Bastol by filing its most vehement objection thereto on November 27, 2001, it cannot complain of not being accorded the opportunity to be heard and much less can it demand for the setting of an actual hearing. What OSCI could have and ought to have done was to present its own counter-affidavits. But it did not.

Documentary evidence submitted substantially proves Bastol's claim for disability indemnity

On the related issue of the certification of a medical doctor other than the company-designated physician, OSCI adamantly maintains that pursuant to Sec. 20 (B) of the 1996 SEC it is only the company-designated physician who is allowed to fix or determine the degree of disability. Thus, according to OSCI, the Labor Arbiter and the CA gravely erred in sanctioning the Grade 1 disability impediment based on a certification issued by a medical doctor who is not the company-designated physician.

We do not agree.

The Contract of Employment of Bastol and PSL, through its agent OSCI, stipulated thus:

1. That the Employee shall be employed on board under the following terms and conditions:

    1.1 Duration of Contract: <u>9+3 months upon mutual consent of the crew & owners/agent</u>
    1.2 Position <u>Bosun</u>
    1.3 Basic Monthly Salary <u>US$500.00</u>
    1.4 Hours of Work <u>48 hours a week</u>
    1.5 Overtime <u>F.O.T. – 30% of basic wage</u>
    1.6 Vacation Leave with Pay <u>One month basic wage per one year service or pro-rata</u>

2. The **terms and conditions of the revised Employment Contract for seafarers governing the employment of all Filipino seafarers approved by the POEA/Dole on July 14, 1989 under Memorandum Circular No. 41 series of 1989 amending circulars relative thereto shall be strictly and faithfully observed**.[69] (Emphasis supplied.)

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[69] *Supra* note 7.

The parties having mutually agreed to the application of the 1994 revised SEC under Memorandum Circular No. 41, Series of 1989,[70] approved by the DOLE and the POEA on July 14, 1989, it is the law between them.

The pertinent provisos of the 1994 revised SEC provided:

PART II

TERMS OF SERVICE

SECTION A. HOURS OF WORK

x x x x x x x x x

SECTION C. COMPENSATION AND BENEFITS

x x x x x x x x x

4. The liabilities of the employer when the seaman suffers injury or illness during the term of his contract are as follows:

a. The employer shall continue to pay the seaman his basic wages during the time he is on board the vessel;

b. If the injury or illness requires medical and/or dental treatment in a foreign port, the employer shall be liable for the full cost of such medical, dental, surgical and hospital treatment as well as board and lodging until the seaman is declared fit to work or to be repatriated.

However, if after repatriation, the seaman still required medical attention arising from said injury or illness, he shall be so provided at cost to the employer until such time he is declared fit or the degree of his disability has been established by the company-designated physician.

c. The employer shall pay the seaman his basic wages from the time he leaves the vessel for medical treatment. After discharge from the vessel, the seaman is entitled to one hundred percent (100%) of his basic wages until **he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in <u>no case shall this period exceed one hundred twenty</u>**

[70] Revised Standard Terms and Conditions Governing the Employment of Filipino Seafarers on Board Ocean-Going Vessels.

> **days**. For the purpose, the seaman shall submit himself to a post employment medical examination by the company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case a written notice to the agency within the same period is deemed as compliance. **Failure of the seaman to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits**. (Emphasis supplied.)

The foregoing provisos were substantially retained in the 1996 SEC with slight changes in Sec. C, 4, c. which was placed under Sec. 20, B, 3, expressed as follows:

> 3. Upon sign-off from the vessel for medical treatment, the seafarer is entitled to sickness allowance equivalent to his basic wage until **he is declared fit to work or the degree of permanent disability has been assessed by the company-designated physician, but in no case shall this period exceed one hundred twenty (120) days**.
>
> For this purpose, the seafarer shall submit himself to a post-employment medical examination by a company-designated physician within three working days upon his return except when he is physically incapacitated to do so, in which case, a written notice to the agency within the same period is deemed as compliance. **Failure of the seafarer to comply with the mandatory reporting requirement shall result in his forfeiture of the right to claim the above benefits**. (Emphasis supplied.)

Applying the foregoing provisos in the instant case, it is thus clear — in either the revised 1994 and the 1996 SEC — that Bastol, suffering from a heart ailment and repatriated on March 7, 1997, must comply with two requirements: *first*, to submit himself to a post-employment medical examination by a company-designated physician within three working days from his repatriation; *second*, he must allow himself to be treated until he is either declared fit to work or be assessed the degree of permanent disability by the company-designated physician. Most importantly, the mandatory compliance of the second requirement is qualified by the limitation or condition that **in no case shall**

this period exceed one hundred twenty (120) days. The 120-day limitation refers to the period of medical attention or treatment by the company-designated physician, who must either declare the seafarer fit to work or assess the degree of permanent disability.

The undisputed facts clearly show Bastol complying with the two mandatory requirements. In fact, OSCI did not dispute that Bastol was referred to the Jose L. Gutierrez Clinic for follow-up examination and treatment with attending company-designated physician Dr. Peralta, who found him unfit for sea duty on March 8 and April 1, 1997. That Bastol submitted himself to the treatment and medical evaluation of company-designated physicians Dr. Peralta and Dr. Lim is undisputed. The facts further show that after Dr. Peralta found Bastol unfit for sea duty, PPI — the local representative of PIC, the insurer of PSL — referred him (Bastol) to further medical treatment at the Metropolitan Hospital under company-designated physician Dr. Lim. Bastol was confined therein for almost a month, *i.e.*, from April 10, 1997 until May 7, 1997.

Dr. Lim found Bastol to be suffering from a heart ailment certifying that he had "Coronary artery dse; S/P Ant. wall MP; Hypercholesterolemia; Hyperglycemia." Dr. Lim regularly updated PPI on the medical status of Bastol as shown by his letters to PPI addressed to Ms. Charry Domaycos, Claims Executive, Crew Claims Division, on April 23, May 24, September 16 and October 28, 1997.

That Bastol suffered from a heart ailment is not disputed. In fact, as noted by the CA, no less than four medical doctors had similar diagnosis of Bastol's heart ailment, *viz*: Dr. Peralta of the Jose L. Gutierrez Clinic, Dr. Lim of the Metropolitan Hospital, PPI company-designated physician Dr. Varwig, and Dr. Vicaldo of the Philippine Heart Center. And that is not to count the medical findings of Docteur Bentadj from the Centre Hospitalo-Universitaire D'Oran in Algiers as embodied in his Rapport Medical[71] issued on February 26, 1997.

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[71] *Supra* note 8.

In all, after his repatriation on March 7, 1997, Bastol went to see Dr. Peralta on March 8, 1997, and until the last examination by Dr. Lim on October 28, 1997, he had been treated by these company-designated doctors for a period spanning around **seven months and 20 days** or for approximately **230 days**. Clearly then, the **maximum period of 120 days stipulated in the SEC for medical treatment and the declaration or assessment by the company-designated physician of either being fit to work or the degree of permanent disability had already lapsed**. Thus, by law, **if Bastol's condition was with the lapse of the 120 days of post-employment medical examination and treatment, which actually lasted as the records show for at least over eight months** and for over a year by the time the complaint was filed, **without his being employed at his usual job**, then it was certainly total permanent disability.

It has been held that disability is intimately related to one's earning capacity.[72] It should be understood less on its medical significance but more on the loss of earning capacity.[73] Total disability does not mean absolute helplessness.[74] In disability compensation, it is not the injury which is compensated, but rather the incapacity to work resulting in the impairment of one's earning capacity.[75] Thus, permanent disability is the **inability of a worker to perform his job for more than 120 days**, regardless of whether or not he loses the use of any part of his body.[76] This is the case of Bastol, aptly held by the CA.

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[72] *Philimare, Inc./Marlow Navigation Co., Ltd. v. Suganob*, G.R. No. 168753, July 9, 2008, 557 SCRA 438, 448.

[73] *Id.*; citing *Austria v. Court of Appeals*, G.R. No. 146636, August 12, 2002, 387 SCRA 216, 221.

[74] *Id.* at 449; *Wallem Maritime Services, Inc. v. National Labor Relations Commission*, G.R. No. 163838, September 25, 2008, 566 SCRA 338, 349.

[75] *Philimare, Inc./Marlow Navigation Co., Ltd. v. Suganob*, *supra* note 72, at 449; citing *Philippine Transmarine Carriers, Inc. v. National Labor Relations Commission*, G.R. No. 123891, February 28, 2001, 353 SCRA 47, 53; *Wallem Maritime Services, Inc. v. National Labor Relations Commission*, *supra* note 74.

[76] *Philimare, Inc./Marlow Navigation Co., Ltd. v. Suganob*, *supra* note 72, at 448; citing *Government Service Insurance System v. Cadiz*, G.R.

In *Wallem Maritime Services, Inc. v. National Labor Relations Commission*,[77] we cited the consistent application of the definition of permanent disability under Sec. 2 (b), Rule VII of the Implementing Rules of Book V of the Labor Code as amended by PD 626, which provides:

(b) *A disability is total and permanent if as a result of the injury or sickness the employee is unable to perform any gainful occupation for a continuous period exceeding 120 days*, except as otherwise provided for in Rule X of these Rules.[78]

We likewise noted in *Wallem Maritime Services, Inc.*[79] that:

The foregoing concept of permanent disability has been consistently employed by the Court in subsequent cases involving seafarers, such as in *Crystal Shipping, Inc. v. Natividad*,[80] in which it was reiterated that **permanent disability means the inability of a worker to perform his job for more than 120 days**. Also in *Philimare, Inc. v. Suganob*,[81] notwithstanding the opinion of the company-designated physician that the seafarer therein was fit to work provided he regularly took his medication, the Court held that the **latter suffered permanent disability in view of evidence that he had been unable to work as chief cook for more than 7 months**. Similarly, in *Micronesia Resources v. Cantomayor*[82] and *United Philippine Lines, Inc. and/or Holland America Line, Inc. v. Beseril*,[83] the Court declared the seafarers therein to have suffered from a **permanent disability after taking evidence into account that they had remained under treatment for more than 120 days, and were unable to work for the same period**.

No. 154093, July 8, 2003, 405 SCRA 450, 454; *Wallem Maritime Services, Inc. v. National Labor Relations Commission*, *supra* note 74.

[77] *Supra* note 74.

[78] *Wallem Maritime Services, Inc. v. National Labor Relations Commission*, *supra* note 74.

[79] *Id.* at 349-350.

[80] G.R. No. 154798, February 12, 2007, Resolution.

[81] *Supra* note 72.

[82] G.R. No. 156573, June 19, 2007, 525 SCRA 42.

[83] G.R. No. 165934, April 12, 2006, 487 SCRA 248.

Moreover, we explained in *Wallem Maritime Services, Inc.* that the lapse of the 120-day threshold period is not the benchmark for considering a permanent disability due to injury or illness, "rather, the true test of whether respondent suffered from a permanent disability is whether there is evidence that he was unable to perform his customary work as messman for more than 120 days."[84]

Applying the foregoing considerations, it is clear that Bastol was not only under the treatment of company-designated physicians for over seven months, but it is likewise undisputed that he had not been employed as bosun for said time. Note again upon his repatriation on March 7, 1997, Bastol was treated by company-designated physician Dr. Peralta who found him unfit for sea duty on March 8 and April 1, 1997. Thereafter, he was confined at the Metropolitan Hospital under company-designated physician Dr. Lim for almost a month, *i.e.*, from April 10, 1997 until May 7, 1997. After confinement, Dr. Lim treated him until October 28, 1997. In all these seven months and 20 days of treatment, Bastol was not employed at his usual job as bosun. In fact, the Court notes that Bastol was never able to work as bosun thereafter on account of his poor health.

Thus, the declaration by Dr. Vicaldo of Bastol's disability as Disability Impediment Grade 1 Degree (120%) constituting total permanent disability on November 28, 1997 or eight months and 20 days (approximately 260 days) from March 8, 1997 when he submitted himself to company-designated physician Dr. Peralta merely echoed what the law provides.

Thus, we can say that Bastol had the right to seek medical treatment other than the company-designated physician after the lapse of the 120-day considering that said physician, within the **maximum 120-day period stipulated in the SEC** neither declared him fit to work or gave the assessment of the degree of his permanent disability which he is incumbent to do. Moreover, as the CA aptly noted, Dr. Vicaldo's diagnosis and assessment should be accorded greater weight considering that

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[84] *Supra* note 74, at 350.

he is a Cardiologist and Congenital Heart Disease Specialist of the Philippine Heart Center. It is undisputed that Dr. Lim, the company-designated physician, is not a cardiology expert being a Diplomate in Rehabilitation Medicine and who seemed to be not the attending physician of Bastol in the Metropolitan Hospital as shown in his September 16, 1997 letter to PPI stating "his cardiologist opines that he has to continue taking his maintenance medications."[85]

OSCI also erroneously contends that the illness of Bastol is not compensable under the SEC. It has already been settled in *Heirs of the Late R/O Reynaldo Aniban v. National Labor Relations Commission*[86] that **myocardial infarction** as a disease or cause of death is compensable, such being occupational. As the CA aptly noted, Bastol's work as bosun caused, if not greatly contributed, to his heart ailment, thus:

> A job of a bosun, as the position of petitioner, is not exactly a walk in the park. A bosun manages actual deck work schedules and assignments directed by the Chief Officer and emergency duties as indicated in the Station Bill. He attends to maintenance and upkeep of all deck equipment, cargo, riggings, safety equipment and helps in maintaining discipline of the deck hands. He assists in ships emergency drills and in any event of emergency and performs other duties and responsibilities as instructed or as necessary. He reports directly to the Chief Officer. What makes the job more difficult, aside from exposure to fluctuating temperatures caused by variant weather changes, the job obviously entails laborious manual tasks conducted in a moving ship, which makes for increased work-related stress. All these factors may have exacerbated petitioner's heart condition. Prolonged and continued exposure to the same could probably risk petitioner [Bastol] to another attack.[87]

We are not blind to the needs of our seafarers who, when getting sick in the line of duty, are given the run around by unscrupulous employers and manning agencies. The instant case

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[85] *Supra* note 17.

[86] G.R. No. 116354, December 4, 1997, 282 SCRA 377.

[87] *Supra* note 2, at 223.

has spanned a dozen years with the disability indemnity benefit not granted. Alas, the sad reality is that Romy B. Bastol succumbed to his illness and died on December 13, 2009 of acute *myocardial infarction* and cannot now enjoy the fruits of his long protracted struggle for what is right and what has accrued to him.

WHEREFORE, premises considered, we *DENY* the instant petition for lack of merit. The Decision dated August 12, 2008 and the Resolutions dated January 7, 2007 and February 6, 2009 of the Court of Appeals in CA-G.R. SP No. 100090 are hereby *AFFIRMED* with *MODIFICATION* in that what is *REINSTATED* therein is the *January 31, 2003 Decision of Labor Arbiter.*

Costs against petitioner.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perez, JJ.,* concur.

THIRD DIVISION

[G.R. No. 186312. June 29, 2010]

SPOUSES DANTE CRUZ and LEONORA CRUZ, *petitioners, vs.* **SUN HOLIDAYS, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; COMMON CARRIERS; DEFINED AND DISCUSSED; RESPONDENT IS CONSIDERED A COMMON CARRIER; REASONS. — Petitioners correctly rely on *De Guzman v. Court of Appeals* in characterizing respondent as a common carrier. The Civil Code defines "common carriers" in the following terms: Article 1732.

Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air for compensation, offering their services to the public. The above article makes **no distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does such carrying only as an ancillary activity** (in local idiom, as "a sideline"). **Article 1732 also carefully avoids making any distinction between** a person or enterprise offering transportation service on a **regular or scheduled basis and** one offering such service on an **occasional, episodic or unscheduled basis**. **Neither does Article 1732 distinguish between** a carrier offering its services to the **"general public,"** *i.e.*, the general community or population, **and** one who offers services or solicits business only from a **narrow segment of the general population**. We think that Article 1733 deliberately refrained from making such distinctions. Indeed, respondent is a common carrier. Its ferry services are so intertwined with its main business as to be properly considered ancillary thereto. The constancy of respondent's ferry services in its resort operations is underscored by its having its own *Coco Beach* boats. And the tour packages it offers, which include the ferry services, may be availed of by anyone who can afford to pay the same. These services are thus available to the public.

2. ID.; ID.; NON-CHARGING OF A SEPARATE FEE OR FARE FOR THE FERRY SERVICES IS INCONSEQUENTIAL. — That respondent does not charge a separate fee or fare for its ferry services is of no moment. It would be imprudent to suppose that it provides said services at a loss. The Court is aware of the practice of beach resort operators offering tour packages to factor the transportation fee in arriving at the tour package price. That guests who opt not to avail of respondent's ferry services pay the same amount is likewise inconsequential. These guests may only be deemed to have overpaid. As *De Guzman* instructs, Article 1732 of the Civil Code defining "common carriers" has deliberately refrained from making distinctions on whether the carrying of persons or goods is the carrier's principal business, whether it is offered on a regular basis, or whether it is offered to the general public. The intent of the law is thus to not consider such distinctions. Otherwise, there is no telling how many other distinctions may be concocted by unscrupulous businessmen engaged in

the carrying of persons or goods in order to avoid the legal obligations and liabilities of common carriers.

3. **ID.; ID.; EXTRAORDINARY DILIGENCE IS REQUIRED FROM COMMON CARRIERS; STATUTORY PRESUMPTION OF NEGLIGENCE MAY BE OVERCOME BY EVIDENCE THAT THE CARRIER EXERCISED EXTRAORDINARY DILIGENCE. —** Under the Civil Code, common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence for the safety of the passengers transported by them, according to all the circumstances of each case. They are bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances. When a passenger dies or is injured in the discharge of a contract of carriage, it is presumed that the common carrier is at fault or negligent. In fact, there is even no need for the court to make an express finding of fault or negligence on the part of the common carrier. This statutory presumption may only be overcome by evidence that the carrier exercised extraordinary diligence.

4. **ID.; ID.; EXTRAORDINARY DILIGENCE REQUIRED OF COMMON CARRIERS DEMANDS THAT THEY TAKE CARE OF THE GOODS OR LIVES ENTRUSTED TO THEM AS IF THEY WERE THEIR OWN. —** Respondent nevertheless harps on its strict compliance with the earlier mentioned conditions of voyage before it allowed *M/B Coco Beach III* to sail on September 11, 2000. Respondent's position does not impress. The evidence shows that PAGASA issued 24-hour public weather forecasts and tropical cyclone warnings for shipping on September 10 and 11, 2000 advising of tropical depressions in Northern Luzon which would also affect the province of Mindoro. By the testimony of Dr. Frisco Nilo, supervising weather specialist of PAGASA, squalls are to be expected under such weather condition. A very cautious person exercising the utmost diligence would thus not brave such stormy weather and put other people's lives at risk. The extraordinary diligence required of common carriers demands that they take care of the goods or lives entrusted to their hands as if they were their own. This respondent failed to do.

5. **ID.; ID.; ELEMENTS OF FORTUITOUS EVENTS; REQUISITES TO FREE COMMON CARRIER FROM LIABILITY ON GROUND OF FORTUITOUS EVENT. —** Respondent's insistence that the incident was caused by a fortuitous event does not impress either. The elements of a "fortuitous event" are: (a) the cause of the unforeseen and unexpected occurrence, or the failure of the debtors to comply with their obligations, must have been independent of human will; (b) the event that constituted the *caso fortuito* must have been impossible to foresee or, if foreseeable, impossible to avoid; (c) the occurrence must have been such as to render it impossible for the debtors to fulfill their obligation in a normal manner; and (d) the obligor must have been free from any participation in the aggravation of the resulting injury to the creditor. To fully free a common carrier from any liability, the fortuitous event must have been the **proximate and only cause** of the loss. And it should have exercised due diligence to prevent or minimize the loss before, during and after the occurrence of the fortuitous event.

6. **ID.; DAMAGES; LIABILITY OF THE COMMON CARRIER FOR BREACH OF CONTRACT OF CARRIAGE RESULTING IN THE DEATH OF A PASSENGER. —** Article 1764 *vis-à-vis* Article 2206 of the Civil Code holds the common carrier in breach of its contract of carriage that results in the death of a passenger liable to pay the following: (1) indemnity for death, (2) indemnity for loss of earning capacity and (3) moral damages. Petitioners are entitled to indemnity for the death of Ruelito which is fixed at ₱50,000. x x x Respecting the award of moral damages, since respondent common carrier's breach of contract of carriage resulted in the death of petitioners' son, following Article 1764 *vis-à-vis* Article 2206 of the Civil Code, petitioners are entitled to moral damages. Since respondent failed to prove that it exercised the extraordinary diligence required of common carriers, it is presumed to have acted recklessly, thus warranting the award too of exemplary damages, which are granted in contractual obligations if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. Under the circumstances, it is reasonable to award petitioners the amount of ₱100,000 as moral damages and ₱100,000 as exemplary damages. Pursuant to Article 2208 of the Civil Code, attorney's fees may also be awarded where exemplary damages are awarded.

The Court finds that 10% of the total amount adjudged against respondent is reasonable for the purpose.

7. ID.; ID.; ID.; UNEARNED INCOME; FORMULA FOR THE COMPUTATION THEREOF. — As for damages representing unearned income, the formula for its computation is: Net Earning Capacity = life expectancy x (gross annual income – reasonable and necessary living expenses). Life expectancy is determined in accordance with the formula: 2/3 x [80 – age of deceased at the time of death] The first factor, *i.e.*, life expectancy, is computed by applying the formula (2/3 x [80 — age at death]) adopted in the American Expectancy Table of Mortality or the Actuarial of Combined Experience Table of Mortality. The second factor is computed by multiplying the life expectancy by the net earnings of the deceased, *i.e.*, the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses. The loss is not equivalent to the entire earnings of the deceased, but only such portion as he would have used to support his dependents or heirs. Hence, to be deducted from his gross earnings are the necessary expenses supposed to be used by the deceased for his own needs. In computing the third factor — necessary living expense, *Smith Bell Dodwell Shipping Agency Corp. v. Borja* teaches that when, as in this case, there is no showing that the living expenses constituted the smaller percentage of the gross income, the living expenses are fixed at half of the gross income. Applying the above guidelines, the Court determines Ruelito's life expectancy as follows: Life expectancy = 2/3 x [80 – age of deceased at the time of death] 2/3 x [80 – 28] 2/3 x [52] Life expectancy = 35 Documentary evidence shows that Ruelito was earning a basic monthly salary of $900 which, when converted to Philippine peso applying the annual average exchange rate of $1 = ₱44 in 2000, amounts to ₱39,600. Ruelito's net earning capacity is thus computed as follows: Net Earning Capacity = life expectancy x (gross annual income – reasonable and necessary living expenses). = 35 x (₱475,200 – ₱237,600) = 35 x (₱237,600) Net Earning Capacity = ₱8,316,000

8. ID.; ID.; ID.; INTEREST; 12% INTEREST PER ANNUM, IMPOSED. — [*E*]*astern Shipping Lines, Inc. v. Court of Appeals* teaches that when an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is

breached, the contravenor can be held liable for payment of interest in the concept of actual and compensatory damages, subject to the following rules, to wit — x x x. 3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. Since the amounts payable by respondent have been determined with certainty only in the present petition, the interest due shall be computed upon the finality of this decision at the rate of 12% per annum until satisfaction, in accordance with paragraph number 3 of the immediately cited guideline in *Eastern Shipping Lines, Inc.*

APPEARANCES OF COUNSEL

Fortun Narvasa & Salazar for petitioners.
Sycip Salazar Hernandez & Gatmaitan for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Spouses Dante and Leonora Cruz (petitioners) lodged a Complaint on January 25, 2001[1] against Sun Holidays, Inc. (respondent) with the Regional Trial Court (RTC) of Pasig City for damages arising from the death of their son Ruelito C. Cruz (Ruelito) who perished with his wife on September 11, 2000 on board the boat *M/B Coco Beach III* that capsized en route to Batangas from Puerto Galera, Oriental Mindoro where the couple had stayed at Coco Beach Island Resort (Resort) owned and operated by respondent.

The stay of the newly wed Ruelito and his wife at the Resort from September 9 to 11, 2000 was by virtue of a tour package-contract with respondent that included transportation to and from the Resort and the point of departure in Batangas.

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[1] Records, pp. 2-6.

Miguel C. Matute (Matute),[2] a scuba diving instructor and one of the survivors, gave his account of the incident that led to the filing of the complaint as follows:

Matute stayed at the Resort from September 8 to 11, 2000. He was originally scheduled to leave the Resort in the afternoon of September 10, 2000, but was advised to stay for another night because of strong winds and heavy rains.

On September 11, 2000, as it was still windy, Matute and 25 other Resort guests including petitioners' son and his wife trekked to the other side of the Coco Beach mountain that was sheltered from the wind where they boarded *M/B Coco Beach III*, which was to ferry them to Batangas.

Shortly after the boat sailed, it started to rain. As it moved farther away from Puerto Galera and into the open seas, the rain and wind got stronger, causing the boat to tilt from side to side and the captain to step forward to the front, leaving the wheel to one of the crew members.

The waves got more unwieldy. After getting hit by two big waves which came one after the other, *M/B Coco Beach III* capsized putting all passengers underwater.

The passengers, who had put on their life jackets, struggled to get out of the boat. Upon seeing the captain, Matute and the other passengers who reached the surface asked him what they could do to save the people who were still trapped under the boat. The captain replied "*Iligtas niyo na lang ang sarili niyo*" (Just save yourselves).

Help came after about 45 minutes when two boats owned by Asia Divers in Sabang, Puerto Galera passed by the capsized *M/B Coco Beach III*. Boarded on those two boats were 22 persons, consisting of 18 passengers and four crew members, who were brought to Pisa Island. Eight passengers, including petitioners' son and his wife, died during the incident.

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[2] TSN of September 12, 2002, pp. 2-22.

At the time of Ruelito's death, he was 28 years old and employed as a contractual worker for Mitsui Engineering & Shipbuilding Arabia, Ltd. in Saudi Arabia, with a basic monthly salary of $900.[3]

Petitioners, by letter of October 26, 2000,[4] demanded indemnification from respondent for the death of their son in the amount of at least ₱4,000,000.

Replying, respondent, by letter dated November 7, 2000,[5] denied any responsibility for the incident which it considered to be a fortuitous event. It nevertheless offered, as an act of commiseration, the amount of ₱10,000 to petitioners upon their signing of a waiver.

As petitioners declined respondent's offer, they filed the Complaint, as earlier reflected, alleging that respondent, as a common carrier, was guilty of negligence in allowing *M/B Coco Beach III* to sail notwithstanding storm warning bulletins issued by the Philippine Atmospheric Geophysical and Astronomical Services Administration (PAGASA) as early as 5:00 a.m. of September 11, 2000.[6]

In its Answer,[7] respondent denied being a common carrier, alleging that its boats are not available to the general public as they only ferry Resort guests and crew members. Nonetheless, it claimed that it exercised the utmost diligence in ensuring the safety of its passengers; contrary to petitioners' allegation, there was no storm on September 11, 2000 as the Coast Guard in fact cleared the voyage; and *M/B Coco Beach III* was not filled to capacity and had sufficient life jackets for its passengers. By way of Counterclaim, respondent alleged that it is entitled to an award for attorney's fees and litigation expenses amounting to not less than ₱300,000.

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[3] *Vide* TSN of May 2, 2002, pp. 5-7; records, p. 4.

[4] Records, pp. 19-20.

[5] *Id.* at 21-22.

[6] *Vide* Complaint, *supra* note 1.

[7] Records, pp. 28-35.

Carlos Bonquin, captain of *M/B Coco Beach III*, averred that the Resort customarily requires four conditions to be met before a boat is allowed to sail, to wit: (1) the sea is calm, (2) there is clearance from the Coast Guard, (3) there is clearance from the captain and (4) there is clearance from the Resort's assistant manager.[8] He added that *M/B Coco Beach III* met all four conditions on September 11, 2000,[9] but a *subasco* or squall, characterized by strong winds and big waves, suddenly occurred, causing the boat to capsize.[10]

By Decision of February 16, 2005,[11] Branch 267 of the Pasig RTC dismissed petitioners' Complaint and respondent's Counterclaim.

Petitioners' Motion for Reconsideration having been denied by Order dated September 2, 2005,[12] they appealed to the Court of Appeals.

By Decision of August 19, 2008,[13] the appellate court denied petitioners' appeal, holding, among other things, that the trial court correctly ruled that respondent is a private carrier which is only required to observe ordinary diligence; that respondent in fact observed extraordinary diligence in transporting its guests on board *M/B Coco Beach III*; and that the proximate cause of the incident was a squall, a fortuitous event.

Petitioners' Motion for Reconsideration having been denied by Resolution dated January 16, 2009,[14] they filed the present Petition for Review.[15]

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[8] *Vide* TSN of February 4, 2003, pp. 6-7.

[9] *Id.* at 8.

[10] TSN of March 4, 2003, pp. 5-6.

[11] Records, pp. 488-496.

[12] *Id.* at 581-585.

[13] Penned by Associate Justice Normandie B. Pizarro, with the concurrence of Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta; *CA rollo,* pp. 135-147.

[14] *Id.* at 190-191.

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

Petitioners maintain the position they took before the trial court, adding that respondent is a common carrier since by its tour package, the transporting of its guests is an integral part of its resort business. They inform that another division of the appellate court in fact held respondent liable for damages to the other survivors of the incident.

Upon the other hand, respondent contends that petitioners failed to present evidence to prove that it is a common carrier; that the Resort's ferry services for guests cannot be considered as ancillary to its business as no income is derived therefrom; that it exercised extraordinary diligence as shown by the conditions it had imposed before allowing *M/B Coco Beach III* to sail; that the incident was caused by a fortuitous event without any contributory negligence on its part; and that the other case wherein the appellate court held it liable for damages involved different plaintiffs, issues and evidence.[16]

The petition is impressed with merit.

Petitioners correctly rely on *De Guzman v. Court of Appeals*[17] in characterizing respondent as a common carrier.

The Civil Code defines "common carriers" in the following terms:

> Article 1732. Common carriers are persons, corporations, firms or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water, or air for compensation, offering their services to the public.

The above article makes **no distinction between one whose principal business activity is the carrying of persons or goods or both, and one who does such carrying only as an ancillary activity** (in local idiom, as "a sideline"). **Article 1732 also carefully avoids making any distinction between** a person or enterprise offering transportation service on a **regular or scheduled basis and** one offering such service on an **occasional, episodic or unscheduled basis**. **Neither does Article 1732 distinguish between** a carrier

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[16] *Vide* Comment, *id.* at 60-81.

[17] G.R. No. L-47822, December 22, 1988, 168 SCRA 612.

offering its services to the **"general public,"** *i.e.*, the general community or population, **and** one who offers services or solicits business only from a **narrow segment of the general population**. We think that Article 1733 deliberately refrained from making such distinctions.

So understood, the concept of "common carrier" under Article 1732 may be seen to coincide neatly with the notion of "public service," under the Public Service Act (Commonwealth Act No. 1416, as amended) which at least partially supplements the law on common carriers set forth in the Civil Code. Under Section 13, paragraph (b) of the Public Service Act, "public service" includes:

> . . . every person that now or hereafter may own, operate, manage, or control in the Philippines, for hire or compensation, with general or limited clientele, whether permanent, occasional or accidental, and done for general business purposes, any common carrier, railroad, street railway, traction railway, subway motor vehicle, either for freight or passenger, or both, with or without fixed route and whatever may be its classification, freight or carrier service of any class, express service, steamboat, or steamship line, pontines, ferries and water craft, engaged in the transportation of passengers or freight or both, shipyard, marine repair shop, wharf or dock, ice plant, ice-refrigeration plant, canal, irrigation system, gas, electric light, heat and power, water supply and power petroleum, sewerage system, wire or wireless communications systems, wire or wireless broadcasting stations and other similar public services . . .[18] (emphasis and underscoring supplied.)

Indeed, respondent is a common carrier. Its ferry services are so intertwined with its main business as to be properly considered ancillary thereto. The constancy of respondent's ferry services in its resort operations is underscored by its having its own *Coco Beach* boats. And the tour packages it offers, which include the ferry services, may be availed of by anyone who can afford to pay the same. These services are thus available to the public.

That respondent does not charge a separate fee or fare for its ferry services is of no moment. It would be imprudent to

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[18] *Id.* at 617-618.

suppose that it provides said services at a loss. The Court is aware of the practice of beach resort operators offering tour packages to factor the transportation fee in arriving at the tour package price. That guests who opt not to avail of respondent's ferry services pay the same amount is likewise inconsequential. These guests may only be deemed to have overpaid.

As *De Guzman* instructs, Article 1732 of the Civil Code defining "common carriers" has deliberately refrained from making distinctions on whether the carrying of persons or goods is the carrier's principal business, whether it is offered on a regular basis, or whether it is offered to the general public. The intent of the law is thus to not consider such distinctions. Otherwise, there is no telling how many other distinctions may be concocted by unscrupulous businessmen engaged in the carrying of persons or goods in order to avoid the legal obligations and liabilities of common carriers.

Under the Civil Code, common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence for the safety of the passengers transported by them, according to all the circumstances of each case.[19] They are bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with due regard for all the circumstances.[20]

When a passenger dies or is injured in the discharge of a contract of carriage, it is presumed that the common carrier is at fault or negligent. In fact, there is even no need for the court to make an express finding of fault or negligence on the part of the common carrier. This statutory presumption may only be overcome by evidence that the carrier exercised extraordinary diligence.[21]

Respondent nevertheless harps on its strict compliance with the earlier mentioned conditions of voyage before it allowed

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[19] CIVIL CODE, Art. 1733.

[20] *Id.*, Art. 1755.

[21] *Diaz v. Court of Appeals,* G.R. No. 149749, July 25, 2006, 496 SCRA 468, 472.

M/B Coco Beach III to sail on September 11, 2000. Respondent's position does not impress.

The evidence shows that PAGASA issued 24-hour public weather forecasts and tropical cyclone warnings for shipping on September 10 and 11, 2000 advising of tropical depressions in Northern Luzon which would also affect the province of Mindoro.[22] By the testimony of Dr. Frisco Nilo, supervising weather specialist of PAGASA, squalls are to be expected under such weather condition.[23]

A very cautious person exercising the utmost diligence would thus not brave such stormy weather and put other people's lives at risk. The extraordinary diligence required of common carriers demands that they take care of the goods or lives entrusted to their hands as if they were their own. This respondent failed to do.

Respondent's insistence that the incident was caused by a fortuitous event does not impress either.

The elements of a "fortuitous event" are: (a) the cause of the unforeseen and unexpected occurrence, or the failure of the debtors to comply with their obligations, must have been independent of human will; (b) the event that constituted the *caso fortuito* must have been impossible to foresee or, if foreseeable, impossible to avoid; (c) the occurrence must have been such as to render it impossible for the debtors to fulfill their obligation in a normal manner; and (d) the obligor must have been free from any participation in the aggravation of the resulting injury to the creditor.[24]

To fully free a common carrier from any liability, the fortuitous event must have been the **proximate and only cause** of the loss. And it should have exercised due diligence to prevent or

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[22] *Vide* records, pp. 268-276.

[23] *Vide* TSN of December 13, 2001, pp. 3-19.

[24] *Lea Mer Industries, Inc. v. Malayan Insurance Co., Inc.*, G.R. No. 161745, September 30, 2005, 471 SCRA 698, 707-708.

minimize the loss before, during and after the occurrence of the fortuitous event.[25]

Respondent cites the squall that occurred during the voyage as the fortuitous event that overturned *M/B Coco Beach III*. As reflected above, however, the occurrence of squalls was expected under the weather condition of September 11, 2000. Moreover, evidence shows that *M/B Coco Beach III* suffered engine trouble before it capsized and sank.[26] The incident was, therefore, not completely free from human intervention.

The Court need not belabor how respondent's evidence likewise fails to demonstrate that it exercised due diligence to prevent or minimize the loss before, during and after the occurrence of the squall.

Article 1764[27] *vis-à-vis* Article 2206[28] of the Civil Code holds the common carrier in breach of its contract of carriage that

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[25] *Ibid.*

[26] Records, pp. 279-280.

[27] Art. 1764. Damages in cases comprised in this Section shall be awarded in accordance with Title XVIII of this Book concerning Damages. Article 2206 shall also apply to the death of a passenger caused by the breach of contract by a common carrier.

[28] Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:

(1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;

(2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

results in the death of a passenger liable to pay the following: (1) indemnity for death, (2) indemnity for loss of earning capacity and (3) moral damages.

Petitioners are entitled to indemnity for the death of Ruelito which is fixed at ₱50,000.[29]

As for damages representing unearned income, the formula for its computation is:

Net Earning Capacity = life expectancy x (gross annual income-reasonable and necessary living expenses).

Life expectancy is determined in accordance with the formula:

2/3 x [80 — age of deceased at the time of death][30]

The first factor, *i.e.*, life expectancy, is computed by applying the formula (2/3 x [80 — age at death]) adopted in the American Expectancy Table of Mortality or the Actuarial of Combined Experience Table of Mortality.[31]

The second factor is computed by multiplying the life expectancy by the net earnings of the deceased, *i.e.*, the total earnings less expenses necessary in the creation of such earnings or income and less living and other incidental expenses.[32] The loss is not equivalent to the entire earnings of the deceased, but only such portion as he would have used to support his dependents or heirs. Hence, to be deducted from his gross earnings are the necessary expenses supposed to be used by the deceased for his own needs.[33]

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[29] *Tiu v. Arriesgado,* G.R. No. 138060, September 1, 2004, 437 SCRA 426, 451-452.

[30] *Candano Shipping Lines, Inc. v. Sugata-on,* G.R. No. 163212, March 13, 2007, 578 SCRA 221, 235.

[31] *Lambert v. Heirs of Ray Castillon,* G.R. No. 160709, February 23, 2005, 452 SCRA 285, 294.

[32] *Ibid.*

[33] *Magbanua v. Tabusares, Jr.,* G.R. No. 152134, June 4, 2004, 431 SCRA 99, 104.

In computing the third factor — necessary living expense, *Smith Bell Dodwell Shipping Agency Corp. v. Borja*[34] teaches that when, as in this case, there is no showing that the living expenses constituted the smaller percentage of the gross income, the living expenses are fixed at half of the gross income.

Applying the above guidelines, the Court determines Ruelito's life expectancy as follows:

Life expectancy = 2/3 x [80 - age of deceased at the time of death]

2/3 x [80 - 28]

2/3 x [52]

Life expectancy = 35

Documentary evidence shows that Ruelito was earning a basic monthly salary of $900[35] which, when converted to Philippine peso applying the annual average exchange rate of $1 = ₱44 in 2000,[36] amounts to ₱39,600. Ruelito's net earning capacity is thus computed as follows:

Net Earning Capacity = life expectancy x (gross annual income - reasonable and necessary living expenses).

= 35 x (₱475,200 - ₱237,600)
= 35 x (₱237,600)

Net Earning Capacity = ₱8,316,000

Respecting the award of moral damages, since respondent common carrier's breach of contract of carriage resulted in the death of petitioners' son, following Article 1764 *vis-à-vis* Article 2206 of the Civil Code, petitioners are entitled to moral damages.

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[34] G.R. No. 143008, June 10, 2002, 383 SCRA 341, 351.

[35] *Vide* records, pp. 258-259.

[36] For reference, *vide* Bangko Sentral ng Pilipinas Treasury Department Reference Exchange Rate Bulletins at www.bsp.gov.ph/dbank_reports/ExchangeRates.

Since respondent failed to prove that it exercised the extraordinary diligence required of common carriers, it is presumed to have acted recklessly, thus warranting the award too of exemplary damages, which are granted in contractual obligations if the defendant acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[37]

Under the circumstances, it is reasonable to award petitioners the amount of ₱100,000 as moral damages and ₱100,000 as exemplary damages.[38]

Pursuant to Article 2208[39] of the Civil Code, attorney's fees may also be awarded where exemplary damages are awarded. The Court finds that 10% of the total amount adjudged against respondent is reasonable for the purpose.

Finally, *Eastern Shipping Lines, Inc. v. Court of Appeals*[40] teaches that when an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for payment of interest in the concept of actual and compensatory damages, subject to the following rules, to wit —

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded

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[37] Vide *Yobido v. Court of Appeals,* 346 Phil. 1, 13 (1997).

[38] Vide *Victory Liner, Inc. v. Gammad*, G.R. No. 159636, November 25, 2004, 444 SCRA 355, 370.

[39] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

[40] G.R. No. 97412, July 12, 1994, 234 SCRA 78, 95–97.

may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code) but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 12% per annum from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit. (emphasis supplied)

Since the amounts payable by respondent have been determined with certainty only in the present petition, the interest due shall be computed upon the finality of this decision at the rate of 12% per annum until satisfaction, in accordance with paragraph number 3 of the immediately cited guideline in *Eastern Shipping Lines, Inc.*

WHEREFORE, the Court of Appeals Decision of August 19, 2008 is *REVERSED* and *SET ASIDE*. Judgment is rendered in favor of petitioners ordering respondent to pay petitioners the following: (1) ₱50,000 as indemnity for the death of Ruelito Cruz; (2) ₱8,316,000 as indemnity for Ruelito's loss of earning capacity; (3) ₱100,000 as moral damages; (4) ₱100,000 as exemplary damages; (5) 10% of the total amount adjudged against respondent as attorney's fees; and (6) the costs of suit.

The total amount adjudged against respondent shall earn interest at the rate of 12% per annum computed from the finality of this decision until full payment.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

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[*] Additional member per Special Order No. 843 dated May 17, 2010.

SECOND DIVISION

[G.R. No. 186527. June 29, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ROY PAMPILLONA *Y* REBADULLA,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DRUGS; ELEMENTS; PRESENT IN CASE AT BAR. —** The elements necessary for the prosecution of illegal sale of drugs are (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution of illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti.* All these elements were present in this case.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; NON-COMPLIANCE THEREWITH WILL NOT RENDER THE ARREST OF AN ACCUSED ILLEGAL OR THE ITEMS SEIZED FROM HIM INADMISSIBLE WHERE THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS ARE PRESERVED. —** Contrary to the argument of the accused, the chain of custody of the seized prohibited drugs was not broken. PO2 Bautista was in possession of the sachet containing the *shabu* all that time after its confiscation. At the police station, he marked the specimen with the initial "EB-RP" upon orders of the investigator. After he had marked it, SPO2 Abong and the investigator brought the *shabu* to the crime laboratory for examination. Besides, the issue of chain of custody was never raised by the accused at the trial court level. It was only brought up belatedly by the accused which clearly demonstrated that such defense was merely an after-thought. At any rate, non-compliance with Section 21 of RA 9165 will not render the arrest of an accused illegal or the items seized or confiscated from him inadmissible. What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would

be utilized in the determination of the guilt or innocence of the accused. In this case, it has been shown that the integrity and evidentiary value of the seized items has been preserved.

3. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF AND PRESUMPTIONS; REGULARITY IN THE PREPARATION OF THE PRE-OPERATION REPORT ESTABLISHED IN CASE AT BAR. —** The Court likewise notes that the regularity in the preparation of the Pre-Operation Report was established by the testimony of PO2 Bautista and SPO2 Abong, when they explained that per office procedure, the entry "*Duration*" was filled in advance to reflect its effectivity or lifetime because the Pre-Operation Report had a lifetime or duration of twenty-four (24) hours. When a specific operation came up, the details of the pre-operation report would then be entered, and the report sent to the PDEA. In this case, the entry "*Duration*" in the Pre-Operation Report indicates "19220H to 2022200H Nov. 2004." The Court, therefore, sustains the regularity in the preparation of the Pre-Operation Report since it was valid or had a lifetime from 10:00 in the evening of November 19, 2004, to 10:00 in the evening of November 20, 2004. Again, taking into consideration the presumption of regularity in the performance of official functions and absent any evidence that would negate such presumption, the Court considers the Pre-Operation Report to have been properly received, noted and acted upon by the PDEA.

4. **ID.; ID.; ID.; PERFORMANCE OF OFFICIAL DUTY PRESUMED REGULAR UNLESS SUBSTANTIALLY REBUTTED BY THE DEFENSE. —** As uniformly observed by the trial court and the appellate court, the account of the arresting/entrapping police officers, as to what took place in the evening of November 20, 2004, was credible. They rendered consistent and straightforward narration of what actually transpired that night. Besides, there is the presumption of regularity in the performance of official duty by the police operatives in this case and such presumption was never substantially rebutted by the defense.

5. **ID.; ID.; DEFENSE OF FRAME-UP GENERALLY VIEWED WITH CAUTION FOR IT IS EASY TO CONTRIVE AND DIFFICULT TO DISPROVE.—** For the claim of frame-up to prosper, the defense must be able to present clear and

convincing evidence to overcome this presumption of regularity. Frame-up, like alibi, is generally viewed with caution by this Court because it is easy to contrive and difficult to disprove. Moreover, it is a common and standard line of defense in prosecution of violations of the Dangerous Drugs Act.

6. **ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONIES OF THE MEMBERS OF THE BUY-BUST TEAM ON THE OPERATION DESERVE FULL FAITH AND CREDIT, ABSENT CLEAR AND CONVINCING EVIDENCE THAT THEY WERE IMPELLED BY ANY IMPROPER MOTIVE OR DID NOT PROPERLY PERFORM THEIR DUTY. —** In this jurisdiction, the conduct of a buy-bust operation is a common and accepted mode of apprehending those involved in illegal sale of prohibited or regulated drugs. It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity. Unless there is clear and convincing evidence that the members of the buy-bust team were impelled by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.

7. **ID.; ID.; ID.; AGAINST THE POSITIVE TESTIMONIES OF THE PROSECUTION WITNESSES, THE PLAIN DENIAL BY THE ACCUSED SIMPLY FAILS. —** In the case at bench, with a practically uncorroborated testimony, the accused miserably failed to show that the members of the buy-bust team were driven by any improper motive or that they did not properly perform their duty. Against the positive testimonies of the prosecution witnesses, the plain denial by the accused simply fails.

8. **CRIMINAL LAW; REPUBLIC ACT NO. 9165; SALE OF DANGEROUS DRUGS; PROPER PENALTY. —** Under Section 5, Article II of Republic Act No. 9165, the sale of any dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine of ₱500,000.00 to ₱10,000,000.00. With the effectivity, however, of Republic Act No. 9346, the imposition of the supreme penalty of death has been proscribed. Thus, the penalty to be imposed on the accused shall only be life imprisonment and fine. Finding that the penalty imposed on him for selling *shabu* to be in accordance with law, the Court upholds it.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

Time and again the Court has condemned the illegal drug trade for being a scourge to our society. As an ardent sentinel of the people's rights and welfare, this Court shall not hesitate to dispense justice on people who engage in such an activity.[1] Drug pushers are merchants of death[2] whose commodities cause so much physical, mental and moral pain not only to the immediate victims of their greed, but also to the families of the victims.[3]

Before this Court is the case of one of those merchants, accused Roy Pampillona *y* Rebadulla.

After being apprehended for the sale of Methylamphetamine Hydrochloride also known as "*shabu*," a dangerous drug, the accused was charged with having committed a violation of Section 5, Article II of Republic Act (R.A.) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002. The Information[4] dated November 22, 2004 reads:

> "That on or about the 20th day of November, 2004, in Quezon City, Philippines, the said accused not being authorized by law to sell, dispense, deliver, transport or distribute any dangerous drug, did, then and there willfully and unlawfully sell, dispense, deliver, transport, distribute, or act as a broker in the said transaction, point

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[1] *People v. San Juan*, G.R. No. 124525, February 15, 2002, 427 Phil. 236, 247-248.

[2] *People v. Abedes*, G.R. No. 73399, November 28,1986, 146 SCRA 132, 137.

[3] *People v. Requiz*, G.R. No. 130992, November 19, 1999, 318 SCRA 635, 648.

[4] CA Records, p. 10.

zero four (0.04) gram of white crystalline substance containing Methylamphetamine Hydrochloride, a dangerous drug.

CONTRARY TO LAW."

As culled from the evidence of the prosecution, it appears that on November 20, 2004, around 3:30 o'clock in the morning, a female informant, a drug-user, appeared at the office of the Anti-Illegal Drugs Special Operations Team *(SAID-SOAP),* Galas Police Station, Quezon City, and informed team leader, Police Inspector (P/Insp.) Erwin Guevarra, about the illegal drug trade activities of one "*Taroy*" in Barangay Damayang Lagi, Quezon City. P/Insp. Guevarra then formed a team composed of PO2 Anthony Palimar, SPO2 Mario Abong, PO2 Erwin Bautista, and two (2) confidential agents.

P/Insp. Guevarra then briefed the team members on the buy-bust operation they would be conducting based on the information relayed by the informant. PO2 Bautista was designated as the poseur-buyer, while SPO2 Abong would serve as back-up. The rest of the team would act as look-outs. P/Insp. Guevarra handed to PO2 Bautista a one hundred (₱100.00) peso bill with Serial Number XE004371 to be utilized as the marked money. SPO2 Bautista then placed his initials "EB" inside the two zeros of the bill. A pre-operation report was also prepared for purposes of coordination with the Philippine Drug Enforcement Agency *(PDEA).*

Later, at around 4:00 o'clock in the morning, the buy-bust team, together with the informant, proceeded to a house located in Barangay Damayang Lagi, Quezon City. The informant told PO2 Bautista that the person standing in front of the house was the drug pusher. In a little while, the informant introduced PO2 Bautista to the seller, who was identified as accused Roy Pampillona. The accused then asked PO2 Bautista, "*Magkano ba bibilhin mo?*" (How much are you going to buy?), to which the latter replied, "*Isang Piso Lang.*" (One Peso only.) The accused then asked for the money and the officer handed to him the marked one hundred peso bill. In exchange, the accused gave a plastic sachet to PO2 Bautista, who, after examining its content, was satisfied that it was *shabu*.

Following a pre-arranged signal, PO2 Bautista removed his baseball cap. Immediately, the waiting team members rushed towards the scene and accosted the accused. SPO2 Abong introduced himself as a police officer and asked the accused to empty his pockets. SPO2 Abong then took the marked money from him and apprised him of his constitutional rights. Thereafter, the accused was taken to the Galas Police Station. Upon orders of the station investigator, PO2 Bautista marked the plastic sachet with the letters "EB-RP" so that it could be properly identified when delivered to the PNP Crime Laboratory for examination.

During the trial, the prosecution and the defense agreed to dispense with the testimony of Senior Police Inspector Maridel C. Rodis, the forensic chemist of the Philippine National Police (PNP), and stipulated on the existence of a Letter-Request for examination of the specimen; the confirmatory report, Chemistry Report No. D-1111-04; and the finding that the specimen was found positive for Methylamphetamine Hydrochloride.

The defense, on the other hand, presented the lone testimony of the accused who claimed that around 3:00 o'clock in the morning of November 20, 2004, he was in his house with his wife and grandchild when he heard knocks on the door; that he did not mind them but his wife got out of bed and opened the door; that suddenly, several persons rushed to their bedroom and, after introducing themselves as policemen, handcuffed him; that they did not tell him why they did so and why they were bringing him to the police station; and that at the Galas Police Station, a certain police asset named "Manny" came over and talked to him.

The accused also recalled that a day earlier, he was with his *barkada* together with a certain Manny playing *kara y kruz.* In that game, Manny lost ₱8,000.00.

That Manny was the same "Manny" who approached him at the police station. He asked for the ₱8,000.00 he lost from the game explaining that the money belonged to some policemen who wanted it back. He told Manny, however, that he had only won ₱2,000.00 in their game and that he had given the money

to his neighbor as payment for his electric bill covering two (2) months. According to him, his electric line was only connected to the line of his neighbor *("nakakabit")*. For his failure to give ₱8,000.00 to Manny, he was framed up.

Decision of the Trial Court

On September 22, 2006, the trial court handed down its Decision[5] convicting the accused of having violated Section 5, Article II of Republic Act No. 9165. The decretal portion of said decision reads:

> "ACCORDINGLY, judgment is hereby rendered finding the accused, ROY PAMPILLONA *y* REBADULLA, GUILTY beyond reasonable doubt of the offense of Violation of Section 5, Article II of R.A. No. 9165 (for drug pushing) as charged and he is hereby sentenced to a jail term of LIFE IMPRISONMENT and to pay a fine of ₱500,000.00.
>
> The plastic sachet of *shabu* involved in this case is ordered transmitted to the PDEA thru the DDB for proper disposition per R.A. 9165. PDEA is requested to be extra careful in safekeeping this *shabu*.
>
> SO ORDERED."

The accused was convicted on the strength of the testimonies of PO2 Bautista and SPO2 Abong. The trial court did not give weight to his defense of alibi. It wrote that PO2 Bautista and SPO2 Abong appeared to be candid and honest as they admitted that the pre-operation coordination report had been prepared in advance or prior to the arrival of their female informant. Their explanation that the said report had a lifetime or duration of twenty-four (24) hours and that the rest of the items in that report were entered after the informant had been interviewed, satisfied the court.

The trial court was of the view that the buy-bust team performed their official duties in a regular manner. Although the plastic bag containing the *shabu* was only marked at the police station,

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[5] CA Records, pp. 93-96.

its physical integrity was not affected because SPO2 Bautista was in possession of it at all times, until he marked the sachet with "*EB-RP*" at the station. They were the same specimen and sachet confirmed by the PNP Forensic Chemist in his Chemistry Report.

The trial court did not give credence to the version of the accused basically because it was not corroborated by any of his co-players in the *kara y cruz* or *barkadas.* It could not also believe that the accused, a jobless person, would bet several thousand of pesos in a game of *kara y kruz.* Even his wife did not take the witness stand to confirm his story.

Decision of the Court of Appeals

In its Decision,[6] the Court of Appeals affirmed the conviction stating that there was no reason to doubt the evaluation and assessment of the trial court regarding the credibility of the prosecution's witnesses. The appellate court noted that PO2 Bautista categorically narrated the buy-bust operation transaction and his testimony was corroborated on material points by SPO2 Abong who was waiting in the car, just a few meters away. The fact that SPO2 Bautista could not recall the name of the person who brought the specimen to the crime laboratory only proves that he was worthy of belief, as he was not coached. Neither could it be said that he rehearsed his lines. At any rate, the lapse in his memory was filled in by SPO2 Abong who claimed that he, together with the investigator, brought the confiscated *shabu* to the PNP Crime Laboratory for examination.

On the claim of the accused that he was just being harassed by the policemen because he won in a game of *kara y kruz*, the appellate court opined that he could have filed the proper administrative charges against them if it were true. Since no administrative or criminal charges were filed, it concluded that his story was merely fabricated to enfeeble the case of the prosecution. Besides, it was lacking in corroboration. Thus,

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[6] *Rollo,* pp. 2-16. Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justice Jose L. Sabio, Jr. and Associate Justice Myrna Dimaranan Vidal concurring.

the accused failed to show that the police officers were impelled by improper and malicious motives in arresting him.

The accused also contends that the Pre-Operation Report was defective since it was prepared in advance and that there was no evidence presented that the same was received and acted upon by the PDEA. To this, the appellate court ruled that such contention had no basis and that assuming there were defects, it would not impair the fact that the accused was arrested in the illegal sale of *shabu* during a buy-bust operation.

THE COURT'S RULING

The Court finds no merit in this appeal.

The elements necessary for the prosecution of illegal sale of drugs are (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor.[7] What is material to the prosecution of illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti.*[8]

All these elements were present in this case. There is no doubt that the accused was caught red-handed in a buy-bust operation. The illegal sale of *shabu* was convincingly established by the credible and corroborated testimony of SPO2 Bautista who acted as the poseur-buyer. He had personal knowledge of the sale and positively identified the accused as the seller of the contraband. The object of the sale was examined and found to be positive for methylamphetamine hydrochloride (*shabu*), per Chemistry Report No. D-1111-04. The testimony of PO2 Bautista appears in the record as follows:

Q: When you noticed that the subject was there, what did you do?

A: Our female informant introduced me as the supposed *shabu* buyer, sir.

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[7] *People v. Adam*, G.R. No. 143842, October 13, 2003, 459 Phil. 676, 684.

[8] *People v. Nicolas*, G.R. No. 170234, February 8, 2007, 515 SCRA 187.

Q: Were you able to talk to the subject at that time?
A: Yes sir. Our subject immediately asked me.

Q: Asked you what?
A: *Magkano ba ang bibilhin mo?*

Q: What was your answer?
A: I said, *"Isang piso lang"* sir.

Q: What was the answer of your subject?
A: He asked me for money, sir.

Q: Were you able to give the money?
A: Yes, sir.

Q: When he received the money, what happened next?
A: He pulled out a piece of plastic sachet containing white crystalline substance suspected *shabu*, sir.[9]

The testimony of PO2 Bautista was indeed corroborated on material points by SPO2 Mario Abong who observed the transaction while waiting inside a car just a few meters away.[10] Clearly, the accused was caught red-handed in the act of selling *shabu* to PO2 Bautista in a buy-bust operation.

Contrary to the argument of the accused, the chain of custody of the seized prohibited drugs was not broken. PO2 Bautista was in possession of the sachet containing the *shabu* all that time after its confiscation. At the police station, he marked the specimen with the initial "EB-RP" upon orders of the investigator. After he had marked it, SPO2 Abong and the investigator brought the *shabu* to the crime laboratory for examination.

Besides, the issue of chain of custody was never raised by the accused at the trial court level. It was only brought up belatedly by the accused which clearly demonstrated that such defense was merely an after-thought.

At any rate, non-compliance with Section 21 of RA 9165[11] will not render the arrest of an accused illegal or the items seized

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[9] TSN, June 21, 2005, pp. 8-9.

[10] TSN, September 6, 2005, p. 6.

[11] Section 21 reads:

or confiscated from him inadmissible.[12] What is of utmost importance is the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. In this case, it has been shown that the integrity and evidentiary value of the seized items has been preserved.

The Court likewise notes that the regularity in the preparation of the Pre-Operation Report was established by the testimony of PO2 Bautista and SPO2 Abong, when they explained that per office procedure, the entry "*Duration*" was filled in advance to reflect its effectivity or lifetime because the Pre-Operation Report had a lifetime or duration of twenty-four (24) hours. When a specific operation came up, the details of the pre-operation report would then be entered, and the report sent to the PDEA. In this case, the entry "*Duration*" in the Pre-Operation Report indicates "19220H to 2022200H Nov. 2004." The Court, therefore, sustains the regularity in the preparation of the Pre-Operation Report since it was valid or had a lifetime from 10:00 in the evening of November 19, 2004, to 10:00 in the evening of November 20, 2004. Again, taking into consideration the presumption of regularity in the performance of official functions

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SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/ Paraphernalia and/or Laboratory Equipment.* — The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(1) 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.

[12] *People of the Philippines v. Marilyn Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 445-446; *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627, 636 and *People v. Pringas,* G.R. No. 175928, August 31, 2007, 531 SCRA 828, 842-843.

and absent any evidence that would negate such presumption, the Court considers the Pre-Operation Report to have been properly received, noted and acted upon by the PDEA.

As uniformly observed by the trial court and the appellate court, the account of the arresting/entrapping police officers, as to what took place in the evening of November 20, 2004, was credible. They rendered consistent and straightforward narration of what actually transpired that night. Besides, there is the presumption of regularity in the performance of official duty by the police operatives in this case and such presumption was never substantially rebutted by the defense.

For the claim of frame-up to prosper, the defense must be able to present clear and convincing evidence to overcome this presumption of regularity.[13] Frame-up, like alibi, is generally viewed with caution by this Court because it is easy to contrive and difficult to disprove. Moreover, it is a common and standard line of defense in prosecution of violations of the Dangerous Drugs Act.[14]

In this jurisdiction, the conduct of a buy-bust operation is a common and accepted mode of apprehending those involved in illegal sale of prohibited or regulated drugs. It has been proven to be an effective way of unveiling the identities of drug dealers and of luring them out of obscurity.[15] Unless there is clear and convincing evidence that the members of the buy-bust team were impelled by any improper motive or were not properly performing their duty, their testimonies on the operation deserve full faith and credit.[16]

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[13] *People of the Philippines v. Frederick Teodoro,* G.R. No. 185164, June 22, 2009; *People of the Philippines v. Narciso Agulay y Lopez*, G.R. No. 181747, September 26, 2008.

[14] *People v. Eugenio*, G.R. No. 146805, January 16, 2003, 443 Phil. 411, 419.

[15] *People v. Cabugatan*, G.R. No. 172019, February 12, 2007, 515 SCRA 537, 552.

[16] *People v. Del Mundo*, G.R. No. 169141, December 6, 2006, 510 SCRA 554, 565-566.

In the case at bench, with a practically uncorroborated testimony, the accused miserably failed to show that the members of the buy-bust team were driven by any improper motive or that they did not properly perform their duty. Against the positive testimonies of the prosecution witnesses, the plain denial by the accused simply fails.[17]

Under Section 5, Article II of Republic Act No. 9165, the sale of any dangerous drug, regardless of its quantity and purity, is punishable by life imprisonment to death and a fine of ₱500,000.00 to ₱10,000,000.00.[18] With the effectivity, however, of Republic Act No. 9346,[19] the imposition of the supreme penalty of death has been proscribed. Thus, the penalty to be imposed on the accused shall only be life imprisonment and fine. Finding that the penalty imposed on him for selling *shabu* to be in accordance with law, the Court upholds it.

WHEREFORE, the August 18, 2008 Decision of the Court of Appeals in CA-G.R. CR H.C. No. 02547 is hereby *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Abad, JJ.,* concur.

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[17] *People v. Sy*, G.R. No. 171397, September 27, 2006, 503 SCRA 772, 783.

[18] 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.

[19] Otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

FIRST DIVISION

[G.R. No. 186539. June 29, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MITSUEL L. ELARCOSA and JERRY B. ORIAS,** *accused*, **JERRY B. ORIAS**, *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; QUESTIONS THEREON ARE BEST ADDRESSED TO THE SOUND DISCRETION OF THE TRIAL COURT. —** In this regard, it should be noted that questions concerning the credibility of a witness are best addressed to the sound discretion of the trial court, since it is the latter which is in the best position to observe the demeanor and bodily movements of a witness.
2. **ID.; ID.; ID.; ID.; BECOMES ALL THE MORE COMPELLING WHEN THE APPELLATE COURT AFFIRMS THE FINDINGS OF THE TRIAL COURT. —** This becomes all the more compelling when the appellate court affirms the findings of the trial court. Thus, we generally defer to the trial court's assessment, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.
3. **ID.; ID.; ID.; TESTIMONIAL EVIDENCE TO BE BELIEVED MUST NOT ONLY PROCEED FROM THE MOUTH OF A CREDIBLE WITNESS BUT MUST FOREMOST BE CREDIBLE IN ITSELF. —** Further, settled is the rule that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself. Hence, the test to determine the value or credibility of the testimony of a witness is whether the same is in conformity with common knowledge and is consistent with the experience of mankind.
4. **ID.; ID.; ID.; ID.; POSITIVE AND CONSISTENT IDENTIFICATION OF ACCUSED AS MALEFACTORS, CONVINCING; CASE AT BAR. —** [R]osemarie was able to convincingly testify that she was present when accused-

appellant Orias and Elarcosa shot to death her brother and her father in the living room, since during that time, she and her mother were preparing supper for accused-appellant Orias and Elarcosa in the kitchen, which was only an arm's length away from the living room. From where she was standing, Rosemarie could not have any difficulty identifying the malefactors, since she knew them beforehand and the living room was sufficiently lighted when the incident happened. As a matter of fact, Rosemarie positively and consistently identified accused-appellant Orias and Elarcosa in the police station during the police line-up, as well as in the courtroom during trial, as the persons who shot her brother and her father.

5. **ID.; ID.; ID.; ID.; ID.; TESTIMONY OF WITNESS WITHOUT ANY IMPROPER MOTIVE IS WORTHY OF FULL FAITH AND CREDIT; CASE AT BAR. —** Moreover, accused-appellant Orias did not present any evidence which would show that Rosemarie was driven by any improper motive in testifying against him. Pertinently, the absence of such improper motive on the part of the witness for the prosecution strongly tends to sustain the conclusion that no such improper motive exists and that her testimony is worthy of full faith and credit. Indeed, there is no reason to deviate from the factual findings of the trial court.

6. **ID.; ID.; ALIBI; FOR ALIBI TO PROSPER, ACCUSED MUST PROVE THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE PRESENT AT THE CRIME SCENE AT THE TIME OF ITS COMMISSION; CASE AT BAR. —** It bears stressing that for alibi to prosper, it is not enough for the accused to prove that he was in another place when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission. Significantly, a meticulous review of the records would reveal that accused-appellant Orias failed to present convincing evidence that he did not leave the dance hall in Barangay Amotay, Binalbagan, Negros Occidental, which incidentally is the same *barangay* where the crime was committed, on the evening of September 27, 1992. Also, considering that the dance hall is in the same *barangay* where the crime was committed, it was not physically impossible for accused-appellant Orias to be present at the *locus criminis* at the time the same was committed.

7. ID.; ID.; ALIBI; CRUMBLES IN THE LIGHT OF POSITIVE IDENTIFICATION BY TRUTHFUL WITNESSES; CASE AT BAR. — Furthermore, it has been held, time and again, that alibi, as a defense, is inherently weak and crumbles in the light of positive identification by truthful witnesses. It is evidence negative in nature and self-serving and cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence. There being no strong and credible evidence adduced to overcome the testimony of Rosemarie pointing to him as one of the culprits, no weight can be given to accused-appellant Orias' alibi.

8. ID.; ID.; ID.; ID.; BECOMES MORE UNWORTHY OF MERIT WHERE IT IS ESTABLISHED MAINLY BY THE ACCUSED HIMSELF, HIS RELATIVES, FRIENDS, AND COMRADES-IN-ARMS. — Although the alibi of accused-appellant Orias appears to have been corroborated by a CAFGU member by the name of Robert Arellano and by a vendor present during the dance, said defense is unworthy of belief not only because of its inherent weakness and the fact that accused-appellant Orias was positively identified by Rosemarie, but also because it has been held that alibi becomes more unworthy of merit where it is established mainly by the accused himself, his relatives, friends, and comrades-in-arms, and not by credible persons.

9. ID.; ID.; ROBBERY WITH HOMICIDE; INSUFFICIENCY OF EVIDENCE TO ESTABLISH THAT CRIME OF ROBBERY WITH HOMICIDE WAS COMMITTED; CASE AT BAR. — Well-entrenched in our jurisprudence is the principle that in order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proved as conclusively as any other essential element of the crime. Where the evidence does not conclusively prove the robbery, the killing of the victim would be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the crime of robbery with homicide. In the present case, the evidence is insufficient to sustain the conviction of the accused-appellant Orias for the crime of robbery with homicide. Aside from the testimony of Rosemarie that she saw accused-appellant Orias and Elarcosa search the wooden chest in their house after shooting the victims, no other evidence was presented to

conclusively prove that the PhP 40,000 cash and the registration certificate of large cattle were inside the said wooden chest and that the accused-appellant Orias and Elarcosa actually took them.

10. **ID.; ID.; TREACHERY; MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE AS CONCLUSIVELY AS THE KILLING ITSELF; CASE AT BAR. —** Treachery was unmistakably present in the instant case. Settled is the rule that qualifying circumstances cannot be presumed, but must be established by clear and convincing evidence as conclusively as the killing itself. It must be remembered that when accused-appellant Orias and Elarcosa went to the house of the victims demanding that supper be prepared for them, said victims did not have the slightest idea of what accused-appellant Orias and Elarcosa intended to do with them. As a matter of fact, while Segundina and Rosemarie prepared supper for accused-appellant Orias and Elarcosa, Jose and Jorge entertained them in the living room. They were just engaged in a conversation when accused-appellant Orias and Elarcosa suddenly stood up and fired their guns at Jose and Jorge. As aptly observed by the CA, "The attack although frontal was very sudden and unexpected." x x x Considerably, even if the shooting was frontal in the case at bar, treachery should still be appreciated, since the victims were not in any position to defend themselves as the attack was so sudden and unexpected.

11. **CRIMINAL LAW; CONSPIRACY; WHEN PRESENT. —** Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once this is established, each and every one of the conspirators is made criminally liable for the crime actually committed by any one of them.

12. **ID.; ID.; THE AGREEMENT TO COMMIT A CRIME MAY BE INFERRED FROM ACTS THAT POINT TO A JOINT PURPOSE AND DESIGN, CONCERTED ACTION, AND COMMUNITY OF INTEREST. —** In the absence of direct proof, the agreement to commit a crime may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and community of interest. It does not matter who inflicted the

mortal wound, as each of the actors incurs the same criminal liability, because the act of one is the act of all. x x x In the instant case, conspiracy is manifested by the fact that the acts of accused-appellant Orias and Elarcosa were coordinated. They were synchronized in their approach to shoot Jose and Jorge, and they were motivated by a single criminal impulse, that is, to kill the victims. Verily, conspiracy is implied when the accused persons had a common purpose and were united in its execution. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility.

13. **ID.; COMPLEX CRIME; DEFINED. —** Article 48 of the Revised Penal Code, which defines the concept of complex crime, states: "ART. 48. Penalty for complex crimes. — When a single act constitutes two or more grave or less grave felonies or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Act No. 4000.)" In a complex crime, although two or more crimes are actually committed, they constitute only one crime in the eyes of the law, as well as in the conscience of the offender. Hence, there is only one penalty imposed for the commission of a complex crime.

14. **ID.; ID.; OF TWO KINDS. —** Complex crime has two (2) kinds. The first is known as compound crime, or when a single act constitutes two or more grave or less grave felonies. The second is known as complex crime proper, or when an offense is a necessary means for committing the other.

15. **ID.; ID.; NOT A COMPLEX CRIME WHEN THREE (3) CRIMES OF MURDER RESULTED FROM SEVERAL INDIVIDUAL AND DISTINCT ACTS; CASE AT BAR. —** The case at bar does not fall under any of the two instances stated above. It is clear from the evidence on record that the three (3) crimes of murder did not result from a single act but from several individual and distinct acts. Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes. x x x In the instant case, however, the acts of accused-appellant Orias and Elarcosa demonstrate the existence of conspiracy, thereby imputing collective criminal responsibility upon them, as the act of one is the act of all. x x x Considering our holding above, we rule that accused-appellant

Orias is guilty, not of a complex crime of multiple murder, but of three (3) counts of murder for the death of the three (3) victims.

16. **REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; DUPLICITY OF OFFENSES CHARGED IN THE INFORMATION, A GROUND THEREFOR; WAIVED IN CASE AT BAR. —** Since there was only one information filed against accused-appellant Orias and Elarcosa, the Court observes that there is duplicity of the offenses charged in the said information. This is a ground for a motion to quash as three (3) separate acts of murder were charged in the information. Nonetheless, the failure of accused-appellant Orias to interpose an objection on this ground constitutes waiver.

17. **CRIMINAL LAW; REVISED PENAL CODE; MURDER; IMPOSABLE PENALTY IN CASE AT BAR. —** Under Article 248 of the Revised Penal Code, as amended, the penalty for the crime of murder is *reclusion perpetua* to death. Without any mitigating or aggravating circumstance attendant in the commission of the crime, the medium penalty is the lower indivisible penalty of *reclusion perpetua*. In the present case, while accused-appellant Orias was charged with three aggravating circumstances in the Information, only one was proved thereby qualifying the killing to murder. Considering that no other aggravating circumstance was proved and that accused-appellant Orias is guilty of three (3) separate counts of murder, the imposable penalty shall be three (3) sentences of *reclusion perpetua*.

18. **ID.; ID.; CIVIL LIABILITY WHEN DEATH OCCURS DUE TO A CRIME; CASE AT BAR. —** Based on Article 100 of the Revised Penal Code, every person criminally liable for a felony is also civilly liable. Thus, when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases. In cases of murder and homicide, civil indemnity of PhP 75,000 and moral damages of PhP 50,000 are awarded automatically. Indeed, such awards are mandatory without need of allegation and proof other than the death of the victim, owing to the fact of the commission of murder or homicide. We, however, additionally grant exemplary damages in the amount of PhP 30,000, in line with current jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the February 28, 2008 Decision of the Court of Appeals (CA) in CA G.R. CEB-CR-H.C. No. 00608 entitled *People of the Philippines v. Mitsuel L. Elarcosa and Jerry B. Orias* which held accused-appellant Jerry B. Orias guilty of multiple murder. The CA Decision modified the December 17, 1996 Decision in Criminal Case No. 567 of the Regional Trial Court (RTC), Branch 56, Himamaylan, Negros Occidental, which held accused-appellant Orias liable for robbery with multiple homicide.

The Facts

In the evening of September 27, 1992, Jorge, Segundina, Jose and Rosemarie, all surnamed dela Cruz, heard some persons calling out to them from outside their house, which is located in Barangay Amotay, Binalbagan, Negros Occidental. Since the voices of these persons were not familiar to them, they did not open their door immediately, and instead, they waited for a few minutes in order to observe and recognize these persons first. It was only when one of them identified himself as Mitsuel L. Elarcosa (Elarcosa), an acquaintance of the family, that Segundina lighted the lamps, while Jose opened the door.[1]

Elarcosa and his companion, accused-appellant Orias, then entered the house and requested that supper be prepared for them as they were roving. Both Elarcosa and accused-appellant Orias were Citizen Armed Forces Geographical Unit (CAFGU)

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[1] *Rollo*, p. 6.

members.[2] Segundina and Rosemarie immediately went to the kitchen to prepare food, while Jose and Jorge stayed in the living room with Elarcosa and accused-appellant Orias.[3]

Since the rice was not cooked yet, Rosemarie first served a plate of *suman* to Elarcosa and accused-appellant Orias, who were then engaged in a conversation with her father, Jorge, and her brother, Jose. She heard accused-appellant Orias asked her brother why the latter did not attend the dance at Sitio Nalibog. Her brother replied that he was tired. Suddenly thereafter, Elarcosa and accused-appellant Orias stood up and fired their guns at Jose and Jorge.[4]

Segundina, who was busy preparing supper in the kitchen, ran towards the living room and embraced her son, Jose, who was already lying on the floor. Elarcosa and accused-appellant Orias then immediately searched the wooden chest containing clothes, money in the amount of forty thousand pesos (PhP 40,000) intended for the forthcoming wedding of Jose in October, and a registration certificate of large cattle. During this time, Rosemarie escaped through the kitchen and hid in the shrubs, which was about six (6) extended arms length from their house. She heard her mother crying loudly, and after a series of gunshots, silence ensued.[5]

Shortly thereafter, Rosemarie proceeded to the house of her cousin, Gualberto Mechabe, who advised her to stay in the house until the morning since it was already dark and he had no other companion who could help them. The following morning, Rosemarie returned to their house where she found the dead bodies of her parents and her brother.[6] The money in the amount

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[2] CA *rollo*, p. 102.

[3] *Rollo*, p. 6.

[4] *Id.*

[5] *Id.*

[6] CA *rollo*, p. 104.

of PhP 40,000, as well as the certificate of registration of large cattle, were also gone.[7]

Eventually, Elarcosa and accused-appellant Orias, as well as a certain Antonio David, Jr., were charged with robbery with multiple homicide in an Information which reads as follows:

> The undersigned Provincial Prosecutor accuses MITSUEL ELARCOSA *y* LOMINOK, JERRY ORIAS *y* BESARIO *alias* "Boy" and ANTONIO DAVID, JR. *y* MORE *alias* "Junior" of the crime of ROBBERY WITH MULTIPLE HOMICIDE, committed as follows:
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> That on or about the 27th day of September, 1992, in the Municipality of Binalbagan, Province of Negros Occidental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring confederating together and mutually helping one another, and with grave abuse of confidence, armed with different kinds of firearms, and with intent of gain, entered the house of GEORGE DE LA CRUZ and, once inside, by means of violence and intimidation of persons, did, then and there, willfully, unlawfully and feloniously take, steal and carry away against the consent of the owners thereof, cash money amounting to FORTY THOUSAND PESOS (₱40,000.00), Philippine Currency, to the damage and prejudice of the said owners in the aforestated amount.
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> That by reason or on the occasion of the said robbery, the said accused for the purpose of enabling them to take, steal and carry away the aforestated amount at the same time did, then and there, willfully, unlawfully and feloniously, with treachery and evident premeditation and with intent to kill, attack, assault, shot and wound said JORGE (GEORGE) DE LA CRUZ, SEGUNDINA DE LA CRUZ and JOSE DE LA CRUZ, *alias* "Pitong" hitting them in the vital parts of their bodies, thereby inflicting upon them mortal gunshot wounds, which directly caused the instantaneous death of said JORGE (GEORGE) DE LA CRUZ, SEGUNDINA DE LA CRUZ and JOSE DE LA CRUZ *alias* "Pitong".
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> CONTRARY TO LAW.
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> Bacolod City, Philippines, December 11, 1992.[8]

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[7] *Rollo*, p. 6.

[8] CA *rollo*, pp. 19-20.

On January 19, 1993, accused-appellant Orias, along with the other accused, pleaded not guilty to the charge. After the pre-trial conference, trial on the merits ensued.

In his defense, accused-appellant Orias contends that on the night the incident took place, he was at the dance hall sponsored by his unit as he was assigned by his Detachment Commander to entertain the visitors and that he stayed there from 6:00 p.m. until the wee hours of the morning.[9]

Ruling of the Trial Court

After trial, the RTC of Himamaylan, Negros Occidental convicted Elarcosa and accused-appellant Orias, but acquitted Antonio David, Jr. The dispositive portion of the Decision reads:

> WHEREFORE, based on the foregoing facts and considerations, this Court declares accused Mitsuel Elarcosa and Jerry Orias guilty beyond reasonable doubt of the offense as charged in the information and sentences them to suffer the penalty of *Reclusion Perpetua*. Further, both accused are ordered to indemnify the heirs of the victim the sum of One Hundred Thousand Pesos (₱100,000.00); as moral damages and Forty Thousand Pesos (₱40,000.00) as actual damages without subsidiary imprisonment in case of insolvency.
>
> Accused Antonio David, Jr. is hereby acquitted on the ground of reasonable doubt.
>
> SO ORDERED.[10]

One of the accused, Antonio David, Jr. was acquitted on the ground of reasonable doubt. The trial court justified this by stating that based on the affidavit and testimony of Rosemarie, only Elarcosa and accused-appellant Orias were positively identified. There was no mention that Antonio David, Jr. was indeed present during the incident.[11]

Aggrieved, Elarcosa and accused-appellant Orias filed an appeal with the CA. However, on June 25, 2005, Elarcosa filed

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[9] *Id.* at 109.

[10] *Id.* at 90-91. Penned by Acting Presiding Judge Jose Y. Aguirre, Jr.

[11] *Id.* at 89.

an Urgent Motion to Withdraw Appeal,[12] which was granted by the CA in its Resolution[13] dated September 11, 2007.

Essentially, accused-appellant Orias contends that the decision of the RTC is erroneous because of the incredibility of the testimony of the prosecution's star witness, Rosemarie dela Cruz, and because of the physical impossibility for accused-appellant to be present at the place of the crime at the time the same was committed.[14]

Ruling of the Appellate Court

On February 28, 2008, the CA affirmed with modification the judgment of the lower court. It ruled that contrary to accused-appellant Orias' contention, the detailed testimony of Rosemarie was clear, consistent and convincing. Further, accused-appellant Orias failed to present any evidence to establish any improper motive that may have impelled Rosemarie to falsely testify against him. The CA also held that in the face of the positive identification of the accused by their very victim as the perpetrators of the crime charged, the defense of alibi must fail.[15]

The CA, however, held that accused-appellant Orias can only be convicted of three (3) counts of murder, and not of robbery with multiple homicide, since the prosecution was not able to prove that robbery was indeed committed.[16] In addition, the CA found that the killing was attended by treachery; hence, the crime committed was not multiple homicide, but multiple murder.[17]

The dispositive portion of the Decision of the CA reads:

WHEREFORE, in view of all the foregoing, December 17, 1996 Decision of the Regional Trial Court, Branch 56, Himamaylan, Negros

[12] *Id.* at 126.

[13] *Id.* at 128-129.

[14] *Rollo*, p. 8.

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

[16] *Id.* at 10.

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

Occidental, in Criminal Case No. 567, is hereby AFFIRMED WITH MODIFICATION. Appellant Jerry B. Orias is hereby found guilty beyond reasonable doubt of Multiple Murder and is hereby sentenced to suffer the penalty of *reclusion perpetua*. Appellants are further ordered to pay the heirs of the victims the amount of One Hundred Fifty Thousand Pesos (₱150,000.00) as civil indemnity. The awards for moral and actual damages are DELETED for lack of factual and legal basis.

SO ORDERED.[18]

On March 25, 2008, accused-appellant Orias filed his Notice of Appeal of the Decision dated February 28, 2008 rendered by the CA.[19]

In our Resolution dated April 13, 2009, we notified the parties that they may file their respective supplemental briefs, if they so desired, within thirty (30) days from notice. On June 8, 2009, accused-appellant Orias manifested that he would no longer file a supplemental brief and that he was merely adopting the Brief for the Accused-Appellants[20] dated September 8, 1999 as his supplemental brief. In the same vein, on July 2, 2009, the People of the Philippines manifested that it was no longer filing a supplemental brief as it believed that the Brief for Plaintiff-Appellee[21] dated January 7, 2000 had adequately addressed the issues and arguments in the instant case.

The Issues

Accused-appellant Orias contends in his *Brief*[22] that:

THE TRIAL COURT ERRED IN FINDING ACCUSED-APPELLANT GUILTY OF THE CRIME CHARGED.

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[18] *Id.* at 13. Penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Antonio L. Villamor and Florito S. Macalino.

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

[20] CA *rollo*, pp. 63-75.

[21] *Id.* at 96-115.

[22] *Id.* at 63-75.

Our Ruling

We sustain accused-appellant's conviction.

The assessment of the credibility of a witness is best left to the sound discretion of the trial court

In his *Brief*, accused-appellant Orias contends that the testimony of Rosemarie is incredible as her recollection of the incident is uncertain and is insufficient to support a finding of guilt against accused-appellant Orias.[23]

We do not agree. As found by both the RTC and the CA, the detailed testimony of Rosemarie is clear, consistent and convincing.

In this regard, it should be noted that questions concerning the credibility of a witness are best addressed to the sound discretion of the trial court, since it is the latter which is in the best position to observe the demeanor and bodily movements of a witness.[24] This becomes all the more compelling when the appellate court affirms the findings of the trial court. Thus, we generally defer to the trial court's assessment, unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.[25] Unfortunately, however, accused-appellant Orias failed to show any of these as to warrant a review of the findings of fact of the lower court.

Further, settled is the rule that testimonial evidence to be believed must not only proceed from the mouth of a credible witness but must foremost be credible in itself.[26] Hence, the test to determine the value or credibility of the testimony of a

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[23] *Id.* at 72.

[24] *Llanto v. Alzona*, G.R. No. 150730, January 31, 2005, 450 SCRA 288, 295-296.

[25] *Fuentes v. Court of Appeals*, G.R. No. 109849, February 26, 1997, 268 SCRA 703, 708-710.

[26] *People v. Zinampan*, G.R. No. 126781, September 13, 2000, 340 SCRA 189, 199.

witness is whether the same is in conformity with common knowledge and is consistent with the experience of mankind.[27]

In the instant case, Rosemarie was able to convincingly testify that she was present when accused-appellant Orias and Elarcosa shot to death her brother and her father in the living room, since during that time, she and her mother were preparing supper for accused-appellant Orias and Elarcosa in the kitchen, which was only an arm's length away from the living room.[28]

From where she was standing, Rosemarie could not have any difficulty identifying the malefactors, since she knew them beforehand and the living room was sufficiently lighted when the incident happened. As a matter of fact, Rosemarie positively and consistently identified accused-appellant Orias and Elarcosa in the police station during the police line-up, as well as in the courtroom during trial, as the persons who shot her brother and her father.[29]

Moreover, accused-appellant Orias did not present any evidence which would show that Rosemarie was driven by any improper motive in testifying against him. Pertinently, the absence of such improper motive on the part of the witness for the prosecution strongly tends to sustain the conclusion that no such improper motive exists and that her testimony is worthy of full faith and credit.[30] Indeed, there is no reason to deviate from the factual findings of the trial court.

Alibi is an inherently weak defense

Accused-appellant Orias further contends in his *Brief* that it was physically impossible for him to be present at the place where the crime was committed during the time it took place.[31] As mentioned above, accused-appellant Orias claims that on

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[27] *Id.*

[28] *Rollo*, p. 9.

[29] *Id.* at 9.

[30] *People v. Baylen*, G.R. No. 135242, April 19, 2002, 381 SCRA 395, 404.

[31] CA *rollo*, pp. 72-73.

the night the incident occurred, he was at the dance hall sponsored by his unit, as he was assigned by his Detachment Commander to entertain the visitors and that he stayed there from 6:00 p.m. until the wee hours of the morning.[32]

Concerning this, it bears stressing that for alibi to prosper, it is not enough for the accused to prove that he was in another place when the crime was committed. He must likewise prove that it was physically impossible for him to be present at the crime scene or its immediate vicinity at the time of its commission.[33]

Significantly, a meticulous review of the records would reveal that accused-appellant Orias failed to present convincing evidence that he did not leave the dance hall in Barangay Amotay, Binalbagan, Negros Occidental, which incidentally is the same *barangay* where the crime was committed, on the evening of September 27, 1992.[34] Also, considering that the dance hall is in the same *barangay* where the crime was committed, it was not physically impossible for accused-appellant Orias to be present at the *locus criminis* at the time the same was committed.

Furthermore, it has been held, time and again, that alibi, as a defense, is inherently weak and crumbles in the light of positive identification by truthful witnesses.[35] It is evidence negative in nature and self-serving and cannot attain more credibility than the testimonies of prosecution witnesses who testify on clear and positive evidence.[36] Thus, there being no strong and credible evidence adduced to overcome the testimony of Rosemarie pointing to him as one of the culprits, no weight can be given to accused-appellant Orias' alibi.

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[32] *Id.* at 109.

[33] *People v. Guerrero*, G.R. No. 170360, March 12, 2009, 580 SCRA 666, 683; *People v. Garte*, G.R. No. 176152, November 25, 2008, 571 SCRA 570, 583.

[34] *Rollo*, p. 9.

[35] *People v. dela Cruz*, G.R. No. 175929, December 16, 2008, 574 SCRA 78, 91.

[36] *People v. Ranin, Jr.*, G.R. No. 173023, June 25, 2008, 555 SCRA 297, 309.

Although the alibi of accused-appellant Orias appears to have been corroborated by a CAFGU member by the name of Robert Arellano and by a vendor present during the dance, said defense is unworthy of belief not only because of its inherent weakness and the fact that accused-appellant Orias was positively identified by Rosemarie, but also because it has been held that alibi becomes more unworthy of merit where it is established mainly by the accused himself, his relatives, friends, and comrades-in-arms,[37] and not by credible persons.[38]

Robbery must be proved conclusively as the killing itself

As found by the CA, accused-appellant Orias can only be convicted of three (3) counts of murder, and not of robbery with homicide.[39]

Well-entrenched in our jurisprudence is the principle that in order to sustain a conviction for the crime of robbery with homicide, it is necessary that the robbery itself be proved as conclusively as any other essential element of the crime. Where the evidence does not conclusively prove the robbery, the killing of the victim would be classified either as a simple homicide or murder, depending upon the absence or presence of any qualifying circumstance, and not the crime of robbery with homicide.[40]

In the present case, the evidence is insufficient to sustain the conviction of the accused-appellant Orias for the crime of robbery with homicide. Aside from the testimony of Rosemarie that she saw accused-appellant Orias and Elarcosa search the wooden chest in their house after shooting the victims, no other evidence was presented to conclusively prove that the PhP 40,000 cash and the registration certificate of large cattle were

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[37] *People v. Manzano*, G.R. No. 108293, September 15, 1995, 248 SCRA 239, 248.

[38] *People v. Panganiban*, G.R. No. 97969, February 6, 1995, 241 SCRA 91, 100-101.

[39] *Rollo*, p. 10.

[40] *People v. Cadevida*, G.R. No. 94528, March 1, 1993, 219 SCRA 218, 228; citing *People v. Pacala*, No. L-26647, August 15, 1974, 58 SCRA 370.

inside the said wooden chest and that accused-appellant Orias and Elarcosa actually took them.

Remarkably, *People v. Alod Manobo*[41] is enlightening, thus:

> On the nature of the crime committed, we agree with the trial court that these appellants may not be convicted of robbery with homicide, there being no adequate independent proof of the robbery. There is no sufficient evidence, outside of the confessions, that anything was stolen from the house of the victims. While there is testimony that four or five days prior to the crime Kee Kang received a large amount of money, there is nothing to prove that the money remained with him until the time the killings were committed several days later. The hiatus between the reception of the money and the delict itself was long enough for the deceased to send the money elsewhere. Nor is there evidence that anything was taken from the house or the trunks therein. That the appellants intended, as they admitted, to rob Kee Kang does not constitute actual robbery. Without separate proof of *corpus delicti*, the extra-judicial confessions will not support conviction for robbery (Rule 133, section 3)
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> No robbery being proved; conviction for robbery with homicide becomes impossible (*People vs. Bamego*, 61 Phil. 318; *People vs. Panaligan*, 43 Phil. 131; *People vs. Labita*, 99 Phil. 1068).
>
> The slaying of Kee Kang, his wife Mandoloon, and his clerk Te Chu must thus be considered as triple murder (*People vs. Barruga*, 61 Phil. 318, 351, and cases cited), qualified by treachery (which absorbs nocturnity), and aggravated by the circumstance of having been perpetrated in the dwelling of the victims. The apposite penalty would be death, but, for lack of a sufficient number of votes, the sentence is reduced to *reclusion perpetua.*

Considering that robbery was not conclusively proved in the instant case, accused-appellant Orias could not be convicted of robbery with homicide.

The killing of the victims is qualified by treachery

Treachery was unmistakably present in the instant case. Settled is the rule that qualifying circumstances cannot be presumed,

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[41] No. L-19798, September 20, 1966, 18 SCRA 30, 41.

but must be established by clear and convincing evidence as conclusively as the killing itself.[42]

It must be remembered that when accused-appellant Orias and Elarcosa went to the house of the victims demanding that supper be prepared for them, said victims did not have the slightest idea of what accused-appellant Orias and Elarcosa intended to do with them. As a matter of fact, while Segundina and Rosemarie prepared supper for accused-appellant Orias and Elarcosa, Jose and Jorge entertained them in the living room. They were just engaged in a conversation when accused-appellant Orias and Elarcosa suddenly stood up and fired their guns at Jose and Jorge. As aptly observed by the CA, "The attack although frontal was very sudden and unexpected."[43] As we held in *People v. Lacaden*:[44]

Accused-appellant's contention that treachery cannot be appreciated, on the ground that an altercation between Pinoy and Danny preceded the shooting, is of no merit. As a rule, there can be no treachery when an altercation ensued between the appellant and the victim. However, the evidence on record shows that after the altercation, accused-appellant and Pinoy went ahead in their motorbike. There may still be treachery even if, before the assault, the assailant and the victim had an altercation and a fisticuffs and, after the lapse of some time from the said altercation, the assailant attacks the unsuspecting victim without affording the latter any real chance to defend himself. In this case, a considerable amount of time had lapsed prior to the attack. We agree with the trial court's observation that there was no fight. Jay Valencia never said in his testimony that there was a fight. He did say in his sworn statement that Danny was kicked by Pinoy, which was ignored because both he (Jay) and Danny just walked away. Jay and Danny, from their actions, were keeping the peace and avoiding a fight by ignoring the taunting by Pinoy and accused-appellant. Pinoy and accused-appellant then sped off in their motorcycle. As Danny and Jay were

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[42] *People v. Discalsota*, G.R. No. 136892, April 11, 2002, 380 SCRA 583, 592; citing *People v. Tabones*, G.R. No. 129695, March 17, 1999, 304 SCRA 781.

[43] *Rollo*, p. 12.

[44] G.R. No. 187682, November 25, 2009.

pushing their own motorbike, they were left walking on their way home. The two victims were unaware that accused-appellant had waited somewhere along the same direction they were heading and was armed with a deadly weapon. That the victim was shot facing the appellant, as contended by the latter, does not negate treachery. **The settled rule is that treachery can exist even if the attack is frontal, as long as the attack is sudden and unexpected, giving the victim no opportunity to repel it or to defend himself. What is decisive is that the execution of the attack, without the slightest provocation from an unarmed victim, made it impossible for the victim to defend himself or to retaliate.** (Emphasis supplied.)

Considerably, even if the shooting was frontal in the case at bar, treachery should still be appreciated, since the victims were not in any position to defend themselves as the attack was so sudden and unexpected.

The acts of accused-appellant Orias and Elarcosa evince the existence of conspiracy

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[45] It arises on the very instant the plotters agree, expressly or impliedly, to commit the felony and forthwith decide to pursue it. Once this is established, each and every one of the conspirators is made criminally liable for the crime actually committed by any one of them.[46]

In the absence of direct proof, the agreement to commit a crime may be deduced from the mode and manner of the commission of the offense or inferred from acts that point to a joint purpose and design, concerted action, and community of interest.[47] It does not matter who inflicted the mortal wound, as each of the actors incurs the same criminal liability, because the act of one is the act of all. As we held in *People v. Alib*:[48]

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[45] REVISED PENAL CODE, Art. 8.

[46] Dissenting Opinion of Justice Ynares-Santiago in *People v. Agsalog*, G.R. No. 141087, March 31, 2004, 426 SCRA 624, 644.

[47] *People v. Perez*, G.R. No. 179154, July 31, 2009.

[48] G.R. No. 130944, January 18, 2000, 322 SCRA 93, 101.

Accused-appellants likewise argue that the trial court erred in finding conspiracy since their complicity in the crime was not sufficiently established by the prosecution. They maintain that the victim suffered only one (1) hack wound on the right side of his head and no other wound was found on his body, thereby negating their participation in the crime. The argument is bereft of merit. **In a conspiracy, it is not necessary to show that all the conspirators actually hit and killed the victim. What is important is that all participants performed specific acts with such closeness and coordination as to unmistakably indicate a common purpose or design to bring about the death of the victim.** (Emphasis supplied.)

In the instant case, conspiracy is manifested by the fact that the acts of accused-appellant Orias and Elarcosa were coordinated. They were synchronized in their approach to shoot Jose and Jorge, and they were motivated by a single criminal impulse, that is, to kill the victims. Verily, conspiracy is implied when the accused persons had a common purpose and were united in its execution. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility.[49]

Accused-appellant Orias should be convicted of three (3) counts of murder and not of the complex crime of murder

We, however, disagree with the findings of the CA that accused-appellant Orias committed the complex crime of multiple murder. Article 48 of the Revised Penal Code, which defines the concept of complex crime, states:

ART. 48. Penalty for complex crimes. — When a single act constitutes two or more grave or less grave felonies or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. (As amended by Act No. 4000.)

In a complex crime, although two or more crimes are actually committed, they constitute only one crime in the eyes of the law, as well as in the conscience of the offender. Hence, there

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[49] Dissenting Opinion of Justice Ynares-Santiago in *People v. Agsalog*, *supra* note 46.

is only one penalty imposed for the commission of a complex crime.[50]

Complex crime has two (2) kinds. The first is known as compound crime, or when a single act constitutes two or more grave or less grave felonies. The second is known as complex crime proper, or when an offense is a necessary means for committing the other.[51]

The case at bar does not fall under any of the two instances stated above. It is clear from the evidence on record that the three (3) crimes of murder did not result from a single act but from several individual and distinct acts. Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes.[52]

In support of its findings, the CA cited *People v. Lawas*,[53] where, on a single occasion, several Moros were killed by a group of Maranaos. However, the reliance by the CA on the aforecited case is misplaced.

In *Lawas*, since there was no conspiracy to perpetuate the killing, collective criminal responsibility could not be imputed upon the defendants. Thus, it was impossible to ascertain the number of persons killed by each of them. As we held in *People v. Hon. Pineda*:

> The present ease is to be differentiated from *People vs. Lawas*, L-7618-20, June 30, 1955. There, on a single occasion, about fifty Maranaos were killed by a group of home guards. It was held that there was only one complex crime. **In that case, however, there was no conspiracy to perpetuate the killing. In the case at bar, defendants performed several acts. And the informations charge conspiracy amongst them. Needless to state, the act of one is the**

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[50] *People v. Gaffud, Jr.*, G.R. No. 168050, September 19, 2008, 566 SCRA 76, 88.

[51] *Id.*

[52] *Id.*; citing *People v. Hon. Pineda*, No. L-26222, July 21, 1967, 20 SCRA 748.

[53] 97 Phil. 975 (1955).

act of all. Not material here, therefore is the finding in Lawas that "it is impossible to ascertain the individual deaths caused by each and everyone" of the accused. It is to be borne in mind, at this point, that apply the first half of Article 48, heretofore quoted, there must be singularity of criminal act; singularity of criminal impulse is not written into the law.[54] (Emphasis supplied.)

In the instant case, however, the acts of accused-appellant Orias and Elarcosa demonstrate the existence of conspiracy, thereby imputing collective criminal responsibility upon them, as the act of one is the act of all. Verily, the ruling in *Lawas* that "it is impossible to ascertain the individual deaths caused by each and everyone" of the defendants does not apply here.

Considering our holding above, we rule that accused-appellant Orias is guilty, not of a complex crime of multiple murder, but of three (3) counts of murder for the death of the three (3) victims.

Since there was only one information filed against accused-appellant Orias and Elarcosa, the Court observes that there is duplicity of the offenses charged in the said information. This is a ground for a motion to quash as three (3) separate acts of murder were charged in the information. Nonetheless, the failure of accused-appellant Orias to interpose an objection on this ground constitutes waiver.[55]

Penalty imposed

Under Article 248 of the Revised Penal Code, as amended, the penalty for the crime of murder is *reclusion perpetua* to death. Without any mitigating or aggravating circumstance attendant in the commission of the crime, the medium penalty is the lower indivisible penalty of *reclusion perpetua*.[56]

In the present case, while accused-appellant Orias was charged with three aggravating circumstances in the Information, only

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[54] *People v. Hon. Pineda*, *supra* note 52, at 753-754.

[55] *People v. Tabio*, G.R. No. 179477, February 6, 2008, 544 SCRA 156, 162. See also *United States vs. Balaba*, 37 Phil. 260 (1917).

[56] *People v. Valdez*, G.R. No. 127663, March 11, 1999, 304 SCRA 611, 629.

one was proved thereby qualifying the killing to murder. Considering that no other aggravating circumstance was proved and that accused-appellant Orias is guilty of three (3) separate counts of murder, the imposable penalty shall be three (3) sentences of *reclusion perpetua*.

Award of damages

Based on Article 100 of the Revised Penal Code, every person criminally liable for a felony is also civilly liable. Thus, when death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; (5) attorney's fees and expenses of litigation; and (6) interest, in proper cases.[57] In cases of murder and homicide, civil indemnity of PhP 75,000 and moral damages of PhP 50,000 are awarded automatically.[58] Indeed, such awards are mandatory without need of allegation and proof other than the death of the victim,[59] owing to the fact of the commission of murder or homicide.[60]

We, however, additionally grant exemplary damages in the amount of PhP 30,000, in line with current jurisprudence.[61]

WHEREFORE, the appeal is *DENIED*. The assailed Decision of the CA in CA G.R. CEB-CR-H.C. No. 00608 is *AFFIRMED* with *MODIFICATIONS*. Accused-appellant Jerry B. Orias is found guilty beyond reasonable doubt of three (3) counts of murder

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[57] *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 699.

[58] *People v. Ocampo*, G.R. No. 177753, September 25, 2009, 601 SCRA 58, 73; *People v. Amodia*, G.R. No. 173791, April 7, 2009, 584 SCRA 518, 545.

[59] *People v. Bajar*, G.R. No. 143817, October 27, 2003, 414 SCRA 494, 510.

[60] *Razon v. People*, G.R. No. 158053, June 21, 2007, 525 SCRA 284, 303.

[61] *People v. Ofemiano*, G.R. No. 187155, February 1, 2010; citing *People v. Pabol*, G.R. No. 187084, October 12, 2009, 603 SCRA 522, 532-533.

and is hereby sentenced to suffer the penalty of *reclusion perpetua* for each count. Accused-appellant is further ordered to pay the heirs of the victims civil indemnity of seventy five thousand pesos (₱75,000.00), moral damages of fifty thousand pesos (₱50,000.00), and exemplary damages of thirty thousand pesos (₱30,000.00) for each count.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 187730. June 29, 2010]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **RODOLFO GALLO *y* GADOT,** *accused-appellant,* **FIDES PACARDO *y* JUNGCO and PILAR MANTA *y* DUNGO,** *accused.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; ARTICLE 13[B] THEREOF; RECRUITMENT AND PLACEMENT OF WORKERS. —** Under Art. 13(b) of the Labor Code, "recruitment and placement" refers to "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not."

2. **ID.; ID.; ID.; ID.; ILLEGAL RECRUITMENT; ELEMENTS THEREOF. —**To commit syndicated illegal recruitment, three elements must be established: (1) the offender undertakes either any activity within the meaning of "recruitment and placement" defined under Article 13(b), or any of the prohibited practices

enumerated under Art. 34 of the Labor Code; (2) he has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers; and (3) the illegal recruitment is committed by a group of three (3) or more persons conspiring or confederating with one another. When illegal recruitment is committed by a syndicate or in large scale, *i.e.,* if it is committed against three (3) or more persons individually or as a group, it is considered an offense involving economic sabotage.

3. **ID.; ID.; ID.; ID.; ID.; A PERSON WITH A LICENSE COULD COMMIT ILLEGAL RECRUITMENT UNDER SECTION 6, R.A. NO. 8042; CASE AT BAR. —** Even with a license, however, illegal recruitment could still be committed under Section 6 of Republic Act No. 8042 ("R.A. 8042"), otherwise known as the *Migrants and Overseas Filipinos Act of 1995 x x x* In the instant case, accused-appellant committed the acts enumerated in Sec. 6 of R.A. 8042. Testimonial evidence presented by the prosecution clearly shows that, in consideration of a promise of foreign employment, accused-appellant received the amount of Php 45,000.00 from Dela Caza. When accused-appellant made misrepresentations concerning the agency's purported power and authority to recruit for overseas employment, and in the process, collected money in the guise of placement fees, the former clearly committed acts constitutive of illegal recruitment. Such acts were accurately described in the testimony of prosecution witness, Dela Caza x x x Essentially, Dela Caza appeared very firm and consistent in positively identifying accused-appellant as one of those who induced him and the other applicants to part with their money. His testimony showed that accused-appellant made false misrepresentations and promises in assuring them that after they paid the placement fee, jobs in Korea as factory workers were waiting for them and that they would be deployed soon. In fact, Dela Caza personally talked to accused-appellant and gave him the money and saw him sign and issue an official receipt as proof of his payment. Without a doubt, accused-appellants' actions constituted illegal recruitment.

4. **CRIMINAL LAW; SPECIAL OFFENSES; SECTION 6 OF R.A. 8042 (MIGRANTS AND OVERSEAS FILIPINOS ACT OF 1995); CONSPIRACY IN THE CONTEXT OF ILLEGAL RECRUITMENT; PRESENT IN CASE AT BAR.**

— This Court likewise finds the existence of a conspiracy between the accused-appellant and the other persons in the agency who are currently at large, resulting in the commission of the crime of syndicated illegal recruitment. In this case, it cannot be denied that the accused-appellant together with Mardeolyn and the rest of the officers and employees of MPM Agency participated in a network of deception. Verily, the active involvement of each in the recruitment scam was directed at one single purpose — to divest complainants with their money on the pretext of guaranteed employment abroad. The prosecution evidence shows that complainants were briefed by Mardeolyn about the processing of their papers for a possible job opportunity in Korea, as well as their possible salary. Likewise, Yeo Sin Ung, a Korean national, gave a briefing about the business and what to expect from the company. Then, here comes accused-appellant who introduced himself as Mardeolyn's relative and specifically told Dela Caza of the fact that the agency was able to send many workers abroad. Dela Caza was even showed several workers visas who were already allegedly deployed abroad. Later on, accused-appellant signed and issued an official receipt acknowledging the down payment of Dela Caza. Without a doubt, the nature and extent of the actions of accused-appellant, as well as with the other persons in MPM Agency clearly show unity of action towards a common undertaking. Hence, conspiracy is evidently present.

5. ID.; REVISED PENAL CODE; ESTAFA UNDER ARTICLE 315 PARAGRAPH 2 (A) THEREOF; ELEMENTS; PRESENT IN CASE AT BAR. — The prosecution likewise established that accused-appellant is guilty of the crime of *estafa* as defined under Article 315 paragraph 2(a) Revised Penal Code x x x The elements of estafa in general are: (1) that the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. Deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed; and which deceives or is intended to deceive another so that he shall act upon it, to his legal injury. All these elements are present in the instant case: the accused-appellant, together with the other accused at large, deceived the complainants into believing that the agency had the power and capability to

send them abroad for employment; that there were available jobs for them in Korea as factory workers; that by reason or on the strength of such assurance, the complainants parted with their money in payment of the placement fees; that after receiving the money, accused-appellant and his co-accused went into hiding by changing their office locations without informing complainants; and that complainants were never deployed abroad. As all these representations of the accused-appellant proved false, paragraph 2(a), Article 315 of the Revised Penal Code is thus applicable.

6. **REMEDIAL LAW; EVIDENCE; POSITIVE IDENTIFICATION PREVAILS OVER ALIBI AND DENIAL; CASE AT BAR.** — Indubitably, accused-appellant's denial of the crimes charged crumbles in the face of the positive identification made by Dela Caza and his co-complainants as one of the perpetrators of the crimes charged. As enunciated by this Court in *People v. Abolidor*, "[p]ositive identification where categorical and consistent and not attended by any showing of ill motive on the part of the eyewitnesses on the matter prevails over alibi and denial." The defense has miserably failed to show any evidence of ill motive on the part of the prosecution witnesses as to falsely testify against him. Therefore, between the categorical statements of the prosecution witnesses, on the one hand, and bare denials of the accused, on the other hand, the former must prevail.

7. **ID.; APPEALS; FINDINGS OF FACT OF TRIAL COURT ARE NOT DISTURBED ON APPEAL; EXCEPTIONS; CASE AT BAR.** — Moreover, this Court accords the trial court's findings with the probative weight it deserves in the absence of any compelling reason to discredit the same. It is a fundamental judicial dictum that the findings of fact of the trial court are not disturbed on appeal except when it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have materially affected the outcome of the case. We find that the trial court did not err in convicting the accused-appellant.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the Decision[1] dated December 24, 2008 of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02764 entitled *People of the Philippines v. Rodolfo Gallo y Gadot (accused-appellant), Fides Pacardo y Jungco and Pilar Manta y Dungo (accused)*, which affirmed the Decision[2] dated March 15, 2007 of the Regional Trial Court (RTC), Branch 30 in Manila which convicted the accused-appellant Rodolfo Gallo *y* Gadot ("accused-appellant") of syndicated illegal recruitment in Criminal Case No. 02-206293 and *estafa* in Criminal Case No. 02-206297.

The Facts

Originally, accused-appellant Gallo and accused Fides Pacardo ("Pacardo") and Pilar Manta ("Manta"), together with Mardeolyn Martir ("Mardeolyn") and nine (9) others, were charged with syndicated illegal recruitment and eighteen (18) counts of *estafa* committed against eighteen complainants, including Edgardo V. Dela Caza ("Dela Caza"), Sandy Guantero ("Guantero") and Danilo Sare ("Sare"). The cases were respectively docketed as Criminal Case Nos. 02-2062936 to 02-206311. However, records reveal that only Criminal Case No. 02-206293, which was filed against accused-appellant Gallo, Pacardo and Manta for syndicated illegal recruitment, and Criminal Case Nos. 02-206297, 02-206300 and 02-206308, which were filed against accused-appellant Gallo, Pacardo and Manta for *estafa*, proceeded to trial due to the fact that the rest of the accused remained at large. Further, the other cases, Criminal Case Nos. 02-206294 to 02-206296, 02-206298 to 02-206299, 02-206301 to 02-206307

[1] *Rollo*, pp. 2-19. Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Rebecca De Guia-Salvador and Vicente S.E. Veloso.

[2] *Id.* at 15-35. Penned by Judge Lucia Peña Purugganan.

and 02-206309 to 02-206311 were likewise *provisionally* dismissed upon motion of Pacardo, Manta and accused-appellant for failure of the respective complainants in said cases to appear and testify during trial.

It should also be noted that after trial, Pacardo and Manta were acquitted in Criminal Case Nos. 02-206293, 02-206297, 02-206300 and 02-206308 for insufficiency of evidence. Likewise, accused-appellant Gallo was similarly acquitted in Criminal Case Nos. 02-206300, the case filed by Guantero, and 02-206308, the case filed by Sare. However, accused-appellant was found guilty beyond reasonable doubt in Criminal Case Nos. 02-206293 and 02-206297, both filed by Dela Caza, for syndicated illegal recruitment and *estafa*, respectively.

Thus, the present appeal concerns solely accused-appellant's conviction for syndicated illegal recruitment in Criminal Case No. 02-206293 and for *estafa* in Criminal Case No. 02-206297.

In Criminal Case No. 02-206293, the information charges the accused-appellant, together with the others, as follows:

The undersigned accuses MARDEOLYN MARTIR, ISMAEL GALANZA, NELMAR MARTIR, MARCELINO MARTIR, NORMAN MARTIR, NELSON MARTIR, MA. CECILIA M. RAMOS, LULU MENDANES, FIDES PACARDO *y* JUNGCO, **RODOLFO GALLO *y* GADOT**, PILAR MANTA *y* DUNGO, ELEONOR PANUNCIO and YEO SIN UNG of a violation of Section 6(a), (l) and (m) of Republic Act 8042, otherwise known as the Migrant Workers and Overseas Filipino Workers Act of 1995, committed by a syndicate and in large scale, as follows:

That in or about and during the period comprised between November 2000 and December, 2001, inclusive, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping with one another, representing themselves to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully and unlawfully, for a fee, recruit and promise employment/job placement abroad to FERDINAND ASISTIN, ENTICE BRENDO, REYMOND G. CENA, EDGARDO V. DELA CAZA, RAYMUND EDAYA, SANDY O. GUANTENO, RENATO V. HUFALAR, ELENA JUBICO, LUPO A. MANALO, ALMA V. MENOR, ROGELIO S. MORON, FEDILA

G. NAIPA, OSCAR RAMIREZ, MARISOL L. SABALDAN, DANILO SARE, MARY BETH SARDON, JOHNNY SOLATORIO and JOEL TINIO in Korea as factory workers and charge or accept directly or indirectly from said FERDINAND ASISTIN the amount of ₱45,000.00; ENTICE BRENDO – ₱35,000.00; REYMOND G. CENA – ₱30,000.00; EDGARDO V. DELA CAZA – ₱45,000.00; RAYMUND EDAYA – ₱100,000.00; SANDY O. GUANTENO – ₱35,000.00; RENATO V. HUFALAR – ₱70,000.00; ELENA JUBICO – ₱30,000.00; LUPO A. MANALO – ₱75,000.00; ALMA V. MENOR – ₱45,000.00; ROGELIO S. MORON – ₱70,000.00; FEDILA G. NAIPA – ₱45,000.00; OSCAR RAMIREZ – ₱45,000.00; MARISOL L. SABALDAN – ₱75,000.00; DANILO SARE – ₱100,000.00; MARY BETH SARDON – ₱25,000.00; JOHNNY SOLATORIO – ₱35,000.00; and JOEL TINIO – ₱120,000.00 as placement fees in connection with their overseas employment, which amounts are in excess of or greater than those specified in the schedule of allowable fees prescribed by the POEA Board Resolution No. 02, Series 1998, and without valid reasons and without the fault of the said complainants failed to actually deploy them and failed to reimburse the expenses incurred by the said complainants in connection with their documentation and processing for purposes of their deployment.[3] (Emphasis supplied)

In Criminal Case No. 02-206297, the information reads:

That on or about May 28, 2001, in the City of Manila, Philippines, the said accused conspiring and confederating together and helping with [sic] one another, did then and there willfully, unlawfully and feloniously defraud EDGARDO V. DELA CAZA, in the following manner, to wit: the said accused by means of false manifestations and fraudulent representations which they made to the latter, prior to and even simultaneous with the commission of the fraud, to the effect that they had the power and capacity to recruit and employ said EDGARDO V. DELA CAZA in Korea as factory worker and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof; induced and succeeded in inducing said EDGARDO V. DELA CAZA to give and deliver, as in fact, he gave and delivered to said accused the amount of ₱45,000.00 on the strength of said manifestations and representations, said accused well knowing that the same were false

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[3] CA *rollo*, p. 16.

and untrue and were made [solely] for the purpose of obtaining, as in fact they did obtain the said amount of ₱45,000.00 which amount once in their possession, with intent to defraud said [EDGARDO] V. DELA CAZA, they willfully, unlawfully and feloniously misappropriated, misapplied and converted the said amount of ₱45,000.00 to their own personal use and benefit, to the damage and prejudice of the said EDGARDO V. DELA CAZA in the aforesaid amount of ₱45,000.00, Philippine currency.

CONTRARY TO LAW.[4]

When arraigned on January 19, 2004, accused-appellant Gallo entered a plea of not guilty to all charges.

On March 3, 2004, the pre-trial was terminated and trial ensued, thereafter.

During the trial, the prosecution presented as their witnesses, Armando Albines Roa, the Philippine Overseas Employment Administration (POEA) representative and private complainants Dela Caza, Guanteno and Sare. On the other hand, the defense presented as its witnesses, accused-appellant Gallo, Pacardo and Manta.

Version of the Prosecution

On May 22, 2001, Dela Caza was introduced by Eleanor Panuncio to accused-appellant Gallo, Pacardo, Manta, Mardeolyn, Lulu Mendanes, Yeo Sin Ung and another Korean national at the office of MPM International Recruitment and Promotion Agency ("MPM Agency") located in Malate, Manila.

Dela Caza was told that Mardeolyn was the President of MPM Agency, while Nelmar Martir was one of the incorporators. Also, that Marcelino Martir, Norman Martir, Nelson Martir and Ma. Cecilia Ramos were its board members. Lulu Mendanes acted as the cashier and accountant, while Pacardo acted as the agency's employee who was in charge of the records of the applicants. Manta, on the other hand, was also an employee who was tasked to deliver documents to the Korean embassy.

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

Accused-appellant Gallo then introduced himself as a relative of Mardeolyn and informed Dela Caza that the agency was able to send many workers abroad. Together with Pacardo and Manta, he also told Dela Caza about the placement fee of One Hundred Fifty Thousand Pesos (PhP 150,000) with a down payment of Forty-Five Thousand Pesos (PhP 45,000) and the balance to be paid through salary deduction.

Dela Caza, together with the other applicants, were briefed by Mardeolyn about the processing of their application papers for job placement in Korea as a factory worker and their possible salary. Accused Yeo Sin Ung also gave a briefing about the business and what to expect from the company and the salary.

With accused-appellant's assurance that many workers have been sent abroad, as well as the presence of the two (2) Korean nationals and upon being shown the visas procured for the deployed workers, Dela Caza was convinced to part with his money. Thus, on May 29, 2001, he paid Forty-Five Thousand Pesos (PhP 45,000) to MPM Agency through accused-appellant Gallo who, while in the presence of Pacardo, Manta and Mardeolyn, issued and signed Official Receipt No. 401.

Two (2) weeks after paying MPM Agency, Dela Caza went back to the agency's office in Malate, Manila only to discover that the office had moved to a new location at Batangas Street, Brgy. San Isidro, Makati. He proceeded to the new address and found out that the agency was renamed to New Filipino Manpower Development & Services, Inc. ("New Filipino"). At the new office, he talked to Pacardo, Manta, Mardeolyn, Lulu Mendanes and accused-appellant Gallo. He was informed that the transfer was done for easy accessibility to clients and for the purpose of changing the name of the agency.

Dela Caza decided to withdraw his application and recover the amount he paid but Mardeolyn, Pacardo, Manta and Lulu Mendanes talked him out from pursuing his decision. On the other hand, accused-appellant Gallo even denied any knowledge about the money.

After two (2) more months of waiting in vain to be deployed, Dela Caza and the other applicants decided to take action. The first attempt was unsuccessful because the agency again moved to another place. However, with the help of the Office of Ambassador Señeres and the Western Police District, they were able to locate the new address at 500 Prudential Building, Carriedo, Manila. The agency explained that it had to move in order to separate those who are applying as entertainers from those applying as factory workers. Accused-appellant Gallo, together with Pacardo and Manta, were then arrested.

The testimony of prosecution witness Armando Albines Roa, a POEA employee, was dispensed with after the prosecution and defense stipulated and admitted to the existence of the following documents:

1. Certification issued by Felicitas Q. Bay, Director II, Licensing Branch of the POEA to the effect that "New Filipino Manpower Development & Services, Inc., with office address at 1256 Batangas St., Brgy. San Isidro, Makati City, was a licensed landbased agency whose license expired on December 10, 2001 and was delisted from the roster of licensed agencies on December 14, 2001." It further certified that "Fides J. Pacardo was the agency's Recruitment Officer";

2. Certification issued by Felicitas Q. Bay of the POEA to the effect that MPM International Recruitment and Promotion is not licensed by the POEA to recruit workers for overseas employment;

3. Certified copy of POEA Memorandum Circular No. 14, Series of 1999 regarding placement fee ceiling for landbased workers.

4. Certified copy of POEA Memorandum Circular No. 09, Series of 1998 on the placement fee ceiling for Taiwan and Korean markets, and

5. Certified copy of POEA Governing Board Resolution No. 02, series of 1998.

Version of the Defense

For his defense, accused-appellant denied having any part in the recruitment of Dela Caza. In fact, he testified that he also applied with MPM Agency for deployment to Korea as a factory worker. According to him, he gave his application directly with Mardeolyn because she was his town mate and he was allowed to pay only Ten Thousand Pesos (PhP 10,000) as processing fee. Further, in order to facilitate the processing of his papers, he agreed to perform some tasks for the agency, such as taking photographs of the visa and passport of applicants, running errands and performing such other tasks assigned to him, without salary except for some allowance. He said that he only saw Dela Caza once or twice at the agency's office when he applied for work abroad. Lastly, that he was also promised deployment abroad but it never materialized.

Ruling of the Trial Court

On March 15, 2007, the RTC rendered its Decision convicting the accused of syndicated illegal recruitment and *estafa*. The dispositive portion reads:

> WHEREFORE, judgment is hereby rendered as follows:
>
> I. Accused FIDES PACARDO *y* JUNGO and PILAR MANTA *y* DUNGO are hereby ACQUITTED of the crimes charged in Criminal Cases Nos. 02-206293, 02-206297, 02-206300 and 02-206308;
>
> II. Accused RODOLFO GALLO *y* GADOT is found guilty beyond reasonable doubt in Criminal Case No. 02-206293 of the crime of Illegal Recruitment committed by a syndicate and is hereby sentenced to suffer the penalty of life imprisonment and to pay a fine of ONE MILLION (Php1,000,000.00) PESOS. He is also ordered to indemnify EDGARDO DELA CAZA of the sum of FORTY-FIVE THOUSAND (Php45,000.00) PESOS with legal interest from the filing of the information on September 18, 2002 until fully paid.
>
> III. Accused RODOLFO GALLO *y* GADOT in Criminal Case No. 02-206297 is likewise found guilty and is hereby

sentenced to suffer the indeterminate penalty of FOUR (4) years of *prision correccional* as minimum to NINE (9) years of *prision mayor* as maximum.

IV. Accused RODOLFO GALLO *y* GADOT is hereby ACQUITTED of the crime charged in Criminal Cases Nos. 02-206300 and 02-206308.

Let alias warrants for the arrest of the other accused be issued anew in all the criminal cases. Pending their arrest, the cases are sent to the archives.

The immediate release of accused Fides Pacardo and Pilar Manta is hereby ordered unless detained for other lawful cause or charge.

SO ORDERED.[5]

Ruling of the Appellate Court

On appeal, the CA, in its Decision dated December 24, 2008, disposed of the case as follows:

WHEREFORE, the appealed Decision of the Regional Trial Court of Manila, Branch 30, in Criminal Cases Nos. 02-206293 and 02-206297, dated March 15, 2007, is AFFIRMED with the MODIFICATION that in Criminal Case No. 02-206297, for *estafa*, appellant is sentenced to four (4) years of *prision correccional* to ten (10) years of *prision mayor*.

SO ORDERED.[6]

The CA held the totality of the prosecution's evidence showed that the accused-appellant, together with others, engaged in the recruitment of Dela Caza. His actions and representations to Dela Caza can hardly be construed as the actions of a mere errand boy.

As determined by the appellate court, the offense is considered economic sabotage having been committed by more than three (3) persons, namely, accused-appellant Gallo, Mardeolyn, Eleonor Panuncio and Yeo Sin Ung. More importantly, a person found

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[5] CA *rollo*, pp. 34-35.

[6] *Rollo*, pp. 18-19.

guilty of illegal recruitment may also be convicted of *estafa*.[7] The same evidence proving accused-appellant's commission of the crime of illegal recruitment in large scale also establishes his liability for *estafa* under paragragh 2(a) of Article 315 of the Revised Penal Code (RPC).

On January 15, 2009, the accused-appellant filed a timely appeal before this Court.

The Issues

Accused-appellant interposes in the present appeal the following assignment of errors:

I

The court *a quo* gravely erred in finding the accused-appellant guilty of illegal recruitment committed by a syndicate despite the failure of the prosecution to prove the same beyond reasonable doubt.

II

The court *a quo* gravely erred in finding the accused-appellant guilty of *estafa* despite the failure of the prosecution to prove the same beyond reasonable doubt.

Our Ruling

The appeal has no merit.

Evidence supports conviction of the crime of Syndicated Illegal Recruitment

Accused-appellant avers that he cannot be held criminally liable for illegal recruitment because he was neither an officer nor an employee of the recruitment agency. He alleges that the trial court erred in adopting the asseveration of the private complainant that he was indeed an employee because such was not duly supported by competent evidence. According to him, even assuming that he was an employee, such cannot warrant

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[7] *People v. Alona Buli-e, et al.*, G.R. No. 123146, June 17, 2003; *People v. Spouses Ganaden, et al.*, G.R. No. 125441, November 27, 1998.

his outright conviction sans evidence that he acted in conspiracy with the officers of the agency.

We disagree.

To commit syndicated illegal recruitment, three elements must be established: (1) the offender undertakes either any activity within the meaning of "recruitment and placement" defined under Article 13(b), or any of the prohibited practices enumerated under Art. 34 of the Labor Code; (2) he has no valid license or authority required by law to enable one to lawfully engage in recruitment and placement of workers;[8] and (3) the illegal recruitment is committed by a group of three (3) or more persons conspiring or confederating with one another.[9] When illegal recruitment is committed by a syndicate or in large scale, *i.e.*, if it is committed against three (3) or more persons individually or as a group, it is considered an offense involving economic sabotage.[10]

Under Art. 13(b) of the Labor Code, "recruitment and placement" refers to "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not."

After a thorough review of the records, we believe that the prosecution was able to establish the elements of the offense sufficiently. The evidence readily reveals that MPM Agency was never licensed by the POEA to recruit workers for overseas employment.

Even with a license, however, illegal recruitment could still be committed under Section 6 of Republic Act No. 8042 ("R.A. 8042"), otherwise known as the *Migrants and Overseas Filipinos Act of 1995*, *viz*:

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[8] *People v. Soliven,* G.R. No. 125081, October 3, 2001.

[9] See Sec. 6, R.A. 8042; See also *People v. Buli-e, et al.,* G.R. No. 123146, June 17, 2003.

[10] Sec. 6 (m), R.A. 8042.

Sec. 6. Definition. — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority contemplated under Article 13(f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines: Provided, That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall, likewise, include the following act, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

x x x x x x x x x

(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and

(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

In the instant case, accused-appellant committed the acts enumerated in Sec. 6 of R.A. 8042. Testimonial evidence presented by the prosecution clearly shows that, in consideration

of a promise of foreign employment, accused-appellant received the amount of Php 45,000.00 from Dela Caza. When accused-appellant made misrepresentations concerning the agency's purported power and authority to recruit for overseas employment, and in the process, collected money in the guise of placement fees, the former clearly committed acts constitutive of illegal recruitment.[11] Such acts were accurately described in the testimony of prosecution witness, Dela Caza, to wit:

PROS. MAGABLIN

Q: How about this Rodolfo Gallo?

A: He was the one who received my money.

Q: Aside from receiving your money, was there any other representations or acts made by Rodolfo Gallo?

A: He introduced himself to me as relative of Mardeolyn Martir and he even intimated to me that their agency has sent so many workers abroad.

x x x x x x x x x

PROS. MAGABLIN

Q: Mr. Witness, as you claimed you tried to withdraw your application at the agency. Was there any instance that you were able to talk to Fides Pacardo, Rodolfo Gallo and Pilar Manta?

A: Yes, ma'am.

Q: What was the conversation that transpired among you before you demanded the return of your money and documents?

A: When I tried to withdraw my application as well as my money, Mr. Gallo told me "I know nothing about your money" while Pilar Manta and Fides Pacardo told me, why should I withdraw my application and my money when I was about to be [deployed] or I was about to leave.

x x x x x x x x x

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[11] *People v. Ong*, G.R. No. 119594, January 18, 2000.

Q: And what transpired at that office after this Panuncio introduced you to those persons whom you just mentioned?

A: The three of them including Rodolfo Gallo told me that the placement fee in that agency is Php 150,000.00 and then I should deposit the amount of Php 45,000.00. After I have deposited said amount, I would just wait for few days…

x x x x x x x x x

Q: They were the one (*sic*) who told you that you have to pay Php 45,000.00 for deposit only?

A: Yes, ma'am, I was told by them to deposit Php 45,000.00 and then I would pay the remaining balance of Php105,000.00, payment of it would be through salary deduction.

Q: That is for what Mr. Witness again?

A: For placement fee.

Q: Now did you believe to (*sic*) them?

A: Yes, ma'am.

Q: Why, why did you believe?

A: Because of the presence of the two Korean nationals and they keep on telling me that they have sent abroad several workers and they even showed visas of the records that they have already deployed abroad.

Q: Aside from that, was there any other representations which have been made upon you or make you believe that they can deploy you?

A: At first I was adamant but they told me "If you do not want to believe us, then we could do nothing." But once they showed me the [visas] of the people whom they have deployed abroad, that was the time I believe them.

Q: So after believing on the representations, what did you do next Mr. Witness?

A: That was the time that I decided to give the money.

x x x x x x x x x

PROS. MAGABLIN

Q: Do you have proof that you gave the money?

A: Yes, ma'am.

Q: Where is your proof that you gave the money?

A: I have it here.

PROS. MAGABLIN:

Witness is producing to this court a Receipt dated May 28, 2001 in the amount of Php45,000.00 which for purposes of record Your Honor, may I request that the same be marked in the evidence as our Exhibit "F".

x x x x x x x x x

PROS. MAGABLIN

Q: There appears a signature appearing at the left bottom portion of this receipt. Do you know whose signature is this?

A: Yes, ma'am, signature of Rodolfo Gallo.

PROS. MAGABLIN

Q: Why do you say that that is his signature?

A: Rodolfo Gallo's signature Your Honor because he was the one who received the money and he was the one who filled up this O.R. and while he was doing it, he was flanked by Fides Pacardo, Pilar Manta and Mardeolyn Martir.

x x x x x x x x x

Q: So it was Gallo who received your money?

A: Yes, ma'am.

PROS. MAGABLIN

Q: And after that, what did this Gallo do after he received your money?

A: They told me ma'am just to call up and make a follow up with our agency.

x x x x x x x x x

Q: Now Mr. Witness, after you gave your money to the accused, what happened with the application, with the promise of employment that he promised?

A: Two (2) weeks after giving them the money, they moved to a new office in Makati, Brgy. San Isidro.

x x x x x x x x x

Q: And were they able to deploy you as promised by them?

A: No, ma'am, they were not able to send us abroad.[12]

Essentially, Dela Caza appeared very firm and consistent in positively identifying accused-appellant as one of those who induced him and the other applicants to part with their money. His testimony showed that accused-appellant made false misrepresentations and promises in assuring them that after they paid the placement fee, jobs in Korea as factory workers were waiting for them and that they would be deployed soon. In fact, Dela Caza personally talked to accused-appellant and gave him the money and saw him sign and issue an official receipt as proof of his payment. Without a doubt, accused-appellants' actions constituted illegal recruitment.

Additionally, accused-appellant cannot argue that the trial court erred in finding that he was indeed an employee of the recruitment agency. On the contrary, his active participation in the illegal recruitment is unmistakable. The fact that he was the one who issued and signed the official receipt belies his profession of innocence.

This Court likewise finds the existence of a conspiracy between the accused-appellant and the other persons in the agency who are currently at large, resulting in the commission of the crime of syndicated illegal recruitment.

In this case, it cannot be denied that the accused-appellant together with Mardeolyn and the rest of the officers and employees of MPM Agency participated in a network of deception. Verily, the active involvement of each in the recruitment scam was

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[12] TSN, August 12, 2004, pp. 15-23.

directed at one single purpose — to divest complainants with their money on the pretext of guaranteed employment abroad. The prosecution evidence shows that complainants were briefed by Mardeolyn about the processing of their papers for a possible job opportunity in Korea, as well as their possible salary. Likewise, Yeo Sin Ung, a Korean national, gave a briefing about the business and what to expect from the company. Then, here comes accused-appellant who introduced himself as Mardeolyn's relative and specifically told Dela Caza of the fact that the agency was able to send many workers abroad. Dela Caza was even showed several workers visas who were already allegedly deployed abroad. Later on, accused-appellant signed and issued an official receipt acknowledging the down payment of Dela Caza. Without a doubt, the nature and extent of the actions of accused-appellant, as well as with the other persons in MPM Agency clearly show unity of action towards a common undertaking. Hence, conspiracy is evidently present.

In *People v. Gamboa*,[13] this Court discussed the nature of conspiracy in the context of illegal recruitment, *viz*:

> Conspiracy to defraud aspiring overseas contract workers was evident from the acts of the malefactors whose conduct before, during and after the commission of the crime clearly indicated that they were one in purpose and united in its execution. Direct proof of previous agreement to commit a crime is not necessary as it may be deduced from the mode and manner in which the offense was perpetrated or inferred from the acts of the accused pointing to a joint purpose and design, concerted action and community of interest. As such, all the accused, including accused-appellant, are equally guilty of the crime of illegal recruitment since in a conspiracy the act of one is the act of all.

To reiterate, in establishing conspiracy, it is not essential that there be actual proof that all the conspirators took a direct part in every act. It is sufficient that they acted in concert pursuant to the same objective.[14]

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[13] G.R. No. 135382, September 29, 2000, 341 SCRA 451.

[14] *Fortuna v. People,* G.R. No. 135784, December 15, 2000.

Estafa

The prosecution likewise established that accused-appellant is guilty of the crime of *estafa* as defined under Article 315 paragraph 2(a) of the Revised Penal Code, *viz*:

> Art. 315. *Swindling* (*estafa*). — Any person who shall defraud another by any means mentioned hereinbelow . . .
>
> x x x x x x x x x
>
> 2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:
>
> (a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or by means of other similar deceits.

The elements of estafa in general are: (1) that the accused defrauded another (a) by abuse of confidence, or (b) by means of deceit; and (2) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.[15] Deceit is the false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed; and which deceives or is intended to deceive another so that he shall act upon it, to his legal injury.

All these elements are present in the instant case: the accused-appellant, together with the other accused at large, deceived the complainants into believing that the agency had the power and capability to send them abroad for employment; that there were available jobs for them in Korea as factory workers; that by reason or on the strength of such assurance, the complainants parted with their money in payment of the placement fees; that after receiving the money, accused-appellant and his co-accused went into hiding by changing their office locations without informing complainants; and that complainants were never

[15] *People v. Soliven*, G.R. No. 125081, October 3, 2001.

deployed abroad. As all these representations of the accused-appellant proved false, paragraph 2(a), Article 315 of the Revised Penal Code is thus applicable.

Defense of Denial Cannot Prevail Over Positive Identification

Indubitably, accused-appellant's denial of the crimes charged crumbles in the face of the positive identification made by Dela Caza and his co-complainants as one of the perpetrators of the crimes charged. As enunciated by this Court in *People v. Abolidor*,[16] "[p]ositive identification where categorical and consistent and not attended by any showing of ill motive on the part of the eyewitnesses on the matter prevails over alibi and denial."

The defense has miserably failed to show any evidence of ill motive on the part of the prosecution witnesses as to falsely testify against him.

Therefore, between the categorical statements of the prosecution witnesses, on the one hand, and bare denials of the accused, on the other hand, the former must prevail.[17]

Moreover, this Court accords the trial court's findings with the probative weight it deserves in the absence of any compelling reason to discredit the same. It is a fundamental judicial dictum that the findings of fact of the trial court are not disturbed on appeal except when it overlooked, misunderstood or misapplied some facts or circumstances of weight and substance that would have materially affected the outcome of the case. We find that the trial court did not err in convicting the accused-appellant.

WHEREFORE, the appeal is *DENIED* for failure to sufficiently show reversible error in the assailed decision. The Decision dated December 24, 2008 of the CA in CA-G.R. CR-H.C. No. 02764 is *AFFIRMED*.

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[16] G.R. No. 147231, February 18, 2004, 423 SCRA 260.

[17] *People v. Carizo,* G.R. No. 96510, July 6, 1994, 233 SCRA 687; *People v. Miranda,* 235 SCRA 202; *People v. Bello,* G.R. No. 92597, October 4, 1994, 237 SCRA 347.

No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 187972. June 29, 2010]

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), represented by ATTY. CARLOS R. BAUTISTA, JR., *petitioner, vs.* **FONTANA DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; DETERMINED BY THE ALLEGATIONS OF THE COMPLAINT IRRESPECTIVE OF WHETHER PLAINTIFF IS ENTITLED TO ALL OR SOME OF THE CLAIMS OR RELIEFS ASSERTED. —** Jurisdiction of a court over the subject matter of the action is a matter of law and is conferred only by the Constitution or by statute. It is settled that jurisdiction is determined by the allegations of the complaint or the petition irrespective of whether plaintiff is entitled to all or some of the claims or reliefs asserted.

2. **ID.; ID.; ID.; ID.; RTC'S ORIGINAL AND EXCLUSIVE JURISDICTION OVER CASES WHERE SUBJECT OF LITIGATION IS INCAPABLE OF PECUNIARY ESTIMATION; ACTION FOR INJUNCTION OR BREACH OF CONTRACT, A CASE OF; CASE AT BAR. —** A perusal of FDC's complaint in Civil Case No. 08-120338 easily reveals that it is an action for injunction based on an alleged violation of contract—the MOA between the parties—which granted

FDC the right to operate a casino inside the Clark Special Economic Zone (CSEZ). As such, the Manila RTC has jurisdiction over FDC's complaint anchored on Sec. 19, Chapter II of BP 129, which grants the RTCs original exclusive jurisdiction over "all civil actions in which the subject of the litigation is incapable of pecuniary estimation." Evidently, a complaint for injunction or breach of contract is incapable of pecuniary estimation. Moreover, the RTCs shall exercise original jurisdiction "in the issuance of writs of *certiorari,* prohibition, *mandamus, quo warranto, habeas corpus* and injunction which may be enforced in any part of their respective regions" under Sec. 21 of BP 129.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC CORPORATIONS; PAGCOR; NO PROVISION FOR THE DIRECT APPEAL OR REVIEW OF PAGCOR'S DECISIONS TO THE SUPREME COURT UNDER PD 1869.** — A scrutiny of PD 1869 demonstrates that it has no procedure for the appeal or review of PAGCOR's decisions or orders. Neither does it make any express reference to an exclusive remedy that can be brought before this Court. Even a review of PD 1869's predecessor laws—PD 1067-A, 1067-B, 1067-C, 1399, and 1632, as well as its amendatory law, RA 9487 — do not confer original jurisdiction to this Court to review PAGCOR's actions and decisions.

4. **ID.; ID.; ID.; ID.; ID.; *PAGCOR V. VIOLA* CATEGORICALLY RULED THAT CASES INVOLVING REVOCATION OF A LICENSE FALLS WITHIN THE ORIGINAL JURISDICTION OF THE RTC; HIERARCHY OF COURTS, NORMALLY FOLLOWED; CASE AT BAR. —** In *PAGCOR v. Viola,* we ruled that PAGCOR, in the exercise of its licensing and regulatory powers, has no quasi-judicial functions, as Secs. 8 and 9 of PD 1869 do not grant quasi-judicial powers to PAGCOR. As such, direct resort to this Court is not allowed. While we allowed said recourse in *Del Mar v. PAGCOR* and *Jaworski v. PAGCOR*, that is an exception to the principle of hierarchy of courts on the grounds of expediency and the importance of the issues involved. More importantly, we categorically ruled in *PAGCOR v. Viola* that cases involving revocation of a license falls within the original jurisdiction of the RTC. x x x Moreover, it is settled that the normal rule is to strictly follow the hierarchy of courts.

5. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PROCEDURE BEFORE THE SUPREME COURT; REMAND OF CASE TO THE LOWER COURT FOR FURTHER RECEPTION OF EVIDENCE IS NOT NECESSARY WHERE THE COURT IS IN A POSITION TO RESOLVE THE DISPUTE BASED ON THE RECORDS BEFORE IT. —** In the exercise of its broad discretionary power, we will resolve FDC's complaint on the merits, instead of remanding it to the trial court for further proceedings. Moreover, the dispute between the parties involves a purely question of law—whether the license or MOA was issued pursuant to PD 1869 or Sec. 5, EO 80, in relation to RA 7227, which does not necessitate a full blown trial. Demands of substantial justice and equity require the relaxation of procedural rules.

6. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC CORPORATIONS; PAGCOR; PD 1869 IS SOURCE OF PAGCOR'S POWER TO REGULATE AND CONTROL ALL GAMES OF CHANCE WITHIN THE PHILIPPINES. —** A reading of the aforequoted provisions [Sec. 13 of RA 7227 in relation to Sec. 5 of EO 80] does not point to any authority granted to PAGCOR to license casinos within Subic, Clark, or any other economic zone. As a matter of fact, Sec. 13 of RA 7227 simply shows that SBMA has no power to license or operate casinos. Rather, said casinos shall continue to be licensed by PAGCOR. Hence, the source of PAGCOR's authority lies in its basic charter, PD 1869, as amended, and neither in RA 7227 nor its extension, EO 80, for the latter merely recognizes PAGCOR's power to license casinos. Indeed, PD 1869 empowers PAGCOR to regulate and control all games of chance within the Philippines, and clearly, RA 7227 or EO 80 cannot be the source of its powers, but its basic charter, PD 1869. *Basco v. PAGCOR* points to PD 1869 as the source of authority for PAGCOR to regulate and centralize all games of chance authorized by existing franchise or law.

7. **ID.; ID.; ID.; ID.; ID.; ONLY PD 1869, PARTICULARLY SECS. 8 AND 9, AND NOT ANY OTHER LAW, REQUIRES REGISTRATION AND AFFILIATION OF ALL PERSONS PRIMARILY ENGAGED IN GAMBLING WITH PAGCOR. —** Lastly, only PD 1869, particularly Secs. 8 and 9 and not any other law, requires registration and affiliation

of all persons primarily engaged in gambling with PAGCOR. x x x In the light of the foregoing provisions, it is unequivocal that PAGCOR draws its authority and power to operate and regulate casinos from PD 1869, and neither from Sec. 5 of EO 80 nor from RA 7227.

8. **CIVIL LAW; CIVIL CODE; CONTRACTS; BREACH THEREOF; PAGCOR HAS NO LEGAL BASIS TO SUPPLANT ITS MEMORANDUM OF AGREEMENT (MOA) WITH FONTANA DEVELOPMENT CORPORATION WITH ITS NEW STANDARD AUTHORITY TO OPERATE (SAO); CASE AT BAR. —** Hence, since PD 1869 remains unaffected by the unconstitutionality of Sec. 5 of EO 80, then PAGCOR has no legal basis for nullifying or recalling the MOA with FDC and replacing it with its new Standard Authority to Operate (SAO). There is no infirmity in the MOA, as it was validly entered by PAGCOR under PD 1869 and remains valid until legally terminated in accordance with the MOA. The reliance of PAGCOR on *Coconut Oil Refiners Association, Inc*. to buttress its position that the MOA with FDC can be validly supplanted with the 10-year SAO is clearly misplaced. That case cannot be a precedent to the instant case, as it dealt solely with the void grant of tax and duty-free incentives inside CSEZ. The Court ruled in *Coconut Oil Refiners Association, Inc.* that the tax incentives within the CSEZ were an invalid exercise of quasi-legislative powers x x x.

9. **ID.; ID.; ID.; A CONTRACT VOLUNTARILY ENTERED INTO BY THE PARTIES IS THE LAW BETWEEN THEM AND ALL ISSUES OR CONTROVERSIES SHALL BE RESOLVED MAINLY BY THE PROVISIONS THEREOF; CASE AT BAR. —** The Court has to point out that the issuance of the 10-year SAO by PAGCOR in lieu of the MOA with FDC is a breach of the MOA. The MOA in question was validly entered into by PAGCOR and FDC on December 23, 1999. It embodied the license and authority to operate a casino, the nature and extent of PAGCOR's regulatory powers over the casino, and the rights and obligations of FDC. Thus, the MOA is a valid contract with all the essential elements required under the Civil Code. The parties are then bound by the stipulations of the MOA subject to the regulatory powers of PAGCOR. Well-settled is the rule that a contract voluntarily entered into by the parties is the law between them and all

issues or controversies shall be resolved mainly by the provisions thereof.

10. **ID.; ID.; ID.; ID.; COURTS HAVE NO CHOICE BUT TO ENFORCE SUCH CONTRACT SO LONG AS THEY ARE NOT CONTRARY TO LAW, MORALS, GOOD CUSTOMS, OR PUBLIC POLICY. —** As parties to the MOA, FDC and PAGCOR bound themselves to all its provisions. After all, the terms of a contract have the force of law between the parties, and courts have no choice but to enforce such contract so long as they are not contrary to law, morals good customs, or public policy. A stipulation for the **term or period** for the effectivity of the MOA to be **co-terminus with term of the franchise of PAGCOR including any extension** is not contrary to law, morals good customs, or public policy. It is beyond doubt that PAGCOR did not revoke or terminate the MOA based on any of the grounds enumerated in No. 1 of Title VI, nor did it terminate it based on the period of effectivity of the MOA specified in Title I and Title II, No. 4 of the MOA. Without explicitly terminating the MOA, PAGCOR simply informed FDC on July 18, 2008 that it is giving the latter an extension of the MOA on a month-to-month basis in gross contravention of the MOA. Worse, PAGCOR informed FDC only on October 6, 2008 that the MOA is deemed expired on July 11, 2008 without an automatic renewal and is replaced with a 10-year SAO. Clearly it is in breach of the MOA's stipulated effectivity period which is co-terminus with that of the franchise granted to PAGCOR in accordance with Sec. 10 of PD 1869 **including any extension**. Hence, PAGCOR's disregard of the MOA is without legal basis and must be nullified. PAGCOR has to respect the December 23, 1999 MOA it entered into with FDC, especially considering the huge investment poured into the project by the latter in reliance and pursuant to the MOA in question.

APPEARANCES OF COUNSEL

Bautista Consolacion Gloria-Rubio Apigo Salvosa Sevilla Noblejas Siosana Sagsagat Papica-Entienza Bagasbas De Guzman-Chua for petitioner.

Estelito P. Mendoza for respondent.

DECISION

VELASCO, JR., *J.*:

In this petition for review under Rule 45, the May 19, 2009 Decision of the Court of Appeals (CA) in CA-G.R. SP No. 107247 is questioned for not nullifying the November 18, 2008 Order of the Regional Trial Court (RTC) in Manila in Civil Case No. 08-120338 that issued a temporary restraining order (TRO) against petitioner Philippine Amusement and Gaming Corporation (PAGCOR), barring PAGCOR from committing acts that allegedly violate the rights of respondent Fontana Development Corporation (FDC) under a December 23, 1999 Memorandum of Agreement (MOA).

The antecedents as culled by the CA from the records are:

Petitioner Philippine Amusement and Gaming Corporation (PAGCOR) is a government owned and controlled corporation created under Presidential Decree (PD) No. 1869 to enable the Government to regulate and centralize all games of chance authorized by existing franchise or permitted by law. Section 10 thereof conferred on PAGCOR a franchise of twenty-five (25) years or until July 11, 2008, renewable for another twenty-five (25) years. Under Section 9 thereof, it was given regulatory powers over persons and/or entities with contract or franchise with it, *viz*:

> SECTION 9. *Regulatory Power*. — The Corporation shall maintain a Registry of the affiliated entities, and shall exercise all the powers, authority and the responsibilities vested in the Securities and Exchange Commission over such affiliated entities mentioned under the preceding section, including but not limited to amendments of Articles of Incorporation and By-Laws, changes in corporate term, structure, capitalization and other matters concerning the operation of the affiliating entities, the provisions of the Corporation Code of the Philippines to the contrary notwithstanding, except only with respect to original incorporation.

On March 13, 1992, Republic Act No. 7227 was enacted to provide for the conversion and development of existing military reservations, including former United States military bases in the Philippines,

into Special Economic Zones (SEZ). The law also provides for the creation of the Subic Bay Metropolitan Authority (SBMA).

On April 3, 1993, then President Fidel V. Ramos issued Executive Order (EO) No. 80. Under Section 5 thereof, the Clark Special Economic Zone (CSEZ) was given all the applicable incentives granted to Subic Bay Special Economic Zone (SSEZ), *viz*:

> SECTION 5. *Investments Climate in the CSEZ.* — Pursuant to Section 5(m) and Section 15 of RA 7227, the BCDA shall promulgate all necessary policies, rules and regulations governing the CSEZ, including investment incentives, in consultation with the local government units and pertinent government departments for implementation by the CDC.
>
> Among others, the CSEZ shall have all the applicable incentives in the Subic Special Economic and Free Port Zone under RA 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investments Code of 1987, the Foreign Investments Act of 1991 and new investments laws which may hereinafter be enacted.
>
> The CSEZ Main Zone covering the Clark Air Base proper shall have all the aforecited investment incentives, while the CSEZ Sub-Zone covering the rest of the CSEZ shall have limited incentives. The full incentives in the Clark SEZ Main Zone and the limited incentives in the Clark SEZ Sub-Zone shall be determined by the BCDA.

On December 23, 1999, PAGCOR granted private respondent Fontana Development Corporation (FDC) (formerly RN Development Corporation) the authority to operate and maintain a casino inside the CSEZ under a Memorandum of Agreement (MOA), stating *inter alia*:

> x x x x x x x x x
>
> 1. RNDC Improvements
>
> x x x x x x x x x
>
> 4. Non-exclusivity, PAGCOR and RNDC agree that **the license granted to RNDC to engage in gaming and amusement operations within CSEZ shall be non-exclusive and co-terminus with the Charter of**

PAGCOR, or any extension thereof, and shall be for the period hereinabove defined. (Emphasis supplied.)

x x x x x x x x x

On April 12, 2000, Clark Development Corporation (CDC) issued Certificate of Registration No. 2000-24. Pursuant to Article VII-11 thereof, the MOA was amended on July 28, 2000, September 6, 2000, December 6, 2001, June 3, 2002, October 13, 2003 and March 31, 2004.

Sometime in 2005, the Coconut Oil Refiners Association challenged before the Supreme Court the constitutionality, among others, of EO No. 80 on the ground that the incentives granted to SSEZ under RA No. 7227 was exclusive and cannot be made applicable to CSEZ by a mere executive order. The case was decided in favor of Coconut Oil Refiners Association and Section 5 aforequoted was declared of no legal force and effect.

On June 20, 2007, RA No. 9487 was enacted, extending PAGCOR's franchise up to July 10, 2033 renewable for another twenty-five (25) years, *viz*:

> SECTION 1. The Philippine Amusement and Gaming Corporation (PAGCOR) franchise granted under Presidential Decree No. 1869, otherwise known as the PAGCOR Charter, is hereby further amended to read as follows:
>
> (1) Section 10, Nature and Term of Franchise, is hereby amended to read as follows:
>
> SEC. 10. *Nature and Term of Franchise*. — Subject to the terms and conditions established in this Decree, the Corporation is hereby granted from the expiration of its original term on July 11, 2008, another period of twenty-five (25) years, the rights, privileges and authority to operate and license gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, *i.e.,* basketball, football, bingo, *etc*. except jai-alai, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines: Provided, That the corporation shall obtain the consent of the local government unit that has territorial jurisdiction over the area chosen as the site for any of its operations.

x x x x x x x x x

On July 18, 2008, PAGCOR informed FDC that it was extending the MOA on a month-to-month basis until the finalization of the renewal of the contract. FDC protested, claiming that the extension of PAGCOR's franchise had automatically extended the MOA: that the SC decisions, including RA Nos. 9400 and 9399, had no effect on the authority of CDC to allow the establishment of a casino inside the CSEZ; and that in *Coconut Oil Refiners Association, Inc.*, the SC did not declare void the entire EO No. 80 but only Section 5 thereof.

On October 6, 2008, after a series of dialogues and exchange of position papers, PAGCOR notified FDC that its [new] standard Authority to Operate shall now govern and regulate FDC's casino operations in place of the previous MOA. FDC moved for the reconsideration of the said decision but the same was denied. On November 5, 2008, PAGCOR instructed FDC to remit its franchise fees in accordance with the Authority to Operate.

On the same date of November 5, 2008, FDC filed before the RTC of Manila the instant complaint for Injunction against PAGCOR, contending that it could not be covered by a month-to-month extension nor by the standard Authority to Operate since the MOA was automatically renewed and extended up to 2033; that the MOA clearly provided that the same was co-terminus with PAGCOR's franchise including any extension thereof; that it had faithfully complied with the conditions under the MOA; that pursuant to the MOA, it had built a hotel-casino complex and put up other investments equivalent to ₱1 Billion; that it had adopted a marketing strategy to attract high roller casino players from Asia and had scrupulously met all its obligations to PAGCOR and other government agencies; and that the provisions invalidated in *Coconut Oil Refiners Association, Inc.*, principally pertained to tax and customs duty, privileges or incentives which was thereafter restored by the enactment of RA No. 9400. The complaint was docketed as the herein Civil Case No. 08-120338 and raffled to Branch 7.

The RTC summoned PAGCOR and set the hearing on the application for TRO. On November 13, 2008, PAGCOR filed its Special Appearance (for Dismissal of the Petition and the Opposition to the Prayer for a Temporary Restraining Order and/or Writ of Preliminary Injunction), praying that the complaint be dismissed for lack of jurisdiction. PAGCOR contended that its decision to replace the MOA with the Authority to Operate was pursuant to its regulatory powers under Sections 8 and 9 of PD No. 1869; that

under the said provisions, it was given all the powers, authority and responsibilities of the Securities and Exchange Commission (SEC) over corporations engaged in gambling; that consequently, being the SEC of said corporations, the appeal or review of its decision should have been made directly to the SC under PD No. 1869 in relation to the last paragraph of Section 6, PD No. 902-A; PAGCOR argued that administrative agencies are co-equal with RTC's; that application or operation of presidential decrees are appealable to the SC under Article VIII, Section 4(2) of the 1987 Constitution; and that there was no basis for the issuance of TRO/Writ of Preliminary Injunction since the franchise or license granted to FDC was not a property right but was merely a privilege and not a contract.

On November 18, 2008, the RTC issued the first assailed Order denying PAGCOR's motion to dismiss and granting FDC's application for a TRO. The RTC held that the SC had no exclusive jurisdiction over cases involving PAGCOR; that the cases of *Del Mar vs. PAGCOR, Sandoval II vs. PAGCOR, Jaworski vs. PAGCOR* were decided by the SC in the exercise of its discretionary power to take cognizance of cases; that it had jurisdiction over the instant complaint under Section 21(1) of *Batas Pambansa* (BP) No. 129 in relation to Article VIII, Section 5(1) of the 1987 Constitution and the rule on hierarchy of courts; that although PAGCOR was granted regulatory powers, it was not extended quasi-judicial functions; and that PAGCOR is not an administrative agency but a government owned and controlled corporation. Upon the posting by FDC of the required bond of ₱500,000.00, the RTC issued on November 19, 2008 the second assailed Order, a TRO enjoining the implementation of the Standard Authority to Operate within a period of twenty (20) days. PAGCOR's motion for reconsideration was denied in the third assailed Order.

On December 8, 2008, the RTC issued an Order likewise denying FDC's application for the issuance of a Writ of Preliminary Injunction. The RTC ruled that FDC failed to present a clear legal right to justify its issuance; that PAGCOR was granted with legislative right to franchise to other entities the operation of gambling casinos; and that since what was granted was a license to operate and not a contract, no vested property right was at stake.

Both PAGCOR and Fontana moved for the reconsideration of the aforesaid Order. Fontana maintained that it was entitled to a Writ of Preliminary Injunction while PAGCOR wanted deleted the

finding that it had the authority to issue casino license to FDC under PD No. 1869.[1]

On February 5, 2009, PAGCOR filed a petition for *certiorari* and prohibition before the CA docketed as CA-G.R. SP No. 107247 entitled *PAGCOR represented by Atty. Carlos R. Bautista, Jr. v. Hon. Ma. Theresa Dolores Estoesta and Fontana Development Corporation*, questioning the November 18, 2008 Order, the November 19, 2008 Order and the December 4, 2008 Order of respondent judge.

Meanwhile, on January 30, 2009, the RTC issued an order, which reconsidered its December 8, 2008 Order and granted the writ of preliminary injunction in favor of FDC. The trial court held that since public interest is not prejudiced, the license issued may not be revoked or rescinded by mere executive action. The *fallo* reads:

> WHEREFORE, having sufficiently established a *prima facie* proof of violation of its right as a casino licensee under the MOA, **FDC's application for the issuance of a writ of preliminary injunction is GRANTED.**
>
> This reconsiders the Order dated December 8, 2008 insofar as it denied the issuance of a writ of preliminary injunction.
>
> Let a writ of preliminary injunction therefore **ISSUE** to become effective only upon posting of ONE HUNDRED MILLION PESOS (₱100,000,000.00).
>
> SO ORDERED.

The Writ of Preliminary Injunction[2] was issued on February 25, 2009.

On February 17, 2009, PAGCOR filed its Motion for Reconsideration and to Dissolve the Preliminary Injunction for Insufficiency of Bond and Irreparable Injury to the Government, which was opposed by FDC. By Order issued on March 31,

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[1] *Rollo*, pp. 74-83.

[2] *Id.* at 748-749.

2009, the RTC denied PAGCOR's motion for reconsideration of its Order dated January 30, 2009 that granted a writ of preliminary injunction in favor of FDC.

On May 19, 2009, the CA rejected the petition in CA-G.R. SP No. 107247 for lack of merit.

In dismissing PAGCOR's petition, the CA threw out PAGCOR's postulation that the RTC had no jurisdiction over the case and that the proper remedy is an original action before this Court, as the corporation is a body equal to the Securities and Exchange Commission (SEC). The appellate court reasoned that nowhere in Presidential Decree No. (PD) 1869 and Republic Act No. (RA) 9487 does it state that the instant petition can only be filed with this Court. Moreover, under RA 8799, the quasi-judicial powers earlier granted to the SEC under PD 902-A were transferred to the RTC, while the powers retained by the Commission are now subject to appeal to the CA.

An examination of the allegations of the complaint further revealed that it was an original action for injunction, and under *Batas Pampansa Blg*. (BP) 129, the RTC shall exercise original jurisdiction over writs of injunction. Lastly, the CA stressed that the case has been rendered moot and academic, as the TRO issued by Judge Estoesta lapsed on December 9, 2008 and its issuance has ceased to be a justiciable controversy. On the other hand, PAGCOR did not assail the writ of preliminary injunction issued by Judge Estoesta on February 25, 2009 after the CA petition was filed.

In the instant petition, PAGCOR puts forward the following issues for the consideration of the Court, to wit:

—The Court *a quo* and the trial court decided the question of substance (*i.e. What is the proper remedy available to a party claiming to be aggrieved by PAGCOR in the exercise of its authority to operate games of chance/gambling and to license and regulate others to operate games of chance/gambling?*) not theretofore determined by the Supreme Court.

—The trial court's TRO and later a Writ of Preliminary Injunction in favor of the private respondent prevented herein Petitioner from

implementing the standard Authority to Operate. In issuing such processes the trial court has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of the power of supervision.

—The trial court's TRO and later a Writ of Preliminary Injunction in favor of private respondent prevented herein Petitioner from collecting Government revenues in the form of the new license fee from private respondent under the standard Authority to Operate. In issuing such processes the trial court has so far departed from the accepted and usual course of judicial proceedings, as to call for an exercise of the power of supervision.

—The Court *a quo* in declaring moot and academic the question of the TRO issued by the trial court had sanctioned the trial court's departure from the accepted and usual course of judicial proceedings, as to call for an exercise of the power of supervision.

—The trial court in declaring that herein Petitioner issued the license (MOA) to herein private respondent under the authority of PD 1869 and not under E.O. 80, Section 5 decided such question of substance in a way not in accord with law or with the applicable decisions of the Supreme Court.

We synthesize petitioner's issues to two core issues:

(1) Whether the Manila RTC or this Court has jurisdiction over FDC's complaint for injunction and specific performance; and

(2) Did PAGCOR issue the license (MOA) under PD 1869 or under Executive Order No. (EO) 80, Section 5?

On the threshold issue of jurisdiction, PAGCOR insists lack of jurisdiction of the trial court over the complaint of FDC and, hence, all the processes and writs issued by said court are null and void. It posits that the proper legal remedy of FDC is not through an injunction complaint before the trial court, but a petition for review on purely questions of law before this Court or an appeal to the Office of the President. It heavily relies on Sec. 9 of PD 1869, which states that PAGCOR "shall exercise all the powers, authority and responsibilities vested in the Securities and Exchange Commission," and Sec. 6 of PD

902-A which provides for a petition for review to this Court from SEC's decisions.

We are not convinced.

Jurisdiction of a court over the subject matter of the action is a matter of law and is conferred only by the Constitution or by statute.[3] It is settled that jurisdiction is determined by the allegations of the complaint or the petition irrespective of whether plaintiff is entitled to all or some of the claims or reliefs asserted.[4]

A perusal of FDC's complaint in Civil Case No. 08-120338 easily reveals that it is an action for injunction based on an alleged violation of contract—the MOA between the parties—which granted FDC the right to operate a casino inside the Clark Special Economic Zone (CSEZ). As such, the Manila RTC has jurisdiction over FDC's complaint anchored on Sec. 19, Chapter II of BP 129, which grants the RTCs original exclusive jurisdiction over "all civil actions in which the subject of the litigation is incapable of pecuniary estimation." Evidently, a complaint for injunction or breach of contract is incapable of pecuniary estimation. Moreover, the RTCs shall exercise original jurisdiction "in the issuance of writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction which may be enforced in any part of their respective regions" under Sec. 21 of BP 129.

PAGCOR's claim of jurisdiction of this Court over the complaint in question heavily leans on Sec. 9 of PD 1869, PAGCOR's Charter, which provides:

> Section 9. *Regulatory Power*. — The Corporation shall maintain a Registry of the affiliated entities and shall exercise all the powers, authority and responsibilities vested in the Securities and Exchange Commission over such affiliated entities x x x.

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[3] *Sevilleno v. Carilo*, G.R. No. 14654, September 14, 2007.

[4] *Philippine Stock Exchange v. Manila Banking Corporation*, G.R. No. 147778, July 23, 2008, 559 SCRA 352, 359; *Republic v. Court of Appeals*, G.R. No. 155450, August 6, 2008, 561 SCRA 160, 171-172, citing *Erectors, Inc. v. National Labor Relations Commission*, G.R. No. 104215, May 8, 1996, 256 SCRA 629.

In view of the vestment to PAGCOR by PD 1869 of the powers, authority, and responsibilities of the SEC, PAGCOR concludes that any decision or ruling it renders has to be brought to this Court via a petition for review based on Sec. 6 of SEC's Charter, PD 902-A, which reads:

> The aggrieved party may appeal the order, decision or ruling of the Commission sitting *en banc* to the Supreme Court by petition for review in accordance with the pertinent provisions of the Rules of Court.

This reasoning is flawed. A scrutiny of PD 1869 demonstrates that it has no procedure for the appeal or review of PAGCOR's decisions or orders. Neither does it make any express reference to an exclusive remedy that can be brought before this Court. Even a review of PD 1869's predecessor laws—PD 1067-A, 1067-B, 1067-C, 1399, and 1632, as well as its amendatory law, RA 9487—do not confer original jurisdiction to this Court to review PAGCOR's actions and decisions.

PAGCOR, however, insists that this Court has jurisdiction over an action contesting its exercise of licensing and regulatory powers, *i.e.*, the revocation of FDC's license to operate a casino in CSEZ and that FDC's complaint is a case of first impression.

PAGCOR's argument is bereft of merit.

A similar factual setting was presented by PAGCOR in *PAGCOR v. Viola*,[5] which involves the controversy between PAGCOR and the Mimosa Regency Casino that operated inside the CSEZ. Mimosa filed a case for injunction and prayed for the issuance of a TRO before the Pampanga RTC when PAGCOR decided to close down the casino. In this case, PAGCOR likewise assailed the jurisdiction of the trial court by claiming that an original action before the CA is the proper remedy.

In *PAGCOR v. Viola*, we ruled that PAGCOR, in the exercise of its licensing and regulatory powers, has no quasi-judicial

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[5] G.R. No. 136445, March 27, 2001 (First Division Resolution). *Rollo*, pp. 945-950.

functions, as Secs. 8 and 9 of PD 1869 do not grant quasi-judicial powers to PAGCOR. As such, direct resort to this Court is not allowed. While we allowed said recourse in *Del Mar v. PAGCOR*[6] and *Jaworski v. PAGCOR*,[7] that is an exception to the principle of hierarchy of courts on the grounds of expediency and the importance of the issues involved. More importantly, we categorically ruled in *PAGCOR v. Viola* that cases involving revocation of a license falls within the original jurisdiction of the RTC, thus:

> Having settled that PAGCOR's revocation of MONDRAGON's authority to operate a casino was not an exercise of quasi-judicial powers **then it follows that the case was properly filed before the Regional Trial Court**. Hence, as the Regional Trial Court had jurisdiction to take cognizance of the case, petitioner's contention that the temporary restraining order and the preliminary injunction by the trial court are void must fail.[8]

Moreover, it is settled that the normal rule is to strictly follow the hierarchy of courts, thus:

> The Supreme Court is a court of last resort, and must so remain if it is to satisfactorily perform the functions assigned to it by the fundamental charter and immemorial tradition. A direct invocation of this Court's original jurisdiction to issue said writs should be allowed only when there are special and important reasons therefor, clearly and specifically set out in the petition. This is established policy—a policy that is necessary to prevent inordinate demands upon the Court's time and attention which are better devoted to those matters within its exclusive jurisdiction, and to prevent further over-crowding of the Court's docket.[9]

While it is the trial court that has original jurisdiction over FDC's complaint, PAGCOR nevertheless prays that this Court "suspend the Rules and directly decide the entire controversy

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[6] G.R. Nos. 138298 & 138982, November 29, 2000, 346 SCRA 485.

[7] G.R. No. 144463, January 14, 2004, 419 SCRA 317.

[8] *Supra* note 5. *Rollo*, p. 950.

[9] *Chong v. dela Cruz*, G.R. No. 184948, July 21, 2009.

in this proceeding instead of remanding the same to the trial court."[10]

In the exercise of its broad discretionary power, we will resolve FDC's complaint on the merits, instead of remanding it to the trial court for further proceedings. Moreover, the dispute between the parties involves a purely question of law—whether the license or MOA was issued pursuant to PD 1869 or Sec. 5, EO 80, in relation to RA 7227, which does not necessitate a full blown trial. Demands of substantial justice and equity require the relaxation of procedural rules.[11] In *Lianga Bay v. Court of Appeals*,[12] the Court held:

> Remand of case to the lower court for further reception of evidence is not necessary where the court is in a position to resolve the dispute based on the records before it. On many occasions, the Court, in the public interest and the expeditious administration of justice, has resolved actions on the merits instead of remanding them to the trial court for further proceedings, such as where the ends of justice would not be subserved by the remand of the case or when public interest demands an early disposition of the case or where the trial court had already received all the evidence of the parties.

The core issue to be resolved is whether the trial court erred in declaring that PAGCOR issued the license (MOA) to FDC under the authority of PD 1869 and not under EO 80, Sec. 5.

PAGCOR maintains that the license it issued to the FDC was based on Sec. 5 of EO 80 and that its charter PD 1869 should be read together with said EO. When Sec. 5 was nullified in *Coconut Oil Refiners Association, Inc. v. Torres*,[13] the MOA it entered into with FDC was consequently voided.

Such postulation must fail.

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[10] *Rollo*, p. 12.

[11] *City Treasurer of Quezon City v. ABS-CBN*, G.R. No. 166408, October 6, 2008.

[12] No. L-37783, January 28, 1988.

[13] G.R. No. 132527, July 29, 2005.

Sec. 5 of EO 80 provides:

SECTION 5. *Investments Climate in the CSEZ.* — Pursuant to Section 5(m) and Section 15 of RA 7227, the BCDA shall promulgate all necessary policies, rules and regulations governing the CSEZ, including investment incentives, in consultation with the local government units and pertinent government departments for implementation by the CDC.

Among others, the CSEZ shall have all the applicable incentives in the Subic Special Economic and Free Port Zone under RA 7227 and those applicable incentives granted in the Export Processing Zones, the Omnibus Investments Code of 1987, the Foreign Investments Act of 1991 and new investments laws which may hereinafter be enacted.

On the other hand, we quote Sec. 13 of RA 7227 in relation to Sec. 5 of EO 80:

Sec. 13. *The Subic Bay Metropolitan Authority.*—

(a) *Creation of the Subic Bay Metropolitan Authority.* —A body corporate to be known as the Subic Bay Metropolitan Authority is hereby created as an operating and implementing arm of the Conversion Authority.

(b) *Powers and functions of the Subic Bay Metropolitan Authority*. — The Subic Bay Metropolitan Authority, otherwise known as the Subic Authority, shall have the following powers and function:

x x x x x x x x x

7) To operate directly or indirectly or license tourism related activities subject to priorities and standards set by the Subic Authority including games and amusements, except horse racing, dog racing and casino gambling **which shall continue to be licensed by the Philippine Amusement and Gaming Corporation (PAGCOR)** upon recommendation of the Conversion Authority; to maintain and preserve the forested areas as a national park.

A reading of the aforequoted provisions does not point to any authority granted to PAGCOR to license casinos within Subic, Clark, or any other economic zone. As a matter of fact, Sec. 13 of RA 7227 simply shows that SBMA has no power to license or operate casinos. Rather, said casinos shall continue

to be licensed by PAGCOR. Hence, the source of PAGCOR's authority lies in its basic charter, PD 1869, as amended, and neither in RA 7227 nor its extension, EO 80, for the latter merely recognizes PAGCOR's power to license casinos. Indeed, PD 1869 empowers PAGCOR to regulate and control all games of chance within the Philippines, and clearly, RA 7227 or EO 80 cannot be the source of its powers, but its basic charter, PD 1869.

Basco v. PAGCOR[14] points to PD 1869 as the source of authority for PAGCOR to regulate and centralize all games of chance authorized by existing franchise or law, thus:

P.D. 1869 was enacted pursuant to the policy of the government to "regulate and centralize thru an appropriate institution all games of chance authorized by existing franchise or permitted by law" (1st Whereas Clause, PD 1869). As was subsequently proved, regulating and centralizing gambling operations in one corporate entity — the PAGCOR, was beneficial not just to the Government but to society in general. It is a reliable source of much needed revenue for the cash strapped Government. It provided funds for social impact projects and subjected gambling to "close scrutiny, regulation, supervision and control of the Government" (4th Whereas Clause, PD 1869).

Lastly, only PD 1869, particularly Secs. 8 and 9 and not any other law, requires registration and affiliation of all persons primarily engaged in gambling with PAGCOR. We quote Secs. 8 and 9:

TITLE III—AFFILIATION PROVISIONS

Section 8. *Registration. — All persons primarily engaged in gambling, together with their allied business, with contract or franchise from the Corporation, shall register and affiliate their businesses with the Corporation.* The Corporation shall issue the corresponding certificates of affiliation upon compliance by the registering entity with the promulgated rules and regulations.

Section 9. *Regulatory Power*. — The Corporation shall maintain a Registry of the affiliated entities, and shall exercise all the powers, authority and the responsibilities vested in the Securities and Exchange

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[14] G.R. No. 91649, May 14, 1991.

Commission over such affiliated entities mentioned under the preceding section, including but not limited to amendments of Articles of Incorporation and By-Laws, changes in corporate term, structure, capitalization and other matters concerning the operation of the affiliating entities, the provisions of the Corporation Code of the Philippines to the contrary notwithstanding, except only with respect to original incorporation.

In the light of the foregoing provisions, it is unequivocal that PAGCOR draws its authority and power to operate and regulate casinos from PD 1869, and neither from Sec. 5 of EO 80 nor from RA 7227. Hence, since PD 1869 remains unaffected by the unconstitutionality of Sec. 5 of EO 80, then PAGCOR has no legal basis for nullifying or recalling the MOA with FDC and replacing it with its new Standard Authority to Operate (SAO). There is no infirmity in the MOA, as it was validly entered by PAGCOR under PD 1869 and remains valid until legally terminated in accordance with the MOA.

The reliance of PAGCOR on *Coconut Oil Refiners Association, Inc.*[15] to buttress its position that the MOA with FDC can be validly supplanted with the 10-year SAO is clearly misplaced. That case cannot be a precedent to the instant case, as it dealt solely with the void grant of tax and duty-free incentives inside CSEZ. The Court ruled in *Coconut Oil Refiners Association, Inc.* that the tax incentives within the CSEZ were an invalid exercise of quasi-legislative powers, thus:

In the present case, while Section 12 of Republic Act No. 7227 expressly provides for the grant of incentives to the SSEZ, it fails to make any similar grant in favor of other economic zones, including the CSEZ. **Tax and duty-free incentives** being in the nature of tax exemptions, the basis thereof should be categorically and unmistakably expressed from the language of the statute. **Consequently, in the absence of any express grant of tax and duty-free privileges to the CSEZ in Republic Act No. 7227**, there would be no legal basis to uphold the questioned portions of two issuances: Section 5 of Executive Order No. 80 and Section 4 of BCDA Board Resolution No. 93-05-034, which both pertain to the CSEZ. (Emphasis supplied.)

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[15] *Supra* note 12.

Lastly, the Court has to point out that the issuance of the 10-year SAO by PAGCOR in lieu of the MOA with FDC is a breach of the MOA. The MOA in question was validly entered into by PAGCOR and FDC on December 23, 1999. It embodied the license and authority to operate a casino, the nature and extent of PAGCOR's regulatory powers over the casino, and the rights and obligations of FDC. Thus, the MOA is a valid contract with all the essential elements required under the Civil Code. The parties are then bound by the stipulations of the MOA subject to the regulatory powers of PAGCOR. Well-settled is the rule that a contract voluntarily entered into by the parties is the law between them and all issues or controversies shall be resolved mainly by the provisions thereof.[16]

On the revocation, termination, or suspension of the license or grant of authority to operate a casino, PAGCOR agreed to the following stipulations on the revocation or termination of the MOA, *viz*:

VI. REVOCATION/TERMINATION

1. This grant of authority may be revoked or suspended at any time at the sole option of PAGCOR by giving written notice to RNDC [FDC] of such revocation or suspension stating therein the reason(s) for such revocation or suspension, on any of the following grounds:

   a. RNDC makes any default which PAGCOR considers material in the due and punctual performance or observance of any of the obligations or undertakings contained in the Agreement, and RNDC shall fail to remedy such default, within fifteen (15) working days after notice specifying the default. Should the default consist in the non-remittance of the consideration as hereinabove specified, PAGCOR shall, in addition have the right to proceed against the Surety Bond, unless RNDC was able to cure the default so specified by PAGCOR within seventy-two (72) hours after notice specifying the default. RNDC shall be liable for interest

[16] *Metro Manila Transit Corporation v. D.M. Consortium, Inc.*, G.R. No. 147594, March 7, 2007, 517 SCRA 632, 640.

at the prevailing commercial rates on all or portion of the amounts due.

b. There shall be any failure on the part of RNDC which PAGCOR considers material to comply with any provision of the Agreement and RNDC fails to remedy the same within fifteen (15) working days after notice specifying the default;

c. RNDC has become bankrupt;

d. After the RNDC casino shall have formally commenced gaming and amusement operations within the CSEZ, RNDC's continuous cumulative non-operation of the casino for a period of one (1) month except upon lawful order of the Court or *force majeure*, provided that upon the cessation of such cause or causes, RNDC shall immediately continue its casino operations, otherwise, such continuous non-operation for the period provided above shall be sufficient ground for revocation or suspension;

e. Failure of RNDC to comply with and observe any pertinent law, rule, regulation and/or ordinance promulgated by a competent authority, including PAGCOR, relative to the operation of the casino;

f. Such other situations analogous to the above.[17]

Central to the present controversy is the term or period of effectivity of the MOA, as provided under the definition of terms in Title I and Title II, No. 4, which, for clarity, we reiterate in full:

> "**Period**" refers to the period of time **co-terminus with that of the franchise granted to PAGCOR in accordance with Section 10 of Presidential Decree No. 1869 including any extension thereof**;[18]
>
> x x x x x x x x x

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[17] *Rollo*, pp. 248-249.

[18] *Id.* at 244.

4. **Non-exclusivity**. PAGCOR and RNDC agree that the license granted to RNDC to engage in gaming and amusement operations within the CSEZ shall be non-exclusive and **co-terminus with the Charter of PAGCOR, or any extension thereof**, and shall be for the period hereinabove defined.[19] (Emphasis supplied.)

As parties to the MOA, FDC and PAGCOR bound themselves to all its provisions. After all, the terms of a contract have the force of law between the parties, and courts have no choice but to enforce such contract so long as they are not contrary to law, morals, good customs, or public policy.[20] A stipulation for the **term or period** for the effectivity of the MOA to be **co-terminus with term of the franchise of PAGCOR including any extension** is not contrary to law, morals, good customs, or public policy.

It is beyond doubt that PAGCOR did not revoke or terminate the MOA based on any of the grounds enumerated in No. 1 of Title VI, nor did it terminate it based on the period of effectivity of the MOA specified in Title I and Title II, No. 4 of the MOA. Without explicitly terminating the MOA, PAGCOR simply informed FDC on July 18, 2008 that it is giving the latter an extension of the MOA on a month-to-month basis in gross contravention of the MOA. Worse, PAGCOR informed FDC only on October 6, 2008 that the MOA is deemed expired on July 11, 2008 without an automatic renewal and is replaced with a 10-year SAO. Clearly it is in breach of the MOA's stipulated effectivity period which is co-terminus with that of the franchise granted to PAGCOR in accordance with Sec. 10 of PD 1869 **including any extension**. Hence, PAGCOR's disregard of the MOA is without legal basis and must be nullified. PAGCOR has to respect the December 23, 1999 MOA it entered into with FDC, especially considering the huge investment poured into the project by the latter in reliance and pursuant to the MOA in question.

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[19] *Id.* at 246.

[20] *Co Chien v. Sta. Lucia Realty and Development, Inc.*, G.R. No. 162090, January 31, 2007, 513 SCRA 570, 582.

WHEREFORE, the petition is hereby *DENIED* for lack of merit. The Decision dated May 19, 2009 of the CA in CA-G.R. SP No. 107247 affirming the Orders dated November 18, 2008 and December 4, 2008 of the RTC, Branch 7 in Manila is hereby *AFFIRMED*. The writ of injunction issued on February 25, 2009 by the trial court pursuant to the January 30, 2009 Order in Civil Case No. 08-120338 is hereby made *PERMANENT*. PAGCOR is ordered to honor and comply with the stipulations of the MOA dated December 23, 1999, as amended, that it executed with FDC.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 188124. June 29, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JONEL FALABRICA SERENAS and JOEL LORICA LABAD,** *accused-appellants.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PROCEDURE IN THE SUPREME COURT; FINDINGS OF FACT MADE BY THE TRIAL COURT, AND AFFIRMED BY THE COURT OF APPEALS ARE BINDING ON THE SUPREME COURT; EXCEPTION. —** Jurisprudence dictates that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded great respect, if not conclusive effect, more so when affirmed by the Court

of Appeals. The exception is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances that, if considered, would change the outcome of the case.

2. **ID.; ID.; ID.; ID.; ID.; FINDING THAT JONEL FALABRICA SERENAS IS GUILTY BEYOND REASONABLE DOUBT OF MURDER, AS ESTABLISHED BY THE DYING DECLARATION OF THE VICTIM, IS RESPECTED. —** We respect the findings that Jonel Falabrica Serenas is guilty beyond reasonable doubt of murder not by virtue of identification by Dianne but as established by the dying declaration of the victim.

3. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; INCONSISTENCIES BETWEEN AFFIDAVIT AND TESTIMONY; TESTIMONY GIVEN MORE WEIGHT SINCE AFFIDAVITS ARE USUALLY INCOMPLETE AND INACCURATE; EXCEPTION. —** Dianne's testimony is doubtful to say the least. This Court is mindful of the rule that if there is an inconsistency between the affidavit and the testimony of a witness, the latter should be given more weight since affidavits being taken *ex-parte* are usually incomplete and inaccurate. Corollary to this is the doctrine that, where the discrepancies are irreconcilable and unexplained and they dwell on material points, such inconsistencies necessarily discredit the veracity of the witness' claim.

4. **ID.; ID.; ID.; ID.; ID.; ID.; CASE AT BAR. —** The second rule is apt to the case at bar. Nowhere in her affidavit did Dianne point to appellants as the perpetrators of the crime. From the tenor of her affidavit, Dianne's suspicion that appellants committed the crime merely arose from the alleged threats made by appellants on the victim the day before the incident. x x x We cannot simply brush aside the fact that while Dianne pointed to the persons who threatened to do harm on the victim, she failed to identify who the perpetrators of the crime are. To the mind of the Court, this omission in Dianne's affidavit is so glaring on a material point, *i.e.*, the failure to attribute authorship to the crime. Therefore, the testimony of Dianne altogether becomes suspect.

5. **ID.; ID.; ADMISSIBILITY; DYING DECLARATION; FOUR REQUISITES WHICH MUST CONCUR. —** As an exception to the rule against hearsay evidence, a dying declaration or

ante mortem statement is evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation. In order for a dying declaration to be held admissible, four requisites must concur: first, the declaration must concern the cause and surrounding circumstances of the declarant's death; second, at the time the declaration was made, the declarant must be under the consciousness of an impending death; third, the declarant is competent as a witness; and fourth, the declaration must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.

6. ID.; ID.; ID.; ID.; ID.; ALL REQUISITES FOR A DYING DECLARATION WERE SUFFICIENTLY MET BY THE STATEMENT OF THE VICTIM COMMUNICATED TO CESAR IN CASE AT BAR. — All requisites for a dying declaration were sufficiently met by the statement of the victim communicated to Cesar. First, the statement pertained to Niño being stabbed, particularly pin-pointing Joe-An as the perpetrator. Second, Niño must have been fully aware that he was on the brink of death considering his bloodied condition when Cesar met him near the bridge. Third, the competence of Niño is unquestionable had he survived the stabbing incident. Fourth, Niño's statement was being offered in a criminal prosecution for his murder.

7. ID.; ID.; BURDEN OF PROOF; PRIMARY BURDEN STILL LIES WITH THE PROSECUTION WHOSE EVIDENCE MUST STAND OR FALL ON ITS OWN WEIGHT AND WHO MUST ESTABLISH BY PROOF BEYOND REASONABLE DOUBT, THE GUILT OF THE ACCUSED BEFORE THERE CAN BE CONVICTION; CASE AT BAR. — Note however that based on the testimonies of witnesses, there was no direct evidence linking appellant Joel to the crime. x x x While the police officers caught Joel hiding under the bridge, this incident appears to be circumstantial and cannot stand to prove Joel's complicity without any corroborating evidence. Admittedly, Joel's defense of denial and alibi are inherently weak, however, it is doctrinal that the weakness of the defense cannot be the basis for conviction. The primary burden still lies with the prosecution whose evidence must stand or fall on its own weight and who must establish by proof

beyond reasonable doubt the guilt of the accused before there can be conviction. At this juncture, we acquit appellant Joel.

8. **CRIMINAL LAW; QUALIFYING CIRCUMSTANCES; TREACHERY, WHEN PRESENT; CASE AT BAR. —** There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from any defense which the offended party might make. The medical records support the finding of treachery. The nature and location of his wounds are indicative of the positions of the victim and his assailant at the time the incident occurred x x x The victim was suddenly attacked by appellant on his way home from his girlfriend's house. He was stabbed twice from behind. The mode of attack on the victim was clearly executed without risk to the attacker. We cannot discount the fact that there were other participants to the crime. Appellant could not have acted alone based on the testimony of the witnesses and the medico-legal report. However, the identity of the other assailants was not proven by the prosecution.

9. **ID.; ID.; EVIDENT PREMEDITATION, WHEN PRESENT; CASE AT BAR. —** In order for evident premeditation to be appreciated, the following requisites must be proven: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will. In the instant case, appellant uttered the words "*iyang mama na iyan, may araw din siya sa akin.*" Even conceding that these utterances were in the form of a threat, it still cannot be presumed that at the time they were made, there was indeed a determination to kill and that appellants had indeed clung to that determination, planning and meditating on how to kill the victim.

10. **ID.; MURDER; WHAT CIVIL LIABILITY INCLUDES IN CASE AT BAR. —** As to appellant's pecuniary liability, we find it proper to increase the award of civil indemnity and moral damages to ₱75,000.00 each. The trial court's grant of ₱23,000.00 as actual damages is increased to ₱25,000.00, but as temperate damages in line with the ruling in *People v.*

Villanueva. We uphold the grant of ₱20,000.00 as attorney's fees, with the victim's mother having hired a private prosecutor to prosecute the case. We increase the award of exemplary damages to ₱30,000.00 in line with recent jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Before us on appeal is the Decision[1] of the Court of Appeals affirming the Judgment[2] of the Regional Trial Court (RTC) of Parañaque in Criminal Case No. 02-01426 convicting appellants Jonel Falabrica Serenas *alias* "Joe-An" (Joe-An) and Joel Lorica Labad (Joel) of the crime of murder.

Appellants were charged under the following Information:

That on or about the 8th day of December 2002 in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating with one John Doe, whose true name and present whereabouts is still unknown, and all of them mutually helping and aiding one another, with intent to kill, treachery and evident premeditation, did then and there, willfully, unlawfully and feloniously attack, assault and stab one Nino Noel Ramos, thereby inflicting upon him serious and mortal stab wound, which caused his death.[3]

The facts, as narrated by prosecution witnesses, follow —

On 8 December 2002, at around 10:00 o'clock in the evening, Niño Noel Ramos (Niño) had just brought his girlfriend, Dianne

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[1] Penned by Associate Justice Edgardo F. Sundiam with Associate Justices Pampio A. Abarintos and Arturo G. Tayag concurring. *Rollo,* pp. 2-20.

[2] Presided by Judge Raul E. De Leon. CA *rollo*, pp. 16-26.

[3] Records, p. 1.

Charisse Gavino (Dianne), home in Sto. Niño, Parañaque City. On his way back to La Huerta, he passed by a bridge connecting the *barangays* of Sto. Niño and La Huerta. Thereat, Niño was stabbed and mauled.[4]

Cesar Ramos (Cesar), Niño's brother, was in the vicinity of N. Domingo Street in La Huerta when he heard a commotion on the bridge. As he was about to proceed to the bridge, he met Niño and noticed that his brother was soaked in his own blood. Niño relayed to Cesar that he was stabbed by Joe-An. Cesar immediately brought Niño to the hospital where the latter expired thirty (30) minutes later.[5] At the police station, Cesar claimed that appellants told him that they merely "took fancy" on Niño.[6]

Dianne initially related in her affidavit executed at the police station that her cousin informed her of a commotion on the bridge. Upon reaching the bridge, she met a friend who told her that her boyfriend, Niño, was stabbed and brought to the hospital. She added that one day before the incident, she and Niño were walking along the bridge when they passed by the group of appellants and heard Joe-An utter the words, "*Iyang mama na iyan, may araw din siya sa akin.*"[7] In her testimony during the trial however, she narrated that she actually saw Joe-An stabbing Niño.[8]

PO3 Ramoncito Lipana (PO3 Lipana) was at the police station in La Huerta on 8 December 2002 when a woman named Dianne came to report a stabbing incident involving her boyfriend. PO3 Lipana, together with PO2 Jesus Brigola (PO2 Brigola) and PO3 Marlon Golfo, immediately proceeded to the crime scene. Upon arriving thereat, the police saw two men scampering away upon seeing them. They chased the two men, later identified as Joe-An and Joel. The police managed to catch the appellants while they were hiding near a *bangka* under the bridge. Appellants

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[4] *Id.* at 12.

[5] TSN, 3 February 2004, pp. 5-8.

[6] *Id.* at 11.

[7] *Id.* at 12.

[8] TSN, 8 June 2004, pp. 92-93.

were brought to the police station where Dianne identified them as the assailants of Niño.[9]

Dr. Valentin T. Bernales (Dr. Bernales), the medico-legal officer who issued the autopsy report, testified that the victim was stabbed twice at the back and the assailant was situated within arm's length. The victim succumbed from the stab wounds, both of which, are fatal. Dr. Bernales also noted that there were contuse abrasions on different parts of the victim's body.[10]

Appellants invoked denial and alibi as their defense. Joe-An, a resident of Wawa, Sto. Niño, alleged that he was at his house on 8 December 2002. While he was taking his dinner, he saw people running towards the bridge. He went out of the house to check on what had happened. He approached a group of people talking about the commotion. Thereafter, he saw the police and *barangay tanods* arrive. He was immediately handcuffed and asked to go with the police. Joe-An alleged that he was physically forced by the police to admit the killing of Niño.[11] Joe-An denied knowing the victim or his girlfriend, Dianne, but admitted that Joel is an acquaintance.[12]

Joel likewise denied his participation in killing Niño. He stated that he was sleeping at around 11 p.m. on 8 December 2002 when he was awakened by an argument involving his mother and four (4) men outside his room. He then got out of the room and saw PO3 Lipana, PO2 Brigola, and two other police "assets." The group invited him for questioning. When the two assets suddenly grabbed him, Joel resisted but he was forcibly brought to the police station. He saw Dianne at the station but the latter did not identify him as the culprit. Instead, Dianne even sought his help to identify the person who killed her boyfriend. This fact notwithstanding, the police refused to let him go. He testified that he did not know the victim or Dianne personally.[13]

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[9] TSN, 21 October 2003, pp. 33-36.

[10] *Id.* at 12-29.

[11] TSN, 22 September 2005, pp. 5-11.

[12] *Id.* at 21-23.

[13] TSN, 8 February 2005, pp. 4-13.

After trial, the RTC rendered judgment convicting appellants, the dispositive portion of which reads:

WHEREFORE, considering that the prosecution was able to prove the guilt of both accused beyond reasonable doubt, accused JONEL FALABRICA SERENAS *alias* JOE-AN and JOEL LORICA LABAD are hereby sentenced to suffer the penalty of *RECLUSION PERPETUA* pursuant to R.A. 9346 which repealed the death penalty law. However, pursuant to Sec. 3 thereof, they are not eligible for parole.

Accused JONEL FALABRICA SERENAS *alias* JOE-AN and JOEL LORICA LABAD are jointly and severally liable to pay the heirs of NIÑO NOEL RAMOS, the following amounts, to wit:

1. ₱50,000.00 as civil indemnity *ex-delicto;*
2. ₱50,000.00 as moral damages;
3. ₱23,000.00 as actual damages;
4. ₱20,000.00 as and by way of attorney's fees; and
5. To pay the cost of suit.[14]

Lending full credence to the testimonies of the prosecution witnesses, the trial court concluded that the appellants conspired in assaulting and stabbing Niño. It gave full weight to the dying declaration uttered by Niño to his brother, as well as the statement of Dianne, who allegedly witnessed appellants threaten Niño the night before the incident. It also appreciated the aggravating circumstances of treachery and evident premeditation in the commission of the crime. Furthermore, the trial court regarded the uncorroborated testimonies of appellants to be "full of inconsistencies and unworthy of weight and credence."[15]

On 13 September 2006, appellants filed a notice of appeal informing the RTC that they are appealing the decision to the Court of Appeals.[16]

The Court of Appeals affirmed with modification the decision of the RTC by awarding exemplary damages in the amount of ₱25,000.00. Thus:

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[14] CA *rollo*, p. 26.

[15] *Id.* at 20-25.

[16] *Id.* at 28.

WHEREFORE, premises considered, the Decision appealed from, being in accordance with law and the evidence, is hereby AFFIRMED with the MODIFICATION that exemplary damages in the amount of ₱25,000.00 is awarded to the heirs of the victim. The Decision in all other respects STANDS.[17]

On 13 August 2008, a notice of appeal was filed assailing the decision of the Court of Appeals before this Court.[18]

On 26 October 2009, the parties were required to simultaneously file their respective supplemental briefs.[19] In two (2) separate manifestations, both parties opted to adopt their briefs submitted before the Court of Appeals.[20]

Summarizing the arguments of both parties, the issues to be resolved are: (1) whether the testimonies of the witnesses are sufficient to prove appellants' guilt beyond reasonable doubt; (2) whether the killing was qualified by treachery and evident premeditation; (3) whether conspiracy has been adequately proven.

In convicting appellants, the lower courts relied heavily on the testimonies of witnesses Cesar and Dianne, which they deemed to be credible. Jurisprudence dictates that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded great respect, if not conclusive effect, more so when affirmed by the Court of Appeals. The exception is when it is established that the trial court ignored, overlooked, misconstrued, or misinterpreted cogent facts and circumstances that, if considered, would change the outcome of the case.[21]

We respect the findings that Jonel Falabrica Serenas is guilty beyond reasonable doubt of murder not by virtue of identification

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[17] *Rollo,* p. 19.

[18] *Id.* at 21.

[19] *Id.* at 28.

[20] *Id.* at 29-30 and 32-33.

[21] *People v. Oliva*, G.R. No. 187043, 18 September 2009; *People v. Anod*, G.R. No. 186420, 25 August 2009, 597 SCRA 205, 211; *People v. De la Cruz*, 446 Phil. 549, 561 (2003).

by Dianne but as established by the dying declaration of the victim. Upon the other hand, we reverse the conviction of Joel Lorica Labad.

The trial court, as affirmed by the Court of Appeals, accorded full weight to the testimony of the prosecution witness, Dianne, who declared on the witness stand that she actually saw appellants maul and stab the victim, thus:

Q Miss witness, do you know the person of Niño Noel Ramos?

A Yes, sir.

Q Why do you know him?

A He was my boyfriend, sir.

Q And where is Niño Noel Ramos now?

A He's dead already, sir.

Q Why do you know that he is dead?

A **Because I saw that day when he was stabbed, sir.**

Q You said that you know when he was stabbed. When was that?

A On December 8, 2002, sir.

Q What time was that?

A At around 10:00 in the evening, sir.

Q Where did it happen?

A It happened on a bridge between La Huerta and Sto. Niño, Parañaque City, sir.

Q Do you know the person who killed your boyfriend?

A Yes, sir.

Q If they are inside the courtroom, can you point to them?

COURT:

Witness pointing to the second and the third detention prisoners from among five (5) who when asked by the Court, *"Ano'ng pangalan*

mo, 'yong pangalawa?" answered by the name of Joel Labad. *"IKaw?* "Jonel Serenas *po*."[22] **[emphasis supplied]**

Appellants argue that Dianne gave conflicting statements regarding the identity of the assailants. In her affidavit, she narrated that a friend informed her that Niño was stabbed and taken to the hospital. During trial however, Dianne testified that she witnessed the actual stabbing incident.

The Office of the Solicitor General (OSG) refutes the alleged inconsistencies in the statements made by Dianne in the affidavit and during trial. It claims that Dianne was categorical in her testimony that she saw appellants stab her boyfriend. Furthermore, her testimony in open court is superior to statements made in her affidavit, which statements may have been made when she was not in her right mind.[23]

The Court of Appeals dismissed the alleged inconsistencies by giving greater weight to the statement made in court by Dianne than that made in the affidavit she executed before the police.

We do not agree.

Dianne's testimony is doubtful to say the least. This Court is mindful of the rule that if there is an inconsistency between the affidavit and the testimony of a witness, the latter should be given more weight since affidavits being taken *ex-parte* are usually incomplete and inaccurate. Corollary to this is the doctrine that, where the discrepancies are irreconcilable and unexplained and they dwell on material points, such inconsistencies necessarily discredit the veracity of the witness' claim.[24] The second rule is apt to the case at bar.

Nowhere in her affidavit did Dianne point to appellants as the perpetrators of the crime. From the tenor of her affidavit, Dianne's suspicion that appellants committed the crime merely

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[22] TSN, 8 June 2004, pp. 5-7.

[23] CA *rollo,* pp. 90-94.

[24] *People v. Villanueva, Jr.*, G.R. No. 187152, 22 July 2009, 593 SCRA 523, 541-542; *People v. Tampon*, 327 Phil. 729, 738 (1996); *People v. Aniscal*, G.R. No. 103395, 22 November 1993, 228 SCRA 101, 112.

arose from the alleged threats made by appellants on the victim the day before the incident. The pertinent portion of her affidavit is hereby reproduced:

> *T: Mayroon ka bang natatandaan pagbabanta kay Niño Noel bago ito nangyari sa kanya?*
>
> *S: Opo, naalala ko po kahapon ika 7 ng Disyembre 2002 humigit kumulang na alas 9:45 ng gabi noong kami ay papauwi dahil hinatid niya ako sa bahay, pagdaan naming sa Wawa Sto. Niño may apat na kalalakihan, naka upo sa may daanan malapit sa laruan ng pool, ang isa ay narinig ko nagsalita ng "IYANG MAMA NA IYAN, MAY ARAW DIN SIYA SA AKIN," hindi ko naman ito pinansin at tuloy tuloy po ang lakad namin.*
>
> *T: Nakilala mo ba kong sino ang apat na kalalakihan?*
>
> *S: Akin pong napag-alaman ang dalawang magkatabi na sina, Michael Baluyot at @Joe-An.*
>
> *T: Sino naman ang iyong narinig nagsalita ng pagbabanta sa kanila kong natatandaan mo pa?*
>
> *S: Opo, si @Joe-An po.*
>
> *T: May ipapakita ako sa iyo, ano ang masasabi mo?*
>
> *S: Opo, siya po ang nagsalita ng pagbabanta,* affiant pointing to the person when asked identified himself as JONEL SERENAS *Y* FALABRICA, @Joe-An, 23 yrs. old, single, jobless, residing at 5058 Wawa Sto. Niño, P'que City.
>
> T: *Mayroon akong ihaharap sa iyo, ano naman ang iyong masasabi sa kanya*?
>
> S: *Opo, siya po ang sumagot kay Joe-An ng "Oo nga, Oo nga" na umaayon sa nasabing pagbabanta*, affiant pointing to the person inside investigation when asked voluntarily identified himself as MICHAEL BALUYOT *Y* ALIC, 17 yrs old single of 117 Wawa, Sto. Niño, P'que City referred to this office by PO2 Ramoncito Lipana, *et al.* for investigation.[25]

We cannot simply brush aside the fact that while Dianne pointed to the persons who threatened to do harm on the victim,

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[25] Records, p. 12.

she failed to identify who the perpetrators of the crime are. To the mind of the Court, this omission in Dianne's affidavit is so glaring on a material point, *i.e.*, the failure to attribute authorship to the crime. Therefore, the testimony of Dianne altogether becomes suspect.

Nevertheless, the prosecution's case did not necessarily crumble. The victim's dying declaration is a most telling evidence identifying Joe-an.

Appellants question the alleged dying declaration of the victim in that they were not sufficiently identified as the persons responsible for Niño's death. Appellants anchor their argument on the utterance of the word "Joe-An" when the victim was asked on who stabbed him. Appellants advance that the victim may have been referring to some other person. Moreover, the victim did not even mention "Joel" or "Joel Labad," the other suspect.[26]

The OSG defends the victim's dying declaration and insists that there was no mistake that the victim was indeed referring to Joe-An, considering that the latter was familiar to him.[27]

As an exception to the rule against hearsay evidence, a dying declaration or *ante mortem* statement is evidence of the highest order and is entitled to utmost credence since no person aware of his impending death would make a careless and false accusation.[28]

In order for a dying declaration to be held admissible, four requisites must concur: first, the declaration must concern the cause and surrounding circumstances of the declarant's death; second, at the time the declaration was made, the declarant must be under the consciousness of an impending death; third, the declarant is competent as a witness; and fourth, the declaration

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[26] CA *rollo*, pp. 50-52.

[27] *Id.* at 90.

[28] *People v. Cerilla*, G.R. No. 177147, 28 November 2007, 539 SCRA 251, 262-263; *People v. Cortezano*, 425 Phil. 696, 716 (2002).

must be offered in a criminal case for homicide, murder, or parricide, in which the declarant is the victim.[29]

Niño's *ante mortem* statement was relayed to his brother Cesar, in this wise:

Q Cesar, will you please tell this Honorable court where were you on the night of December 8, 2002 at about 9:30?

A I was near the crime scene, sir.

Q Where is this place?

A In N. Domingo, La Huerta, Parañaque City, sir.

Q At that time, what did you notice?

A There was a commotion on top of the bridge, sir.

Q So, what did you do?

A We verified it, sir.

Q After that, what did you do?

A I saw my brother coming, sir.

Q Who is this brother of yours that you saw?

A Niño Noel Ramos, sir.

Q When you saw Niño Noel approaching, what did you do?

A I asked him what the commotion was all about, sir.

Q What did he answer?

A He told me that he was stabbed, sir.

Q What else did he tell you?

A I asked him who stabbed him, sir.

Q What was his answer?

A He answered [to] me that it was Joe-an, sir.

Q What else did he tell you?

A He asked me to bring him to the hospital, sir.

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[29] *People v. Cerilla, id.*

Q What did you do when he asked you to bring him to the hospital?

A I held him up and brought him to the hospital, sir.

Q Why? What was the condition of your brother at that time?

A He was bloodied, sir.[30]

All requisites for a dying declaration were sufficiently met by the statement of the victim communicated to Cesar. First, the statement pertained to Niño being stabbed, particularly pinpointing Joe-An as the perpetrator. Second, Niño must have been fully aware that he was on the brink of death considering his bloodied condition when Cesar met him near the bridge. Third, the competence of Niño is unquestionable had he survived the stabbing incident. Fourth, Niño's statement was being offered in a criminal prosecution for his murder.

Note however that based on the testimonies of witnesses, there was no direct evidence linking appellant Joel to the crime. Cesar testified, thus:

Q But you only knew that there was a stabbing incident when you were told by the victim that he was stabbed?

A Yes, sir.

Q **And he told you that he was stabbed by a certain, who was that?**

A **Joe-an, sir.**

Q **Only Joe-an?**

A **Yes, sir.**

Q And aside from this, he was not mentioning any other person?

A That is the only name he mentioned but there were three (3) or four (4) persons who mauled him, sir.

Q The accused in this case, of course, you do not know them?

A I know them by their faces, sir.

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[30] TSN, 3 February 2004, pp. 5-7.

Q Why did you say so?

A Because I often pass by that place, sir.

Q But you did not see these persons at that time of the incident?

A I saw them but I cannot see their faces because it was quite far, sir.

Q And you only came to know about these persons at the police precinct, is that correct?

A Yes, sir.

Q Because Dianne and your brother told you so?

A Yes, sir.[31] **[Emphasis supplied]**

While the police officers caught Joel hiding under the bridge, this incident appears to be circumstantial and cannot stand to prove Joel's complicity without any corroborating evidence. Admittedly, Joel's defense of denial and alibi are inherently weak, however, it is doctrinal that the weakness of the defense cannot be the basis for conviction. The primary burden still lies with the prosecution whose evidence must stand or fall on its own weight and who must establish by proof beyond reasonable doubt the guilt of the accused before there can be conviction.[32] At this juncture, we acquit appellant Joel.

With respect to Joe-An, the lower courts properly appreciated the presence of treachery in qualifying the crime to murder.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and especially to ensure its execution, without risk to himself arising from any defense which the offended party might make.[33]

The medical records support the finding of treachery. The nature and location of his wounds are indicative of the positions

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

[32] *People v. Fabito*, G.R. No. 179933, 16 April 2009, 585 SCRA 591, 613.

[33] *People v. Lacaden*, G.R. No. 187682, 25 November 2009.

of the victim and his assailant at the time the incident occurred. The trial court drew a better picture of how the victim was stabbed, thus:

> It is clear under the circumstances that the victim has no opportunity to retaliate the aggression of the accused when he was stabbed because according to Dr. Valentin Bernales, Medico-Legal Officer of the National Bureau of Investigation considering the locations of the wound which was sustained by the accused, the assailant was about an arm [sic] length away and believed to be at the back of the victim who was standing and almost in the same level when the first stab wound was inflicted. As to the second wound, according to Dr. Bernales, the victim appears already lying face down on the ground when stabbed by the accused which to some extent is consistent with the testimony of Cesar that his brother/victim was mauled by four (4) other persons. This may be the reason why the victim sustained contuse abrasions on the different parts of his body.[34]

The victim was suddenly attacked by appellant on his way home from his girlfriend's house. He was stabbed twice from behind. The mode of attack on the victim was clearly executed without risk to the attacker. We cannot discount the fact that there were other participants to the crime. Appellant could not have acted alone based on the testimony of the witnesses and the medico-legal report. However, the identity of the other assailants was not proven by the prosecution.

While affirming that treachery attended the commission of the crime, we however rule out the presence of evident premeditation.

In order for evident premeditation to be appreciated, the following requisites must be proven: (1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will. In the instant case, appellant uttered the words "*iyang mama na iyan, may araw din siya sa akin.*" Even conceding that these utterances

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[34] CA *rollo*, p. 24.

were in the form of a threat, it still cannot be presumed that at the time they were made, there was indeed a determination to kill and that appellants had indeed clung to that determination, planning and meditating on how to kill the victim.

Finally, appellants question the sufficiency of evidence to prove conspiracy. They aver that there was no concerted action pursuant to a common criminal design between the appellants. Moreover, the manner by which appellants conspired with one another in stabbing the victim was not discussed in the trial court's decision.[35]

The OSG submits that conspiracy may be deduced from the manner by which the crime was perpetrated. It recalled that appellants waited by the bridge where the victim passes by whenever he visits his girlfriend. Upon seeing the victim, they grabbed and mauled him. Moments later, Joe-Ann stabbed the victim. Thereafter, appellants escaped and hid under the bridge where they were eventually apprehended. Clearly, they have performed overt acts in furtherance of the common design of killing the victim.[36]

There is nothing on record that would prove that conspiracy existed. The circumstantial evidence cited by the OSG are not sufficient to prove that appellant conspired with other individuals to perpetrate the crime. Further lending doubt to this claim is the fact that the alleged co-conspirator's identity was not established.

In sum, we find that the prosecution has proven that appellant Joe-An is guilty beyond reasonable doubt for the crime of murder. The acquittal of the other appellant, Joel, is in order on the ground of reasonable doubt.

As to appellant's pecuniary liability, we find it proper to increase the award of civil indemnity and moral damages to ₱75,000.00[37] each. The trial court's grant of ₱23,000.00 as

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[35] *Id.* at 58-59.

[36] *Id.* at 96-97.

[37] *People v. Satonero*, G.R. No. 186233, 2 October 2009.

actual damages is increased to ₱25,000.00, but as temperate damages in line with the ruling in *People v. Villanueva.*[38] We uphold the grant of ₱20,000.00 as attorney's fees, with the victim's mother having hired a private prosecutor to prosecute the case.[39] We increase the award of exemplary damages to ₱30,000.00 in line with recent jurisprudence.[40]

WHEREFORE, the Decision of the Court of Appeals is hereby *MODIFIED*.

Appellant *JONEL FALABRICA SERENAS* is found *GUILTY* of the crime of murder and is sentenced to suffer the penalty of *reclusion perpetua*. He is ordered to pay the heirs of the victim Niño Noel Ramos the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages; ₱30,000.00 as exemplary damages, ₱25,000.00 as temperate damages and ₱20,000.00 as attorney's fees.

For failure of the prosecution to establish his guilt beyond reasonable doubt, appellant *JOEL LORICA LABAD* is *ACQUITTED*. The Director of Prisons is ordered to cause his immediate release, unless he is being held for some other lawful cause, and to inform this Court of such action within five days from receipt of this Decision.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., Leonardo-de Castro, and *del Castillo, JJ.,* concur.

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[38] 456 Phil. 14 (2003).

[39] TSN, 10 August 2004, pp. 6-7.

[40] *People v. Mortera*, G.R. No. 188104, 23 April 2010; *People v. Gutierrez*, G.R. No. 188602, 4 February 2010.

THIRD DIVISION

[G.R. No. 188233. June 29, 2010]

QUERUBIN L. ALBA and RIZALINDA D. DE GUZMAN, *petitioners, vs.* **ROBERT L. YUPANGCO,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CORPORATE OFFICERS; WHEN SOLIDARILY LIABLE WITH THE CORPORATION IN LABOR DISPUTES. —** There is solidary liability when the obligation expressly so states, when the law so provides, or *when the nature of the obligation so requires*. *MAM Realty Development Corporation v. NLRC,* on solidary liability of corporate officers in labor disputes, enlightens: x x x A corporation being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents are not theirs but the direct accountabilities of the corporation they represent. True solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases: 1. When directors and trustees or, in appropriate cases, the officers of a corporation: (a) vote for or assent to *patently* unlawful acts of the corporation; (b) act in *bad faith* or with *gross negligence* in directing the corporate affairs; x x x In labor cases, for instance, the Court has held corporate directors and officers solidarily liable with the corporation for the **termination of employment of employees** done with **malice** or in **bad faith**.
2. **ID.; ID.; ID.; ID.; RESPONDENT'S LIABILITY COULD ONLY BE JOINT CONSIDERING THE LACK OF MALICE IN THE DISMISSAL OF EMPLOYEES; CASE AT BAR. —** From the October 25, 1999 Decision of the Labor Arbiter, there is no finding or indication that petitioners' dismissal was effected with malice or bad faith. Respondent's liability could thus only be joint, not solidary.
3. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; FINALITY THEREOF; MODIFICATION OF A FINAL**

AND EXECUTORY JUDGMENT IS IMPERMISSIBLE; EXCEPTIONS; CASE AT BAR. — By declaring that respondent's liability is solidary, the Labor Arbiter modified the already final and executory October 25, 1999 Decision. That is impermissible, even if the modification is meant to correct erroneous conclusions of fact and law, whether it be made by the court that rendered it or by the highest court in the land. The only recognized exceptions are the corrections of clerical errors or the making of so-called *nunc pro tunc* entries which cause no prejudice to any party and in cases where the judgment is void. Said exceptions are not present in the present case.

4. **ID.; ID.; ID.; ID.; *ALIAS* WRIT OF EXECUTION MUST CONFORM TO THE TENOR OF THE JUDGMENT; CASE AT BAR. —** Since the *alias* writ of execution did not conform, is different from and thus went beyond or varied the tenor of the judgment which gave it life, it is a nullity. To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law. Petitioners' attribution of laches to respondent for belatedly raising a possible defense as to his liability, does not thus lie, the Labor Arbiter's modification of the final and executory judgment being a nullity.

APPEARANCES OF COUNSEL

Puyat Jacinto & Santos for petitioners.
Benjamin S. Benito for respondent.

D E C I S I O N

CARPIO MORALES, *J*.:

Querubin L. Alba and Rizalinda D. De Guzman (petitioners) filed separate complaints for illegal dismissal and payment of retirement benefits against Y.L. Land Corporation and Ultra Motors Corporation, respectively. Robert L. Yupangco (respondent) was impleaded in his capacity as President of both corporations. The complaints were consolidated before Labor Arbiter Patricio L. Libo-on.

By Decision of October 25, 1999, the Labor Arbiter rendered judgment in favor of petitioners, disposing as follows:

WHEREFORE, premises considered, judgment is hereby rendered **ordering the respondents** as follows:

QUERUBIN L. ALBA

1. To immediately reinstate complainant to his former position with full backwages computed in the amount of Three Hundred Eighty Thousand (₱380,000.00) Pesos [from March 25, 1999 up to the date of this decision);

2. And if complainant opts not to be reinstated, in which case, in lieu of reinstatement respondent [sic] is ordered to pay complainant separation pay equivalent to one-half (½) month salary for every year of service;

3. To pay complainant his earned commission in the amount of Five Hundred Thousand (₱500,000.00) Pesos.

RIZALINDA D. DE GUZMAN

1. To pay her retirement pay equivalent to seventy-five (75%) percent of her basic monthly salary, or in the amount of Six Hundred Thousand (₱600,000.00) Pesos;

2. Pay her unpaid commission of Four Hundred Forty Eight Thousand Six Hundred Eighty One and 52/100 (₱448,681.52) Pesos; and

3. Pay the balance of her unused vacation and sick leave benefits in the amount of Eighty One Thousand Eight Hundred Forty Two and 33/100 (₱81,842.33) [₱50,000.00/26 days = ₱1,923.9769 x 155.5 = ₱299,038.45 – ₱217,196.12 = ₱81,842.33]

All other claims are denied for lack of merit.

SO ORDERED.[1] (emphasis and underscoring in the original)

For failure to put up a *supersedeas* bond, the National Labor Relations Commission (NLRC) denied respondent's appeal, by Resolution of December 29, 1999. Entry of judgment was thereafter recorded on August 10, 2000 certifying that the Resolution had become final and executory on June 24, 2000.

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[1] CA *rollo*, pp. 31-32.

On September 27, 2000, upon petitioners' motion, the Labor Arbiter issued a Writ of Execution. The writ was returned unsatisfied, however, prompting petitioners to file a motion for the issuance of an *alias* writ.

No opposition having been filed, the Labor Arbiter issued an *alias* writ of execution on September 11, 2001 which was implemented by NLRC Sheriff Stephen B. Andres by distraining respondent's club share (Certificate No. 1931) at the Manila Golf and Country Club, Inc.

On December 14, 2001, one Regina Victoria de Ocampo filed an Affidavit of Third Party Claim which was, by Order dated February 23, 2006, dismissed with prejudice.

The Labor Arbiter subsequently issued a 2nd *alias* writ of execution on May 15, 2006. Respondent, by motion, challenged the impending sale of his club share, arguing, *inter alia,* that he should not be held *solidarily* liable with his co- respondent corporations for the judgment obligation. One Alejandro B. Hontiveros also filed a third party claim. The Labor Arbiter denied respondent's motion and Hontiveros' claim by Order of February 22, 2007.

Petitioners thereafter filed a motion for the issuance of a 3rd *alias* writ of execution which was granted by Order of June 5, 2007. This time, respondent moved for the quashal of said *alias* writ, alleging that it was issued beyond the five-year prescriptive period under the NLRC Rules of Procedure. And he again questioned the enforcement of the judgment obligation on his personal property, inviting attention to the dispositive portion of the final and executory decision of the Labor Arbiter which did not state his liability as joint and solidary with the corporate obligors.

Respondent nevertheless deposited Bank of Philippine Islands Manager's Check No. 0918 in the amount of ₱730,235.13 representing his liability equivalent to one-third of the monetary obligation.

By Order of September 5, 2007, the Labor Arbiter denied respondent's motion to quash the 3rd *alias* writ. Brushing aside

respondent's contention that his liability is merely joint, the Labor Arbiter ruled:

> Such issue regarding the personal liability of the officers of a corporation for the payment of wages and money claims to its employees, as in the instant case, has long been resolved by the Supreme Court in a long list of cases [*A.C. Ransom Labor Union-CLU vs. NLRC* (142 SCRA 269) and reiterated in the cases of *Chua vs. NLRC* (182 SCRA 353), *Gudez vs. NLRC* (183 SCRA 644)]. In the aforementioned cases, the Supreme Court has expressly held that the **irresponsible** officer of the corporation (*e.g.* President) is liable for the corporation's obligations to its workers. Thus, respondent Yupangco, being the president of the respondent YL Land and Ultra Motors Corp., is properly jointly and severally liable with the defendant corporations for the labor claims of Complainants Alba and De Guzman.[2] x x x (emphasis and underscoring supplied)

On respondent's appeal, the NLRC, by Resolution of February 27, 2008, affirmed the Labor Arbiter's Order of September 5, 2007 and denied respondent's Motion for Reconsideration by Resolution of May 30, 2008.

On respondent's petition for prohibition, the Court of Appeals, by Decision of February 20, 2009,[3] *set aside* the assailed issuances of the NLRC, it holding that the execution of judgment against respondent beyond his 1/3 share of the monetary obligation is tainted with grave abuse of discretion, the October 25, 1999 Decision of the Labor Arbiter being silent as to his and his co-obligor-corporations' solidary liability. Thus the appellate court enjoined the Labor Arbiter and NLRC from proceeding with the enforcement of the *alias* writ in so far as it allowed execution of the judgment against respondent beyond his one third (1/3) share in the monetary obligation.

Petitioners' motion for reconsideration having been denied by Resolution of June 5, 2009,[4] they filed the present petition

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

[3] Penned by Associate Justice Jose Catral Mendoza (now a Member of this Court) with the concurrence of Associate Justices Portia Aliño-Hormachuelos and Ramon M. Bato, Jr., *id.* at 530-544.

[4] *Id.* at 587.

for review on *certiorari*, contending that respondent had waived any possible defense as to his liability for belatedly raising the same — seven years after the finality of the Labor Arbiter's October 25, 1999 Decision.

As reflected above, the Labor Arbiter held that respondent's liability is solidary.

There is solidary liability when the obligation expressly so states, when the law so provides, or *when the nature of the obligation so requires*. *MAM Realty Development Corporation v. NLRC,*[5] on solidary liability of corporate officers in labor disputes, enlightens:

> x x x A corporation being a juridical entity, may act only through its directors, officers and employees. Obligations incurred by them, acting as such corporate agents are not theirs but the direct accountabilities of the corporation they represent. True solidary liabilities may at times be incurred but only when exceptional circumstances warrant such as, generally, in the following cases:
>
> 1. When directors and trustees or, in appropriate cases, the officers of a corporation:
>
>   (a) vote for or assent to *patently* unlawful acts of the corporation;
>
>   (b) act in *bad faith* or with *gross negligence* in directing the corporate affairs;
>
> x x x x x x x x x
>
> In labor cases, for instance, the Court has held corporate directors and officers solidarily liable with the corporation for the **termination of employment of employees** done with **malice** or in **bad faith**.[6] (italics in the original; emphasis and underscoring supplied)

From the October 25, 1999 Decision of the Labor Arbiter, there is no finding or indication that petitioners' dismissal was effected with malice or bad faith. Respondent's liability could thus only be joint, not solidary.

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[5] G.R. No. 114787, June 2, 1995, 244 SCRA 797.

[6] *Id*. at 802-803.

By declaring that respondent's liability is solidary, the Labor Arbiter modified the already final and executory October 25, 1999 Decision. That is impermissible, even if the modification is meant to correct erroneous conclusions of fact and law, whether it be made by the court that rendered it or by the highest court in the land.[7] The only recognized exceptions are the corrections of clerical errors or the making of so-called *nunc pro tunc* entries[8] which cause no prejudice to any party and in cases where the judgment is void.[9] Said exceptions are not present in the present case.

Since the alias writ of execution did not conform, is different from and thus went beyond or varied the tenor of the judgment which gave it life, it is a nullity.[10] To maintain otherwise would be to ignore the constitutional provision against depriving a person of his property without due process of law.[11]

Petitioners' attribution of laches to respondent does not thus lie, the Labor Arbiter's modification of the final and executory judgment being a nullity.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

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[7] *Mayon Estate Corporation v. Altura*, *et al*., G.R. No. 134462, October 18, 2004, 440 SCRA 377, 386.

[8] A *nunc pro tunc* entry only places in proper form on the record, a judgment that has been previously rendered.

[9] *Manning International Corporation v. NLRC*, G.R. No. 83018, March 13, 1991, 195 SCRA 155.

[10] *B.E. San Diego, Inc. v. Alzul*, G.R. No. 169501, June 8, 2007, 524 SCRA 402, 433.

[11] *Cabang v. Basay*, G.R. No. 180587, March 20, 2009.

[*] Additional member per Special Order No. 843 dated May 17, 2010.

FIRST DIVISION

[G.R. No. 188320. June 29, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **HONORIO TIBON *y* DEISO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; PARRICIDE; ELEMENTS**. — Article 246 of the Revised Penal Code defines parricide x x x. Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of the accused.

2. **ID.; ID.; ID.; DIFFERENTIATED FROM MURDER AND HOMICIDE**. — Parricide is differentiated from murder and homicide by the relationship between the killer and his or her victim. Even without the attendant circumstances qualifying homicide to murder, the law punishes those found guilty of parricide with *reclusion perpetua* to death, prior to the enactment of Republic Act No. (RA) 9346 (*An Act Prohibiting the Imposition of the Death Penalty in the Philippines).* The commission of parricide is punished more severely than homicide since human beings are expected to love and support those who are closest to them. The extreme response of killing someone of one's own flesh and blood is indeed unnatural and tragic.

3. **REMEDIAL LAW; EVIDENCE; INSANITY AS AN EXEMPTING CIRCUMSTANCE; BURDEN OF PROOF; LIES ON THE PERSON WHO PLEADS THE EXEMPTING CIRCUMSTANCE OF INSANITY**. — Article 12 of the Code states: C*ircumstances which exempt from criminal liability.* — The following are exempt from criminal liability: 1. An imbecile or an insane person, unless the latter has acted during a lucid interval. x x x The aforementioned circumstances are not easily available to an accused as a successful defense. Insanity is the exception rather than the rule in the human condition. While Art. 12(1) of the Revised Penal Code provides that an imbecile or insane person is exempt from criminal liability,

unless that person has acted during a lucid interval, the presumption, under Art. 800 of the Civil Code, is that every human is sane. Anyone who pleads the exempting circumstance of insanity bears the burden of proving it with clear and convincing evidence. It is in the nature of confession and avoidance. An accused invoking insanity admits to have committed the crime but claims that he or she is not guilty because of insanity.

4. **ID.; ID.; ID.; ID.; PROOF OF AN ACCUSED'S INSANITY MUST RELATE TO THE TIME IMMEDIATELY PRECEDING OR COETANEOUS WITH THE COMMISSION OF THE OFFENSE CHARGED; CASE AT BAR. —** The testimony or proof of an accused's insanity must, however, relate to the time immediately preceding or coetaneous with the commission of the offense with which he is charged. We agree with the Solicitor General that the mental records Tibon wishes to support his defense with are inapplicable to the theory he espouses. The NCMH records of his mental health only pertain to his ability to stand trial and not to his mental state immediately before or during the commission of the crimes.

5. **CRIMINAL LAW; REVISED PENAL CODE; EXEMPTING CIRCUMSTANCES; INSANITY; UNCONTROLLED JEALOUSY, ANGER AND/OR DESPONDENCY ARE NOT EQUIVALENT TO INSANITY; CASE AT BAR. —** The change in Tibon's behavior was triggered by jealousy. He acted out of jealous rage at the thought of his wife having an affair overseas. Uncontrolled jealousy and anger are not equivalent to insanity. Nor is being despondent, as Tibon said he was when interviewed by the police. There is a vast difference between a genuinely insane person and one who has worked himself up into such a frenzy of anger that he fails to use reason or good judgment in what he does. We reiterate jurisprudence which has established that only when there is a complete deprivation of intelligence at the time of the commission of the crime should the exempting circumstance of insanity be considered.

6. **REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; FINDINGS OF FACT MADE BY THE TRIAL COURT AND AFFIRMED BY THE COURT OF APPEALS ARE GENERALLY BINDING ON THE SUPREME COURT; CASE AT BAR. —** The requirements for a finding of insanity

have not been met by the defense. As the appellate court noted, Tibon's unusual behavior prior to and after he committed parricide do not meet the stringent standards on an insanity plea as required by this Court. The presumption of sanity has not been overcome. In contrast, the prosecution, as found by the lower courts, sufficiently established evidence that Tibon voluntarily killed his two children on the night of December 12, 1998. On this matter, We find no reason to reverse the findings of fact made by the trial court and affirmed by the Court of Appeals.

7. **CRIMINAL LAW; REVISED PENAL CODE; PARRICIDE; PROPER PENALTY; CASE AT BAR**. — In view of RA 9346, the appellate court correctly modified the sentence of Tibon to *reclusion perpetua.*

8. **ID.; ID.; ID.; ID.; DAMAGES THAT MAY BE AWARDED WHEN DEATH OCCURS DUE TO A CRIME. —** When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.

9. **ID.; ID.; ID.; ID.; ID.; CASE AT BAR. —** Recent jurisprudence pegs civil indemnity in the amount of PhP75,000, which is automatically granted to the offended party, or his/her heirs in case of the former's death, without need of further evidence other than the fact of the commission of murder, homicide, parricide and rape. x x x According to Art. 2199 of the Civil Code, one is entitled to adequate compensation for pecuniary loss suffered by him that is duly proved. This compensation is termed actual damages. The party seeking actual damages must produce competent proof or the best evidence obtainable, such as receipts, to justify an award therefor. We note that the trial court failed to award actual damages in spite of the presentation of receipts showing wake and funeral expenses (Exhibits "R", "R-1", "R-2", "R-4", and "R-5") amounting to PhP173,000. We therefore grant said amount. Moral damages are also in order. Even in the absence of any allegation and proof of the heirs' emotional suffering, it has been recognized that the loss of a loved one to a violent death brings emotional pain and anguish, more so in this case where two young children were brutally killed while their mother was away. The award of PhP75,000.00 is proper pursuant to established jurisprudence

holding that where the imposable penalty is death but reduced to *reclusion perpetua* pursuant to RA 9346, the award of moral damages should be increased from ₱50,000.00 to ₱75,000.00. Pursuant to prevailing jurisprudence, the trial court should have made accused-appellant account for PhP30,000 as exemplary damages on account of relationship, a qualifying circumstance, which was alleged and proved, in the crime of parricide.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

Parricide is the most terrible and unnatural of crimes.[1]

It is said that, in Romulus' time, there was no penalty for parricide because it was considered a crime too evil ever to be committed. While parricide in those days referred to the murder of one's own parent or ascendant, the killing of one's own offspring, which the term's modern meaning now includes, is equally horrendous and deserving of the stiffest penalty.

This is an appeal from the February 25, 2009 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01406, which affirmed the August 2, 2005 Decision in Criminal Case Nos. 98-169605-06 of the Regional Trial Court (RTC), Branch 26 in Manila. The RTC found accused-appellant Honorio Tibon guilty beyond reasonable doubt of two counts of parricide.

The Facts

Two Informations charged Tibon of the following:

Criminal Case No. 98-169605

That on or about the 12th day of December, 1998, in the City of Manila, Philippines, the said accused did then and there willfully,

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[1] Cassiodorus, *The Letters of Cassiodorus*.

unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the person of one KEEN GIST TIBON *Y* SUMINGIT, 3 years of age and his legitimate son, by then and there stabbing him several times on the chest with a bladed weapon, thereby inflicting upon the said KEEN GIST TIBON *Y* SUMINGIT stab wounds which were the direct and immediate cause of his death thereafter.

Criminal Case No. 98-169606

That on or about the 12th day of December, 1998, in the City of Manila, Philippines, the said accused did then and there willfully, unlawfully and feloniously, with intent to kill, attack, assault and use personal violence upon the person of one REGUEL ALBERT TIBON *Y* SUMINGIT, 2 years of age and his legitimate son, by then and there stabbing him several times on the chest with a bladed weapon, thereby inflicting upon the said REGUEL ALBERT TIBON *Y* SUMINGIT stab wounds which were the direct and immediate cause of his death thereafter.

At his arraignment, Tibon entered a plea of "not guilty." A trial on the merits ensued.

The prosecution presented witnesses Senior Police Officer 3 (SPO3) Jose M. Bagkus; Francisco Abella Abello, Jr., Tibon's neighbor; Medico-Legal Officer Dr. Emmanuel Aranas of the Philippine National Police Crime Laboratory; Gina Sumingit, Tibon's common-law wife and mother of the two victims; and Renato Tibon, brother of Tibon. Tibon was the sole witness for the defense.

During trial, the following facts were established:

Accused-appellant and his common-law wife Gina Sumingit (Gina) lived together as husband and wife since 1994. They had two children, Keen Gist (KenKen) and Reguel Albert (Reguel).[2] They lived with accused-appellant's parents and siblings on the third floor of a rented house in C.M. Recto, Manila.[3] Due to financial difficulties, Gina went to Hong Kong to work as a domestic helper, leaving accused-appellant with

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[2] CA *rollo*, p. 86.

[3] *Id.* at 89.

custody of their two children.[4] After some time, accused-appellant heard from his sister who was also working in Hong Kong that Gina was having an affair with another man. After the revelation, he was spotted drinking a lot and was seen hitting his two children.[5]

On the night of December 12, 1998, at around 11:30 p.m., accused-appellant's mother[6] and his siblings, among them Zernan and Leilani, went to accused-appellant's room. They saw accused-appellant with KenKen and Reguel. The two children appeared lifeless and bore wounds on their bodies. When accused-appellant realized that his mother and siblings had seen his two children lying on the floor, accused-appellant stabbed himself on the chest with a kitchen knife, to the shouts of horror of his mother and siblings. He tried to end his life by jumping out the window of their house.[7] Accused-appellant sustained a head injury from his fall but he and his two children, KenKen ande Reguel, were rushed to Mary Johnston Hospital by his siblings Renato and Leilani and some of their neighbors. Once at the hospital, accused-appellant received treatment for his injuries. The two children, however, could no longer be revived.[8]

Gina called long distance on December 13, 2008 and asked about KenKen and Reguel. When told about the stabbing incident, she immediately flew back to Manila the next day.[9]

Dr. Aranas acted on a written request from the Western Police District (WPD) Homicide Division and the Certificates of Identity and Consent for Autopsy signed by KenKen and Reguel's aunt Leilani Tibon. His examination of the victims' cadavers showed that Reguel, who was attacked while facing the assailant, sustained abrasions on the forehead, cheeks, and chin and five (5) stab

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[4] *Id.*

[5] *Id.* at 87.

[6] The name of accused-appellant's mother was not mentioned in the records.

[7] *Id.* at 85-86.

[8] CA *rollo*, p. 27.

[9] *Id.* at 26.

wounds, four (4) of which were caused by a sharp bladed instrument and fatal. The doctor further observed that for a two-year old to be attacked so violently, the killer must have been extremely angry.[10]

The body of three-year old KenKen sustained three (3) stab wounds on the left side of the chest, which were likewise fatal, as these pierced his heart and left lung.[11]

WPD Police Investigator SPO3 Bagkus interviewed Tibon while he was undergoing treatment from stab wounds on the chest and head injuries under police security at the Jose Reyes Medical Center. After being informed by SPO3 Bagkus of his constitutional rights, Tibon confided that he was despondent and voluntarily admitted to stabbing KenKen and Reguel.[12] Tibon's sister Leilani, likewise, told SPO3 Bagkus that Tibon was responsible for the killings.[13]

Gina confronted Tibon at the hospital where he was confined. She said the latter confessed to stabbing their children and begged for her forgiveness. She added that he even wrote a letter again the next year asking to be forgiven. Supported by receipts, she claimed that she spent PhP 173,000 for the wake and funeral of her two children. When asked if she could quantify the damage caused to her in terms of money, she said it was for PhP 500,000.[14]

Tibon denied the charges against him and raised insanity as defense. He said that he could not recall what happened on the night he allegedly stabbed his two children. He also could not remember being taken to the hospital. He said he was only informed by his siblings that he had killed KenKen and Reguel, causing him to jump off the window of their house.[15]

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[10] *Id.* at 25.

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

[12] *Id.* at 24.

[13] *Id.* at 23.

[14] *Id.* at 26.

[15] *Id.* at 28.

The Ruling of the Trial Court

The RTC found for the prosecution. It gave full faith and credit to the witnesses who testified against Tibon. In contrast, Tibon's testimony was found unworthy of belief. In spite of his defense of insanity, the trial court noted that he was in full control of his faculties before, during, and after he attacked his two children. The dispositive portion of the RTC Decision reads:

WHEREFORE, PREMISES CONSIDERED, accused HONORIO TIBON *y* DENISO (sic) is found GUILTY beyond reasonable doubt of the crime of two (2) counts of Parricide, and sentencing him in each case to suffer the extreme penalty of DEATH and to pay the heirs of the victims KEEN GIST TIBON and REGUEL ALBERT TIBON ₱75,000.00 each as civil indemnity.[16]

The Ruling of the Appellate Court

On appeal, the CA affirmed the findings of the RTC and found that the defense did not overcome the presumption of sanity. The appellate court stressed that evidence of insanity after the commission of an offense may be accorded weight only if there is also proof of abnormal behavior immediately before or simultaneous to the commission of the crime. It reduced the penalty meted to Tibon to *reclusion perpetua.*

The *fallo* of the CA decision states:

WHEREFORE, in view of the foregoing, the 2 August 2005 decision of the Regional Trial Court of Manila (Branch 26) in Criminal Case No. 98-169605-06 finding accused-appellant Honorio Tibon *y* Deiso guilty beyond reasonable doubt of the crime of parricide on two (2) counts, is AFFIRMED with MODIFICATION as to *penalty*. Pursuant to Republic Act No. 9346, the penalty of death imposed upon accused-appellant is reduced to *reclusion perpetua*, without eligibility for parole.

SO ORDERED.[17]

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[16] *Id.* at 29. Penned by Judge Silvino T. Pampilo, Jr.

[17] *Rollo*, p. 11. Penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Bienvenido L. Reyes and Isaias P. Dicdican.

Tibon maintains his innocence on appeal to this Court.

On August 3, 2009, this Court notified the parties that they may submit supplemental briefs if they so desired. The parties manifested their willingness to submit the case on the basis of the records already submitted.

The Issue

WHETHER THE COURT OF APPEALS GRAVELY ERRED IN NOT CONSIDERING THE EXEMPTING CIRCUMSTANCE OF INSANITY IN FAVOR OF THE ACCUSED-APPELLLANT.

The Ruling of this Court

Tibon argues that the exempting circumstance of insanity was established, therefore overthrowing the presumption of sanity. Combined with Tibon's testimony, Tibon's medical record with the National Center for Mental Health (NCMH) and his strange behavior allegedly show an unstable mind deprived of intelligence. That he had no recollection of the stabbing incident is further proof of his insanity. His criminal act of stabbing his children was, thus, involuntary.

The People, represented by the Office of the Solicitor General, on the other hand, rebuts the argument of Tibon by asserting that his mental state, as ascertained by the NCMH, referred to his condition to stand trial and not his mental state before and during the commission of the crimes with which he was charged. Furthermore, Tibon's non-recollection of the stabbing incident does not prove his insanity and amounts merely to a general denial. The People argues that, contrary to the requirements on establishing insanity, Tibon was unable to present any competent witness who could explain his mental condition. Lastly, the reduction of civil indemnity from PhP 75,000 to PhP 50,000 is recommended, since the crimes were not attended by any aggravating circumstances.

We affirm Tibon's conviction.

The Revised Penal Code defines parricide as follows:

Art. 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse of the accused.[18]

This appeal admits that parricide has indeed been committed. The defense, however, banks on Tibon's insanity to exempt him from punishment.

The defense has unsatisfactorily shown that Tibon was insane when he stabbed his two young sons. Article 12 of the Code states:

Circumstances which exempt from criminal liability. — The following are exempt from criminal liability:

1. An imbecile or an insane person, unless the latter has acted during a lucid interval. x x x

The aforementioned circumstances are not easily available to an accused as a successful defense. Insanity is the exception rather than the rule in the human condition.[19] While Art. 12(1) of the Revised Penal Code provides that an imbecile or insane person is exempt from criminal liability, unless that person has acted during a lucid interval, the presumption, under Art. 800 of the Civil Code, is that every human is sane. Anyone who pleads the exempting circumstance of insanity bears the burden of proving it[20] with clear and convincing evidence.[21] It is in the

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[18] *People v. Castro*, G.R. No. 172370, October 6, 2008.

[19] *People v. Yam-Id*, G.R. No. 126116, June 21, 1999, 308 SCRA 651.

[20] *People v. Pambid*, G.R. No. 124453, March 15, 2000, 328 SCRA 158; citing *People v. Catanyag*, G.R. No. 103974, September 10, 1993, 226 SCRA 293.

[21] *People v. Florendo*, G.R. No. 136845, October 8, 2003, 413 SCRA 132.

nature of confession and avoidance. An accused invoking insanity admits to have committed the crime but claims that he or she is not guilty because of insanity. The testimony or proof of an accused's insanity must, however, relate to the time immediately preceding or coetaneous with the commission of the offense with which he is charged.[22] We agree with the Solicitor General that the mental records Tibon wishes to support his defense with are inapplicable to the theory he espouses. The NCMH records of his mental health only pertain to his ability to stand trial and not to his mental state immediately before or during the commission of the crimes.

The change in Tibon's behavior was triggered by jealousy. He acted out of jealous rage at the thought of his wife having an affair overseas. Uncontrolled jealousy and anger are not equivalent to insanity. Nor is being despondent, as Tibon said he was when interviewed by the police. There is a vast difference between a genuinely insane person and one who has worked himself up into such a frenzy of anger that he fails to use reason or good judgment in what he does.[23] We reiterate jurisprudence which has established that only when there is a complete deprivation of intelligence at the time of the commission of the crime should the exempting circumstance of insanity be considered.[24]

It is apt to recall *People v. Ocfemia*[25] where this Court ruled that the professed inability of the accused to recall events before and after the stabbing incident, as in the instant case, does not necessarily indicate an aberrant mind but is more indicative of a concocted excuse to exculpate himself. It is simply too convenient for Tibon to claim that he could not remember anything rather than face the consequences of his terrible deed.

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[22] *People v. Opuran*, G.R. Nos. 147674-75, March 17, 2004, 425 SCRA 654.

[23] *People v. Villa, Jr.*, G.R. No. 129899, April 27, 2000, 331 SCRA 142.

[24] *People v. Robiños,* G.R. No. 138453, May 29, 2002, 382 SCRA 581; citing *People v. Condino*, GR No. 130945, November 19, 2001.

[25] G.R. No. 126135, October 25, 2000, 344 SCRA 315.

The requirements for a finding of insanity have not been met by the defense. As the appellate court noted, Tibon's unusual behavior prior to and after he committed parricide do not meet the stringent standards on an insanity plea as required by this Court. The presumption of sanity has not been overcome. In contrast, the prosecution, as found by the lower courts, sufficiently established evidence that Tibon voluntarily killed his two children on the night of December 12, 1998. On this matter, We find no reason to reverse the findings of fact made by the trial court and affirmed by the Court of Appeals.

A final word. Parricide is differentiated from murder and homicide by the relationship between the killer and his or her victim. Even without the attendant circumstances qualifying homicide to murder, the law punishes those found guilty of parricide with *reclusion perpetua* to death, prior to the enactment of Republic Act No. (RA) 9346 (*An Act Prohibiting the Imposition of the Death Penalty in the Philippines).* The commission of parricide is punished more severely than homicide since human beings are expected to love and support those who are closest to them. The extreme response of killing someone of one's own flesh and blood is indeed unnatural and tragic. Tibon must thus be handed down the harshest penalty for his crimes against his innocent children.

Penalty Imposed

In view of RA 9346, the appellate court correctly modified the sentence of Tibon to *reclusion perpetua.*

Pecuniary Liability

When death occurs due to a crime, the following damages may be awarded: (1) civil indemnity *ex delicto* for the death of the victim; (2) actual or compensatory damages; (3) moral damages; (4) exemplary damages; and (5) temperate damages.[26]

The Solicitor General recommended the reduction of civil indemnity from PhP75,000 to PhP50,000. However, recent

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[26] *People v. Domingo,* G.R. No. 184343, March 2, 2009.

jurisprudence pegs civil indemnity in the amount of PhP75,000,[27] which is automatically granted to the offended party, or his/her heirs in case of the former's death, without need of further evidence other than the fact of the commission of murder, homicide, parricide and rape.[28] *People v. Regalario*[29] has explained that 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.

According to Art. 2199 of the Civil Code, one is entitled to adequate compensation for pecuniary loss suffered by him that is duly proved. This compensation is termed actual damages. The party seeking actual damages must produce competent proof or the best evidence obtainable, such as receipts, to justify an award therefor.[30] We note that the trial court failed to award actual damages in spite of the presentation of receipts showing wake and funeral expenses (Exhibits "R", "R-1", "R-2", "R-4", and "R-5") amounting to PhP173,000. We therefore grant said amount.

Moral damages are also in order. Even in the absence of any allegation and proof of the heirs' emotional suffering, it has been recognized that the loss of a loved one to a violent death brings emotional pain and anguish,[31] more so in this case where two young children were brutally killed while their mother was away. The award of PhP75,000.00 is proper pursuant to established jurisprudence holding that where the imposable penalty is death but reduced to *reclusion perpetua* pursuant to RA 9346,

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[27] *People v. Regalario,* G.R. No. 174483, March 31, 2009, 582 SCRA 738, 761.

[28] *People v. Paycana, Jr.*, G.R. No. 179035, April 16, 2008, 551 SCRA 657.

[29] *People v. Anod*, G.R. No. 186420, August 25, 2009; see *People v. Victor*, G.R. No. 127903, July 9, 1998, 292 SCRA 186.

[30] *People v. Domingo, supra* note 26.

[31] *People v. Panado,* G.R. No. 133439, December 26, 2000, 348 SCRA 679, 690-691.

the award of moral damages should be increased from ₱50,000.00 to ₱75,000.00.[32]

Pursuant to prevailing jurisprudence, the trial court should have made accused-appellant account for PhP30,000 as exemplary damages on account of relationship, a qualifying circumstance, which was alleged and proved, in the crime of parricide.[33]

WHEREFORE, the appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01406 convicting accused-appellant Honorio Tibon *y* Deiso of parricide is *AFFIRMED* with the *MODIFICATION* that accused-appellant should pay the heir of the victims:

(1) Civil indemnity of PhP 75,000 for each victim;

(2) Actual damages of PhP 173,000;

(3) Moral damages of PhP 75,000 for each victim; and

(4) Exemplary damages of PhP 30,000 for each victim.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perez, JJ.,* concur.

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[32] *People v. Regalario, supra* note 27; citing *People v. Audine,* G.R. No. 168649, December 6, 2006, 510 SCRA 531, 547, *People v. Orbita*, G.R. No. 172091, March 31, 2008; *People v. Balobalo,* G.R. No. 177563, October 18, 2008.

[33] *People v. Paycana, Jr.*, *supra* note 28; citing *People v. Domingo Arnante y Dacpano*, G.R. No. 148724, October 15, 2002, 391 SCRA 155, 161.

FIRST DIVISION

[G.R. No. 188601. June 29, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOHNNY BAUTISTA *y* BAUTISTA and JERRY MORALES *y* URSAL,** *accused.* **JOHNNY BAUTISTA *y* BAUTISTA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; BEST ADDRESSED TO THE SOUND DISCRETION OF THE TRIAL COURT; EXCEPTIONS; CASE AT BAR. —** It is a well-entrenched doctrine that the assessment 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 first hand and note their demeanor, conduct and attitude under grilling examination. The trial court has the singular opportunity to observe the witnesses "through the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien." This rule admits of exceptions, however, such as when the trial court's findings of facts and conclusions are not supported by the evidence on record, or when certain facts of substance and value, likely to change the outcome of the case have been overlooked by the lower court, or when the assailed decision is based on a misapprehension of facts. None of these exceptions exists in this case.

2. **ID.; ID.; ID.; MINOR INCONSISTENCIES IN THE TESTIMONIES TEND TO BOLSTER THE CREDIBILITY OF THE WITNESS. —** Minor inconsistencies in the testimonies, even if they do exist x x x tend to bolster, rather than weaken, the credibility of the witness for they show that his testimony was not contrived or rehearsed. Trivial

inconsistencies do not rock the pedestal upon which the credibility of the witness rests, but enhances credibility as they manifest spontaneity and lack of scheming.

3. ID.; ID.; ID.; ID.; INCONSISTENCY BETWEEN AFFIDAVIT AND TESTIMONY OF A WITNESS; TESTIMONY COMMANDS GREATER WEIGHT CONSIDERING THAT AFFIDAVITS TAKEN *EX PARTE* ARE ALMOST INVARIABLY INCOMPLETE AND OFTENTIMES INACCURATE; CASE AT BAR. — It is settled that whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight considering that affidavits taken *ex parte* are inferior to testimony given in court, the former being almost invariably incomplete and oftentimes inaccurate. x x x Moreover, the alleged inconsistencies in the declarations and testimony of the witnesses were sufficiently explained. The reason why Fritzie's affidavit did not mention accused-appellant's participation was because the affidavit was only limited to those who participated in the actual kidnapping. Likewise, as to the specific role of accused-appellant, Fritzie could only testify on what she heard about this from Palapar who was privy to the conspiracy to kidnap her. However, Fritzie categorically affirmed in open court that accused-appellant was among those who guarded her in the safe house. This observation indicates the complicity of accused-appellant in the kidnapping. As to Dexter's contradicting affidavit and testimony, this was more than adequately explained, as well, when he testified in open court that his statement in the affidavit did not mean that he had no opportunity to recognize accused-appellant Bautista as the person who received the ransom money. It only meant that he will be able to identify the accused-appellant if he saw him again. x x x It is quite common for a witness to recognize a malefactor better when there is a face-to-face confrontation during the hearing. Jurisprudence is cognizant of this situation.

4. ID.; ID.; ID.; TESTIMONIES ENTITLED TO FULL FAITH AND CREDIT WHEN PROSECUTION WITNESSES WERE NOT MOVED BY ANY IMPROPER MOTIVE IN TESTIFYING AGAINST ACCUSED. — Furthermore, accused-appellant was unable to prove any ill motive on the part of the prosecution witnesses. The presumption is that their

testimonies were not moved by any ill will and was untainted by bias, and thus entitled to full faith and credit.

5. **CRIMINAL LAW; REVISED PENAL CODE; CONSPIRACY; EXISTS WHEN TWO OR MORE PERSONS COME TO AN AGREEMENT CONCERNING THE COMMISSION OF A FELONY AND DECIDE TO COMMIT IT. —** Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Where all the accused acted in concert at the time of the commission of the offense, and it is shown by such acts that they had the same purpose or common design and were united in its execution, conspiracy is sufficiently established. It must be shown that all participants performed specific acts with such closeness and coordination as to indicate a common purpose or design to commit the felony.

6. **ID.; ID.; ID.; ID.; WHEN AN ACCUSED MAY BE HELD GUILTY AS A CO-PRINCIPAL BY REASON OF CONSPIRACY; CASE AT BAR. —** Evidently, to hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended. In this case, the evidence on record inscrutably shows the existence of a conspiracy between accused-appellant and his co-accused. The testimony of the state witness Palapar was replete with instances of accused-appellant's involvement with the kidnapping group considering: (a) accused-appellant was present at Chowking Malate when the kidnapping was being planned with the group; (b) he was also with the group of Yap-Obeles immediately after the kidnapping attempt on a certain trader was foiled; (c) he was the one who rented the gray Toyota Corolla that was used in the kidnapping; and (d) he was likewise present with Yap-Obeles and his wife, Doris, when the couple asked Palapar to deliver Roy's share of the ransom money. Taking these facts in conjunction with the testimony of Dexter, who testified that accused-appellant was the one who received the ransom money and apparently, was also the one giving

him instructions, and that of Fritzie, who testified that accused-appellant was one of her guards at the safe house, then the commonality of purpose of the acts of accused-appellant together with the other accused can no longer be denied. Such acts have the common design or purpose to commit the felony of kidnapping for ransom. Thus accused-appellants' argument that he is a mere accomplice must fail. He is liable as a principal for being a co-conspirator in the crime of Kidnapping for Ransom under Art. 267 of the RPC, as amended by R.A. 7659.

7. **REMEDIAL LAW; EVIDENCE; ALIBI; ACCUSED MUST ESTABLISH PHYSICAL IMPOSSIBILITY FOR HIM TO BE PRESENT AT THE TIME AND SCENE OF THE CRIME; CASE AT BAR. —** Consistently, this Court has declared that for the defense of alibi to prosper, the defense must establish the physical impossibility for the accused to be present at the scene of the crime at the time of the commission thereof. The facts in this case illustrate that there was no physical impossibility for the accused-appellant to be at the scene of the crime, considering that Manila is just a short ride away from Gumaca, Quezon. Physical impossibility takes into consideration not only the geographical distance between the scene of the crime and the place where the accused-appellant maintains where he was at, but more importantly, the accessibility between these two points — how this distance translates to number of hours of travel. Geographical distances may be taken judicial notice of, but this alone will not suffice for purposes of proving an alibi.

8. **ID.; ID.; ID.; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION BY THE COMPLAINANT; CASE AT BAR. —** What is more, alibi is considered as one of the weakest defenses not only due to its inherent weakness and unreliability, but also because it is easy to fabricate. Nothing is more settled in criminal law jurisprudence than the doctrine that alibi cannot prevail over the positive and categorical testimony and identification of the accused by the complainant. Such is the situation in the instant case. Accused-appellant was positively and categorically identified not only by the victim but as well as her brother. As has been consistently ruled by this Court, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness and alibi, if not substantiated by clear and convincing evidence,

is negative and self-serving evidence undeserving of weight in law.

9. **ID.; ID.; FLIGHT OF ACCUSED; CLEARLY EVINCES "CONSCIOUSNESS OF GUILT AND A SILENT ADMISSION OF CULPABILITY". —** It should be noted that accused-appellant fled to Bicol when he learned that Yap-Obeles was arrested by the authorities. In *People v. Deduyo*, this Court said that flight by the accused clearly evinces "consciousness of guilt and a silent admission of culpability. Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion."

10. **CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING FOR RANSOM; COMMITTED IN CASE AT BAR**. — The crime of Kidnapping for Ransom is defined under Art. 267 of the RPC, as amended by R.A. 7659. x x x The prosecution has proved that the motive for the kidnapping was indeed to obtain ransom money for the victim. Ransom is money, price or consideration paid or demanded for the redemption of a captured person or persons; a payment that releases from captivity. In the instant case, the testimonies of the witnesses were more than sufficient to satisfy the motive of the accused-appellant and his co-conspirators to obtain ransom money from the victim's family. x x x We find that the prosecution has discharged its burden of proving the guilt of the accused-appellant for the crime of Kidnapping for Ransom with moral certainty.

11. **ID.; ID.; ID.; CIVIL LIABILITY; DAMAGES THAT MAY BE AWARDED. —** With respect to the award of damages, the prevailing jurisprudence dictates the following amounts to be imposed: PhP 75,000 as civil indemnity which is awarded if the crime warrants the imposition of death penalty; PhP 75,000 as moral damages because the victim is assumed to have suffered moral injuries, without need of proof; and PhP 30,000 as exemplary damages. Even though the penalty of death was not imposed, the civil indemnity of PhP 75,000 is still proper because 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.

12. ID.; ID.; ID.; ID.; ID.; PROPER MORAL AND EXEMPLARY DAMAGES IN CASE AT BAR. — Instead of the usual award of PhP 75,000 as moral damages without need of proof, this Court, however, sustains the award of the RTC of PhP 200,000 as moral damages for the ignominy and sufferings Fritzie and her family suffered due to the accused-appellant's act of detaining the victim in blindfold and mentally torturing her and her family into raising the ransom money. And to set an example for the public good, accused-appellant should pay the victim PhP 30,000 as exemplary damages following prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

The Case

This is an appeal from the March 18, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 01694 entitled *People of the Philippines v. Johnny Bautista y Bautista and Jerry Morales y Ursal (accused-appellants), Roberto Yap-Obeles, Luis Miranda, John Doe @ "Roy" and John Doe @ "Centes" (accused)*, which affirmed the July 1, 2002 Decision in Criminal Case No. 00-2082 of the Regional Trial Court (RTC), Branch 116 in Pasay City.[2]

Accused-appellant Johnny Bautista *y* Bautista (Bautista) stands convicted of the crime of Kidnapping for Ransom, as defined and penalized under Article 267 of the Revised Penal Code (RPC),

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[1] *Rollo*, pp. 2-25. Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Edgardo P. Cruz and Vicente S.E. Veloso.

[2] CA *rollo*, pp. 43-80. Penned by Judge Eleuterio F. Guerrero.

as amended by Republic Act No. (RA) 7659, for which he was sentenced to suffer the penalty of *reclusion perpetua*.

The Facts

The charge against the accused-appellant stemmed from the following Information:

> That on or about November 12, 2000, in the City of Pasay, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then private individuals, conspiring and confederating with each other, and mutually helping one another, together with others whose real names and/or whereabouts are still unknown, did then and there willfully, unlawfully and feloniously, for the purpose of extorting ransom from one Fritzie So and her parents/family, or of killing said Fritzie so if the desired amount of money could not be given, kidnap, and carry away, detain and deprive the said Fritzie So of her liberty without authority of law, against her will and consent.
>
> Contrary to law.[3]

On December 21, 2000, accused-appellant Bautista, Roberto Yap-Obeles (Yap-Obeles), Celso Palapar (Palapar), and Jerry Morales (Morales), with the assistance of their counsel *de parte*, were arraigned and pleaded "not guilty" to the charge against them.[4] Pre-trial was then considered closed and termination.

Prior to trial on the merits, however, all of the accused separately petitioned the trial court for bail for their provisional liberty.[5] During the course of the initial hearing of the separate petitions for bail, it was mutually agreed by the parties that whatever evidence the prosecution adduces in support of its opposition will be considered to form part of its evidence in chief in the case, without prejudice to the presentation of other evidence as additional proof during the trial of the case on its merits. After presentation of evidence, the trial court resolved

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[3] Records, pp. 2-3.

[4] CA *rollo*, p. 44.

[5] *Id.* at 44-45.

to deny the petitions for bail filed by the accused for lack of merit, except that of accused Yap-Obeles who was granted bail for his temporary liberty in the amount of PhP 300,000.[6]

Likewise before trial on the merits, the prosecution sought the discharge of accused Palapar as a state witness which, after due hearing and despite the opposition of his co-accused, was granted by the trial court through a Resolution dated July 3, 2001.[7]

Trial on the merits finally commenced on March 27, 2001.

During the trial, the prosecution offered the testimonies of Fritzie So (Fritzie), Dexter So (Dexter), P/Sr. Insp. Fernando Ortega (P/Sr. Insp. Ortega), Atty. Florimond Rous (Atty. Rous) and Palapar. On the other hand, the defense presented as its witnesses Yap-Obeles, Morales, and Bautista, the accused-appellant.

Version of the Prosecution

A summary of the facts according to the prosecution is as follows:

On November 12, 2000, at around 12 noon to 1 o'clock in the afternoon, Fritzie was inside their store located at 2485 Taft Avenue, Pasay City. She was with her brothers Dexter and Kingsley So, and her mother, Lolita So, when they noticed a grey Toyota Corolla car and a black Mitsubishi Adventure going around their place. The cars were driven by men later identified as Palapar and Yap-Obeles, respectively.[8]

Yap-Obeles, a doctor by profession and a businessman, had been known to the So family for 10 years. He had also been a tenant for six months at the So family's apartment located at the back of the family's hardware store.[9]

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[6] *Id.* at 45.

[7] Records, pp. 322-329.

[8] TSN, January 31, 2001, pp. 5-6.

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

After a while, Fritzie noticed that the Toyota Corolla stopped in front of the store while the Mitsubishi Adventure parked some two meters away. Three (3) armed men then alighted from the Toyota Corolla and entered the store. Two (2) of the armed men, later identified as Morales and accused Luis Miranda, poked their guns at Fritzie's brothers and mother and warned them not to report the incident to the police. The remaining armed man, later identified as *alias* "Centes," forcibly took and carried Fritzie from the store and forced her to board the Toyota Corolla. The car then sped towards the direction of Baclaran, followed by the Mitsubishi Adventure.[10]

On board the vehicle, Fritzie noticed that aside from her, there were five (5) other persons inside the car: Palapar, the driver, Morales, and three (3) other unidentified men. Fritzie was seated between Morales and an unidentified man. During the ride, Fritzie was blindfolded and the blindfold was not removed until they reached the safe house.[11]

Meanwhile, after Fritzie was abducted from the store, Dexter called up the Criminal Investigation Division (CID) of the Pasay City Police Station to report the incident but was advised to go directly to the police headquarters. At around 1:45 in the afternoon, or 15 minutes after Fritzie's abduction was reported to the police, Mrs. Lolita So received a telephone call from the armed men who informed her that they had Fritzie. Dexter also received similar calls from the kidnappers.[12]

At 2:00 in the afternoon of November 12, 2000, Dexter went to the CID of the Pasay City Police where he was referred to the Presidential Anti-Organized Crime Task Force (PAOCTF) and he was able to talk to Colonel Michael Ray Aquino (Col. Aquino) through the telephone. Col. Aquino told Dexter that his men would arrive at their house later that evening to coordinate with him.[13]

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[10] *Id.* at 7; TSN, March 27, 2001, pp. 16-23; CA *rollo*, p. 46.

[11] TSN, January 31, 2001, p. 39; CA *rollo*, p. 46.

[12] TSN, March 27, 2001, pp. 24-25.

[13] CA *rollo*, p. 47.

When Dexter returned home from the office of the CID, he received a call from the kidnappers who demanded PhP 8 million for the release of Fritzie. Dexter told the caller that he and his family could not raise such amount although they would try their best to look for such amount. The caller replied that Dexter better do something as he would call back and if they fail to raise the amount, Dexter would find the corpse or dead body of his sister in Pampanga. This threat made Dexter and his mother so afraid that they could not sleep or eat thereafter.[14]

When the abductors arrived at their destination in San Nicolas, Bacoor, Cavite, Fritzie was told to alight and later brought inside a room. When the blindfold was removed, she noticed that the persons who abducted her were the same ones attending to the safe house. She identified them as Palapar, Yap-Obeles, a certain *alias* "Roy" and *alias* "Centes," Luis Miranda, Morales, and accused-appellant Bautista.

Fritzie was kept inside one of the rooms in the safe house. She was allowed to go and use the comfort room for her personal need. But while at the safe house, she noticed that all of her abductors tried to hide their faces from her but, nonetheless, she recognized and remembered one of them as accused-appellant Bautista.[15]

Later that night, one of the abductors, identified by Fritzie as the accused *alias* "Roy," entered her room and angrily told her that her family reported her abduction to the *barangay* authorities and did not make any arrangements for the payment of the ransom money. Roy then told Fritzie that they would just kill her. Because of such threat, she became so afraid that she cried for a long time for fear that she would really be killed.[16]

After several negotiations, Dexter was able to bargain for the payment of PhP 1 million ransom for the release of his sister. He agreed to meet with the kidnappers at the Magallanes

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[14] TSN, March 27, 2001, pp. 32-40.

[15] TSN, January 31, 2001, pp. 11-14.

[16] CA *rollo*, p. 46.

Supermarket along the South Expressway at 4:00 in the afternoon on November 14, 2000. The kidnappers instructed him to lower down the windshields of his car, not to report the meeting to the police, and to bring the exact amount of ransom money in a travelling bag; otherwise, something will happen to his sister. Subsequently, the kidnappers changed the location and instead instructed him to bring the money to the Magallanes Bridge, not the Magallanes Supermarket, particularly at the broken post situated beside a billboard of Guess on top of the same bridge.[17]

When Dexter arrived at the place designated by the kidnappers, he threw the money bag along the street near the bridge, after which the kidnapper called him in his cellphone and Dexter was told to pick up the bag and throw it on the road underneath the bridge. As instructed, Dexter dropped the bag and he suddenly saw someone catch the bag. He later identified accused-appellant Bautista as the person who caught the bag.[18]

After delivering the ransom money, Dexter went home. Thereupon, he received a call from the kidnapper telling him that the money was complete and that his sister, Fritizie, would be released after an hour. The kidnappers gave Fritzie PhP 1,000 for taxi fare and at around 8:30 in the evening of November 14, 2000, she finally arrived home.[19]

That night, *alias* "Roy" received a phone call from Yap-Obeles instructing him to go to his (Yap-Obeles) warehouse in Paco, Manila. Roy answered that he would instead send Palapar. Upon Roy's instructions, Palapar went to the warehouse and found Yap-Obeles, accused-appellant, and accused-appellant's sister, Doris, who is also Yap-Obeles' wife, waiting for him. Yap-Obeles and Doris gave Palapar PhP 300,000 wrapped in a yellow plastic bag, with instructions to deliver it to Roy as his share in the ransom money. Palapar did as told and was in turn given PhP7,000 by Roy as payment for his services as the driver of the group.[20]

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[17] TSN, March 27, 2001, pp. 32-40.

[18] *Id.* at 40-51.

[19] CA *rollo*, p. 47.

[20] TSN, August 13, 2001, pp. 36-44.

On November 15, 2000, two teams were designated by Col. Cesar Mancao of the PAOCTF to investigate the kidnapping of Fritzie. One team was headed by P/Sr. Insp. Ortega and the other by P/Col. Tucay. The following day, at about 4:00 in the morning, Col. Mancao conducted a briefing of the teams informing them that the PAOCTF was able to trace a call made by Palapar to a certain Marilyn Pena, a reported neighbor of Palapar.[21] The teams were then sent to scout the area and found a person fitting the description of Palapar. Palapar informed P/Col. Tucay that he would cooperate with the task force in the apprehension of the persons involved in the kidnapping.

Palapar disclosed that the plan to kidnap Fritzie was hatched in a meeting among the group which, among others, included Yap-Obeles and Bautista.[22] Further, he narrated that on November 10, 2000, he, Luis Miranda, and Roy even went to the hardware store of the victim to familiarize themselves with the appearance of Fritzie and with the vicinity of the hardware store.[23] He pointed to Yap-Obeles as the mastermind and financier of the kidnapping and also mentioned the names and whereabouts of the other persons involved in the kidnapping.

Relying on this information, the teams proceeded to Pier 4, North Harbor to search for a certain person, who was subsequently identified as Morales. They proceeded to a house pointed to by Palapar as the residence of Morales, but the person who opened the door of the house was not Morales. Instead, this person pointed to the whereabouts of Morales, and he (Morales) was subsequently invited by the team of PAOCTF officers to give his side on his alleged involvement in the kidnapping incident.[24]

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[21] TSN, February 14, 2001, pp. 14-15 and 42-44; TSN, August 14, 2001, pp. 32-34.

[22] TSN, September 5, 2001, pp. 18, 19, 21 and 25.

[23] TSN, March 27, 2001, p. 7.

[24] TSN, February 14, 2001, pp. 16-24 and 44-49; August 13, 2001, pp. 50-53.

Next, the teams proceeded to locate a certain Yap-Obeles at 321 Southway Mansion in Manila and likewise invited him to go to Camp Crame. As a last stop, the team of P/Sr. Insp. Ortega dropped by the warehouse of Yap-Obeles at Paco, Manila to retrieve the motor vehicle and the red scooter involved in the kidnapping incident. At the warehouse, they met Yap-Obeles' wife, Doris Bautista, and asked her permission to bring both the scooter and the Mitsubishi Adventure to their office. Doris Bautista agreed and both vehicles were turned over to the Legal Investigation Division after said team arrived at the PAOCTF office in Camp Crame.[25]

The police then went after Roy, who was able to escape.[26] Bautista, on the other hand, was persuaded by his younger brother to surrender.[27]

The following day, the police called up Dexter saying that certain persons surrendered and others were arrested. He was requested to go to Camp Crame to identify the suspects. Upon arriving at Camp Crame, Dexter was shown a police line up and he identified two persons: first, accused-appellant Bautista as the one who received the money; and second, Yap-Obeles as the driver of the black Mitsubishi Adventure who followed the Toyota Corolla car that carried away his sister.[28]

Version of the Defense

Bautista's defense, on the other hand, was confined to an alibi, to wit:

In the evening of November 11, 2000, accused-appellant and his live-in partner, Janet Arida (Janet), left Manila on board a gray Honda City to attend the town fiesta in Gumaca which was scheduled on November 12, 2000. He stayed at Janet's house in Barangay Progreso, Gumaca, Quezon the entire day

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[25] TSN, February 14, 2001, pp. 24-33.

[26] TSN, August 14, 2001, p. 6.

[27] TSN, October 18, 2001, pp. 15-17.

[28] CA *rollo,* p. 48.

and only left for Manila the following day, November 13, 2000 at around 4:00 in the morning. He then reported for work the next day, November 14, 2000, at the Almighty Trading Corporation in Paco, Manila, a corporation owned by the family of Yap-Obeles, the husband of his younger sister, Doris.[29]

He denied knowledge of any of the accused, except Yap-Obeles, because of his marriage to his sister. But, he admitted that he fled to Bicol when he learned that Yap-Obeles was arrested fearing that he might be implicated as he was an employee of Yap-Obeles. Further, he admitted that he rented a vehicle for Yap-Obeles at a rent-a-car company and the said vehicle was delivered on November 10 or 11, 2000. Yap-Obeles allegedly provided the rent money.[30]

But contrary to his initial testimony, the accused-appellant subsequently admitted knowing Palapar as early as second week of October 2000 when the latter went to the warehouse where accused-appellant was working. With the help of his younger brother and a certain Police Inspector Moya, accused-appellant eventually surrendered.[31]

His alibi was corroborated by the mother of his live-in partner, Ludivina Arida. She testified that accused-appellant was indeed with her daughter on November 12, 2000 attending the fiesta, and that he left early in the morning of November 13, 2000.

Ruling of the Trial Court

After trial, the RTC convicted the appellant. The dispositive portion of the Decision reads:

WHEREFORE, in light of the foregoing facts and considerations, this Court hereby renders judgment finding the accused Roberto Yap-Obeles, Johnny Bautista *y* Bautista and Jerry Morales *y* Ursal all GUILTY beyond reasonable doubt as principals in the crime of Kidnapping for Ranson, as this felony is defined and penalized under

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[29] *Rollo*, p. 12.

[30] *Id.*

[31] *Id.*

Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659, and are sentenced each to death. The same accused are further ordered to restore and to pay jointly and severally the family of the victim Fritzie So the sum of Php1,000,000.00, by way of restitution, and the sum of Php200,000.00, as moral damages, plus costs of suit.

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SO ORDERED.[32]

Ruling of the Appellate Court

On March 18, 2009, the CA affirmed the judgment of the lower court with a modification as to the penalty. The CA noted that the passage of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of the Death Penalty in the Philippines," effectively proscribed the imposition of the death penalty. In lieu of which, the CA imposed *reclusion perpetua* without eligibility of parole, notwithstanding the mitigating circumstance of voluntary surrender. The CA reasoned that a single indivisible penalty, like *reclusion perpetua*, is "applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed."[33] The dispositive portion of the Decision reads:

WHEREFORE, the appealed Decision is affirmed with the MODIFICATION that appellants are each sentenced to *reclusion perpetua*. Costs against the appellants.

SO ORDERED.[34]

The Issues

Bautista contends in his *Brief* that:[35]

1. The court *a quo* gravely erred in giving full credence to the testimonies of the prosecution witnesses;

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[32] CA *rollo*, pp. 22-23.

[33] *Rollo*, p. 24.

[34] *Id.* at 11.

[35] CA *rollo*, pp. 196-225.

2. Assuming *arguendo* that the accused-appellant is guilty, the court *a quo* gravely erred in finding that the accused-appellant acted in conspiracy with the other co-accused and in not finding that his participation in the commission of the crime was as a mere accomplice.[36]

The Court's Ruling

We sustain appellant's conviction.

Factual Findings of the Trial Court should be Respected

In his *Brief*, accused-appellant argues that the trial court failed to consider several inconsistencies in the testimonies of the victim. Notably, he pounds on the fact that on cross-examination Fritzie stated that she had no personal knowledge of the participation of the accused-appellant in the alleged kidnapping for ransom. It is his position that Fritzie's identification was merely derived from the confession of the state witness, Palapar.

In addition, accused-appellant asserts that the trial court also failed to consider the material inconsistencies of the testimony of the victim's brother, Dexter, with regard to his (accused-appellant's) identification as the recipient of the ransom money.

We do not agree.

After a careful perusal of the records of this case, this Court finds no cogent reason to question the trial court's assessment of the credibility of the witnesses.

It is a well-entrenched doctrine that the assessment 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 first hand and note their demeanor, conduct and attitude under grilling examination.[37] The trial court has the singular opportunity to observe the witnesses "through

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[36] *Id.* at 198-199.

[37] *People v. Bantiling*, G.R. No. 136017, November 15, 2001, 369 SCRA 47.

the different indicators of truthfulness or falsehood, such as the angry flush of an insisted assertion or the sudden pallor of a discovered lie or the tremulous mutter of a reluctant answer or the forthright tone of a ready reply; or the furtive glance, the blush of conscious shame, the hesitation, the sincere or the flippant or sneering tone, the heat, the calmness, the yawn, the sigh, the candor or lack of it, the scant or full realization of the solemnity of an oath, the carriage and mien."[38]

This rule admits of exceptions, however, such as when the trial court's findings of facts and conclusions are not supported by the evidence on record, or when certain facts of substance and value, likely to change the outcome of the case have been overlooked by the lower court, or when the assailed decision is based on a misapprehension of facts.[39] None of these exceptions exists in this case.

Moreover, the alleged inconsistencies in the declarations and testimony of the witnesses were sufficiently explained. The reason why Fritzie's affidavit did not mention accused-appellant's participation was because the affidavit was only limited to those who participated in the actual kidnapping. Likewise, as to the specific role of accused-appellant, Fritzie could only testify on what she heard about this from Palapar who was privy to the conspiracy to kidnap her. However, Fritzie categorically affirmed in open court that accused-appellant was among those who guarded her in the safe house. This observation indicates the complicity of accused-appellant in the kidnapping.

As to Dexter's contradicting affidavit and testimony, this was more than adequately explained, as well, when he testified in open court that his statement in the affidavit did not mean that he had no opportunity to recognize accused-appellant Bautista as the person who received the ransom money. It only meant that he will be able to identify the accused-appellant if he saw him again, *viz*:

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[38] *People v. Yambot*, G.R. No. 120350, October 13, 2000, 343 SCRA 20.

[39] *People v. Burgos*, G.R. No. 117451, September 29, 1997, 279 SCRA 697.

COURT:

Q: So would you still insist that you recognized Bautista as the one who catched (*sic*) or received the bag of money?

A: Yes, your honor.

Q: Then if you insist now that it was Bautista who catched (*sic*) or received the money, why is it that in your sworn statement you did not mention it and you mentioned that you did not recognize the one who received the money?

A: **When I threw the bag, I did not closely see him but when I see him again I can identify him, you Honor.**[40] (Emphasis supplied.)

It is quite common for a witness to recognize a malefactor better when there is a face-to-face confrontation during the hearing. Jurisprudence is cognizant of this situation.[41]

Therefor, such testimonies prevail over the affidavits previously executed by the witnesses. It is settled that whenever there is inconsistency between the affidavit and the testimony of a witness in court, the testimony commands greater weight considering that affidavits taken *ex parte* are inferior to testimony given in court, the former being almost invariably incomplete and oftentimes inaccurate.[42]

Additionally, accused-appellant cannot plausibly bank on the minor inconsistencies in the testimonies, even if they do exist because such minor and insignificant inconsistencies tend to bolster, rather than weaken, the credibility of the witness for they show that his testimony was not contrived or rehearsed.[43] Trivial inconsistencies do not rock the pedestal upon which the

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[40] TSN, March 27, 2001, p. 90.

[41] *People v. Eduardo Pavillare*, G.R. No. 129970, April 5, 2000, 329 SCRA 684.

[42] *People v. Garcia*, G.R. No. 139753, May 7, 2002, 381 SCRA 722.

[43] *People v. Sagun*, G.R. No. 110554, February 19, 1999, 303 SCRA 382, 397.

credibility of the witness rests, but enhances credibility as they manifest spontaneity and lack of scheming.[44]

Furthermore, accused-appellant was unable to prove any ill motive on the part of the prosecution witnesses. The presumption is that their testimonies were not moved by any ill will and was untainted by bias, and thus entitled to full faith and credit.[45]

Conspiracy was present

In addition, accused-appellant submits that his participation in the commission of the crime was merely that of an accomplice and that the finding of the trial court of conspiracy is in error. He argues that the prosecution failed miserably to prove the existence of a conspiracy.

We disagree.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[46] Where all the accused acted in concert at the time of the commission of the offense, and it is shown by such acts that they had the same purpose or common design and were united in its execution, conspiracy is sufficiently established.[47] It must be shown that all participants performed specific acts with such closeness and coordination as to indicate a common purpose or design to commit the felony.[48]

In *People v. Pagalasan*, the Court elaborately discussed the concept of conspiracy, to wit:

> Judge Learned Hand once called conspiracy "the darling of the modern prosecutor's nursery." There is conspiracy when two or more

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[44] *People v. Cristobal,* G.R. No. 116279, January 29, 1996, 252 SCRA 507, 517.

[45] *People v. Quilang*, G.R. Nos. 123265-66, August 12, 1999, 312 SCRA 314.

[46] *People v. Bacungay*, G.R. No. 125017, March 12, 2002, 379 SCRA 22.

[47] *People v. Tejero*, G.R. No. 135050, April 19, 2002, 381 SCRA 382, 390.

[48] *People v. Dy,* G.R. Nos. 115236-37, January 27, 2002, 375 SCRA 15, 47.

persons agree to commit a felony and decide to commit it. **Conspiracy as a mode of incurring criminal liability must be proven separately from and with the same quantum of proof as the crime itself. Conspiracy need not be proven by direct evidence.** After all, secrecy and concealment are essential features of a successful conspiracy. Conspiracies are clandestine in nature. **It may be inferred from the conduct of the accused before, during and after the commission of the crime, showing that they had acted with a common purpose and design.** Paraphrasing the decision of the English Court in *Regina v. Murphy*, conspiracy may be implied if it is proved that two or more persons aimed by their acts towards the accomplishment of the same unlawful object, each doing a part so that their combined acts, though apparently independent of each other, were, in fact, connected and cooperative, indicating a closeness of personal association and a concurrence of sentiment. **To hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose.**

The United States Supreme Court in *Braverman v. United States*, held that the precise nature and extent of the conspiracy must be determined by reference to the agreement which embraces and defines its objects. For one thing, the temporal dimension of the conspiracy is of particular importance. Settled as a rule of law is that the conspiracy continues until the object is attained, unless in the meantime the conspirator abandons the conspiracy or is arrested. There is authority to the effect that the conspiracy ends at the moment of any conspirator's arrest, on the presumption, albeit rebuttable, that at the moment the conspiracy has been thwarted, no other overt act contributing to the conspiracy can possibly take place, at least as far as the arrested conspirator is concerned. The longer a conspiracy is deemed to continue, the greater the chances that additional persons will be found to have joined it. There is also the possibility that as the conspiracy continues, there may occur new overt acts. If the conspiracy has not yet ended, then the hearsay acts and declarations of one conspirator will be admissible against the other conspirators and one conspirator may be held liable for substantive crimes committed by the others.

Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common

design as one of its probable and natural consequences even though it was not intended as part of the original design. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended. Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result that they are in contemplation of law, charged with intending the result. **Conspirators are necessarily liable for the acts of another conspirator even though such act differs radically and substantively from that which they intended to commit.**[49] x x x (Emphasis supplied.)

Evidently, to hold an accused guilty as a co-principal by reason of conspiracy, he must be shown to have performed an overt act in pursuance or furtherance of the complicity. There must be intentional participation in the transaction with a view to the furtherance of the common design and purpose. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.

In this case, the evidence on record inscrutably shows the existence of a conspiracy between accused-appellant and his co-accused. The testimony of the state witness Palapar was replete with instances of accused-appellant's involvement with the kidnapping group considering: (a) accused-appellant was present at Chowking Malate when the kidnapping was being planned with the group;[50] (b) he was also with the group of Yap-Obeles immediately after the kidnapping attempt on a certain trader was foiled;[51] (c) he was the one who rented the gray Toyota Corolla that was used in the kidnapping;[52]and (d) he was likewise present with Yap-Obeles and his wife, Doris, when the couple asked Palapar to deliver Roy's share of the ransom money.[53]

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[49] *People v. Pagalasan*, G.R. Nos. 131926 & 138991, June 18, 2003.

[50] TSN, September 5, 2001, pp. 18-19.

[51] TSN, August 14, 2001, p. 46.

[52] TSN, September 5, 2001, p. 20.

[53] TSN, August 13, 2001, pp. 36-44.

Taking these facts in conjunction with the testimony of Dexter, who testified that accused-appellant was the one who received the ransom money and apparently, was also the one giving him instructions, and that of Fritzie, who testified that accused-appellant was one of her guards at the safe house, then the commonality of purpose of the acts of accused-appellant together with the other accused can no longer be denied. Such acts have the common design or purpose to commit the felony of kidnapping for ransom.

Thus, accused-appellants' argument that he is a mere accomplice must fail. He is liable as a principal for being a co-conspirator in the crime of Kidnapping for Ransom under Art. 267 of the RPC, as amended by R.A. 7659, which provides:

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 the kidnapping or detention shall have lasted more than five 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, female or a public officer.

The penalty shall be death penalty where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned 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.

The prosecution has proved that the motive for the kidnapping was indeed to obtain ransom money for the victim. Ransom is money, price or consideration paid or demanded for the redemption

of a captured person or persons; a payment that releases from captivity.[54] In the instant case, the testimonies of the witnesses were more than sufficient to satisfy the motive of the accused-appellant and his co-conspirators to obtain ransom money from the victim's family.

Defense of Alibi cannot Stand

In a last attempt to avoid liability, accused-appellant relays an alibi, which, according to him, would be sufficient to acquit him when taken in light of his other arguments. The Court is not persuaded.

Consistently, this Court has declared that for the defense of alibi to prosper, the defense must establish the physical impossibility for the accused to be present at the scene of the crime at the time of the commission thereof.[55] The facts in this case illustrate that there was no physical impossibility for the accused-appellant to be at the scene of the crime, considering that Manila is just a short ride away from Gumaca, Quezon.

Physical impossibility takes into consideration not only the geographical distance between the scene of the crime and the place where the accused-appellant maintains where he was at, but more importantly, the accessibility between these two points — how this distance translates to number of hours of travel.[56] Geographical distances may be taken judicial notice of, but this alone will not suffice for purposes of proving an alibi.[57]

What is more, alibi is considered as one of the weakest defenses not only due to its inherent weakness and unreliability, but also

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[54] *Corpus Juris Secundum*, 458; 36 Words and Phrases, 102.

[55] *People v. Guzman,* G.R. No. 169246, January 26, 2007, 513 SCRA 156, 171-172; *People v. Ramos*, G.R. No. 125898, April 14, 2004; *People v. Abes,* G.R. No. 138937, January 20, 2004, 420 SCRA 259, 274; *People v. Colonia,* G.R. No. 138541, June 12, 2003; *People v. Babac,* G.R. No. 97932, December 23, 1991.

[56] *People v. Mamarion,* G.R. No. 137554, October 1, 2003, 412 SCRA 47; citing *People v. Gomez*, G.R. No. 132171, May 31, 2000, 332 SCRA 661, 669.

[57] *Id.*

because it is easy to fabricate.[58] Nothing is more settled in criminal law jurisprudence than the doctrine that alibi cannot prevail over the positive and categorical testimony and identification of the accused by the complainant.[59] Such is the situation in the instant case. Accused-appellant was positively and categorically identified not only by the victim but as well as her brother. As has been consistently ruled by this Court, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness and alibi, if not substantiated by clear and convincing evidence, is negative and self-serving evidence undeserving of weight in law.[60]

It should be noted that accused-appellant fled to Bicol when he learned that Yap-Obeles was arrested by the authorities.[61] In *People v. Deduyo*,[62] this Court said that flight by the accused clearly evinces "consciousness of guilt and a silent admission of culpability. Indeed, the wicked flee when no man pursueth, but the innocent are as bold as lion."[63]

In conclusion, in criminal cases such as the one on hand, the prosecution is not required show the guilt of the accused with absolute certainty. Only moral certainty is demanded, or that degree of proof which, to an unprejudiced mind, produces conviction.[64] We find that the prosecution has discharged its burden of proving the guilt of the accused-appellant for the crime of Kidnapping for Ransom with moral certainty.

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[58] *People v. Torres*, G.R. No. 176262, September 11, 2007, 532 SCRA 654; *People v. Santiago*, G.R. No. 175326, November 28, 2007, 539 SCRA 198.

[59] *People v. Gingos*, G.R. No. 176632, September 11, 2007, 532 SCRA 670, 683.

[60] *People v. Tumulak*, G.R. No. 177299, November 28, 2007, 539 SCRA 296.

[61] TSN, October 18, 2001, p. 15.

[62] G.R. No. 138456, October 23, 2003, 414 SCRA 146, 162.

[63] *People v. Deduyo,* G.R. No. 138456, October 23, 2003, 414 SCRA 146, 162.

[64] RULES OF COURT, Rule 133, Sec. 2.

With respect to the award of damages, the prevailing jurisprudence[65] dictates the following amounts to be imposed: PhP 75,000 as civil indemnity which is awarded if the crime warrants the imposition of death penalty; PhP 75,000 as moral damages because the victim is assumed to have suffered moral injuries, without need of proof; and PhP 30,000 as exemplary damages.

Even though the penalty of death was not imposed, the civil indemnity of PhP 75,000 is still proper because 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.[66]

Instead of the usual award of PhP 75,000 as moral damages without need of proof, this Court, however, sustains the award of the RTC of PhP 200,000 as moral damages for the ignominy and sufferings of Fritzie and her family have suffered due to the accused-appellant's act of detaining the victim in blindfold and mentally torturing her and her family into raising the ransom money.

And to set an example for the public good, accused-appellant should pay the victim PhP 30,000 as exemplary damages following prevailing jurisprudence.

WHEREFORE, the appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 01694 finding accused-appellant Johnny Bautista guilty of the crime charged is *AFFIRMED* with *MODIFICATION*. In addition to the sum of PhP 1,000,000 as restitution for the ransom money and PhP 200,000 as moral damages, accused-appellant is likewise ordered

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[65] *People v. Sarcia*, G.R. No. 169641, September 10, 2009; *People v. Abellera*, G.R. No. 166617, July 3, 2007; *People v. Danilo Sia y Binghay*, G.R. No. 174059, February 27, 2009; *People v. Salome*, G.R. No. 169077, August 31, 2006, 500 SCRA 659; *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704.

[66] *People v. Victor*, 354 Phil. 195, 209 (1998).

to pay the victim the amount of PhP 75,000 as civil indemnity and PhP 30,000 as exemplary damages.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 188610. June 29, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALBERT SANCHEZ *y* GALERA,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; CRIMES AND PENALTIES; MURDER; KILLING OF A PERSON, NOT PARRICIDE OR INFANTICIDE, WITH ANY OF THE ATTENDANT CIRCUMSTANCES OUTLINED IN ARTICLE 248 OF THE REVISED PENAL CODE. —** Article 248 of the Revised Penal Code defined "Murder" as the unlawful killing of a person, which is not parricide or infanticide, provided that treachery or evident premeditation, among other circumstances, attended the killing. The presence of one of the circumstances enumerated in Art. 248 of the Code would suffice to qualify a killing as murder.

2. **ID.; ID.; GENERAL PROVISIONS; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; AGGRAVATING CIRCUMSTANCES; TREACHERY; TWO CONDITIONS MUST OCCUR FOR ITS PROPER APPRECIATION. —** There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense,

which the offended party might make. For treachery to be appreciated, two conditions must concur: (1) The employment of means, methods or manner of execution that would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and (2) The offender's deliberate or conscious choice of means, method or manner of execution. The essence of treachery is the sudden attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor. x x x

3. **ID.; ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, TREACHERY ATTENDED THE KILLING OF JUFER. —** In the case at bar, circumstances do obtain to justify the finding of treachery in the killing of Jufer. Consider: Appellant surreptitiously entered the De Leons' residence at around 5:00 o'clock in the morning of January 27, 2006 and snuck up inside Jufer's bedroom, while the other De Leon children were busy preparing for school and their mother attending to their breakfast. The family was unaware that appellant went to the second floor and stabbed Jufer, at that time merely 11 years old who most likely had no opportunity, but surely without the needed heft and strength to ward off, much less overpower, the appellant. x x x The Court can grant that no one witnessed the actual killing of Jufer. This fact alone, however, is not an argument against the criminal liability of the appellant for the lad's gruesome death. As may be recalled, appellant was in Jufer's room, holding a bloody knife over the unmoving boy lying face down on bed when Jelyn entered his brother's room. More importantly, Jufer, before breathing his last, positively identified appellant as his assailant. Jurisprudence teaches that there is treachery when an adult person attacks and causes the death of a child of tender years. As the Court elucidated in *People vs. Cabarrubias,* the killing of a child is characterized by treachery even if the manner of assault is not shown. For, the weakness of the victim due to his tender years results in the absence of any danger to the accused.

4. **REMEDIAL LAW; EVIDENCE; ADMISSIBILITY; DYING DECLARATION; A PIECE OF EVIDENCE OF THE HIGHEST ORDER. —** What Jufer uttered just before he expired — *"Mama, si Kuya Albert, sinaksak ako"* — is

admissible in evidence against the appellant pursuant to Section 37, Rule 130 of the Rules of Court. Sec. 37. *Dying declaration*. — The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death. A dying declaration is an evidence of the highest order; it is entitled to the utmost credence on the premise that no one person who knows of his impending death would make a careless and false accusation. At the brink of death, all thoughts of concocting lies disappear.

5. **CRIMINAL LAW; REVISED PENAL CODE; GENERAL PROVISIONS; CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY; AGGRAVATING CIRCUMSTANCES; TREACHERY; IN THE CASE AT BAR, TREACHERY IS LIKEWISE APPRECIATED IN THE STABBING OF JELYN. —** Treachery is likewise appreciated in the stabbing of Jelyn. When Jelyn went up to look for Jufer, appellant approached her from behind, covered her mouth and stabbed her. The relative physical positions of the unsuspecting Jelyn and appellant when the latter commenced the attack and the suddenness thereof caught Jelyn unaware and unable to defend herself. Jelyn's testimony on direct examination established the elements of treachery x x x The notion of Jelyn being helpless when appellant made his brutal moves finds corroboration from her mother's testimony. x x x

6. **ID.; ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE MANNER APPELLANT ASSAULTED AND EVENTUALLY KILLED EDGAR ALSO INDICATED TREACHERY. —** The manner appellant assaulted and eventually killed Edgar also indicated treachery. Like his wife and children, Edgar had at the start no idea of appellant's armed and dangerous presence in the house on the fateful morning in question. Jelyn testified that, while she and her mother were being held in the room by appellant, Edgar came up but appellant pushed past Edgar by the stairs, stabbed him, then grabbed another knife from the kitchen before coming back upstairs to finish Edgar off. The attack against Edgar when he was on his way to the upper floor was so sudden and unexpected, negating any suggestion that he was in a position to defend himself. These circumstances are manifestly indicative of the presence

of conditions under which treachery may be appreciated, *i.e.,* the employment of means of execution that affords the person attacked no opportunity to defend himself. Even more, the fact that appellant inflicted more stabbing blows on Edgar after he fell on his bottom gravely wounded and with his large intestines spilling out, clearly exhibits the treacherous nature of the killing. Joshua Ray De Leon testified being awakened by the noise and seeing his father near the top of the stairs, while appellant, wielding a knife, was at the middle of the stairs following the former. Because of fear, he hid in the hallway bathroom but witnessed the stabbing through the slightly opened bathroom door.

7. **ID.; ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, TREACHERY IS NOT ATTENDANT IN THE STABBING OF JEANE AS SHE WAS SUFFICIENTLY FOREWARNED OF THE AGGRESSION AGAINST HER AND HER FAMILY BY THE APPELLANT. —** Treachery is not, however, attendant in the stabbing of Jeane. While at the back of their house, son Jorvi informed her that appellant was upstairs. In fact, she instructed her daughter Jelyn to call 161 as she asked the appellant to spare their lives. Appellant even warned her to keep quiet. After she discovered that Jufer was wounded, she started to carry him outside their bedroom, only to see her husband wrestling with the appellant. She had the presence of mind to put down her son, pick up a knife she found on the floor and attempted to stab the accused. x x x In fine, Jeane was sufficiently forewarned of the aggression against her and her family by the appellant. Appellant was on a killing frenzy when Jeane faced him up close at Jufer's room. An attack from appellant was then something not unexpected. Hence, treachery cannot be appreciated against appellant, although his sex and weapon gave him superiority of strength as against Jeane. An attack by a man with a deadly weapon upon an armed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and weapon used in the act afforded him, and from which the woman was unable to defend herself.

8. **ID.; ID.; ID.; ID.; ID.; EVIDENCE PREMEDITATION; ELEMENTS. —** For evident premeditation to be considered, the following must be established: (1) the time when the accused determined (conceived) to commit the crime; (2) an overt act

manifestly indicating that he clung to his determination to commit the crime (kill his victim); and (3) a sufficient lapse of time between the decision to commit the crime and the execution thereof to allow the accused to reflect upon the consequences of his act. Premeditation presupposes a deliberate planning of the crime before executing it. The execution of the criminal act, in other words, must be preceded by cool thought and reflection. x x x there must be showing of a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to execute the crime.

9. **ID.; ID.; ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE INTERPLAY OF THE DIFFERENT CIRCUMSTANCES LEADING TO THE STABBING INCIDENTS INDICATE THE PRESENCE OF EVIDENT PREMEDITATION. —** In the case at bar, the interplay of the following circumstances indicate the presence of evident premeditation. First, the night before the stabbing incidents, appellant went to the De Leon residence to ask for money. Edgar, with much reluctance, gave appellant only ₱100. Jeane noted appellant receiving the money with a hostile expression on his face. Appellant was no longer working for the De Leon, so he was not required to go back to the house. But he did return the following morning, January 27, 2006, armed, surreptitiously entering the house and proceeding to Jufer's bedroom while everyone was busy having breakfast and preparing for school. Second, Jufer told his mother that while relieving himself in the comfort room, appellant pointed a knife at him. John Ray corroborated the pointing-of-knife scenario. On the witness box, John Ray testified that on the night of January 26, 2006, appellant was toying with a knife while talking to him and Jufer, threatening to kill them both should they report the matter to their parents. Last but not least, six different knives, all with blood stains, were found at the crime scene. Two pairs of gloves were discovered near Jufer's body. These compelling pieces of evidence presuppose planning. There can be no serious argument that appellant was determined to commit a crime as early as on the night of January 26, 2006, when he uttered the threat to kill Jufer at the bathroom. Jelyn and Joshua Ray testified to seeing appellant holding a knife while talking to Jufer. Appellant had the whole night to contemplate his action and reflect upon its consequences before he entered the household the following morning. Finally, the covert manner appellant

gained entry in the house and stabbed the victims showed a careful deliberation of his criminal intent. As the CA aptly observed, taking into stock the incidents that happened on the night of January 26, 2006, the fact that he hid in the room of Jufer after sneaking into the De Leon's household early the next morning and the real evidence found in the house, appellant's "commission of the crime was not clearly a product of accident, it was evidently a premeditated one."

10. **ID.; ID.; ID.; PENALTIES; APPLICATION; IF THE PENALTY PRESCRIBED IS COMPOSED OF TWO INDIVISIBLE PENALTIES, AND THERE IS AN AGGRAVATING CIRCUMSTANCE, THE HIGHER PENALTY SHOULD BE IMPOSED (ARTICLE 63). —** Clearly then, the presence of the attending circumstances of treachery and/or evident premeditation qualified the killing of Edgar and Jufer to murder, which, under Art. 248 of the Revised Penal Code, as amended, is punishable by *reclusion perpetua* to death. Article 63 of the same Code provides that if the penalty prescribed is composed of two indivisible penalties, as in the instant case, and there is an aggravating circumstance the higher penalty should be imposed. Since, evident premeditation can be considered as an ordinary aggravating circumstance, treachery, by itself, being sufficient to qualify the killing, the proper imposable penalty — the higher sanction — is death. x x x

11. **ID.; ID.; ID.; ID.; SERVICE; ENACTMENT OF REPUBLIC ACT NO. 9346; PENALTY REDUCED TO *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE. —** However, in view of the enactment of Republic Act No. 9346, prohibiting the imposition of the death penalty, the penalty for the killing of each of the victim is reduced to *reclusion perpetua* without eligibility for parole. The penalty of *reclusion perpetua* thus imposed by the CA on appellant for each count of murder is correct. x x x

12. **ID.; ID.; ID.; CIVIL LIABILITY; CIVIL INDEMNITY; CASE AT BAR. —** So is the award of PhP 75,000 as civil indemnity *ex delicto*.

13. **ID.; ID.; ID.; ID.; MORAL DAMAGES; CASE AT BAR. —** The Court, however, modifies the award of moral damages, which is mandatory in homicide and murder without need of

allegation and proof other than the death of the victim. To conform with recent jurisprudence on heinous crimes where the proper imposable penalty is death, if not for R.A. 9346, the award of moral damages is increased to PhP 75,000 for each count of murder.

14. **ID.; ID.; ID.; ID.; EXEMPLARY DAMAGES; CASE AT BAR. —** The award of exemplary damages in the amount of PhP 30,000 is additionally in order if, as here, the crime was committed with an aggravating circumstance, be it generic or qualifying. The Court thus grants the same to serve as deterrent to serious wrongdoings, as a vindication of the wanton invasion of the rights of the victims, or punishment for those guilty of outrageous conduct.

15. **ID.; ID.; ID.; FELONIES WHICH AFFECT CRIMINAL LIABILITY; FRUSTRATED STAGE; CASE AT BAR. —** As to the stabbings of Jeane and Jelyn, appellant committed frustrated murder as he inflicted on them mortal wounds which could have had taken their lives had it not been for the prompt medical intervention, a cause independent of appellant's will.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

For review is the Decision[1] of the Court of Appeals (CA) dated February 27, 2009, in CA-G.R. CR-H.C. No. 02902, which affirmed with modification, the decision of the Regional Trial Court (RTC) of Marikina City in Criminal Case Nos. 06-8245-MK, 06-8246-MK, 06-8247-MK and 06-8248-MK, finding appellant Albert Sanchez *y* Galera guilty of two (2) counts of murder and two (2) counts of frustrated murder.

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[1] Penned by Associate Justice Vicente S.E. Veloso with the concurrence of Justice Edgardo P. Cruz and Justice Ricardo R. Rosario.

The accusatory portions of the criminal informations filed against Sanchez for the crimes aforestated are respectively reproduced below:

Criminal Case No. 06-8245-MK for Murder

That on or about the 27th day of January 2006, in the City of Marikina, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, armed with knife, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab one Jufer James De Leon *y* Cruz, a minor, 11 years of age, thereby inflicting upon him fatal wounds which caused his death soon after the said killing having attended by the qualifying circumstance of treachery and evident premeditation, which upgrades the killing to Murder.

CONTRARY TO LAW.

Criminal Case No. 06-8246-MK for Murder

That on or about the 27th day of January 2006, in the City of Marikina, Philippines and within the jurisdiction of this Court, the above-named accused, armed with knife, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab one Edgar De Leon, thereby inflicting upon him fatal wounds which caused his death soon thereafter the said killing having attended by the qualifying circumstance of treachery and evident premeditation, which upgrades the killing to Murder.

CONTRARY TO LAW.

Criminal Case No. 06-8247-MK for Frustrated Murder

That on or about the 27th day of January 2006, in the City of Marikina, Philippines and within the jurisdiction of this Court, the above-named accused, armed with knife, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab one Jeane De Leon *y* Cruz, thereby inflicting upon [her] stab wounds which would ordinarily [cause] her death, thus performing all the acts of execution which would have produced the crime of murder as a consequence thereof, but nevertheless did not produce it by reason of cause/s independent of [his] will that is due to the timely and able medical assistance rendered to said Jeane de Leon *y* Cruz, which prevented [her] death.

CONTRARY TO LAW.

Criminal Case No. 06-8248-MK for Frustrated Murder

That on or about the 27th day of January 2006, in the City of Marikina, Philippines and within the jurisdiction of this Court, the above-named accused, armed with knife, with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault and stab one Jelyn Mae de Leon *y* Cruz, thereby inflicting upon the latter stab wounds which would ordinarily [cause] her death, thus, performing all the acts of execution which would have [produced] the crime of murder as a consequence thereof, but nevertheless did not produce it by reason of cause/s independent of his will, that is due to the timely and able medical assistance rendered to said Jelyn May De Leon *y* Cruz, which prevented her death.

CONTRARY TO LAW.

When arraigned, Sanchez, duly assisted by counsel, pleaded not guilty to all the charges.

In the ensuing trial, the prosecution presented in evidence the testimonies of John Ray De Leon, Jelyn Mae De Leon, Jeane De Leon, Dr. Arnel Marquez, the Medico-Legal Officer of Rizal who performed an autopsy on the cadaver of two of the victims, and the arresting and investigating police officers.[2]

On the other hand, the defense waived its right to present evidence.

The pertinent facts, as gathered from the records, may be summarized as follows:

On January 26, 2006, siblings John Ray, Jufer James[3] (Jufer), Jelyn Mae (Jelyn), Jorvi and Junel, all surnamed De Leon, were at home by themselves, their parents, Edgar and Jeane,[4] having gone out to buy certain items for their catering business. Between 9:00 to 10:00 p.m. of that day, Sanchez entered the De Leon's house in dela Paz St., Marikina City, and there and then told

[2] P/Chief Inspector Cenon Manalo, a member of the SOCO team and PO1 Reynaldo Candelaria.

[3] 11 years old

[4] Referred to as Jeanne in some pleadings.

John Ray, then 10 years old, that his father Edgar would give him some money. Sanchez then proceeded to the master's bedroom at the second floor of the house.[5] John Ray was familiar with Sanchez, the latter having once stayed with the family as a houseboy. When John Ray asked him to leave, Sanchez proceeded to the comfort room on the ground floor where Jufer was then inside defecating. Sanchez was still inside that room when spouses Jeane and Edgar arrived.

Later learning where Sanchez was, Edgar asked the former to come out. Sanchez would thereafter request Edgar for money, claiming that his sister is confined in a hospital in a nearby town.

From her room, Jeane later went downstairs, joined Edgar and Sanchez, and explained to their irritated-looking former houseboy that they could only spare PhP 100 as they had just purchased several items for their business. In the meantime, Edgar handed Sanchez ₱100, telling him just to come back the following day. With a hostile expression, Sanchez accepted the money, then left. Later, Jufer confided to his mother that Sanchez, while in the rest room, had pointed a knife at and threatened to kill him. Obviously terrified by the threat, Jufer slept in his parents' room that night.

Very early the following morning, January 27, Jeane prepared breakfast for her school children. Noticing Jufer's absence at the breakfast table, she asked the 13-year-old Jelyn to get her kid brother down.[6] Jelyn went to Jufer's bedroom upstairs and there found him lying on his bed face down. Suddenly, somebody grabbed her from behind, covered her mouth, pointed a knife on her neck and later stabbed her.[7] The assailant then pushed her towards the bed, told her to be quiet and pressed her face down near her brother until she could not breathe. Jelyn recognized the voice to be that of Sanchez. And while Jelyn was calling out to get Jufer's attention whom she thought was merely asleep, Sanchez stabbed her on the chest. Jelyn reacted by boxing and

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[5] TSN, June 5, 2006, p. 14, Records, Folder 2.

[6] TSN, September 12, 2006, p. 57.

[7] TSN, June 5, 2006, p. 54, Records, Folder 2.

kicking Sanchez, shouting for help at the same time. And even as Sanchez gave her a piece of cloth to wipe the blood in her neck and motioned her to keep quiet, Jelyn managed to plead for her life.[8]

Meanwhile, Jeane who decided to look for Jufer herself heard a commotion and a thudding sound. When she checked what it was, son Jorvi rushed towards her to inform her that Sanchez was inside the house. The nervous Jeane then hurried to Jufer's room upstairs where she saw Sanchez holding a knife against Jelyn's bloodied neck. Then Jeane uttered, "*Dali, tumawag ka ng 161*."[9] At that instance, Sanchez shoved Jeane inside Jufer's room even as she pleaded for their lives. In response, Sanchez placed his fingers on his lips to signal silence. Thereafter, Jeane turned her son, Jufer, upside down only to discover that he was bathed in blood. Jufer weakly uttered, "*Mama, si Kuya Albert sinaksak ako.*"[10] At this point, Sanchez ran outside the room.

Jeane, cradling her bloodied son, intending to bring him to the hospital, again instructed daughter Jelyn to call 161. While carrying Jufer outside the room, Jeane noticed Sanchez assaulting Edgar near the stairs. She then brought Jufer to her room so she could help Edgar. In the process, she spotted a knife in the hallway floor, and picked it up as she approached Edgar who was then sitting on the floor. At that juncture, Sanchez turned his ire towards her and stabbed her on the lower left side of the chest.[11] When the injured Edgar stood up in an obvious bid to help his wife, Sanchez again lunged at and stabbed the former. Her own attempt to hit Sanchez with the knife she picked up earlier, however, proved unsuccessful. In fact, Sanchez continued with his stabbing spree inflicting on her injuries on her lower left eye and stomach. Then he returned to Edgar, stabbing him on the stomach and side, causing his large intestines to spill out. Only after Edgar again fell did Sanchez run out of the house.

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[8] *Id.* at 49-65.

[9] TSN, September 19, 2006, p. 56.

[10] *Id.* at 60.

[11] *Id.* at 67.

After Sanchez has left, Jeane helped her husband up, gathered all her children in one room, placed her bloodied son beside his equally bloodied father and locked the door. She then cried out for help. At this time, Jufer was no longer moving, while Edgar was hardly breathing.

At around 6:35 in the morning of January 27, 2006, POl Reynaldo Candelaria, responding to radio call reporting a stabbing incident, proceeded to the De Leons' place. A trembling John Ray met and told tell him who stabbed his father. When Candelaria opened the gate of the house, he saw Sanchez running towards the back of the house holding a knife. And after a chase, Candelaria, with the help of nearby residents, caught up with and arrested Sanchez. At the Amang Rodriquez Hospital where police operatives brought him and where Jeane and Jelyn were sent for treatment, mother and daughter identified Sanchez as the assailant.

Meanwhile, the bodies of Jufer and Edgar de Leon were brought to the Eastern Police District crime laboratory for autopsy.

The uniform entry, "Stab wounds, trunk", appeared in the separate autopsy reports[12] prepared by Medico Legal Officer Jose Arnel M. Marquez[13] as the cause of death of both Jufer and Edgar De Leon.[14] On the other hand, the Medico-Legal

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[12] Exh. "M" & "N".

[13] Dated January 27, 2006, Exhibit "M", Folder 2, Documentary Exhibits, p. 22.

[14] As for Jufer James C. De Leon:

x x x x x x x x x

(1) Multiple abrasions, right cheek, measuring 7 x 6 cm, 5 cm from the anterior midline.
(2) Ligature mark, neck, measuring 18 x 0.4cm, bisected by the anterior midline.
(3) Hematoma, right shoulder measuring 7 x 3.5 cm from the anterior midline. x x x

Conclusion: Cause of death, Stab wounds, trunk.
As for Edgar C. De Leon:

x x x x x x x x x

Certificate[15] issued by Dr. Alejandro Geronimo stated that Jeane de Leon was confined at the hospital from January 27, 2006 to February 4, 2006 for treatment of multiple stab wounds.[16] In the case of Jelyn, she was confined and treated also for multiple wounds. [17]

Jeanne and Jelyn's combined hospital bills amounted to PhP 300,000, while the internment and burial expenses for Edgar and Jufer totaled to PhP 150,000.[18]

When the defense was called for initial presentation of its evidence, the defense counsel, in open court, manifested, with the conformity of the accused, that the defense is waiving its right to present evidence.[19]

On July 23, 2007, in consolidated Crim. Case Nos. 06-8245-MK to 068248-MK the Regional Trial Court (RTC) of Marikina City, Branch 272, the RTC[20] rendered a decision finding accused Sanchez guilty of two (2) counts of murder and two (2) counts of frustrated murder. The dispositive portion of the decision states:

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(1) Stab wound, neck, measuring 3 x 0.3 cm. 8 cm left of the anterior midline.

(2) Stab wound, right pectoral region, measuring 4 x 0.5cm, 18 cm from the anterior midline.

Conclusion: Cause of death is stab wounds, trunk

[15] Exhibit "K", Folder 2, Documentary Exhibits, p. 21
lacerated wound 3cm left suborabital
Lacerated wound less than 2 cm left cheek #2
Stab wound 5 cm upper left quadrant
Expor Lap
Vejorrhaphy Gastrorrhaphy

[16] *Supra,* Exhibit "L".

[17] *Supra*, Exhibit "L"; Stab wound Zone II neck right
mandibular area right
Supraclavicular area right
S/P Wound Exploration
Ligation of Bleeders

[18] As shown by the receipts, Exhibits "Q" to "Q-26".

[19] Order dated March 26, 2007, Records, Main Folder, p. 155.

[20] Presided by Judge Felix P. Reyes.

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

1. In Criminal Case No. 06-8245-MK, accused ALBERT SANCHEZ *y* GALERA is found GUILTY beyond reasonable doubt of the crime of MURDER as defined and penalized under Article 248 of the Revised Penal Code qualified by treachery and evident premeditation and is hereby sentenced to *Reclusion Perpetua* and to pay the heirs of the victim Jufer James de Leon the amount of ₱50,000.00 as indemnity for his death, ₱42,500.00 as actual damages, and ₱100,000.00 as moral damages.

2. In Criminal Case No. 06-8246-MK, accused ALBERT SANCHEZ *y* GALERA is also found GUILTY beyond reasonable doubt of the crime of MURDER as defined and penalized under Article 248 of the Revised Penal Code qualified by treachery and evident premeditation and is hereby sentenced to *reclusion perpetua* and to pay the heirs of the victim Edgar De Leon the amount of ₱50,000.00 as indemnity for his death, ₱42,500.00 as actual damages and ₱100,000.00 as moral damages;

3. In Criminal Case No. 06-8247-MK, accused ALBERT SANCHEZ *y* GALERA is found GUILTY beyond reasonable doubt of the crime of FRUSTRATED MURDER under Article 248 in relation to Article 6 of the Revised Penal Code. Applying the indeterminate Sentence Law, and in the absence of modifying circumstances, he is hereby sentenced to in indeterminate prison term of TEN (10) YEARS and ONE (1) DAY of *prision mayor* as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of *reclusion temporal* as maximum, and to pay his victim Jeane de Leon the amount of ₱40,786.55 as actual expenses and ₱50,000.00 as moral damages; and

4. In Criminal Case No. 06-8248-MK, the accused ALBERT SANCHEZ *y* GALERA is found GUILTY beyond reasonable doubt of the crime of FRUSTRATED MURDER under Article 248 in relation to Article 6 of the Revised Penal Code. Applying the indeterminate Sentence Law, and in the absence of modifying circumstances, he is hereby sentenced to in indeterminate prison term of TEN (10) YEARS and ONE (1) DAY of *prision mayor* as minimum, to SEVENTEEN (17) YEARS and FOUR (4) MONTHS of *reclusion temporal* as maximum, and to pay his victim Jelyn Mae de Leon the amount of ₱66,341.85 as actual expenses and ₱50,000.00 as moral damages.

The period during which the herein accused was in detention during the pendency of these cases shall be credited to him in full provided he agrees to abide by and comply with the rules and regulations of the City Jail of Marikina.

SO ORDERED.

Therefrom, Sanchez went to the CA on appeal, docketed as CA G.R. HC-No. 02902, on the lone submission that the RTC erred in convicting him of murder and frustrated murder when the qualifying circumstances of treachery and evident premeditation have not been proven beyond reasonable doubt.

Eventually, the CA rendered on February 27, 2009 a Decision affirming that of the RTC, with the following modification: the increase in the award of civil indemnity, but the reduction of the award for moral damages in Criminal Case Nos. 06-8245-MK and 06-8246-MK, respectively. The *fallo* of the CA's decision reads:

WHEREFORE, the appeal is DENIED and the appealed decision dated 23 July 2007 is AFFIRMED with MODIFICATIONS in that: (a) the awards of civil indemnity in Criminal Case Nos. 06-8245-MK and 06-8246-MK are respectively increased to ₱75,000.00; while the amounts of moral damages in said cases are reduced to ₱50,000.00 respectively.

As did the RTC, the CA found the killing of Edgar and Jufer and the wounding of the Jeane and Jelyn to have been attended by treachery and evident premeditation.

On March 12, 2009, appellant filed a timely Notice of Appeal of the appellate court's decision.

By Resolution of September 16, 2009, the Court accepted the appeal and required the parties to submit supplemental briefs, if they so desire within 30 days from notice. Each, however, manifested the willingness to submit the case on the basis of the records and the pleadings already submitted.

The Ruling of the Court

By virtually reiterating his arguments raised before the CA, appellant admits criminal responsibility for the death of Edgar

and Jufer and the almost fatal injuries of Jelyn and Jeane. He now presents the following point as conclusion that the appellate court should have made: that the prosecution failed to prove with moral certainty the circumstance of treachery and evident premeditation, hence, he should be acquitted of the crimes charged convicting him instead of the lesser crimes of homicide and frustrated homicide.

The desired downgrading of appellant's criminal liability, from murder to homicide (two counts) and from frustrated murder to frustrated homicide (two counts) cannot be granted. The instant appeal is, accordingly, dismissed.

Article 248[21] of the Revised Penal Code defines "Murder" as the unlawful killing of a person, which is not parricide or infanticide, provided that treachery or evident premeditation, among other circumstances, attended the killing. The presence of one of the circumstances enumerated in Art. 248 of the Code would suffice to qualify a killing as murder.

There is treachery when the offender commits any of the crimes against persons, employing means, methods or forms which tend directly and specially to ensure its execution, without risk to himself arising from the defense, which the offended party might make. For treachery to be appreciated, two conditions must concur:

(1) The employment of means, methods or manner of execution that would ensure the offender's safety from any defense or retaliatory act on the part of the offended party; and

(2) The offender's deliberate or conscious choice of means, method or manner of execution.[22]

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[21] 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 x x x;

x x x x x x x x x

5. With evident premeditation.

[22] *People v. Bohol*, G.R. No. 178198, December 10, 2008.

In the case at bar, circumstances do obtain to justify the finding of treachery in the killing of Jufer. Consider: Appellant surreptitiously entered the De Leons' residence at around 5:00 o'clock in the morning of January 27, 2006 and snuck up inside Jufer's bedroom, while the other De Leon children were busy preparing for school and their mother attending to their breakfast. The family was unaware that appellant went to the second floor and stabbed Jufer, at that time merely 11 years old who most likely had no opportunity, but surely without the needed heft and strength to ward off, much less overpower, the appellant.

The essence of treachery is the sudden attack by an aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor.[23] The trial court correctly appreciated the qualifying aggravating circumstance of treachery in the killing of Jufer.

The Court can grant that no one witnessed the actual killing of Jufer. This fact alone, however, is not an argument against the criminal liability of the appellant for the lad's gruesome death. As may be recalled, appellant was in Jufer's room, holding a bloody knife over the unmoving boy lying face down on bed when Jelyn entered his brother's room. More importantly, Jufer, before breathing his last, positively identified appellant as his assailant.

Jurisprudence teaches that there is treachery when an adult person attacks and causes the death of a child of tender years.[24] As the Court elucidated in *People vs. Cabarrubias,*[25] the killing of a child is characterized by treachery even if the manner of assault is not shown. For, the weakness of the victim due to his tender years results in the absence of any danger to the accused.

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[23] *People v. Guzman*, G.R. No. 169246, January 26, 2007; citing *People v. Fallorina*, G.R. No. 137347, March 4, 2004, 424 SCRA 655, 674.

[24] Reyes, *The Revised Penal Code*, 16th Ed., 2006, p. 471; citing *People v. Valerio*, *Jr.*, No. L-4116, February 25, 1982, 112 SCRA 231.

[25] Nos. 94709-10, June 15, 1993.

What Jufer uttered just before he expired — *"Mama, si Kuya Albert, sinaksak ako"*— is admissible in evidence against the appellant pursuant to Section 37, Rule 130 of the Rules of Court.

Sec. 37. *Dying declaration*. — The declaration of a dying person, made under the consciousness of an impending death, may be received in any case wherein his death is the subject of inquiry, as evidence of the cause and surrounding circumstances of such death.

A dying declaration is an evidence of the highest order; [26] it is entitled to the utmost credence on the premise that no one person who knows of his impending death would make a careless and false accusation. At the brink of death, all thoughts of concocting lies disappear.

Treachery is likewise appreciated in the stabbing of Jelyn. When Jelyn went up to look for Jufer, appellant approached her from behind, covered her mouth and stabbed her. The relative physical positions of the unsuspecting Jelyn and appellant when the latter commenced the attack and the suddenness thereof caught Jelyn unaware and unable to defend herself. Jelyn's testimony on direct examination established the elements of treachery:[27]

Court: What time was it when you were eating?
Witness: 5:30 0'clock in the morning your Honor.
Court: Of what date?
Witness: January 27, 2006 Your Honor.

x x x x x x x x x

Atty. Gonzales: You said that after eating you were looking for Jufer, what did you do to find him?
Witness: I went to their room sir.
Atty. Gonzales: When you said to their room, which room are you referring?
Witness: The room of Jufer, sir.

x x x x x x x x x

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[26] *People v. Cortejano*, G.R. No. 140732, January 29, 2002.

[27] TSN, June 5, 2006, p. 52.

Atty. Gonzales: What happened next after that?
Witness: I was looking for him and when I found him, somebody covered my mouth, sir.

x x x x x x x x x

Court: Where was he [Jufer], inside the room?
Witness: He was on the bed lying face down, Your Honor.
Atty. Gonzales: You said that someone covered your mouth, what did you do when that somebody covered your mouth?
Witness: I kept silent, I felt something x x x a pointed object on my neck, sir.
Atty. Gonzales: After that, what transpired next, if any?
Witness: I was pinned down and I was stabbed, sir.
Court: Did you see this someone who covered your mouth?
Witness: Not yet Your Honor.

x x x x x x x x x

Atty. Gonzales: **Madam witness, you said a person covered your mouth, you did not do anything but despite that he stabbed you?**
Witness: Yes, sir.
Atty. Gonzales: You said that you were pinned down by this person, what happened next?
Witness: He pressed my head until I could not breath[e] anymore, sir.

x x x x x x x x x

Atty. Gonzales: But at the time you were stabbed by that person, were you not able to talk to your brother Jufer?
Witness: No sir. (Underscoring added.)

The notion of Jelyn being helpless when appellant made his brutal moves finds corroboration from her mother's testimony, as follows:

COURT: What time did you wake up during the day [June (sic) 27, 2006] ?
WITNESS: 5:00 o'clock in the morning your Honor.
COURT: What about the children?
WITNESS: Same time your Honor.

x x x x x x x x x

ATTY. GONZALES: What did he [Jorvi] tell you?
WITNESS: When he approached me, he told me, "*Mama, nasa itaas si Kuya Albert*"
ATYY. GONZALES: What was your reaction when your son told you that Kuya Albert was upstairs?
WITNESS: I felt nervous because I realized that the commotion I heard was coming from upstairs, sir.
ATTY. GONZALES: What did you do after that?
WITNESS: I immediately went inside the house and went upstairs, sir.
ATTY. GONZALES: When you were upstairs, what happened next?
WITNESS: When I went upstairs I saw my daughter Jelyn Mae bloodied at the right side of her neck, sir.
ATTY. GONZALES: What was your reaction when you saw that your daughter was bloodied at the right side of her neck?
WITNESS: I immediately uttered, "*dali tumawag ka ng 161*"
ATTY. GONZALES: After that what happened?
WITNESS: I went inside the room of Jufer, sir. And when I entered the room, Albert shoved me, sir.
ATTY. GONZALES: By the way, where was this Albert when you entered the room?
WITNESS: When I saw Jelyn, Albert was on her back holding a knife, sir.
ATTY. GONXALES: What was Jelyn doing at that time?
WITNESS: I saw there was fear on her face, sir.

x x x x x x x x x

COURT: Was your son still alive at that time?
WITNESS: Yes, Your Honor. He said something to me x x x "*Mama, si Kuya Albert, sinaksak ako*"
COURT: Where was the accused when your son Jufer told you that?
WITNESS: He suddenly ran outside, Your Honor."

The manner appellant assaulted and eventually killed Edgar also indicated treachery. Like his wife and children, Edgar had at the start no idea of appellant's armed and dangerous presence in the house on the fateful morning in question. Jelyn testified[28] that, while she and her mother were being held in the room by

[28] TSN, June 5, 2006, p. 70.

appellant, Edgar came up but appellant pushed past Edgar by the stairs, stabbed him, then grabbed another knife from the kitchen before coming back upstairs to finish Edgar off. The attack against Edgar when he was on his way to the upper floor was so sudden and unexpected, negating any suggestion that he was in a position to defend himself. These circumstances are manifestly indicative of the presence of conditions under which treachery may be appreciated, *i.e.,* the employment of means of execution that affords the person attacked no opportunity to defend himself. Even more, the fact that appellant inflicted more stabbing blows on Edgar after he fell on his bottom gravely wounded and with his large intestines spilling out, clearly exhibits the treacherous nature of the killing.

Joshua Ray De Leon testified being awakened by the noise and seeing his father near the top of the stairs, while appellant, wielding a knife, was at the middle of the stairs following the former. Because of fear, he hid in the hallway bathroom but witnessed the stabbing through the slightly opened bathroom door.

Treachery is not, however, attendant in the stabbing of Jeane. While at the back of their house, son Jorvi informed her that appellant was upstairs. In fact, she instructed her daughter Jelyn to call 161 as she asked the appellant to spare their lives. Appellant even warned her to keep quiet.[29] After she discovered that Jufer was wounded, she started to carry him outside their bedroom, only to see her husband wrestling with the appellant. She had the presence of mind to put down her son, pick up a knife she found on the floor and attempted to stab the accused.

> ATTY. GONZALES: Going back to my question, after you saw your husband wrestling with Albert Sanchez, what did you do if any?
> WITNESS: I ran towards to help my husband because I saw Albert stabbed him on his side and my husband fell down, sir.
>
> x x x x x x x x x
>
> ATTY. GONZALES: Now while the accused was stabbing your husband, what did you do next?

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[29] TSN, September 19, 2006.

WITNESS: I ran and I noticed a knife and I held it, sir.
ATTY. GONZALES: After you were able to hold the knife, what did you do next?
WITNESS: I approached him while Edgar was sitting down. When I approached him, he stabbed me (witness pointed to her lower side of the chest), sir.

x x x x x x x x x

COURT: According to you, you were able to see a knife?
WITNESS: I noticed the knife on the hallway, Your Honor.
COURT: On your way out of the room?
WITNESS: Yes Your Honor.
COURT: On the floor?
WITNESS: Yes Your Honor.
COURT: After you went out of the room, did you notice if the accused was still holding a knife?
WITNESS: Yes Your Honor. Because he was stabbing Edgar.
COURT: You picked up that knife from the floor?
WITNESS: I just saw another knife, Your Honor.
COURT: The one you noticed?
WITNESS: I picked it up, Your Honor.
COURT: You went to the accused?
WITNESS: Yes Your Honor.

x x x x x x x x x

COURT: When you were stabbed, you were holding a knife?
WITNESS: Yes, Your Honor.
COURT: You did not fight back?
WITNESS: When I saw the intestines of my husband, I trusted the knife on him, I thought I was able to stab him, Your Honor.

In fine, Jeane was sufficiently forewarned of the aggression against her and her family by the appellant. Appellant was on a killing frenzy when Jeane faced him up close at Jufer's room. An attack from appellant was then something not unexpected. Hence, treachery cannot be appreciated against appellant, although his sex and weapon gave him superiority of strength as against Jeane. An attack by a man with a deadly weapon upon an armed and defenseless woman constitutes the circumstance of abuse of that superiority which his sex and

weapon used in the act afforded him, and from which the woman was unable to defend herself.[30]

The next issue is whether or not the aggravating circumstance of evident premeditation attended the assault on the De Leon family. Both the RTC and the CA resolved the question in the affirmative.

We agree with their parallel determinations.

For evident premeditation to be considered, the following must be established: (1) the time when the accused determined (conceived) to commit the crime; (2) an overt act manifestly indicating that he clung to his determination to commit the crime (kill his victim); and (3) a sufficient lapse of time between the decision to commit the crime and the execution thereof to allow the accused to reflect upon the consequences of his act.[31] Premeditation presupposes a deliberate planning of the crime before executing it. The execution of the criminal act, in other words, must be preceded by cool thought and reflection. As here, there must be showing of a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to execute the crime.[32]

In the case at bar, the interplay of the following circumstances indicate the presence of evident premeditation. First, the night before the stabbing incidents, appellant went to the De Leon residence to ask for money. Edgar, with much reluctance, gave appellant only ₱100. Jeane noted appellant receiving the money with a hostile expression on his face. Appellant was no longer working for the De Leon, so he was not required to go back to the house. But he did return the following morning, January 27, 2006, armed, surreptitiously entering the house and proceeding to Jufer's bedroom while everyone was busy having breakfast and preparing for school.

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[30] *People v. Ermita*, 383 Phil. 656 (2000).

[31] *People v. Herida*, G.R. No. 127158, March 5, 2001, 353 SCRA 650.

[32] *People v. Guzman*, *supra* note 23.

Second, Jufer told his mother that while relieving himself in the comfort room, appellant pointed a knife at him. John Ray corroborated the pointing-of-knife scenario. On the witness box, John Ray testified that on the night of January 26, 2006, appellant was toying with a knife while talking to him and Jufer, threatening to kill them both should they report the matter to their parents.

Last but not least, six different knives, all with blood stains, were found at the crime scene.[33] Two pairs of gloves[34] were discovered near Jufer's body. These compelling pieces of evidence presuppose planning.

There can be no serious argument that appellant was determined to commit a crime as early as on the night of January 26, 2006, when he uttered the threat to kill Jufer at the bathroom. Jelyn and Joshua Ray testified to seeing appellant holding a knife while talking to Jufer.[35] Appellant had the whole night to contemplate his action and reflect upon its consequences before he entered the household the following morning. Finally, the covert manner appellant gained entry in the house and stabbed the victims showed a careful deliberation of his criminal intent. As the CA aptly observed, taking into stock the incidents that happened on the night of January 26, 2006, the fact that he hid in the room of Jufer after sneaking into the De Leon's household early the next morning and the real evidence found in the house, appellant's "commission of the crime was not clearly a product of accident, it was evidently a premeditated one."

Clearly then, the presence of the attending circumstances of treachery and/or evident premeditation qualified the killing of Edgar and Jufer to murder, which, under Art. 248 of the Revised Penal Code, as amended, is punishable by *reclusion perpetua* to death. Article 63[36] of the same Code provides that if the

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[33] Exhs. "D", "D-l", "D-2", and "D-3".

[34] Exhs. "C-7" and "C-8".

[35] TSN, June 5, 2006, p. 26.

[36] Art. 63. Rules for the application of indivisible penalties — x x x In all cases in which the law prescribes a penalty composed of two indivisible

penalty prescribed is composed of two indivisible penalties, as in the instant case, and there is an aggravating circumstance the higher penalty should be imposed. Since, evident premeditation can be considered as an ordinary aggravating circumstance, treachery, by itself, being sufficient to qualify the killing, the proper imposable penalty — the higher sanction — is death. However, in view of the enactment of Republic Act No. 9346,[37] prohibiting the imposition of the death penalty, the penalty for the killing of each of the victim is reduced to *reclusion perpetua* without eligibility for parole.[38] The penalty of *reclusion perpetua* thus imposed by the CA on appellant for each count of murder is correct. So is the award of PhP 75,000 as civil indemnity *ex delicto*.[39]

The Court, however, modifies the award of moral damages, which is mandatory in homicide and murder without need of allegation and proof other than the death of the victim.[40] To conform with recent jurisprudence on heinous crimes where the proper imposable penalty is death, if not for R.A. 9346, the award of moral damages is increased to PhP 75,000 for each count of murder.[41] The award of exemplary damages in the amount of PhP 30,000 is additionally in order if, as here, the crime was committed with an aggravating circumstance, be it generic or qualifying.[42] The Court thus grants the same to serve as deterrent to serious wrongdoings, as a vindication of the wanton invasion

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penalties, the following rules shall be observed in the application thereof: 1. When the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

[37] An Act Prohibiting the Imposition of the Death Penalty, signed into law on June 24, 2006.

[38] Sec. 3 of RA 9346 provides that "persons convicted of offenses with *reclusion perpetua* or whose sentences will be reduced to *reclusion perpetua* shall not be eligible for parole."

[39] *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704.

[40] *People v. Bajar,* 460 Phil. 683 (2003).

[41] *People v. Regalario*, G.R. No. 174483, March 31, 2009, 582 SCRA 738.

[42] *Id.*

of the rights of the victims, or punishment for those guilty of outrageous conduct.[43]

As to the stabbings of Jeane and Jelyn, appellant committed frustrated murder as he inflicted on them mortal wounds which could have had taken their lives had it not been for the prompt medical intervention, a cause independent of appellant's will.

WHEREFORE, the appeal is *DENIED*. The Decision of the Court of Appeals dated February 27, 2009 in CA-G.R. CR.-H.C. No. 02902 finding Albert Sanchez *y* Galera guilty of two counts of murder and two counts of frustrated murder and sentencing him to serve prison terms therein defined without parole is hereby *AFFIRMED* with the *MODIFICATION* that appellant is ordered to pay the heirs of Jufer James and Edgar De Leon the increased amount of PhP 75,000 as moral damages and the amount of PhP 30,000 as exemplary damages, respectively, for each count of murder in Criminal Case Nos. 06-8245-MK and 06-8246-MK.

No pronouncements as to costs.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perez, JJ.,* concur.

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[43] *People v. Guzman*, *supra*; *People v. Orilla*, G.R. Nos. 148939-40, February 13, 2004, 422 SCRA 620.

FIRST DIVISION

[G.R. No. 188976. June 29, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAKAR MAPAN LE *y* SUBA and RODEL DEL CASTILLO *y* SACRUZ,** *accused-appellants.*

SYLLABUS

1. **CRIMINAL LAW; SPECIAL OFFENSES; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; VIOLATION OF SECTION 5 THEREOF; ILLEGAL SALE OF *SHABU*; ELEMENTS; ESTABLISHED IN CASE AT BAR. —** Accused-appellants are charged with violating Section 5 of RA 9165, x x x The essential elements that must be established in prosecuting a case of illegal sale of *shabu* are: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor. What is material is proof that the transaction actually took place, along with the presentation in court of the illegal substance which constitutes the *corpus delicti* of the crime. In the instant case, the aforementioned elements were established by the prosecution. Le received Php200 from poseur-buyer PO2 Noble in exchange for a plastic sachet handed to him by Del Castillo. PO2 Noble wrote his initials on the seized item. The plastic sachet's contents were then subjected to a laboratory examination and tested positive for *shabu.*

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES DO NOT AFFECT CREDIBILITY; CASE AT BAR. —** The alleged inconsistencies cited by the defense do not materially affect the credibility of the prosecution's witnesses. As the OSG correctly pointed out, the inconsistencies were too trivial to merit consideration. What is important is that the elements of the crime were established by both the oral and object evidence presented in court.

3. **ID.; ID.; SALE OF PROHIBITED DRUGS; MARKED MONEY USED IN THE BUY-BUST OPERATION IS NOT INDISPENSABLE BUT MERELY CORROBORATIVE**

IN NATURE. — Accused-appellants' argument on the failure to present the marked money in court is not only without merit but baseless. Two (2) One hundred peso (Php100) bills were presented as evidence as the buy-bust money used and marked as Exhibits "E" and "F". Moreover, the presentation of buy-bust money is not required by law or jurisprudence. Its non-presentation is not fatal to the case for the prosecution. The marked money used in the buy-bust operation is not indispensable but merely corroborative in nature.

4. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; IDENTITY AND INTEGRITY OF SEIZED *SHABU* MUST BE PRESERVED; LINKS ESTABLISHED IN CASE AT BAR. —** We likewise affirm the findings of both lower courts on the issue of chain of custody. What is important is the preservation of the identity and integrity of the seized *shabu.* Section 21 of RA 9165 provides the procedure for buy-bust operations x x x In the instant case, the links in the chain are the following: (1) At the scene of the buy-bust operation, Castillo handed the plastic sachet to PO2 Noble, who immediately marked it with his initials; (2) The plastic sachet was brought to the laboratory for examination per Request for Laboratory Examination (Exhibit "A") signed by Police Inspector Earl B. Castillo; (3) According to Physical Science Report No. D-0670-04E (Exhibit "B") prepared by Forensic Chemist Lourdeliza Gural Cejes, the two (2) grams inside the seized sachet tested positive for *shabu.* Non-compliance with Sec. 21 does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. The requirements under RA 9165 and its IRR are not inflexible. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused. The prosecution in this case was able to preserve the integrity and the evidentiary value of the *shabu* seized from accused-appellants.

5. **ID.; ID.; PRESUMPTION OF REGULARITY OF PERFORMANCE OF DUTY OF BUY BUST TEAM; UPHELD ABSENT CLEAR AND CONVINCING EVIDENCE OF IMPROPER MOTIVE; CASE AT BAR. —** Likewise undeserving of credence is the allegation of frame-up. Accused-appellants did not present any evidence of extortion on the part of the buy-bust team. Neither were they able to

show any effort in correcting a wrong supposedly committed against them by filing the appropriate administrative and criminal charges against the police officers who arrested them. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the buy-bust operation deserve full faith and credit.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the March 31, 2009 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03019 entitled *People of the Philippines v. Jakar Mapan Le y Suba alias "Ankaw" and Rodel Del Castillo y Sacruz alias "Rodel"* which affirmed the Decision of the Regional Trial Court (RTC) Branch 154 in Pasig City in Criminal Case No. 13644-D for Violation of Section 5 in relation to Section 26 of Republic Act (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*. Accused-appellants were sentenced to life imprisonment.

The Facts

An Information charged accused-appellants as follows:

On or about July 27, 2004, in Pasig City and within the jurisdiction of this Honorable Court, the accused, conspiring and confederating together, and both of them mutually helping and aiding one another, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, deliver and give away to PO1 Richard N. Noble, a police poseur-buyer, one (1) heat-sealed transparent plastic sachet, containing two (2) grams of white crystalline substance, which were found positive to the test for methamphetamine hydrochloride, a dangerous drug, in violation of the said law.[1]

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[1] CA *rollo,* p. 6.

During their arraignment, accused-appellants both gave a negative plea.

At the trial, the prosecution presented the following witnesses: PO2 Richard Noble (PO2 Noble) and PO1 Melvin Mendoza (PO1 Mendoza). The defense offered the testimonies of accused-appellants and Norhaya Mapan Le, Mapan Le's daughter.

Version of the Prosecution

According to PO2 Noble, the Pasig City Police Station received information at around 9:00 on the evening of July 27, 2004 from a confidential informant (CI) that a certain "Ankar" and "Rodel" were selling *shabu* in Bolante, Palatiw in Pasig City. He noticed that the two men tagged in the information were included in their drug watch list. Their office thus prepared a pre-operation report (Exhibit "B") and coordinated with the Philippine Drug Enforcement Agency (PDEA) (Exhibit "B-1"). Police Inspector Castillo organized a buy-operation and designated PO2 Noble as the poseur-buyer. PO2 Noble placed his initials "RN" on the buy-bust money (Exhibits "E" and "F") consisting of two (2) Php100 bills. PO2 Noble, PO1 Mendoza and their colleagues then headed for the target area in two (2) unmarked vehicles. They reached the place at around 9:50pm and walked to the place of "Ankar" and "Rodel." Once the latter were spotted, the CI talked to "Ankar" and introduced PO2 Noble as a regular *shabu* buyer. When "Ankar" asked PO2 Noble how much he wanted to purchase, he replied by giving "Ankar" the Php200 marked money. "Ankar" then instructed "Rodel" to give PO2 Noble a plastic sachet. PO2 Noble examined the contents of the plastic bag and proceeded to scratch his head to mark the consummation of the drug transaction. Upon seeing the pre-arranged signal from PO2 Noble, back-up operative PO2 Mendoza rushed to the scene. PO2 Noble arrested "Rodel" while PO2 Mendoza arrested "Ankar," who attempted to flee. PO2 Mendoza retrieved the buy-bust money from "Ankar" while PO2 Noble marked the plastic sachet received from "Rodel."[2]

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[2] *Id.* at 50-52.

PO1 Melvin Mendoza corroborated PO2 Noble's testimony. He testified that he followed PO2 Noble and the CI at a distance of around 10 to 15 meters. He observed the men talking with "Ankar," with "Rodel" handing something to "Ankar" afterwards. "Ankar" then handed the object to PO2 Noble. PO2 Mendoza did not see what the object was from where he was situated. When he saw PO2 Noble brush his hair with his hand he joined PO2 Noble in arresting "Rodel" and "Ankar," with PO2 Noble informing the men of their violation. PO2 Noble then placed markings on the plastic sachet that was sold. The men were then brought to the police station for further investigation.[3] The two were subsequently identified as Jakar "Ankar" Mapan Le (Le) and Rodel Del Castillo (Del Castillo).

Version of the Defense

On the witness stand, Le testified that he was a vendor of slippers and socks at the Pasig Market. On the evening of July 27, 2004, he was inside his house with his family. While they were watching television someone suddenly kicked the door of their house. Four male strangers then entered without warning and frisked him. They found nothing on his person. He asked if they had a warrant and they answered that they did not. Still they brought him outside and boarded him in a red car. He was told that they were taking him to their office.[4]

According to Le, Del Castillo[5] lived five houses away from him. He only knew Del Castillo by face and only found out his name when he arrived at the Parancillo Police Station, where Del Castillo was in handcuffs. Le recounted that a police officer named Noble demanded PhP 10,000 from Mapan for his freedom. Le answered that he did not have money, to which Noble said, "*tutuluyan kita.*" Le was jailed when he could not comply with Noble's demand.

Del Castillo testified that on the night of the buy-bust operation, he was on his way home from work as a *kargador* in the market.

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[3] *Id.* at 52-53.

[4] *Id.* at 53.

[5] Also identified in the records as "Rodel Castillo."

He stopped by a deep-well pump in front of Le's house in order to wash his hands. Several police officers approached him while he was washing his hands. He was asked if he knew who Ankar was. He replied in the negative. Afterwards, he noticed that three of the police officers went inside Le's house while the rest remained outside. He left soon after. After taking only a few steps, PO2 Noble called Del Castillo back and asked him if he knew Le. He replied that he did not. He was boarded in a car, with Le following suit three minutes later. The two were brought to Rizal Medical Center where they were made to sign a document. They were not brought to the crime laboratory for drug testing but were instead escorted to the Parancillo police station.[6]

Del Castillo narrated that the police insisted he knew who Le was. He denied this and was brought to a bathroom where he was beaten up.[7]

Norhaya Mapan Le (Norhaya) corroborated her father's testimony. She said she was watching television with her parents when four men barged into their house on July 27, 2007 at around 10 to 11pm. They were armed men in civilian clothing who announced that they were police officers. They instructed her family not to move. The men searched their house and did not find anything. She saw them frisk her father and handcuff him. Later, their neighbors told them that the police officers were from Parancillo and that they should follow her father to the police station.[8]

At the police station, Norhaya and her family begged Police Officer Noble to set her father free because he was innocent. The policeman instructed them to pay Php10,000.00 for the release of Le. When they told Noble they could not produce the amount, they were advised to return when they had the payment.[9]

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[6] CA *rollo*, p. 54.

[7] *Id.*

[8] *Id.* at 55.

[9] *Id.*

In addition, Norhaya testified that she did not know her father's co-accused Rodel Del Castillo prior to the alleged buy-bust operation. She told the court that her father left their house on July 27, 2004 to sell slippers and socks at the market and returned home before 8pm and did not leave their house anymore.[10]

The Ruling of the Trial Court

Finding all of the elements of a valid buy-bust operation present, the RTC convicted accused-appellants of the crime charged. The trial court also noted that the requirements prescribed by RA 9165 on coordination with PDEA were complied with. The defense's claim of extortion was not given credence as it was found to be a vain attempt by accused-appellants to show motive on the part of the police officers even if the former had no visible means of income.

The dispositive portion of the RTC Decision[11] reads:

> WHEREFORE, premises considered, judgment is hereby rendered in finding the accused JAKAR MAPAN LE and RODEL DEL CASTILLO GUILTY beyond reasonable doubt of violation of Section 5, Article II of RA 9165 (sale of dangerous drugs) and each of them is sentenced to suffer the penalty of LIFE IMPRISONMENT. Each of them is also ordered to pay a fine of ₱1,000,000.00. x x x
>
> SO ORDERED.

Accused-appellants appealed their conviction before the CA. They averred that their guilt was not proven beyond reasonable doubt. There were material inconsistencies and contradictions in the prosecution witnesses' testimonies, such as PO2 Noble and PO1 Mendoza's version of how the buy-bust operation was conducted. The defense also emphasized that the prosecution failed to (1) present the person who delivered the subject *shabu* to the crime laboratory, thus creating a missing link in the chain of custody; and (2) make an inventory and take photographs of the confiscated *shabu* in the presence of accused-appellants, a

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[10] *Id.*

[11] *Id.* at 57. Penned by Judge Abraham B. Borreta.

media representative, and an elected public official as required by RA 9165.

The Ruling of the Court of Appeals

The CA[12] affirmed the appealed RTC decision. The alleged inconsistent statements made by prosecution witnesses were not material enough to overturn the trial court's findings and did not delve into the elements of the crime charged. As to the chain of custody rule, the appellate court ruled that what was most important was that the prosecution showed that the identity and integrity of the *shabu* was preserved.

Accused-appellants seasonably filed their Notice of Appeal of the appellate court's Decision.

On September 23, 2009, this Court required the parties to submit supplemental briefs, if they so desire. The parties manifested that they were adopting their arguments contained in their respective briefs earlier filed with the Court.

The Issue

WHETHER THE COURT OF APPEALS ERRED IN FINDING ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT.

Reiterating their arguments, accused-appellants maintain that the prosecution witnesses' testimonies on how the buy-bust operation occurred were completely different from each other. The non-presentation of the marked money the team used is also questioned. The prosecution's evidence is likewise attacked for having a missing link in the chain of custody of over the subject *shabu* and for non-compliance with Sec. 21 of RA 9165 as well as its Implementing Rules and Regulations (IRR). The defense further argues that no justifiable reason was offered for such non-compliance.

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[12] *Rollo*, pp. 2-23. The Decision was penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Lucas P. Bersamin and Ramon R. Garcia, concurring.

The Office of the Solicitor General (OSG), on the other hand, argues on behalf of the People that the prosecution was able to prove the identity of the seized *shabu.* They label as immaterial whether it was Le or Castillo who gave the *shabu* to PO2 Noble. In their view, the non-presentation of the marked money does not create a hiatus in the evidence of the prosecution as the sale of the *shabu* was adequately proven and the *shabu* itself was presented before the court. In addition, they point out that the photocopies of the marked money were presented, identified, and not objected to.

On the matter of extortion, the OSG contends that no proof was shown by the defense to overcome the presumption of regularity in the performance of official duties enjoyed by the buy-bust operation team's members.

The Ruling of This Court

We affirm accused-appellant's conviction.

Elements of the Crime

Accused-appellants are charged with violating Section 5 of RA 9165, which reads:

> *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 essential elements that must be established in prosecuting a case of illegal sale of *shabu* are: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and the payment therefor.[13]

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[13] *People v. Guiara*, G.R. No. 186497, September 17, 2009, 600 SCRA 310, 322-323.

What is material is proof that the transaction actually took place, along with the presentation in court of the illegal substance which constitutes the *corpus delicti* of the crime.[14]

In the instant case, the aforementioned elements were established by the prosecution. Le received Php200 from poseur-buyer PO2 Noble in exchange for a plastic sachet handed to him by Del Castillo. PO2 Noble wrote his initials on the seized item. The plastic sachet's contents were then subjected to a laboratory examination and tested positive for *shabu.* The alleged inconsistencies cited by the defense do not materially affect the credibility of the prosecution's witnesses. As the OSG correctly pointed out, the inconsistencies were too trivial to merit consideration. What is important is that the elements of the crime were established by both the oral and object evidence presented in court.

Accused-appellants' argument on the failure to present the marked money in court is not only without merit but baseless. Two (2) One hundred peso (Php100) bills were presented as evidence as the buy-bust money used and marked as Exhibits "E" and "F". Moreover, the presentation of buy-bust money is not required by law or jurisprudence. Its non-presentation is not fatal to the case for the prosecution. The marked money used in the buy-bust operation is not indispensable but merely corroborative in nature.[15]

Chain of Custody

We likewise affirm the findings of both lower courts on the issue of chain of custody. What is important is the preservation of the identity and integrity of the seized *shabu.*

RA 9165 provides the procedure for buy-bust operations:

Section 21. *Custody and Disposition of Confiscated, Seized, and/ or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/*

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[14] *People v. Capco,* G.R. No. 183088, September 17, 2009, 600 SCRA 204, 214.

[15] *People v. Cruz,* G.R. No. 164580, February 6, 2009, 578 SCRA 147, 154.

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;

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/ paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s: *Provided*, That when the volume of the dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of dangerous drugs still to be examined by the forensic laboratory: *Provided, however*, That a final certification shall be issued on the completed forensic laboratory examination on the same within the next twenty-four (24) hours;

(4) After the filing of the criminal case, the Court shall, within seventy-two (72) hours, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within twenty-four (24) hours thereafter proceed with the destruction or burning of 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 DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: *Provided*, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: *Provided, further*, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; x x x

To summarize, we ruled in *People v. Camad*,[16] that there are links that must be established in the chain of custody in a buy-bust situation, *viz*: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal

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[16] G.R. No. 174198, January 9, 2010.

drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court.

In the instant case, the links in the chain are the following:

(1) At the scene of the buy-bust operation, Castillo handed the plastic sachet to PO2 Noble, who immediately marked it with his initials;

(2) The plastic sachet was brought to the laboratory for examination per Request for Laboratory Examination (Exhibit "A") signed by Police Inspector Earl B. Castillo;

(3) According to Physical Science Report No. D-0670-04E (Exhibit "B") prepared by Forensic Chemist Lourdeliza Gural Cejes, the two (2) grams inside the seized sachet tested positive for *shabu.*

Non-compliance with Sec. 21 does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible.[17] The requirements under RA 9165 and its IRR are not inflexible. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."[18] The prosecution in this case was able to preserve the integrity and the evidentiary value of the *shabu* seized from accused-appellants. The records show that there was substantial compliance with the requirements of RA 9165. We thus hold that the chain of custody requirements were met in the instant case.

Presumption of Regularity

Likewise undeserving of credence is the allegation of frame-up. Accused-appellants did not present any evidence of extortion

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[17] *People v. De Leon,* G.R. No. 186471, January 25, 2010; citing *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 448; *People v. Del Monte*, G.R. No. 179940, April 23, 2008, 552 SCRA 627.

[18] *People v. De Leon, supra*; citing *People v. Naquita*, *supra*; *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421.

on the part of the buy-bust team. Neither were they able to show any effort in correcting a wrong supposedly committed against them by filing the appropriate administrative and criminal charges against the police officers who arrested them. Unless there is clear and convincing evidence that the members of the buy-bust team were inspired by any improper motive or were not properly performing their duty, their testimonies on the buy-bust operation deserve full faith and credit.[19] We therefore uphold the presumption that the members of the buy bust team performed their duties in a regular manner. Their testimonies as prosecution witnesses are entitled to full faith and credit.

Penalty Imposed

RA 9165 prescribes the penalty of life imprisonment to death and a fine ranging from PhP 500,000 to PhP 10 million for a violation of Sec. 5 of the same law. Having been sentenced to life imprisonment and to pay a fine of PhP 1 million each, accused-appellants' imposed penalties should be affirmed as these are within the range provided by law.

WHEREFORE, the appeal is *DENIED*. Accordingly, the CA's March 31, 2009 Decision in CA-G.R. CR-H.C. No. 03019 is *AFFIRMED IN TOTO*. Costs against accused-appellants.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perez, JJ.,* concur.

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[19] *People v. Tion*, G.R. No. 172092, December 16, 2009.

EN BANC

[G.R. No. 189600. June 29, 2010]

MILAGROS E. AMORES, *petitioner, vs.* **HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL and EMMANUEL JOEL J. VILLANUEVA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *QUO WARRANTO*; PETITION FILED PURSUANT TO SECTION 17 OF RA NO. 7941, THE PARTY-LIST SYSTEM ACT; MOOT AND ACADEMIC; IN THE CASE AT BAR, RENDERING OF A DECISION ON THE MERITS WOULD STILL BE OF PRACTICAL VALUE. —** It bears noting that the term of office of party-list representatives elected in the May, 2007 elections will expire on June 30, 2010. While the petition has, thus, become moot and academic, rendering of a decision on the merits in this case would still be of practical value.

2. **POLITICAL LAW; ELECTION LAWS; THE PARTY-LIST SYSTEM ACT (R.A. NO. 7941); NBC RESOLUTION NO. 07-60 DATED JULY 9, 2007; IN THE CASE AT BAR, SINCE PETITIONER'S CHALLENGE GOES INTO PRIVATE RESPONDENT'S QUALIFICATIONS, IT MAY BE FILED AT ANYTIME DURING HIS TERM.—** On the first issue, the Court finds that public respondent committed grave abuse of discretion in considering petitioner's Petition for *Quo Warranto* filed out of time. Its counting of the 10-day reglementary period provided in its Rules from the issuance of NBC Resolution No. 07-60 on July 9, 2007 is erroneous. x x x Considering, however, that the records do not disclose the exact date of private respondent's proclamation, the Court overlooks the technicality of timeliness and rules on the merits. Alternatively, since petitioner's challenge goes into private respondent's qualifications, it may be filed at anytime during his term. "Qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualifications is lost, his title may be seasonably challenged."

3. ID.; ID.; ID.; ID.; SECTION 13 OF RA NO. 7941 GOVERNS THE PROCLAMATION OF THE REPRESENTATIVE OF THE WINNING SECTORAL PARTY; CASE AT BAR. — To be sure, while NBC Resolution No. 07-60 partially proclaimed CIBAC as a winner in the May, 2007 elections, along with other party-list organizations, it was by no measure a proclamation of private respondent himself as required by Section 13 of RA No. 7941. "Sec. 13. *How Party-List Representatives are Chosen.* Party-list representatives shall be proclaimed by the COMELEC based on the list of names submitted by the respective parties, organizations, or coalitions to the COMELEC according to their ranking in said list."

4. ID.; ID.; ID.; ID.; THIS COURT HAS SET ASIDE NBC RESOLUTION NO. 07-60 IN *BARANGAY ASSOCIATION FOR NATIONAL ADVANCEMENT AND TRANSPARENCY V. COMELEC.* — AT ALL EVENTS, this Court set aside NBC Resolution No. 07-60 in *Barangay Association for National Advancement and Transparency v. COMELEC*, after revisiting the formula for allocation of additional seats to party-list organizations.

5. ID.; ID.; ID.; SECTION 9 GOVERNS AGE REQUIREMENTS FOR NOMINEES OF YOUTH SECTOR. — [T]he Court shall first discuss the age requirement for youth sector nominees under Section 9 of RA No. 7941 reading: "Sec. 9. *Qualifications of Party-List Nominees.* No person shall be nominated as party-list representative unless he is a natural-born citizen of the Philippines, a registered voter, a resident of the Philippines for a period of not less than one (1)year immediately preceding the day of the election, able to read and write, a *bona fide* member of the party or organization which he seeks to represent for at least ninety (90) days preceding the day of the election, and is at least twenty-five (25) years of age on the day of the election. In case of a **nominee of the youth sector**, he must at least be twenty-five (25) but **not more than thirty (30) years of age on the day of the election**. Any youth sectoral representative who attains the age of thirty (30) during his term shall be allowed to continue in office until the expiration of his term." x x x As the law states in unequivocal terms that a **nominee of the youth sector** **must at least be twenty-five (25) but not more than thirty (30) years of age on the day of the election**, so it must be that a candidate who is more

than 30 on election day is not qualified to be a youth sector nominee. Since this mandate is contained in RA No. 7941, the Party-List System Act, it covers ALL youth sector nominees vying for party-list representative seats.

6. **ID.; ID.; ID.; ID.; IN THE CASE AT BAR, RESPONDENT WAS BEYOND THE AGE LIMIT.** — The records disclose that private respondent was already more than 30 years of age in May, 2007, it being stipulated that he was born in August, 1975. . . .

7. **ID.; ID.; ID.; SECTION 15 COVERS CHANGES IN BOTH POLITICAL PARTY AND SECTORAL AFFILIATION.** —[S]ection 15 reads: "Sec. 15. *Change of Affiliation; Effect*. Any elected party-list representative who changes his **political party or sectoral affiliation** during his term of office shall forfeit his seat: Provided, That if he changes his **political party or** **sectoral affiliation** within six (6) months before an election, he shall not be eligible for nomination as party-list representative under his new party or organization." What is clear is that the wording of Section 15 covers changes in both political party and sectoral affiliation. And the latter may occur within the same party since multi-sectoral party-list organizations are qualified to participate in the Philippine party-list system. Hence, a nominee who changes his sectoral affiliation within the same party will only be eligible for nomination under the new sectoral affiliation if the change has been effected at least six months before the elections. . . .

8. **ID.; ID.; ID.; ID.; IN THE CASE AT BAR, THE COMELEC ITSELF FOUND OUT THAT RESPONDENT DID NOT CHANGE HIS AFFILIATION.** — [M]oreover, he did not change his sectoral affiliation at least six months before May, 2007, public respondent itself having found that he shifted to CIBAC's overseas Filipino workers and their families sector only on March 17, 2007.

9. **STATUTORY CONSTRUCTION; STATUTES; INTERPRETATION OF; WHEN THE LAW IS CLEAR AND FREE FROM ANY DOUBT OR AMBIGUITY, THERE IS NO ROOM FOR CONSTRUCTION OR INTERPRETATION.** — A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.

x x x [*U*]*bi lex non distinguit nec nos distinguire debemus.* When the law does not distinguish, we must not distinguish. x x x [S]ince the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is the plain meaning rule or *verba legis,* as expressed in the maxim *index animi sermo* or speech is the index of intention.

10. **POLITICAL LAW; ELECTION LAWS; PARTY-LIST SYSTEM ACT (R.A. NO. 7941); IN THE CASE AT BAR, THE COURT FINDS NO TEXTUAL SUPPORT FOR PUBLIC RESPONDENT'S INTERPRETATIONS OF SECTIONS 9 AND 15.** — The Court finds no textual support for public respondent's interpretation that Section 9 applied only to those nominated during the first three congressional terms after the ratification of the Constitution or until 1998, unless a sectoral party is thereafter registered exclusively as representing the youth sector. x x x As petitioner points out, RA No. 7941 was enacted only in March, 1995. There is thus no reason to apply Section 9 thereof only to youth sector nominees nominated during the first three congressional terms after the ratification of the Constitution in 1987. Under this interpretation, the last elections where Section 9 applied were held in May, 1995 or two months after the law was enacted. This is certainly not sound legislative intent, and could not have been the objective of RA No. 7941. There is likewise no rhyme or reason in public respondent's ratiocination that after the third congressional term from the ratification of the Constitution, which expired in 1998, Section 9 of RA No. 7941 would apply only to sectoral parties registered exclusively as representing the youth sector. This distinction is nowhere found in the law. . . . Respecting Section 15 of RA No. 7941, the Court fails to find even an iota of textual support for public respondent's ratiocination that the provision did not apply to private respondent's shift of affiliation from CIBAC's youth sector to its overseas Filipino workers and their families sector as there was no resultant change in party-list affiliation. . . .

11. **ID.; ID.; ID.; SECTION 13 GOVERNS THE PROCLAMATION OF THE REPRESENTATIVE OF THE WINNING SECTORAL PARTY; IN THE CASE AT BAR, PRIVATE RESPONDENT WHO WAS EVENTUALLY PROCLAIMED AS PARTY-LIST REPRESENTATIVE OF CIBAC AND**

RENDERED SERVICES AS SUCH, IS ENTITLED TO KEEP THE COMPENSATION AND EMOLUMENTS PROVIDED BY LAW FOR THE POSITION UNTIL HE IS PROPERLY DECLARED INELIGIBLE. — It is, therefore, beyond cavil that Sections 9 and 15 of RA No. 7941 apply to private respondent. The Court finds that private respondent was not qualified to be a nominee of either the youth sector or the overseas Filipino workers and their families sector in the May, 2007 elections. x x x That private respondent is the first nominee of CIBAC, whose victory was later upheld, is of no moment. A party-list organization's ranking of its nominees is a mere indication of preference, their qualifications according to law are a different matter. It not being contested, however, that private respondent was eventually proclaimed as a party-list representative of CIBAC and rendered services as such, he is entitled to keep the compensation and emoluments provided by law for the position until he is properly declared ineligible to hold the same.

APPEARANCES OF COUNSEL

Rogelio Pizarro, Jr. for petitioner.
The Solicitor General for public respondent.
Frederick Mikhail I. Farolan for private respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Via this petition for *certiorari*, Milagros E. Amores (petitioner) challenges the Decision of May 14, 2009 and Resolution No. 09-130 of August 6, 2009 of the House of Representatives Electoral Tribunal (public respondent), which respectively dismissed petitioner's Petition for *Quo Warranto* questioning the legality of the assumption of office of Emmanuel Joel J. Villanueva (private respondent) as representative of the party-list organization Citizens' Battle Against Corruption (CIBAC) in the House of Representatives, and denied petitioner's Motion for Reconsideration.

In her Petition for *Quo Warranto*[1] seeking the ouster of private respondent, petitioner alleged that, among other things, private respondent assumed office without a formal proclamation issued by the Commission on Elections (COMELEC); he was disqualified to be a nominee of the youth sector of CIBAC since, at the time of the filing of his certificates of nomination and acceptance, he was already 31 years old or beyond the age limit of 30 pursuant to Section 9 of Republic Act (RA) No. 7941, otherwise known as the Party-List System Act; and his change of affiliation from CIBAC's youth sector to its overseas Filipino workers and their families sector was not effected at least six months prior to the May 14, 2007 elections so as to be qualified to represent the new sector under Section 15 of RA No. 7941.

Not having filed his Answer despite due notice, private respondent was deemed to have entered a general denial pursuant to public respondent's Rules.[2]

As earlier reflected, public respondent, by Decision of May 14, 2009,[3] dismissed petitioner's Petition for *Quo Warranto*, finding that CIBAC was among the party-list organizations which the COMELEC had partially proclaimed as entitled to at least one seat in the House of Representatives through National Board of Canvassers (NBC) Resolution No. 07-60 dated July 9, 2007. It also found the petition which was filed on October 17, 2007 to be out of time, the reglementary period being 10 days from private respondent's proclamation.

Respecting the age qualification for youth sectoral nominees under Section 9 of RA No. 7941, public respondent held that it applied only to those nominated as such during the first three congressional terms after the ratification of the Constitution or until 1998, unless a sectoral party is thereafter registered exclusively as representing the youth sector, which CIBAC, a multi-sectoral organization, is not.

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[1] *Rollo,* pp. 104-113.

[2] *Id.* at 33.

[3] *Id.* at 32-45.

In the matter of private respondent's shift of affiliation from CIBAC's youth sector to its overseas Filipino workers and their families sector, public respondent held that Section 15 of RA No. 7941 did not apply as there was no resultant change in party-list affiliation.

Her Motion for Reconsideration having been denied by Resolution No. 09-130 dated August 6, 2009,[4] petitioner filed the present Petition for *Certiorari*.[5]

Petitioner contends that, among other things, public respondent created distinctions in the application of Sections 9 and 15 of RA No. 7941 that are not found in the subject provisions, fostering interpretations at war with equal protection of the laws; and NBC Resolution No. 07-60, which was a partial proclamation of winning party-list organizations, was not enough basis for private respondent to assume office on July 10, 2007, especially considering that he admitted receiving his own Certificate of Proclamation only on December 13, 2007.

In his Comment,[6] private respondent avers in the main that petitioner has not substantiated her claims of grave abuse of discretion against public respondent; and that he became a member of the overseas Filipinos and their families sector years before the 2007 elections.

It bears noting that the term of office of party-list representatives elected in the May, 2007 elections will expire on June 30, 2010. While the petition has, thus, become moot and academic, rendering of a decision on the merits in this case would still be of practical value.[7]

The Court adopts the issues framed by public respondent, to wit: (1) whether petitioner's Petition for *Quo Warranto* was

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

[5] *Id*. at 3-31.

[6] *Id*. at 176-187.

[7] Vide *Malaluan v. Commission on Elections,* G.R. No. 120193, March 6, 1996, 254 SCRA 397, 403-404.

dismissible for having been filed unseasonably; and (2) whether Sections 9 and 15 of RA No. 7941 apply to private respondent.

On the first issue, the Court finds that public respondent committed grave abuse of discretion in considering petitioner's Petition for *Quo Warranto* filed out of time. Its counting of the 10-day reglementary period provided in its Rules[8] from the issuance of NBC Resolution No. 07-60 on July 9, 2007 is erroneous.

To be sure, while NBC Resolution No. 07-60 partially proclaimed CIBAC as a winner in the May, 2007 elections, along with other party-list organizations,[9] it was by no measure a proclamation of private respondent himself as required by Section 13 of RA No. 7941.

> Section 13. *How Party-List Representatives are Chosen.* Party-list representatives shall be proclaimed by the COMELEC based on the list of names submitted by the respective parties, organizations, or coalitions to the COMELEC according to their ranking in said list.

AT ALL EVENTS, this Court set aside NBC Resolution No. 07-60 in *Barangay Association for National Advancement and Transparency v. COMELEC*[10] after revisiting the formula for allocation of additional seats to party-list organizations.

Considering, however, that the records do not disclose the exact date of private respondent's proclamation, the Court overlooks the technicality of timeliness and rules on the merits. Alternatively, since petitioner's challenge goes into private respondent's qualifications, it may be filed at anytime during his term.

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[8] Rule 17 of the 2004 Rules of public respondent provides:

Rule 17. *Quo Warranto.* — A verified petition for *quo warranto* contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any voter within ten (10) days after the proclamation of the winner. x x x

[9] *Vide rollo,* pp. 93-94.

[10] G.R. Nos. 179271 & 179295, April 21, 2009, 586 SCRA 210.

Qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualifications is lost, his title may be seasonably challenged.[11]

On the second and more substantial issue, the Court shall first discuss the age requirement for youth sector nominees under Section 9 of RA No. 7941 reading:

Section 9. *Qualifications of Party-List Nominees.* No person shall be nominated as party-list representative unless he is a natural-born citizen of the Philippines, a registered voter, a resident of the Philippines for a period of not less than one (1)year immediately preceding the day of the election, able to read and write, a bona fide member of the party or organization which he seeks to represent for at least ninety (90) days preceding the day of the election, and is at least twenty-five (25) years of age on the day of the election.

In case of a **nominee of the youth sector**, he must at least be twenty-five (25) but **not more than thirty (30) years of age on the day of the election**. Any youth sectoral representative who attains the age of thirty (30) during his term shall be allowed to continue in office until the expiration of his term. (Emphasis and underscoring supplied.)

The Court finds no textual support for public respondent's interpretation that Section 9 applied only to those nominated during the first three congressional terms after the ratification of the Constitution or until 1998, unless a sectoral party is thereafter registered exclusively as representing the youth sector.

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application.[12]

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[11] Vide *Frivaldo v. COMELEC,* G.R. No. 87193, June 23, 1989, 174 SCRA 245, 255.

[12] *Twin Ace Holdings Corporation v. Rufina and Compan*y, G.R. No. 160191, June 8, 2006, 490 SCRA 368, 376.

As the law states in unequivocal terms that a **nominee of the youth sector must at least be twenty-five (25) but not more than thirty (30) years of age on the day of the election**, so it must be that a candidate who is more than 30 on election day is not qualified to be a youth sector nominee. Since this mandate is contained in RA No. 7941, the Party-List System Act, it covers ALL youth sector nominees vying for party-list representative seats.

As petitioner points out, RA No. 7941 was enacted only in March, 1995. There is thus no reason to apply Section 9 thereof only to youth sector nominees nominated during the first three congressional terms after the ratification of the Constitution in 1987. Under this interpretation, the last elections where Section 9 applied were held in May, 1995 or two months after the law was enacted. This is certainly not sound legislative intent, and could not have been the objective of RA No. 7941.

There is likewise no rhyme or reason in public respondent's ratiocination that after the third congressional term from the ratification of the Constitution, which expired in 1998, Section 9 of RA No. 7941 would apply only to sectoral parties registered exclusively as representing the youth sector. This distinction is nowhere found in the law. *Ubi lex non distinguit nec nos distinguire debemus.* When the law does not distinguish, we must not distinguish.[13]

Respecting Section 15 of RA No. 7941, the Court fails to find even an iota of textual support for public respondent's ratiocination that the provision did not apply to private respondent's shift of affiliation from CIBAC's youth sector to its overseas Filipino workers and their families sector as there was no resultant change in party-list affiliation. Section 15 reads:

> Section 15. *Change of Affiliation; Effect.* Any elected party-list representative who changes his **political party or sectoral affiliation** during his term of office shall forfeit his seat: Provided, That if he

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[13] *Vide Adasa v. Abalos,* G.R. No. 168617, February 19, 2007, 516 SCRA 261, 280; *Philippine Free Press, Inc. v. Court of Appeals*, G.R. No. 132864, October 24, 2005, 473 SCRA 639, 662.

changes his **political party or** **sectoral affiliation** within six (6) months before an election, he shall not be eligible for nomination as party-list representative under his new party or organization. (emphasis and underscoring supplied.)

What is clear is that the wording of Section 15 covers changes in both political party and sectoral affiliation. And the latter may occur within the same party since multi-sectoral party-list organizations are qualified to participate in the Philippine party-list system. Hence, a nominee who changes his sectoral affiliation within the same party will only be eligible for nomination under the new sectoral affiliation if the change has been effected at least six months before the elections. Again, since the statute is clear and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is the plain meaning rule or *verba legis,* as expressed in the maxim *index animi sermo* or speech is the index of intention.[14]

It is, therefore, beyond cavil that Sections 9 and 15 of RA No. 7941 apply to private respondent.

The Court finds that private respondent was not qualified to be a nominee of either the youth sector or the overseas Filipino workers and their families sector in the May, 2007 elections.

The records disclose that private respondent was already more than 30 years of age in May, 2007, it being stipulated that he was born in August, 1975.[15] Moreover, he did not change his sectoral affiliation at least six months before May, 2007, public respondent itself having found that he shifted to CIBAC's overseas Filipino workers and their families sector only on March 17, 2007.[16]

That private respondent is the first nominee of CIBAC, whose victory was later upheld, is of no moment. A party-list organization's ranking of its nominees is a mere indication of preference, their qualifications according to law are a different matter.

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[14] *Vide Padua v. People,* G.R. No. 168546, July 23, 2008, 559 SCRA 519, 531.

[15] *Vide rollo,* p. 33.

[16] *Vide rollo,* p. 43.

It not being contested, however, that private respondent was eventually proclaimed as a party-list representative of CIBAC and rendered services as such, he is entitled to keep the compensation and emoluments provided by law for the position until he is properly declared ineligible to hold the same.[17]

WHEREFORE, the petition is *GRANTED*. The Decision dated May 14, 2009 and Resolution No. 09-130 dated August 6, 2009 of the House of Representatives Electoral Tribunal are *SET ASIDE*. Emmanuel Joel J. Villanueva is declared ineligible to hold office as a member of the House of Representatives representing the party-list organization CIBAC.

SO ORDERED.

Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Corona, C.J. and *Nachura, J.,* no part.

FIRST DIVISION

[G.R. No. 190616. June 29, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **PASTOR LLANAS, JR.** ***y*** **BELCHES,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; RAPE; WHEN AND HOW COMMITTED. — Penile or organ rape is, in context, committed when the accused has carnal knowledge of the victim by force, threat or

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[17] Vide *Malaluan v. COMELEC, supra* note 7 at 407.

intimidation, or when the victim is deprived of reason or is unconscious, or when the victim is under 12 years of age.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; AN OFFENDED WOMAN'S TESTIMONY HURDLING THE EXACTING TEST OF CREDIBILITY WOULD SUFFICE TO CONVICT.** — Rape is essentially an offense of secrecy involving only two persons and not generally attempted save in secluded places far from prying eyes. By the intrinsic nature of rape cases, the crime usually commences solely upon the word of the offended girl herself and conviction invariably turns upon her credibility, as the People's single witness of the actual occurrence. Accordingly, certain guiding principles have been formulated in resolving rape cases. Foremost of these: an offended woman's testimony hurdling the exacting test of credibility would suffice to convict. In fine, the credibility of the victim is always the single most important issue in prosecution for rape.

3. **ID.; ID.; ID.; YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH AND SINCERITY. —** Testimonies of rape-victims normally carry and are given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified is not true. Youth and immaturity are generally badges of truth and sincerity.

4. **ID.; ID.; ID.; AAA'S TESTIMONY ON THE FACT OF MOLESTATION WAS GIVEN "IN A STRAIGHTFORWARD AND CANDID MANNER, UNSHAKEN BY RIGID CROSS-EXAMINATION."** — Without hesitation, AAA had pointed an accusing finger at the appellant, her father no less, as the person who forced himself on her on at least three occasions and who caused her pain when he inserted his sex organ into her vagina. As determined by the trial court, AAA's testimony on the fact of molestation was given "in a straightforward and candid manner, unshaken by rigid cross-examination that indeed she has been raped by her father in 3 occasions which are the subject of these cases." There is, thus, no cause or reason to

withhold credence on her testimony, absent, as here, ill motive on her part that would becloud the veracity of her account.

5. ID.; ID.; ID.; CONSIDERING THAT AAA'S ATTACKER HELD MORAL AND PHYSICAL DOMINION OVER AND, HAD IN FACT, THREATENED HER, IT IS UNDERSTANDABLE IF SHE WAS, DURING THAT TIME, COWED INTO SUBMITTING TO HER FATHER'S BEASTLY BENT. — It cannot be over-emphasized enough that the third rape incident occurred when AAA was barely out of her teens. Be that as it may and considering that her attacker held moral and physical dominion over, and had in fact threatened her, it is understandable if AAA was, during that time, cowed into submitting to her father's beastly bent. In light of this perspective, the absence of a struggle or an outcry from AAA, if this really were the case *vis-à-vis* the 2005 rape incident, does not, standing alone, preclude the commission of the crime. As we have repeatedly held, there is no standard norm of behavior for victims of rape immediately before and during the forcible *coitus* and its ugly aftermath. This is especially true with minor rape victims.

6. ID.; ID.; ID.; A MEDICAL REPORT ON THE RAPE VICTIM, BEING ONLY CORROBORATIVE OF THE FINDING OF RAPE, IS NOT INDISPENSABLE IN A PROSECUTION FOR RAPE; CASE AT BAR. — Appellant's obvious thesis that a minor rape victim always results in vaginal injury rests on a lot of oversimplification and, hence, must be eschewed. To start with, full penile penetration, which would ordinarily result in hymenal rupture or laceration of the vagina of a girl of tender years, is not a consummating ingredient in the crime of rape. The mere knocking at the door of the pudenda by the accused's penis suffices to constitute the crime of rape. And given AAA's unwavering testimony as to her harrowing ordeal in the hands of appellant, the Court cannot accord merit to the latter's argument that the lack of patent physical manifestation of rape weakens the case against him. The medical report on AAA is only corroborative of the finding of rape. The absence of fresh external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape, hymenal laceration and like vaginal injuries not being, to repeat, an element of the crime of rape. What is more, the foremost consideration in the prosecution of rape

is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is, to repeat, sufficient to convict.

7. ID.; ID.; ID.; A MATTER BEST ADDRESSED BY THE TRIAL COURT. — As the Court has often repeated, the issue of credibility is a matter best addressed by the trial court which had the chance to observe the demeanor of the witnesses while testifying. For this reason, the Court accords great weight and even finality to factual findings of the trial court, especially its assessments of the witnesses and their credibility, barring arbitrariness or oversight of some fact or circumstance of weight and substance.

8. ID.; ID.; DEFENSES OF DENIAL AND ALIBI; AN ACCUSED MUST PRESENT CONVINCING PROOF THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE *LOCUS CRIMINIS*; CASE AT BAR. —Appellant's defenses of denial and alibi, centering on the argument that it was impossible for him to commit the crime of rape against his daughter on August 4, 2005 as he was in Brgy. Quinale from August 3 to August 10, 2005, deserve scant consideration. As correctly ruled by the RTC, appellant failed to present convincing proof that it was physically impossible for him to be at the *locus criminis* on August 4, 2005. The trial court wrote: "x x x Likewise the accused should not only prove that he was not at the place of the crime but should likewise prove that it is impossible for him to be at the place of the crime. Barangay Quinale is about 7 kilometers away from Cabanbanan and the accused did not prove that is impossible for him to be at Cabanbanan from Quinale.

9. CRIMINAL LAW; RAPE; ELEMENTS; EXACT DATE OF THE COMMISSION OF THE RAPE NOT AN ELEMENT OF THE CRIME. — Appellant's attempt, in his bid for exculpation, to ride on AAA's inability to recall precisely what time of the day the 2005 rape transpired is puerile. Victims of rape hardly retain in their memories the dates and manner they were violated and it is for this reason that the exact date of the commission of the rape is not an element of the crime. The gravamen of the offense is carnal knowledge of a woman without her consent.

10. ID.; ID.; PROPER PENALTY WHERE VICTIM IS UNDER 18 AND THE OFFENDER IS HER FATHER; CASE AT BAR. — In all then, we find no reason to disturb the findings and the case disposition of the CA, confirmatory of that of the trial court. The imposition of the penalty of *reclusion perpetua*, instead of death, for each count of qualified rape, on appellant who shall not be eligible for parole under the Indeterminate Sentence Law is in order in light of R.A. 9346 or the Anti-Death Penalty Law, which prohibits the imposition of the death penalty. The award of PhP 75,000 as civil indemnity *ex delicto* and the same amount as moral damages for each count of qualified rape is in line with existing case law. In rape cases, the concurrence, as here, of the victim's minority (under 18) and her relationship with the offender is a special qualifying circumstance for which the law prescribes the penalty of death under Art. 266-B of the Revised Penal Code. While the new law prohibits the imposition of death, the penalty provided for a heinous crime is still death and qualified rape is still a heinous offense. The award of exemplary damages is also proper not only to deter outrageous conduct, but also in view of the aggravating circumstances of minority and relationship surrounding the commission of the offense, both of which were alleged in the information and proved during the trial. To conform to current jurisprudence, PhP 30,000 for each count of rape ought to be awarded, upped from the PhP 25,000 given by the courts *a quo*.

APPEARANCES OF COUNSEL

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

D E C I S I O N

VELASCO, JR., *J.*:

On September 26, 2005, in the Regional Trial Court (RTC) of Calabanga, Camarines Sur, three (3) separate informations for rape under Article 266-A in relation to Art. 266-B of the Revised Penal Code were filed against herein appellant Pastor Llanas, Jr. The informations, docketed as Criminal Case Nos.

RTC 05-1035, 05-1043, and 05-1044, were eventually raffled to Branch 63 of the court.

The first information, Criminal Case No. RTC 05-1035, reads as follows:

> That on or about August 4, 2005 at 1:00 P.M., in Bgy. Cabanbanan, Municipality of Calabanga, Province of Camarines Sur, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, willfully, unlawfully and feloniously by force or intimidation has carnal knowledge with his daughter [AAA], 15 years old against her will to her damage and prejudice.
>
> The crime is committed with the following attendant aggravating/ qualifying circumstances: The victim is under 18 and the offender is her father.
>
> ACTS CONTRARY TO LAW.[1]

The other informations for the same crime were worded similarly, as above, but reflected the years 1998 and 1999 as the date of the commission of the crime and the corresponding age of AAA,[2] the private offended party, as 9 and 10 years old, respectively.

When arraigned, appellant, assisted by counsel, pleaded not guilty to all the charges contained in the three (3) informations.

During pre-trial, the parties stipulated on the following: Appellant is legally married to BBB, AAA's mother, and that he is the father of AAA, his and BBB's only child. Marked at that time as Exh. "B" for the prosecution was a xerox copy of AAA's

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[1] *Rollo*, p. 2.

[2] The identity of the victims or any information tending to establish or compromise their identities, as well as those of their immediate family or household members, shall be withheld pursuant to RA No. 7610, *An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes,* RA No. 9262, *An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victim;*, and Sec. 40 of A.M. No. 04-10-11-SC, known as "*Rule on Violence Against Women and Their Children*" effective November 15, 2004; *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

Birth Certificate and Exh. "C", a xerox copy of the BBB's and appellant's Certificate of Marriage.

In the ensuing joint trial, the prosecution presented in evidence the testimony of AAA, her examination covering the three cases, BBB, the municipal civil registrar of Calabanga and the examining physician.

As summarized in the decision[3] of the Court of Appeals (CA) subject of review, the relevant antecedents facts are as follows:

The first incident happened sometime in 1998 when AAA was only a 9-year old Grade III schoolgirl.[4] On the fateful day of that year, appellant tricked AAA into going with him to a "camalig" to play. Once inside, appellant laid her on the bamboo floor and removed her garments. In all her innocence, AAA asked why she is being undressed only to be told by the appellant not to report anything, else he would kill her and BBB. After taking off his clothes, appellant parted AAA's legs, went on top of her, inserted his sex organ to hers and made the usual push-and-pull routine. After he was done, appellant left AAA crying in pain. At home later, AAA, remembering the threat her father made, kept her peace.

One day the following year, appellant again sexually abused AAA, now 10 years old. In the witness box, AAA could not recall whether the incident happened in the morning or in the afternoon, but she distinctly remembered that it occurred in 1999, being in Grade IV at that time and it was the year the family moved to another house in the same barrio.

Then on August 4, 2005, at around 1:00 o'clock in the afternoon, while BBB was out of the house, appellant approached AAA, now 15 years old, to ask her to play. This remark frightened AAA, as this was the same line used when she was abused in the past. AAA spurned the invitation to play, but the insistent appellant told her that: "*para lang yan*. It's just that. You are

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[3] *Rollo*, pp. 2-14.

[4] The OSG places the age of AAA in 1998 at 8 years old.

not going to be pregnant because I'm withdrawing my semen."[5] There and then, appellant brought her to a room, stripped her of her shorts and panty and likewise removed his garments. What happened next was a virtual repeat of what appellant did in 1998 and 1999 after he asked AAA to play.

On August 12, 2005, while BBB was out selling camote, appellant made an attempt, but failed, to again ravish AAA. Responding later to BBB's questioning why she was crying, AAA disclosed everything to her mother. Thereafter, BBB, with AAA in tow, proceeded to the local police station to report about the incidents, after which BBB repaired to the local National Bureau of Investigation office to have AAA physically examined.

The records of the physical examination conducted by Dr. Jane P. Fajardo yielded the following entries: "*no extragenital physical injury x x x on the body of [AAA] at the time of examination; old healed hymenal lacerations present; and hymenal orifice wide x x x as to allow complete penetration by an average sized adult male organ in full erection without producing hymenal injury*." Per Dr. Fajardo's account, the old hymenal laceration could, in all probability, have been caused by sexual intercourse, occurring a month or even years before the examination.

Appellant testified for the defense. He denied allegations about raping AAA in 1998 and 1999. He also professed innocence of the August 4, 2005 rape incident, being, according to him, then in Brgy. Quinale, Calabanga working with one Roger Evangelista from August 3 to August 10, 2005.

Evangelista, in the witness box, lent his voice to buttress what essentially was appellant's defenses of alibi and denial proffered in relation to the August 2005 rape charge.

On June 7, 2007, the RTC rendered a joint decision finding appellant guilty of raping AAA, her minor legitimate child, a crime which, as thus specially qualified, is punishable under Art. 266-B of the Penal Code by death, as a single penalty. In

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[5] *Rollo*, p. 5.

view, however, of the passage of Republic Act No. (RA) 9346,[6] the RTC sentenced appellant to suffer the penalty of *reclusion perpetua* for each count of qualified rape. In full, the dispositive portion of the trial court's decision reads:

WHEREFORE, in view of the foregoing, the prosecution having proven the guilt of Pastor Llanas, Jr. *Y* Belches beyond reasonable doubt of the offense of rape, said accused is convicted of the offense charged and to suffer the following penalties:

1. In Crim. Case No. RTC 05-1035, accused is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is likewise ordered to pay [AAA] civil liability in the amount of ₱75,000.00; ₱75,000.00 for moral damages, exemplary damages in the amount of ₱25,000.00, and to pay the cost.
2. In Crim. Case No. RTC 05-1043, accused is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is likewise ordered to pay [AAA] civil liability in the amount of ₱75,000.00; ₱75,000.00 for moral damages, exemplary damages in the amount of ₱25,000.00, and to pay the cost.
3. In Crim. Case No. RTC 05-1044 accused is hereby sentenced to suffer the penalty of *reclusion perpetua*. He is likewise ordered to pay [AAA] civil liability in the amount of ₱75,000.00; ₱75,000.00 for moral damages, exemplary damages in the amount of ₱25,000.00, and to pay the cost.

Considering that accused has undergone preventive imprisonment, he shall be credited in the services of his sentence with the time he has undergone preventive imprisonment subject to the conditions provided for by law.

SO ORDERED.[7]

In time, appellant went to the Court of Appeals (CA) on appeal on the lone submission that —

THE TRIAL COURT GRAVELY ERRED IN FINDING [HIM] GUILTY BEYOND REASONABLE DOUBT OF THREE (3) COUNTS OF RAPE.

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[6] An Act Abolishing the Death Penalty in the Philippines.

[7] CA *rollo*, pp. 71-83. Penned by Judge Freddie D. Balonzo.

Equally convinced of AAA's credibility and finding appellant's arguments in support of his defense untenable, if not downright preposterous, the CA by Decision[8] of October 26, 2009 affirmed appellant's conviction for three counts of qualified rape and the imposition of the main penalty for each crime, with the qualification, however, that appellant should be ineligible for parole. The *fallo* of the appellate court's decision reads:

IN LIGHT OF ALL THE FOREGOING, the appeal is hereby **DENIED**. The Joint Decision of the Regional Trial Court, Branch 63, Calabanga, Camarines Sur, convicting the accused-appellant of the crime of rape under Article 266-A and Article 266-B of the Revised Penal Code in Criminal Cases Nos. RTC 05-1035, RTC 05-1043 and RTC 05-1044 is hereby **AFFIRMED with MODIFICATION**.

For each count, accused-appellant Pastor Llanas, Jr. is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole.

SO ORDERED.[9]

Therefrom, appellant filed a notice of appeal, to which the CA, per its resolution of December 2, 2009, gave due course.

The case having been elevated to the Court, we now review the RTC's and CA parallel findings.

Appellant seeks acquittal, predicating his plea principally on the issue of: (1) the credibility of the prosecution's key witness; and (2) the sufficiency of the People's evidence.

Among other things, appellant maintains that the courts *a quo* erred in giving full credence and reliance on AAA's statements, it being his contention that her account of what purportedly happened reeks with inconsistencies and does not jibe with the normal flow of things. As argued, it is unnatural for a person placed in a certain situation, as what AAA found

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[8] Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Juan Q. Enriquez and Francisco Acosta.

[9] *Rollo*, pp. 2-14.

herself in, not to struggle or at least offer some resistance to ward off the advances of an unarmed person. And as further asserted, it is contrary to human experience that AAA did not cry for help when she was allegedly molested in the family home.

Training his sights on another angle, appellant contends that the physical evidence ran counter to AAA's allegations of rape. If, as AAA alleged, she was sexually abused in August 4, 2005, then the results of her medical examination undertaken a week after the rape incident would have had demonstrated signs of extra genital physical injury, contusion or abrasion. What the medico legal noted, however, were old healed hymenal lacerations, which, appellant theorized, could have been "sustained through promiscuity"[10] of her daughter.

The Court resolves to affirm the CA decision.

Penile or organ rape is, in context, committed when the accused has carnal knowledge of the victim by force, threat or intimidation, or when the victim is deprived of reason or is unconscious, or when the victim is under 12 years of age.[11]

Rape is essentially an offense of secrecy involving only two persons and not generally attempted save in secluded places far from prying eyes. By the intrinsic nature of rape cases, the crime usually commences solely upon the word of the offended girl herself and conviction invariably turns upon her credibility, as the People's single witness of the actual occurrence.[12] Accordingly, certain guiding principles have been formulated in resolving rape cases. Foremost of these: an offended woman's testimony hurdling the exacting test of credibility would suffice to convict.[13] In fine, the credibility of the victim is always the

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[10] *Id.* at 68.

[11] REVISED PENAL CODE, Art. 266-A; *People v. Barangan*, G.R. No. 175480, October 2, 2007, 534 SCRA 570.

[12] *People v. Corpuz*, G.R. No. 168101, February 13, 2006, 482 SCRA 435, 444.

[13] *People v. Luceriano*, G.R. No. 145223, February 11, 2004; 422 SCRA 486.

single most important issue in prosecution for rape.[14] Withal, in passing upon the credibility of the victim-witness, the highest degree of respect must be afforded to the evaluation and findings of the trial court.[15]

Without hesitation, AAA had pointed an accusing finger at the appellant, her father no less, as the person who forced himself on her on at least three occasions and who caused her pain when he inserted his sex organ into her vagina. As determined by the trial court, AAA's testimony on the fact of molestation was given "in a straightforward and candid manner, unshaken by rigid cress-examination that indeed she has been raped by her father in 3 occasions which are the subject of these cases."[16] There is, thus, no cause or reason to withhold credence on her testimony, absent, as here, ill motive on her part that would becloud the veracity of her account.

As the Court has often repeated, the issue of credibility is a matter best addressed by the trial court which had the chance to observe the demeanor of the witnesses while testifying. For this reason, the Court accords great weight and even finality to factual findings of the trial court, especially its assessments of the witnesses and their credibility, barring arbitrariness or oversight of some fact or circumstance of weight and substance.[17] Testimonies of rape-victims normally carry and are given full weight and credit, since when a girl, particularly if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has in fact been committed. When the offended party is of tender age and immature, courts are inclined to give credit to her account of what transpired, considering not only her relative vulnerability but also the shame to which she would be exposed if the matter to which she testified

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[14] *People v. Ceballos Jr.*, G.R. No. 169642, September 14, 2007, 533 SCRA 493.

[15] *People v. Balonzo*, G.R. No. 176153, September 21, 2007, 533 SCRA 760.

[16] CA *rollo*, p. 78.

[17] *People v. Virrey*, G.R. No. 133910, November 14, 2001, 368 SCRA 623.

is not true.[18] Youth and immaturity are generally badges of truth and sincerity.[19]

It cannot be over-emphasized enough that the third rape incident occurred when AAA was barely out of her teens. Be that as it may and considering that her attacker held moral and physical dominion over, and had in fact threatened her, it is understandable if AAA was, during that time, cowed into submitting to his father's beastly bent. In light of this perspective, the absence of a struggle or an outcry from AAA, if this really were the case *vis-à-vis* the 2005 rape incident, does not, standing alone, preclude the commission of the crime. As we have repeatedly held, there is no standard norm of behavior for victims of rape immediately before and during the forcible *coitus* and its ugly aftermath. This is especially true with minor rape victims.[20]

Appellant has made much of the report on the medical examination conducted on AAA showing that it did not complement AAA's allegations of rape.[21]

Appellant's obvious thesis that a minor rape victim always results in vaginal injury rests on a lot of oversimplification and, hence, must be eschewed. To start with, full penile penetration, which would ordinarily result in hymenal rupture or laceration of the vagina of a girl of tender years, is not a consummating ingredient in the crime of rape. The mere knocking at the door of the pudenda by the accused's penis suffices to constitute the crime of rape.[22] And given AAA's unwavering testimony as to her harrowing ordeal in the hands of appellant, the Court cannot

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[18] *Llave v. People*, G.R. No. 166040, April 26, 2006, 488 SCRA 376.

[19] *People v. Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168; citing *People v. Guambor*, G.R. No. 152183, January 22, 2004, 420 SCRA 677, 682.

[20] *People v. Gayomma*, G.R.No. 128129, September 30, 1999, 315 SCRA 639, 645.

[21] CA *rollo*, pp. 46-63.

[22] *People v. Plurad*, G.R. Nos. 138361-63, December 2, 2002, 393 SCRA 306.

accord merit to the latter's argument that the lack of patent physical manifestation of rape weakens the case against him. The medical report on AAA is only corroborative of the finding of rape. The absence of fresh external signs or physical injuries on the complainant's body does not necessarily negate the commission of rape,[23] hymenal laceration and like vaginal injuries not being, to repeat, an element of the crime of rape.[24] What is more, the foremost consideration in the prosecution of rape is the victim's testimony and not the findings of the medico-legal officer. In fact, a medical examination of the victim is not indispensable in a prosecution for rape; the victim's testimony alone, if credible, is, to repeat, sufficient to convict.[25]

Appellant's defenses of denial and alibi, centering on the argument that it was impossible for him to commit the crime of rape against his daughter on August 4, 2005 as he was in Brgy. Quinale from August 3 to August 10, 2005, deserve scant consideration. As correctly ruled by the RTC, appellant failed to present convincing proof that it was physically impossible for him to be at the *locus criminis* on August 4, 2005. The trial court wrote:

> x x x Likewise the accused should not only prove that he was not at the place of the crime but should likewise prove that it is impossible for him to be at the place of the crime. Barangay Quinale is about 7 kilometers away from Cabanbanan and the accused did not prove that is impossible for him to be at Cabanbanan from Quinale.[26]

Appellant's attempt, in his bid for exculpation, to ride on AAA's inability to recall precisely what time of the day the 2005 rape transpired is puerile. Victims of rape hardly retain in their memories the dates and manner they were violated and it

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[23] *People v. Espino, Jr.*, G.R. No. 176742, June 17, 2008, 554 SCRA 682; citing *People v. Boromeo*, G.R. No. 150501, 3 June 2004, 430 SCRA 533, 546.

[24] *Id.*; citing *People v. Esteves*, 438 Phil. 687, 699 (2002).

[25] *People v. Boromeo*, G.R. No. 150501, June 3, 2004, 430 SCRA 533.

[26] CA *rollo*, p. 80.

is for this reason that the exact date of the commission of the rape is not an element of the crime.[27] The gravamen of the offense is carnal knowledge of a woman without her consent.

In all then, we find no reason to disturb the findings and the case disposition of the CA, confirmatory of that of the trial court. The imposition of the penalty of *reclusion perpetua*, instead of death, for each count of qualified rape, on appellant who shall not be eligible for parole under the Indeterminate Sentence Law is in order in light of R.A. 9346 or the Anti-Death Penalty Law, which prohibits the imposition of the death penalty.[28]

The award of PhP 75,000 as civil indemnity *ex delicto* and the same amount as moral damages for each count of qualified rape is in line with existing case law.[29] In rape cases, the concurrence, as here, of the victim's minority (under 18) and her relationship with the offender is a special qualifying circumstance for which the law prescribes the penalty of death under Art. 266-B[30] of the Revised Penal Code. While the new

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[27] *People v. Tupaz*, G.R. No. 136141, October 9, 2002.

[28] Section 1. The imposition of the penalty is hereby prohibited. Accordingly, [RA] 8177 x x x and all other laws x x x insofar as they impose the death penalty are hereby repealed or amended accordingly.

Section. 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. x x x

Section 3. Persons convicted of offenses punished with *reclusion perpetua* or whose sentences will be reduced to *reclusion perpetua* shall not be eligible for parole under Act. No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

[29] *People v. Daco*, G.R. No. 168166, October 10, 2008, 568 SCRA 348.

[30] Art. 266-B *Penalties*.— Rape under paragraph 1 of the next preceding article shall be punishable by *reclusion perpetua*. x x x

The death shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent x x x or the common law spouse of the parent of the victim.

law prohibits the imposition of death, the penalty provided for a heinous crime is still death and qualified rape is still a heinous offense.[31]

The award of exemplary damages is also proper not only to deter outrageous conduct,[32] but also in view of the aggravating circumstances of minority and relationship surrounding the commission of the offense,[33] both of which were alleged in the information and proved during the trial. To conform to current jurisprudence,[34] PhP 30,000 for each count of rape ought to be awarded, upped from the PhP 25,000 given by the courts *a quo*.

WHEREFORE, the appealed decision of the Court of Appeals dated October 26, 2009 in CA-G.R. CR-H.C. No. 02878 is *AFFIRMED* with the *MODIFICATION* that award of exemplary damages for each count of rape is increased to PhP 30,000. Costs against accused-appellant.

SO ORDERED.

Corona, C.J. (Chairperson), Leonardo-de Castro, del Castillo, and *Perez, JJ.,* concur.

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[31] *People v. Bidoc*, G.R. No. 169430, October 31, 2006, 506 SCRA 481; citing *People v. Sambrano*, G.R. No. 143708, February 24, 2003, 398 SCRA 106.

[32] CIVIL CODE, Art. 2229 states: Exemplary or corrective damages are imposed by way of example or correction for the public good.

[33] CIVIL CODE, Art. 2230 states: Exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances.

[34] *People v. Dalisay*, G.R. No. 188106, November 25, 2009, 605 SCRA 807; *People v. Perez*, G.R. No. 189303, October 13, 2009.

EN BANC

[A.C. No. 8390. July 2, 2010]
(Formerly CBD 06-1641)

A-1 FINANCIAL SERVICES, INC., *complainant, vs.* **ATTY. LAARNI N. VALERIO,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; GROSS MISCONDUCT; DELIBERATE FAILURE TO PAY JUST DEBTS AND ISSUANCE OF WORTHLESS CHECKS; A CASE OF. —** In *Barrientos v. Libiran-Meteoro,* we held that: x x x [the] deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law. Lawyers are instruments for the administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. They must at all times faithfully perform their duties to society, to the bar, the courts and to their clients, which include prompt payment of financial obligations. They must conduct themselves in a manner that reflects the values and norms of the legal profession as embodied in the Code of Professional Responsibility. Canon 1 and Rule 1.01 explicitly states that: Canon 1— A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes. Rule 1.01— A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. In the instant case, there is no denial of the existence of the loan obligation despite respondent's failure to cooperate before any proceedings in relation to the complaint. Prior to the filing of the complaint against her, Atty. Valerio's act of making partial payments of the loan and interest suffices as proof that indeed there is an obligation to pay on her part. Respondent's mother, Mrs. Valerio, likewise, acknowledged her daughter's obligation.
2. **ID.; ID.; A LAWYER'S FAILURE TO ANSWER THE COMPLAINT AGAINST HIM AND HIS FAILURE TO**

APPEAR AT THE INVESTIGATION ARE EVIDENCE OF RESISTANCE TO LAWFUL ORDERS OF THE COURT. — Atty. Valerio's conduct in the course of the IBP and court proceedings is also a matter of serious concern. She failed to answer the complaint against her. Despite due notice, she failed to attend the disciplinary hearings set by the IBP. She also ignored the proceedings before the court as she likewise failed to both answer the complaint against her and appear during her arraignment, despite orders and notices from the court. Clearly, this conduct runs counter to the precepts of the Code of Professional Responsibility and violates the lawyer's oath which imposes upon every member of the Bar the duty to delay no man for money or malice. Atty. Valerio has failed to live up to the values and norms of the legal profession as embodied in the Code of Professional Responsibility. In *Ngayan v. Tugade,* we ruled that "[a lawyer's] failure to answer the complaint against him and his failure to appear at the investigation are evidence of his flouting resistance to lawful orders of the court and illustrate his despiciency for his oath of office in violation of Section 3, Rule 138 of the Rules of Court."

3. **ID.; ID.; FOR GROSS MISCONDUCT AND WANTON DISREGARD OF LAWFUL ORDERS IN THE COURSE OF THE PROCEEDINGS, THE PENALTY OF SUSPENSION FROM THE PRACTICE OF LAW FOR TWO (2) YEARS IS PROPER. —** In *Lao v. Medel*, we held that the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct for which a lawyer may be sanctioned with one-year suspension from the practice of law. The same sanction was imposed on the respondent-lawyer in *Rangwani v. Dino,* having found guilty of gross misconduct for issuing bad checks in payment of a piece of property, the title to which was only entrusted to him by the complainant. However, in this case, we deem it reasonable to affirm the sanction imposed by the IBP-CBD, *i.e*., Atty. Valerio was ordered suspended from the practice of law for two (2) years, because, aside from issuing worthless checks and failing to pay her debts, she has also shown wanton disregard of the IBP's and Court Orders in the course of the proceedings.

D E C I S I O N

PERALTA, *J.*:

Before us is a Complaint[1] dated January 18, 2006 for disciplinary action against respondent Atty. Laarni N. Valerio filed by A-1 Financial Services, Inc., represented by Diego S. Reunilla, its account officer, with the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD), docketed as CBD Case No. 06-1642, now A.C. No. 8390, for violation of *Batas Pambansa Blg.* 22 (B.P. 22) and non-payment of debt.

On November 13, 2001, A-1 Financial Services, Inc., a financing corporation, granted the loan application of Atty. Valerio amounting to ₱50,000.00. To secure the payment of the loan obligation, Atty. Valerio issued a postdated check, to wit: *Check No. 0000012725; dated April 1, 2002, in the amount: ₱50,000.00.*[2] However, upon presentation at the bank for payment on its maturity date, the check was dishonored due to insufficient funds. As of the filing of the instant case, despite repeated demands to pay her obligation, Atty. Valerio failed to pay the whole amount of her obligation.

Thus, on November 10, 2003, complainant filed a B.P. 22 case against Atty. Valerio, docketed as Criminal Case No. 124779. Atty. Valerio's arraignment was scheduled for August 31, 2004; however, she failed to appear despite due notice.[3] Subsequently, a Warrant of Arrest[4] was issued but Atty. Valerio posted no bail. On November 22, 2004, complainant sent a letter[5] to Atty. Valerio calling her attention to the issuance of the Warrant of Arrest against her and requested her to submit to the jurisdiction of the court by posting bail. The said letter was received by

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[1] *Rollo*, pp. 1-2.

[2] *Id*. at 5.

[3] *Id*. at 6.

[4] *Id*. at 7.

[5] *Id*. at 8.

Atty. Valerio, as evidenced by the postal registry return cards.[6] Despite court orders and notices, Atty. Valerio refused to abide.

On January 18, 2006, complainant filed an administrative complaint against Atty. Valerio before the Integrated Bar of the Philippines (IBP). On January 26, 2006, the IBP Commission on Bar Discipline (IBP-CBD) required Atty. Valerio to file an answer, but she did not file any responsive pleading at all. However, in a letter[7] dated March 16, 2006, respondent's mother, Gorgonia N. Valerio (Mrs. Valerio), explained that her daughter had been diagnosed with *schizophrenia*; thus, could not properly respond to the complaint against her. Futhermore, Mrs. Valerio undertook to personally settle her daughter's obligation.

On September 13, 2007, the IBP-CBD directed Atty. Valerio to appear before the mandatory conference. Atty. Valerio, again, failed to attend the conference. Subsequently, in an Order dated November 15, 2007, the IBP ordered the parties to submit their position papers. No position paper was submitted by Atty. Valerio.

Thus, in its Report and Recommendation dated September 16, 2008, the IBP-CBD recommended that Atty. Valerio be suspended from the practice of law for a period of two (2) years, having found her guilty of gross misconduct.

The IBP-CBD gave no credence to the medical certificate submitted by Atty. Valerio's mother, in view of the latter's failure to appear before the IBP-CBD hearings to affirm the truthfulness thereof or present the physician who issued the same. The IBP-CBD, further, pointed out that Atty. Valerio's failure to obey court processes, more particularly her failure to appear at her arraignment despite due notice and to surrender to the Court despite the issuance of a warrant of arrest, showed her lack of respect for authority and, thus, rendered her morally unfit to be a member of the bar.[8]

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[6] *Id*. at 9.

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

[8] *Id*.

On December 11, 2008, the IBP Board of Governors adopted and approved with modification the report and recommendation of the IBP-CBD. Atty. Valerio was instead ordered suspended from the practice of law for a period of one (1) year.

Nevertheless, to provide Atty. Valerio further opportunity to explain her side, the Court, in a Resolution dated December 15, 2009, directed Atty. Valerio and/or her mother, to submit a duly notarized medical certificate issued by a duly licensed physician and/or certified copies of medical records to support the claim of *schizophrenia* on the part of Atty. Valerio within a non-extendible period of ten (10) days from receipt hereof.

However, despite the lapse of considerable time after the receipt of notice[9] to comply with the said Resolution, no medical certificate or medical records were submitted to this Court by either respondent and/or her mother. Thus, this resolution.

We sustain the findings and recommendations of the IBP-CBD.

In *Barrientos v. Libiran-Meteoro*,[10] we held that:

> x x x [the] deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct, for which a lawyer may be sanctioned with suspension from the practice of law. Lawyers are instruments for the administration of justice and vanguards of our legal system. They are expected to maintain not only legal proficiency but also a high standard of morality, honesty, integrity and fair dealing so that the people's faith and confidence in the judicial system is ensured. They must at all times faithfully perform their duties to society, to the bar, the courts and to their clients, which include prompt payment of financial obligations. They must conduct themselves in a manner that reflects the values and norms of the legal profession as embodied in the Code of Professional Responsibility. Canon 1 and Rule 1.01 explicitly states that:
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> > Canon 1— A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

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[9] The Resolution dated December 15, 2009 was received on January 6, 2010.

[10] 480 Phil. 661, 671 (2004).

Rule 1.01—A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

In the instant case, there is no denial of the existence of the loan obligation despite respondent's failure to cooperate before any proceedings in relation to the complaint. Prior to the filing of the complaint against her, Atty. Valerio's act of making partial payments of the loan and interest suffices as proof that indeed there is an obligation to pay on her part. Respondent's mother, Mrs. Valerio, likewise, acknowledged her daughter's obligation.

The Court, likewise, finds unmeritorious Mrs. Valerio's justification that her daughter, Atty. Valerio, is suffering from a health condition, *i.e. schizophrenia*, which has prevented her from properly answering the complaint against her. Indeed, we cannot take the "medical certificate" on its face, considering Mrs. Valerio's failure to prove the contents of the certificate or present the physician who issued it.

Atty. Valerio's conduct in the course of the IBP and court proceedings is also a matter of serious concern. She failed to answer the complaint against her. Despite due notice, she failed to attend the disciplinary hearings set by the IBP. She also ignored the proceedings before the court as she likewise failed to both answer the complaint against her and appear during her arraignment, despite orders and notices from the court. Clearly, this conduct runs counter to the precepts of the Code of Professional Responsibility and violates the lawyer's oath which imposes upon every member of the Bar the duty to delay no man for money or malice. Atty. Valerio has failed to live up to the values and norms of the legal profession as embodied in the Code of Professional Responsibility.

In *Ngayan v. Tugade*,[11] we ruled that "[a lawyer's] failure to answer the complaint against him and his failure to appear at the investigation are evidence of his flouting resistance to lawful orders of the court and illustrate his despiciency for his oath of office in violation of Section 3, Rule 138 of the Rules of Court."

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[11] A.C. No. 2490, February 7, 1991, 193 SCRA 779, 784.

We come to the penalty imposable in this case.

In *Lao v. Medel*,[12] we held that the deliberate failure to pay just debts and the issuance of worthless checks constitute gross misconduct for which a lawyer may be sanctioned with one-year suspension from the practice of law. The same sanction was imposed on the respondent-lawyer in *Rangwani v. Dino,*[13] having found guilty of gross misconduct for issuing bad checks in payment of a piece of property, the title to which was only entrusted to him by the complainant.

However, in this case, we deem it reasonable to affirm the sanction imposed by the IBP-CBD, *i.e*., Atty. Valerio was ordered suspended from the practice of law for two (2) years,[14] because, aside from issuing worthless checks and failing to pay her debts, she has also shown wanton disregard of the IBP's and Court Orders in the course of the proceedings.

WHEREFORE, Resolution No. XVIII-2008-647 dated December 11, 2008 of the IBP, which found respondent Atty. Laarni N. Valerio guilty of gross misconduct and violation of the Code of Professional Responsibility, is *AFFIRMED with MODIFICATION*. She is hereby *SUSPENDED* for two (2) years from the practice of law, effective upon the receipt of this Decision. She is warned that a repetition of the same or a similar act will be dealt with more severely.

Let a copy of this Decision be furnished to the Office of the Bar Confidant, to be appended to the personal record of Atty. Valerio as a member of the Bar; the Integrated Bar of the Philippines; and the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

This Decision shall be immediately executory.

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[12] 453 Phil. 115, 121, citing *Co v. Bernardino*, 285 SCRA 102 (1998).

[13] 486 Phil. 8 (2004).

[14] *Wong v. Atty. Moya*, A.C. No. 6972, October 17, 2008, 569 SCRA 256.

SO ORDERED.

Corona, C.J., Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-de Castro, Bersamin, del Castillo, Abad, Villarama, Jr., Perez, and *Mendoza, JJ.,* concur.

Brion, J., on leave.

SECOND DIVISION

[G.R. No. 148974. July 2, 2010]

OMC CARRIERS, INC. and JERRY AÑALUCAS *y* PITALINO, *petitioners, vs.* **SPOUSES BERLINO C. NABUA and ROSARIO T. NABUA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW ARE REVIEWABLE; QUESTIONS OF LAW AND QUESTIONS OF FACT, DISTINGUISHED.** — A petition for review on *certiorari* under Rule 45 of the Rules of Court should include only questions of law — questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts, while a question of fact exists when the doubt centers on the truth or falsity of the alleged facts. There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. Once the issue invites a review of the evidence, the question is one of fact.

2. **ID.; ID.; ID.; EVIDENCE; ABSENT GRAVE ABUSE OF DISCRETION, THE SUPREME COURT WILL NOT DISTURB THE FACTUAL FINDINGS OF THE COURT OF APPEALS; CASE AT BAR.** — Factual findings of the Court of Appeals are binding on the Court. Absent grave abuse

of discretion, the Court will not disturb the factual findings of the Court of Appeals. In *Encarnacion v. Court of Appeals*, the Court held that, "unless there is a clearly grave or whimsical abuse on its part, findings of fact of the appellate court will not be disturbed. The Supreme Court will only exercise its power of review in known exceptions such as gross misappreciation of evidence or a total void of evidence." After a painstaking review of the records of the case at bar, this Court holds that petitioners' stand is bereft of any evidence to support it as both the RTC and CA had correctly found that the proximate cause of the accident was the negligence of petitioner Añalucas.

3. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; PRESUMPTION OF NEGLIGENCE ON THE PART OF EMPLOYER IN THE SELECTION AND SUPERVISION OF HIS EMPLOYEE MAY BE OVERCOME BY A CLEAR SHOWING ON THE PART OF THE EMPLOYER THAT HE HAS EXERCISED THE CARE AND DILIGENCE OF A GOOD FATHER OF A FAMILY IN THE SELECTION AND SUPERVISION OF HIS EMPLOYEE. —** It is thus clear that the employer of a negligent employee is liable for the damages caused by the latter. When an injury is caused by the negligence of an employee, there instantly arises a presumption of the law that there was negligence on the part of the employer, either in the selection of his employee or in the supervision over him after such selection. However, the presumption may be overcome by a clear showing on the part of the employer that he has exercised the care and diligence of a good father of a family in the selection and supervision of his employee. In other words, the burden of proof is on the employer. Thus, petitioners must prove two things: first, that they had exercised due diligence in the selection of petitioner Añalucas, and second, that after hiring Añalucas, petitioners had exercised due diligence in supervising him.

4. **ID.; ID.; ID.; ID.; ID.; TEST OF DUE SUPERVISION, NOT SATISFIED. —** In the case at bar, while this Court may be satisfied that petitioner company had exercised due diligence in the selection of petitioner Añalucas, the focus now shifts as to whether or not petitioner company had satisfied the test of due supervision. Petitioner company's attempt to prove that

it had exercised due diligence of a good father of a family in the supervision of petitioner Añalucas is summarized in its Memorandum and was testified to by its Operations Manager. xxx After a thorough and extensive review of the records, this Court is unconvinced that petitioner company had satisfactorily discharged its burden. The alleged Memorandum (Exhibit 6) alluded to by petitioner company amounts to nothing more than a "reminder memo on offenses punishable by dismissal," wherein specific offenses are spelled out to which erring employees may be punished by the company. Likewise, the alleged circulars from Petron amount to nothing more than minutes of the "Haulers Meeting," a list of "Hot Spots" and a "Table of Penalties." These circulars do not, in any way, concern safety procedures to prevent accident or damage to property or injury to people on the road. It bears to stress that the existence of supervisory policies cannot be casually invoked to overturn the presumption of negligence on the part of the employer. The testimonies relating to the checking of damages during carbarn time, the inspection if drivers were given traffic violation tickets and inspection of the validity of the drivers' licenses are all oral evidence without any object or documentary evidence to support them. Like in *Metro Transit*, this Court is unable to accept the self-serving nature of the testimonies without any other evidence. The alleged daily inspections conducted were not supported by any evidence on record. Moreover, even the seminars regarding safety and driving, allegedly conducted by petitioners' witness, Max Pagsaligan, were not satisfactorily established in evidence. Specifically, there is no record that petitioner Añalucas attended such seminars. Normally, employers keep files concerning the qualifications, work experience, training, evaluation, and discipline of their employees. The failure of petitioners to put forth evidence to substantiate the testimonies of the witnesses is certainly fatal to its cause.

5. **ID.; DAMAGES; DEATH INDEMNITY AND MORAL DAMAGES, AWARDED IN CASE AT BAR. —** Death indemnity has been fixed by jurisprudence at ₱50,000.00. Hence, the amount awarded by the RTC and the CA must be reduced accordingly. On the issue of moral damages, prevailing jurisprudence fixes moral damages of ₱50,000.00 for death. It must be stressed that moral damages are not intended to enrich a plaintiff at the expense of the defendant. They are

awarded to allow the plaintiff to obtain means, diversion or amusements that will serve to alleviate the moral suffering he/she has undergone due to the defendant's culpable action and must, perforce, be proportional to the suffering inflicted. Thus, given the circumstances of the case at bar, an award of ₱50,000.00 as moral damages is proper.

6. **ID.; ID.; ATTORNEY'S FEES; NOT PROPER ABSENT A JUSTIFICATION THEREFOR. —** [T]he rule on the award of attorney's fees is that there must be a justification for the same. In the absence of a statement why attorney's fees were awarded, the same should be disallowed. On this note, after reading through the text of the CA decision, this Court finds that the same is bereft of any findings of fact and law to justify the award of attorney's fees. While it may be safe to surmise that the RTC granted attorney's fees as a consequence of its grant of exemplary damages, such cannot be said for the CA, since the same deleted the award of exemplary damages after finding that petitioner Añalucas was not grossly negligent. The CA did not explain why it was still awarding attorney's fees to respondents, therefore, such an award must be deleted.

7. **ID.; ID.; ACTUAL DAMAGES; COMPETENT PROOF OF THE ACTUAL AMOUNT OF LOSS IS NECESSARY. —** While petitioners did not put in error the award of actual damages, this Court feels that the same should nevertheless be reviewed as an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors. This is especially so if the court finds that their consideration is necessary in arriving at a just decision of the case before it. For one to be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party. Actual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts. x x x [T]he RTC erred when it awarded the amount of ₱110,000.00 as actual damages, as the said amount

was not duly substantiated with receipts. Hence, the amount of actual damages that can only be recovered is ₱59,173.50.

8. ID.; ID.; COMPENSATORY DAMAGES; NOT PROPER; EXPLAINED. — [A]lthough respondents did not appeal the CA Decision, they now pray in their Memorandum that this Court reinstate the RTC award of ₱2,000,000.00 as compensatory damages which was deleted by the CA. Respondents point out that the victim, Reggie Nabua, was 18 years old and at the time of his death, a freshman taking up Industrial Engineering. On this point, *Metro Manila Transit Corporation v. Court of Appeals* is instructive, to wit: x x x Art. 2206 of the Civil Code provides that in addition to the indemnity for death caused by a crime or *quasi delict*, the "defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; . . ." Compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money. **Evidence must be presented that the victim, if not yet employed at the time of death, was reasonably certain to complete training for a specific profession**. **In *People v. Teehankee*, no award of compensation for loss of earning capacity was granted to the heirs of a college freshman because there was no sufficient evidence on record to show that the victim would eventually become a professional pilot.** **But compensation should be allowed for loss of earning capacity resulting from the death of a minor who has not yet commenced employment or training for a specific profession if sufficient evidence is presented to establish the amount thereof** x x x. In the case at bar, respondents only testified to the fact that the victim, Reggie Nabua, was a freshman taking up Industrial Engineering at the Technological Institute of the Philippines in Cubao. Unlike in *Metro Transit* where evidence of good academic record, extra-curricular activities, and varied interests were presented in court, herein respondents offered no such evidence. Hence, the CA was correct when it deleted the award of compensatory damages amounting to ₱2,000,000.00, as the same is without any basis.

APPEARANCES OF COUNSEL

Conrado R. Mangahas & Associates for petitioners.
Arnulfo L. Tamayo for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari*,[1] under Rule 45 of the Rules of Court, seeking to set aside the December 28, 1999 Decision[2] and July 3, 2001 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 60034. The CA affirmed, with modification, the Decision[4] of the Regional Trial Court (RTC), National Capital Judicial Region, Branch 224, Quezon City, in Civil Case No. Q-95-24838, which found petitioners liable to respondents for damages.

The facts of the case are as follows:

On August 4, 1995, at about 3:00 p.m., an Isuzu private tanker with plate no. PCH 612, owned by and registered in the name of petitioner OMC Carriers, Inc. and then being driven by its employee Jerry P. Añalucas (Añalucas), was cruising along Quirino Highway towards the general direction of Lagro, Quezon City. At *Barangay* Pasong Putik, Novaliches, Quezon City, the aforesaid private tanker hit a private vehicle, an Isuzu Gemini with plate no. NDF 372, which was making a left turn towards a nearby Caltex gasoline station. The impact heavily damaged the right side portion of the latter motor and mortally injured its 18-year-old driver, Reggie T. Nabua, who was later pronounced dead on arrival at the Fairview Polymedic Hospital.[5]

[1] *Rollo*, pp. 8-14.

[2] Penned by Associate Justice Fermin A. Martin, Jr., with Associate Justices B.A. Adefuin de la Cruz and Martin S. Villarama, Jr. (now a member of this Court), concurring; *id.* at 18-32.

[3] *Id.* at 16.

[4] Records, pp. 183-189.

[5] CA Decision, *rollo*, pp. 19-20.

Respondent spouses Berlino and Rosario Nabua, the parents of the victim, filed a Complaint[6] for damages against petitioners and the General Manager of OMC Carriers, Chito Calauag,[7] before the RTC of Quezon City, Branch 224. The complaint was docketed as Civil Case No. Q-95-24838 and entitled, *Spouses Berlino C. Nabua and Rosario T. Nabua, Plaintiffs, vs. OMC Carriers, Inc., its General Manager, Chito Calauag, and Jerry Añalucas y Pitalino, Defendants*.

On January 19, 1998, the RTC rendered a Decision,[8] the dispositive portion of which reads:

> Accordingly, therefore, the Court finds and renders judgment in favor of the plaintiffs as against defendants and ordering the latter to pay the plaintiffs, jointly and solidarily, the following:
>
> 1. ₱110,000.00 for actual damages, or for money spent during the funeral, wake and burial of the deceased Regie Nabua;
> 2. ₱2,000,000.00 for compensatory damages and the amount of ₱60,000.00 as indemnity for the death of Reggie Nabua;
> 3. ₱100,000.00 as moral damages and another ₱100,000.00 as exemplary damages; and
> 4. ₱50,000.00 as attorney's fees;
> 5. Costs of the suit.
>
> IT IS SO ORDERED.[9]

Aggrieved, petitioners appealed the RTC Decision to the CA. On December 28, 1999, the CA rendered a Decision, partially granting the petition, the dispositive portion of which states:

> WHERFORE, the appealed decision is AFFIRMED subject to the following modifications:
>
> 1. Absolving appellant Chito Calauag from liability for the death of Regie Nabua; and

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[6] Records, pp. 1-6.

[7] Spelled as "Caluag" in some pleadings.

[8] Records, pp. 183-189.

[9] Records, p. 189.

2. Deleting, for want of basis, the following damages awarded by the court a *quo*, *viz*:

   a. ₱2,000,000.00 as lost earnings of the deceased; and

   b. ₱100,000.00 as exemplary damages.

SO ORDERED.[10]

Not satisfied with the CA's disposition of their petition, petitioners filed a Partial Motion for Reconsideration.[11] On July 3, 2001, the CA issued a Resolution denying petitioners' motion for reconsideration.

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

I. THE COURT OF APPEALS, WITH DUE RESPECT, COMMITTED ERROR IN ITS DECISION WHEN IT DISREGARDED OR REFUSED TO FOLLOW AND APPLY THE APPLICABLE RULINGS OF THIS HONORABLE COURT WHICH NOW FORM THE LAW OF THE LAND.

II. AS A RESULT OF THE COURT OF APPEALS' REFUSAL TO FOLLOW AND APPLY THE JURISPRUDENCE LAID DOWN BY THIS HONORABLE COURT, ITS DECISION TENDS TO MODIFY, AMEND OR REJECT THE JURISPRUDENCE APPLICABLE TO THE CASE AT BAR.[12]

The petition is partly meritorious.

Prefatorily, this Court shall address petitioners' position that the proximate and immediate cause of the accident was the negligence of the victim, Reggie Nabua.[13] This Court is not persuaded as the same is a question of fact.

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

[11] CA *rollo*, pp. 96-104.

[12] *Rollo*, p. 10.

[13] *Id.* at 12.

A petition for review on *certiorari* under Rule 45 of the Rules of Court should include only questions of law — questions of fact are not reviewable. A question of law exists when the doubt centers on what the law is on a certain set of facts, while a question of fact exists when the doubt centers on the truth or falsity of the alleged facts. There is a question of law if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence. Once the issue invites a review of the evidence, the question is one of fact.[14]

Factual findings of the Court of Appeals are binding on the Court. Absent grave abuse of discretion, the Court will not disturb the factual findings of the Court of Appeals.[15] In *Encarnacion v. Court of Appeals*,[16] the Court held that, "unless there is a clearly grave or whimsical abuse on its part, findings of fact of the appellate court will not be disturbed. The Supreme Court will only exercise its power of review in known exceptions such as gross misappreciation of evidence or a total void of evidence."

After a painstaking review of the records of the case at bar, this Court holds that petitioners' stand is bereft of any evidence to support it as both the RTC and CA had correctly found that the proximate cause of the accident was the negligence of petitioner Añalucas. The testimony of eyewitness Marlon Betiranta shows that the victim, Reggie Nabua, was driving at a slow pace when he was entering the Caltex station, to wit:

Q - You mean to say that you were immediately behind this Gemini car?

A - Yes, sir.

Q- Now, when this Gemini car was about to go to the direction of the Caltex Station coming from the right portion, what did you notice this car or the driver did?

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[14] *Pagsibigan v. People*, G.R. No. 163868, June 4, 2009, 588 SCRA 249, 256.

[15] *Encarnacion v. Court of Appeals*, G.R. No. 101292, June 8, 1993, 223 SCRA 279, 282.

[16] *Id.* at 284.

A - He gave a sign that he was going at (sic)the left, sir.

Q - And did you notice the manner by which this driver was driving at that time, when he made the sign?

A - Yes, sir.

Q - What?

A - He were (sic) just in a slow pace, sir.

Q - Now, Mr. Witness, when this vehicle Gemini met an accident and have (sic) a collision you said, with the other vehicle, please explain to the Court the type of vehicle that had a collision with this Gemini?

A - It was a large tanker truck, sir.[17]

In addition, another eyewitness corroborated the testimony of Betiranta that the victim was slowly driving his car towards the gas station. He also emphasized that the truck which bumped the Gemini car was very fast. Second eyewitness Teddy Villarama testified, thus:

"Q - **Now, you said, Mr. Witness that you saw this car entering the gasoline station, can you tell the Court how fast or the speed of this vehicle or at what phase (sic) were they moving?**

A - Very[,] very slow.

Q - How about the truck, did you notice what is the phase (sic) of the truck?

A – The truck was very fast that it suddenly came in."[18]

Lastly, even petitioners' own witness, PO3 Edgardo Talacay, testified that petitioners' truck left skid marks, which would not be present if the truck was running in a normal speed, to wit:

Q - Do you know, as a traffic investigator, Mr. Witness, what causes skid marks?

A - Well, the cause of skid marks is (sic), if the vehicle is running in a speed greater that what the law is being regulated (sic), it cause skid marks when you apply the breaks.

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[17] TSN, June 3, 1996, pp. 9-10. (Emphasis supplied.)

[18] TSN, August 22, 1996, pp. 11-12. (Emphasis supplied.)

Q - What about sudden application of breaks upon notice of danger ahead, will it cause skid marks?
A - It will cause skid marks because your intention is to stop your driven vehicle right then and there.

Q - Although the vehicle may not be running necessarily beyond the lawful speed?
A - I think, if the vehicle is running in a normal speed, skid marks would not be present in the mishap.

Q - Notwithstanding, the sudden application of breaks?
A - Yes, sir.

Court
Q - The skid marks, Mr. Witness, refer to the skid marks made by the truck or the Isuzu Gemini?
A - Made by the truck, your Honor.

x x x x x x x x x[19]

All told, this Court is convinced, and thus affirms the findings of fact of the RTC and the CA that the proximate cause of the accident was the negligence of petitioner Añalucas.

Having resolved the same, this Court shall now address the defense of petitioner company that they exercised due diligence in the selection and supervision of their employees. On this note, the CA ruled that petitioners had failed to overturn the presumption of negligence on the part of the employer, to wit:

In their defense, the appellants' witnesses have admittedly testified at length regarding the hiring and supervisory policies of the appellant company. While they were able to amply demonstrate the implantation of the company's hiring procedure insofar as appellant Jerry Añalucas was concerned, the same witnesses failed to similarly individualize the company's purported supervisory policies. The introduction of evidence showing the employer exercised the required amount of care in selecting its employees is only half of the employer's burden is (sic) overcome. The question of diligent supervision depends on the circumstances of employment, which, in the instant case was not sufficiently proved by the appellants. In discounting merit from the appellants' second assignment of error, this Court is, consequently,

[19] TSN, June 20, 1997, pp. 26-27. (Emphasis supplied).

guided by the principle that the existence of hiring procedure and supervisory policies cannot be casually invoked to overturn the presumption of negligence on the part of the employer.[20]

Article 2180 of the Civil Code provides:

x x x x x x x x x

Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry.

x x x x x x x x x

The responsibility treated in this article shall cease when the persons herein mentioned prove they observed all the diligence of a good father of a family to prevent damage.

It is thus clear that the employer of a negligent employee is liable for the damages caused by the latter. When an injury is caused by the negligence of an employee, there instantly arises a presumption of the law that there was negligence on the part of the employer, either in the selection of his employee or in the supervision over him after such selection. However, the presumption may be overcome by a clear showing on the part of the employer that he has exercised the care and diligence of a good father of a family in the selection and supervision of his employee.[21] In other words, the burden of proof is on the employer.[22] Thus, petitioners must prove two things: first, that they had exercised due diligence in the selection of petitioner Añalucas, and second, that after hiring Añalucas, petitioners had exercised due diligence in supervising him.

The question is: how does an employer prove that he indeed exercised the diligence of a good father of a family in the selection and supervision of his employee? The case of *Metro Manila Transit Corporation v. Court of Appeals*[23] is instructive*:*

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[20] *Rollo*, pp. 29-30. (Citations omitted.)

[21] *Baliwag Transit, Inc. v. Court of Appeals*, 330 Phil. 785, 789 (1999).

[22] *Syki v. Begasa*, 460 Phil. 381, 386 (2003).

[23] G.R. No. 104408, June 21, 1993, 223 SCRA 521.

In fine, the party, whether plaintiff or defendant, who asserts the affirmative of the issue has the burden of presenting at the trial such amount of evidence required by law to obtain a favorable judgment. . . . **In making proof in its or his case, it is paramount that the best and most complete evidence is formally entered.**

Coming now to the case at bar, while there is no rule which requires that testimonial evidence, to hold sway, must be corroborated by documentary evidence, inasmuch as the witnesses' testimonies dwelt on mere generalities, we cannot consider the same as sufficiently persuasive proof that there was observance of due diligence in the selection and supervision of employees. *Petitioner's attempt to prove its "deligentissimi patris familias" in the selection and supervision of employees through oral evidence must fail as it was unable to buttress the same with any other evidence, object or documentary, which might obviate the apparent biased nature of the testimony.*

Our view that the evidence for petitioner MMTC falls short of the required evidentiary quantum as would convincingly and undoubtedly prove its observance of the diligence of a good father of a family has its precursor in the underlying rationale pronounced in the earlier case of *Central Taxicab Corp. vs. Ex-Meralco Employees Transportation Co., et al.*, set amidst an almost identical factual setting, where we held that:

x x x x x x x x x

The failure of the defendant company to produce in court any 'record' or other documentary proof tending to establish that it had exercised all the diligence of a good father of a family in the selection and supervision of its drivers and buses, notwithstanding the calls therefore by both the trial court and the opposing counsel, argues strongly against its pretensions.

We are fully aware that there is no hard-and-fast rule on the quantum of evidence needed to prove due observance of all the diligence of a good father of a family as would constitute a valid defense to the legal presumption of negligence on the part of an employer or master whose employee has by his negligence, caused damage to another. x x x *(R)educing the testimony of Albert to its proper proportion, we do not have enough trustworthy evidence left to go by.* We are of the considerable opinion, therefore, that the believable evidence on the degree of care and diligence that has

been exercised in the selection and supervision of Roberto Leon *y* Salazar, is not legally sufficient to overcome the presumption of negligence against the defendant company. (Italics supplied.)[24]

In the case at bar, while this Court may be satisfied that petitioner company had exercised due diligence in the selection of petitioner Añalucas, the focus now shifts as to whether or not petitioner company had satisfied the test of due supervision.

Petitioner company's attempt to prove that it had exercised due diligence of a good father of a family in the supervision of petitioner Añalucas is summarized in its Memorandum[25] and was testified to by its Operations Manager, Chito Calauag, to wit:

1. The new employee was given formal/written papers as to things expected from him as a driver; about driving habits, about things he should do just in case and was issued guidelines, circulars both from OMC Carriers (Exhs. 6, 6-A, 6-B, 6-C, 6-D, 6-E) and from Petron (Exhs. 8, 8-A to 8-A-5);
2. That the circulars and guidelines are placed in each of the tankers to see to it that they are brought to the knowledge and attention of the drivers and helpers;
3. That every carbarn time, the Chief Mechanic and Asst. Operations Manager check the tanker for any sign of damage to ascertain if the driver had been involved in an accident;
4. That every weekend, when the drivers are paid their salaries/ wages, the Cashier is made to examine the licenses of the drivers to know if they had been issued Traffic Violation Tickets;
5. That if the license has expired or a ticket had been issued and has expired, the driver is grounded until the licenses is (sic) renewed or the license, if confiscated has been redeemed;
6. That, in the meantime, a substitute driver is assigned to the tanker to temporarily take the place of the grounded driver.[26]

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[24] *Id.* at 535-536. (Emphasis ours.)

[25] *Rollo*, pp. 49-61.

[26] *Id.* at 56-57.

After a thorough and extensive review of the records, this Court is unconvinced that petitioner company had satisfactorily discharged its burden. The alleged Memorandum (Exhibit 6) alluded to by petitioner company amounts to nothing more than a "reminder memo on offenses punishable by dismissal,"[27] wherein specific offenses are spelled out to which erring employees may be punished by the company. Likewise, the alleged circulars[28] from Petron amount to nothing more than minutes of the "Haulers Meeting," a list of "Hot Spots" and a "Table of Penalties." These circulars do not, in any way, concern safety procedures to prevent accident or damage to property or injury to people on the road. It bears to stress that the existence of supervisory policies cannot be casually invoked to overturn the presumption of negligence on the part of the employer.[29]

The testimonies relating to the checking of damages during carbarn time, the inspection if drivers were given traffic violation tickets and inspection of the validity of the drivers' licenses are all oral evidence without any object or documentary evidence to support them. Like in *Metro Transit*, this Court is unable to accept the self-serving nature of the testimonies without any other evidence. The alleged daily inspections conducted were not supported by any evidence on record. Moreover, even the seminars regarding safety and driving,[30] allegedly conducted by petitioners' witness, Max Pagsaligan, were not satisfactorily established in evidence. Specifically, there is no record that petitioner Añalucas attended such seminars.

Normally, employers keep files concerning the qualifications, work experience, training, evaluation, and discipline of their employees.[31] The failure of petitioners to put forth evidence to

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[27] Records, pp. 141-144.

[28] *Id.* at 147-154.

[29] *Fabre, Jr. v. Court of Appeals*, G.R. No. 111127, July 26, 1996, 259 SCRA 426, 434-435.

[30] TSN, October 15, 1997, pp. 18, 27.

[31] *Metro Manila Transit Corporation v. Court of Appeals*, 359 Phil. 18, 33 (1998).

substantiate the testimonies of the witnesses is certainly fatal to its cause.

Having resolved the same, this Court shall now address the issue of damages. Petitioners contend that the CA erred when it affirmed the RTC's award of ₱60,000.00 as death indemnity and ₱100,000.00 as moral damages. Petitioners contend that such an award was contrary to prevailing jurisprudence. In addition, petitioners also argue that the award of attorney's fees was without legal basis.

The same is meritorious.

Death indemnity has been fixed by jurisprudence at ₱50,000.00.[32] Hence, the amount awarded by the RTC and the CA must be reduced accordingly. On the issue of moral damages, prevailing jurisprudence fixes moral damages of ₱50,000.00 for death.[33] It must be stressed that moral damages are not intended to enrich a plaintiff at the expense of the defendant.[34] They are awarded to allow the plaintiff to obtain means, diversion or amusements that will serve to alleviate the moral suffering he/she has undergone due to the defendant's culpable action and must, perforce, be proportional to the suffering inflicted.[35] Thus, given the circumstances of the case at bar, an award of ₱50,000.00 as moral damages is proper.

Next, the rule on the award of attorney's fees is that there must be a justification for the same. In the absence of a statement why attorney's fees were awarded, the same should be disallowed.[36] On this note, after reading through the text of the CA decision, this Court finds that the same is bereft of any

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[32] *Philippine Hawk Corporation v. Vivian Tan Lee*, G.R. No. 166869, February 16, 2010.

[33] *Id.*

[34] *Spouses Hernandez v. Dolor*, 479 Phil. 593, 605 (2004).

[35] *Id.*

[36] *Lozano v. Ballesteros*, G.R. No. 49470, April 8, 1991, 195 SCRA 681, 691.

findings of fact and law to justify the award of attorney's fees. While it may be safe to surmise that the RTC granted attorney's fees as a consequence of its grant of exemplary damages, such cannot be said for the CA, since the same deleted the award of exemplary damages after finding that petitioner Añalucas was not grossly negligent. The CA did not explain why it was still awarding attorney's fees to respondents, therefore, such an award must be deleted.

While petitioners did not put in error the award of actual damages, this Court feels that the same should nevertheless be reviewed as an appellate court is clothed with ample authority to review rulings even if they are not assigned as errors. This is especially so if the court finds that their consideration is necessary in arriving at a just decision of the case before it.[37]

For one to be entitled to actual damages, it is necessary to prove the actual amount of loss with a reasonable degree of certainty, premised upon competent proof and the best evidence obtainable by the injured party.[38] Actual damages are such compensation or damages for an injury that will put the injured party in the position in which he had been before he was injured. They pertain to such injuries or losses that are actually sustained and susceptible of measurement. To justify an award of actual damages, there must be competent proof of the actual amount of loss. Credence can be given only to claims which are duly supported by receipts.[39]

In the case at bar, respondents only submitted the following evidence to substantiate their claim for actual damages:

Provisional Receipt No. 773, dated August 13, 1995, issued by La Funeraria Novaliches. (Exhibit "A")	₱28,000.00

[37] *Cuaton v. Salud*, 465 Phil. 999, 1006 (2004).

[38] *People v. Dela Cruz*, G.R. No. 168173, December 24, 2008, 575 SCRA 412, 446-447.

[39] *B.F Metal Corporation v. Spouses Lomotan*, G.R. No. 170813, April 16, 2008, 551 SCRA 618, 626-627.

Official Receipt No. 105675, dated August 12, 1995, issued by Philippine Memorial Park Inc. for payment of interment fees received from respondents. (Exhibit "B")	₱3,900.00
Official Receipt No. 105656, dated August 8, 1995, issued by Philippine Memorial Park Inc. for payment of interment fees received from respondents. (Exhibit "B-1")	₱2,000.00
Letter-Certification, dated August 17, 1995 from Philippine Memorial Park, Inc. to certify the amount of the lot used for the burial of Mr. Reggie Nabua. (Exhibit "C")	₱24,000.00
Official Receipt No. 10596, dated August 4, 1995, issued by Fairview Polymedic Clinic for emergency treatment of Reggie Nabua. (Exhibit "D")	₱ 1,273.50
TOTAL	**₱59,173.50**

Based on the foregoing, the RTC erred when it awarded the amount of ₱110,000.00 as actual damages, as the said amount was not duly substantiated with receipts. Hence, the amount of actual damages that can only be recovered is ₱59,173.50.

Lastly, although respondents did not appeal the CA Decision, they now pray in their Memorandum[40] that this Court reinstate the RTC award of ₱2,000,000.00 as compensatory damages which was deleted by the CA.[41] Respondents point out that the victim, Reggie Nabua, was 18 years old and at the time of his death, a freshman taking up Industrial Engineering. On this point, *Metro Manila Transit Corporation v. Court of Appeals*[42] is instructive, to wit:

x x x Art. 2206 of the Civil Code provides that in addition to the indemnity for death caused by a crime or *quasi delict*, the "defendant

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[40] *Rollo*, pp. 62-72.

[41] *Id.* at 65.

[42] *Supra* note 31.

shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; . . ." Compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money. **Evidence must be presented that the victim, if not yet employed at the time of death, was reasonably certain to complete training for a specific profession**. **In *People v. Teehankee*, no award of compensation for loss of earning capacity was granted to the heirs of a college freshman because there was no sufficient evidence on record to show that the victim would eventually become a professional pilot.** **But compensation should be allowed for loss of earning capacity resulting from the death of a minor who has not yet commenced employment or training for a specific profession if sufficient evidence is presented to establish the amount thereof** x x x.[43]

x x x x x x x x x

In sharp contrast with the situation obtaining in *People v. Teehankee*, where the prosecution merely presented evidence to show the fact of the victim's graduation from high school and the fact of his enrollment in a flying school, the spouses Rosales did not content themselves with simply establishing Lisa Rosalie's enrollment at UP Integrated School. They presented evidence to show that Liza Rosalie was a good student, promising artist, and obedient child. She consistently performed well in her studies since grade school. A survey taken in 1984 when Liza Rosalie was twelve years old showed that she had good study habits and attitudes. Cleofe Chi, guidance counselor of the University of the Philippines Integrated School, described Liza Rosalie as personable, well-liked, and with a balanced personality. Professor Alfredo Rebillon, a faculty member of the University of the Philippines College of Fine Arts, who organized workshops which Liza Rosalie attended in 1982 and 1983, testified that Liza Rosalie had the potential of eventually becoming an artist. Professor Rebillon's testimony is more than sufficiently established by the 51 samples of Liza Rosalie's watercolor, charcoal, and pencil drawings submitted as exhibits by the spouses Rosales. Neither MMTC nor Pedro Musa controverted this evidence.[44]

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[43] *Id.* at 38-39.

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

In the case at bar, respondents only testified to the fact that the victim, Reggie Nabua, was a freshman taking up Industrial Engineering at the Technological Institute of the Philippines in Cubao.[45] Unlike in *Metro Transit* where evidence of good academic record, extra-curricular activities, and varied interests were presented in court, herein respondents offered no such evidence. Hence, the CA was correct when it deleted the award of compensatory damages amounting to ₱2,000,000.00, as the same is without any basis.

WHEREFORE, the instant petition is *PARTIALLY GRANTED*. The Decision of the Court of Appeals in CA-G.R. CV No. 60034 is *AFFIRMED* with *MODIFICATION*. The award of death indemnity is *REDUCED* to ₱50,000.00. The award of actual damages is hereby *REDUCED* to ₱59,173.50. The award of moral damages is likewise *REDUCED* to ₱50,000.00. The award of attorney's fees is *DELETED*. All other awards of the Court of Appeals are *AFFIRMED*. Following jurisprudence,[46] petitioners are ordered to *PAY* legal interest of 6% per annum from the date of promulgation of the Decision dated January 19, 1998 of the Regional Trial Court, National Capital Judicial Region, Branch 224, Quezon City and 12% per annum from the time the Decision of this Court attains finality, on all sums awarded until their full satisfaction.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

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[45] TSN, February 14, 1996, p. 13; TSN, February 28, 1996, p. 17.

[46] *Eastern Shipping Lines, Inc. v. Court of Appeals*, G.R. No. 97412, July 12, 1994, 234 SCRA 78.

SECOND DIVISION

[G.R. No. 151084. July 2, 2010]

PROVINCE OF CAMARINES SUR, represented by GOVERNOR LUIS R. VILLAFUERTE, *petitioner, vs.* **HEIRS OF AGUSTIN PATO, ADOLFO DEL VALLE BRUSAS and ZENAIDA BRUSAS; TRIFONA FEDERIS, MAURICIO MEDIALDEA and NELSON TONGCO; MARIANO DE LOS ANGELES; HEIRS OF MIGUEL PATO, ARACELI BARRAMEDA ACLAN and PONCIANO IRAOLA; HEIRS OF CRESENCIA** ***VDA. DE*** **SAN JOAQUIN,*** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PERFECTION OF APPEALS; PAYMENT OF DOCKET FEES WITHIN THE PRESCRIBED PERIOD IS MANDATORY; CASE AT BAR. —** Time and time again, this Court has consistently held that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory. x x x From the time Atty. Torallo paid the corresponding docket fees, approximately 15 months had already lapsed from the time the notice of appeal was filed by petitioner's former counsel Atty. Catangui. This is to this Court's mind, already too late in the day.

2. **ID.; ID.; ID.; ID.; ID.; RELAXATION OF THE RULES, NOT PROPER; EXPLAINED. —** While the strict application of the jurisdictional nature of the rule on payment of appellate docket fees may be mitigated under exceptional circumstances to better serve the interest of justice, such circumstances are not present in the case at bar. Petitioner's attempt to pass the

* The Court approved the Extra-Judicial Settlement with Compromise Sale executed by the Heirs of San Joaquin per Resolution dated December 12, 2007.

buck on the sickness of its former counsel, Atty. Catangui, is not a compelling reason for this Court to relax the strict requirement for the timely payment of appellate docket fees. While this Court expresses grief over the death of Atty. Catangui, his sickness was not of such a nature which would have impaired his mental faculties and one which would have prevented him from paying the docket fees. From the time he filed a notice of appeal assailing the RTC Decision, Atty. Catangui was still the Provincial Legal Officer for 6 months prior to his transfer to his new post at the National Commission on Indigenous Peoples. Even if the corresponding docket fees were not paid upon the filing of the notice of appeal, still, Atty. Catangui could have rectified the situation by paying the fees within the 15-day reglementary period to file an appeal. As manifested by petitioner, Atty. Catangui was in the practice of law for 10 years, he should have, therefore, seen to it that the stringent requirements for an appeal were complied with.

APPEARANCES OF COUNSEL

Janis Ian Regaspi-Cleofe for petitioners.
Medialdea & Tongco for Mauricio Medialdea and Nelson Tongco.
Expedito Mapa for Heirs of Agustin Pato.
Adan Marcelo B. Botor for Adolfo Brusas.
J. Barte Law Office for Spouses Adolfo & Sonia Brusas.
Nelson Beltran for Araceli Aclan.
San Buenaventura Law Office for San Buenaventura.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari*,[1] under Rule 45 of the Rules of Court, seeking to set aside the Resolutions

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[1] *Rollo*, pp. 10-43.

of the Court of Appeals (CA) dated May 31, 2001[2] and November 19, 2001[3] in CA-G.R. CV No. 69735.

The facts of the case are as follows:

Expropriation proceedings were initiated by petitioner Province of Camarines Sur against respondents Heirs of Agustin Pato, Adolfo del Valle Brusas & Zenaida Brusas, Trifona Federis, Mauricio Medialdea & Nelson Tongco, Mariano de los Angeles, Heirs of Miguel Pato, Araceli Barrameda Aclan and Ponciano Iraola sometime in 1989 in the Regional Trial Court (RTC) of Pili, Camarines, Sur, Fifth Judicial Region, Branch 32. In the proceedings which was docketed as Special Civil Action No. P-2-'89, petitioner proposed to pay respondents ₱20,000.00 per hectare, or ₱2.00 per square meter, as just compensation for their lands. Respondents resisted the attempt of petitioner to expropriate their properties arguing, among others, that there was no public necessity. Motions to Dismiss filed by respondents were, however, denied by the RTC. After a protracted litigation that led to the appointment of Commissioners to determine the proper value of the properties, the RTC rendered a Decision,[4] the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, judgment is hereby rendered:

1. Expropriating, in favor of plaintiff Province, for the public use detailed in its complaint, and in Res. No. 129, S. of 1998, the lands described in its pars. 1 and 4, consolidated complaint, as further described its sketch plan, p. 361 records;

2. Condemning plaintiff to pay defendants as just compensation for the land, owned by defendants named in the consolidated complaint and enumerated in Annex A as well as the improvements standing thereon, at the time this decision is executed, and set forth in Annex C hereof, which is made an integral part of this decision, with 6%

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[2] *Id.* at 45-46.

[3] Penned by Associate Justice Jose L. Sabio, Jr., with Presiding Justice Ma. Alicia Austria-Martinez (retired member of this Court) and Associate Justice Hilarion L. Aquino, concurring; *id.* at 49-50.

[4] *Rollo*, pp. 63-68.

interest per annum from the date cases were individually filed until paid; and

3. Condemning plaintiff to pay Financial Assistance per E.O. 1035, Sec. 18 to the tenants mentioned in the summary of the commissioner's report and enumerated in Annex A; and to pay Commissioners Co, Altar and Malali, ₱5,000.00 each, immediately.

NO COSTS.

SO ORDERED.[5]

The RTC ruled that the reasonable value of the lands to be expropriated were as follows:

Irrigated riceland – ₱9.00 per sq. m.
Unirrigated riceland, coconut land, orchard – ₱8.00 per sq. m.
Residential land – ₱120.00 per sq. m.[6]

Petitioner filed a Motion for Reconsideration[7] to the RTC Decision, specifically arguing that the value of just compensation should only be ₱20,000.00 per hectare, or ₱2.00 per square meter. Petitioner argued that such value was the amount awarded by other RTCs in the area, which involved landholdings of the same condition as that of the subject properties.

On June 9, 2000, the RTC issued an Omnibus Order[8] denying petitioner's motion to reduce the valuations it made.

On June 15, 2000, petitioner filed with the RTC a Notice of Appeal.[9]

On May 31, 2001, the CA issued a Resolution[10] dismissing the appeal of petitioner for failure to pay the docket fees, thus:

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[5] *Id.* at 67-68.

[6] *Id.* at 66.

[7] Records, Vol. 3, pp. 1493-1519.

[8] *Id.* at 1583-1585.

[9] *Id.* at 1586-1587.

[10] *Rollo,* pp. 45-46.

x x x x x x x x x

The Court RESOLVES to:

x x x x x x x x x

(d) DISMISS the appeal of plaintiff-appellant Province of Camarines Sur for failure to pay the jurisdictional requirement of payment of the docket fee pursuant to Sec. 1 (c) of the 1997 Rules of Civil Procedure.[11]

Aggrieved, petitioner filed a Motion for Reconsideration,[12] which was, however, denied by the CA in a Resolution[13] dated November 19, 2001.

Hence, herein petition, with petitioner raising the following errors committed by the CA, to wit:

i.

THE COURT OF APPEALS GRAVELY ERRED AND GROSSLY ABUSED ITS DISCRETION IN DISMISSING THE APPEAL OF HEREIN PETITIONER PROVINCE OF CAMARINES SUR AND IN DENYING ITS MOTION FOR RECONSIDERATION SUCH DISMISSAL AND DENIAL BEING ENTIRELY NOT IN ACCORD AND DIRECTLY IN CONTRAVENTION WITH THE APPLICABLE DECISIONS OF THE SUPREME COURT IN THE INSTANT CASE, CONSIDERING THE ATTENDANT CIRCUMSTANCES HEREIN WHICH JUSTIFY THE LIBERAL INTERPRETATION AND APPLICATION OF THE RULES OF COURT.

ii.

THE COURT OF APPEALS SERIOUSLY ERRED IN DISMISSING THE APPEAL OF HEREIN PETITIONER PROVINCE OF CAMARINES SUR SINCE SAID APPEAL IS EXCEPTIONALLY MERITORIOUS AS THE APPEALED DECISION COMPLETELY DEPARTED FROM THE APPLICABLE RULES AND DULY ESTABLISHED

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[11] *Id.* at 45.

[12] *Id*. at 52-58.

[13] *Id*. at 49-50.

JURISPRUDENCE IN THE DETERMINATION OF JUST COMPENSATION IN EXPROPRIATION CASES AND INSTEAD THE JUDGE IN THE LOWER COURT USED HIS OWN PERSONAL VIEW AND BELIEF IN COMING UP WITH THE VALUATION OF THE PROPERTY AS TO URGENTLY REQUIRE THE EXERCISE OF THE POWER OF JUDICIAL INTERVENTION AND SUPERVISION BY THE COURT OF APPEALS.

iii.

THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR WHEN IT DENIED THE MOTION FOR RECONSIDERATION FILED BY HEREIN PETITIONER AND AFFIRMED ITS RESOLUTION DISMISSING THE APPEAL OF HEREIN PETITIONER PROVINCE BY CITING ONE CASE WHICH IS NOT APPLICABLE IN THIS INSTANT CASE AND CITING ANOTHER WHICH IS, IN FACT, SUPPORT OF THE APPEAL OF HEREIN PETITIONER.[14]

At the crux of the controversy is a determination of the propriety of the CA's resolution dismissing petitioner's appeal for failure to pay the docket fees. In its Motion for Reconsideration[15] before the CA, petitioner argued that its failure to pay the docket fees was due to the honest inadvertence and excusable negligence of its former counsel, Atty. Victor D.R. Catangui, to wit:

x x x x x x x x x

1. The failure of the former counsel of herein Plaintiff-Appellant Province of Camarines Sur (the late Atty. Victor D.R. Catangui) to pay or caused to be paid the appellate court docket fees was committed through honest inadvertence and excusable negligence, since during the time that the notice of appeal was filed, said counsel was already having health problems affecting his heart that substantially distracted him from faithfully performing his duties and functions as Provincial Legal Officer, including that as counsel of herein Plaintiff-Appellant Province of Camarines Sur in the above-entitled case;

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[14] *Id.* at 20-21.

[15] *Id.* at 52-58.

2. That it was the same physical condition that forced him to resign as Provincial Legal Officer effective January 2, 2001 as the distance between his office in Provincial Capitol Complex, Cadlan, Pili, Camarines Sur and that of his residence in San Roque, Iriga City, which is, more or less than 27 kilometers is too much for him to physically endure;

3. That, notwithstanding his resignation from the Provincial Government of Camarines Sur and subsequent transfer to a much nearer office in Iriga City, he nevertheless, sad to tell, unexpectedly succumbed on March 2, 2001 at the age of 47. x x x[16]

This Court is not convinced. Time and time again, this Court has consistently held that the payment of docket fees within the prescribed period is mandatory for the perfection of an appeal. Without such payment, the appellate court does not acquire jurisdiction over the subject matter of the action and the decision sought to be appealed from becomes final and executory.[17]

Records disclose that petitioner's former counsel Atty. Catangui filed a Notice of Appeal on June 15, 2000. On January 15, 2001, Atty. Catangui filed a Motion with the CA notifying the same that he was withdrawing as counsel for petitioner. On May 31, 2001, the CA issued the first assailed Resolution, which noted the motion of Atty. Catangui to withdraw as counsel and which also dismissed petitioner's appeal for failure to pay the docket fees. Said resolution was sent to petitioner via registered mail and was received by petitioner's agent, a certain Loningning Noora-Papa, as evidenced by the Registry Return Receipt.[18] It was only on August 2, 2001 that the CA received the Entry of Appearance[19] of petitioner's new counsel, Atty. Elias A. Torallo, Jr. With the appearance of Atty. Torallo, the CA resent the May 31, 2001 Resolution informing him of the dismissal of the petition. On September 11, 2001, a day after receiving said Resolution, Atty. Torallo paid the corresponding docket fees.

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[16] *Id*. at 52-53.

[17] *Yambao v. Court of Appeals*, 399 Phil. 712, 717-718 (2000).

[18] CA *rollo*, p. 64. (Dorsal side.)

[19] *Id.* at 66.

From the time Atty. Torallo paid the corresponding docket fees, approximately 15 months had already lapsed from the time the notice of appeal was filed by petitioner's former counsel Atty. Catangui. This is to this Court's mind, already too late in the day.

While the strict application of the jurisdictional nature of the rule on payment of appellate docket fees may be mitigated under exceptional circumstances to better serve the interest of justice,[20] such circumstances are not present in the case at bar.

Petitioner's attempt to pass the buck on the sickness of its former counsel, Atty. Catangui, is not a compelling reason for this Court to relax the strict requirement for the timely payment of appellate docket fees. While this Court expresses grief over the death of Atty. Catangui, his sickness[21] was not of such a nature which would have impaired his mental faculties and one which would have prevented him from filing the docket fees. From the time he filed a notice of appeal assailing the RTC Decision, Atty. Catangui was still the Provincial Legal Officer for 6 months prior to his transfer to his new post at the National Commission on Indigenous Peoples. Even if the corresponding docket fees were not paid upon the filing of the notice of appeal, still, Atty. Catangui could have rectified the situation by paying the fees within the 15-day reglementary period to file an appeal. As manifested by petitioner, Atty. Catangui was in the practice of law for 10 years, he should have, therefore, seen to it that the stringent requirements for an appeal were complied with.

M. A. Santander Construction Inc. v. Villanueva[22] is instructive, thus:

In the instant case, petitioner received a copy of the Decision of the trial court on March 3, 1998. Accordingly, it had, pursuant

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[20] *Ayala Land, Inc. v. Spouses Carpo*, 399 Phil. 327, 335 (2000).

[21] The medical history of Atty. Catangui reveals that he was suffering from diabetes mellitus type 2 and hypertensive cardiovascular disease; *rollo*, pp. 70-71.

[22] 484 Phil. 500 (2004).

to Section 3, Rule 41, until March 18, 1998 within which to perfect its appeal by filing within that period the Notice of Appeal and paying the appellate docket and other legal fees. While petitioner filed the Notice of Appeal on March 9, 1998, or within the reglementary period, however, it paid the required docket fees only on November 13, 1998, or late by 7 months and 25 days.

The mere filing of the Notice of Appeal is not enough, for it must be accompanied by the payment of the correct appellate docket fees. Payment in full of docket fees within the prescribed period is mandatory. It is an essential requirement without which the decision appealed from would become final and executory as if no appeal had been filed. Failure to perfect an appeal within the prescribed period is not a mere technicality but jurisdictional and failure to perfect an appeal renders the judgment final and executory.

In *Guevarra vs. Court of Appeals*, where the docket fees were not paid in full within the prescribed period of fifteen (15) days but were paid forty-one (41) days late due to "inadvertence, oversight, and pressure of work," we held that the Court of Appeals correctly dismissed the appeal. In *Lee vs. Republic of the Philippines*, where half of the appellate docket fee was paid within the prescribed period, while the other half was tendered after the period within which payment should have been made, we ruled that no appeal was perfected. Clearly, where the appellate docket fee is not paid in full within the reglementary period, the decision of the trial court becomes final and no longer susceptible to an appeal. For once a decision becomes final, the appellate court is without jurisdiction to entertain the appeal.[23]

Withal, it bears to stress that Appeal is not a constitutional right, but a mere statutory privilege. It must be exercised strictly in accordance with the provisions of the law and rules. Specifically, the payment of docket fees within the period for perfecting an appeal is mandatory. In the present case, petitioner has not given sufficient reason why it should be exempt from this stringent rule.

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[23] *Id.* at 504-505. (Emphasis supplied.)

WHEREFORE, premises considered, the petition is *DENIED*. The Resolutions of the Court of Appeals, dated May 31, 2001 and November 19, 2001, in CA-G.R. CV No. 69735, are *AFFIRMED.*

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 152266. July 2, 2010]

HEIRS OF PEDRO DE GUZMAN, *petitioners, vs.* **ANGELINA PERONA and HEIRS OF ROSAURO DE GUZMAN; BATAAN DEVELOPMENT BANK; and REPUBLIC PLANTERS BANK,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ISSUES AND ARGUMENTS NOT BROUGHT BEFORE THE TRIAL COURT CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL. —** Petitioners' allegation that their predecessor Pedro acquired the land covered by TCT No. 78181 by means of oral partition cannot be taken cognizance by this Court. This allegation was never raised before the RTC. In the trial court, Pedro's theory was that the property subject of this case was adjudicated to him by virtue of a document executed by Andrea in his favor. Well settled is the rule that issues and arguments not brought before the trial court cannot be raised for the first time on appeal. Basic considerations of due process impel this rule.

2. **CIVIL LAW; LAND TITLES AND DEEDS; INDEFEASIBILITY OF CERTIFICATE OF TITLE; AS AGAINST A TAX DECLARATION WHICH IS NOT CONCLUSIVE**

EVIDENCE OF TITLE TO OR OWNERSHIP OF PROPERTY, THE CERTIFICATE OF TITLE IS SUPERIOR AND INDEFEASIBLE PROOF OF OWNERSHIP OF PROPERTY. — [A]s between respondents' title, embodied in a certificate of title, and Pedro's title, evidenced only by a tax declaration, the former is evidently far superior and is conclusive and an indefeasible proof of respondents' ownership over the property subject of this case. Respondents' certificate of title is binding upon the whole world. Time and again, the Court has ruled that tax declarations and corresponding tax receipts cannot be used to prove title to or ownership of a real property inasmuch as they are not conclusive evidence of the same.

3. **ID.; ID.; ACTION FOR RECONVEYANCE BASED ON FRAUD; PARTY SEEKING RECONVEYANCE MUST PROVE BY CLEAR AND CONVINCING EVIDENCE HIS TITLE TO THE PROPERTY AND THE FACT OF FRAUD; MERE ALLEGATIONS OF FRAUD ARE INSUFFICIENT. —** Pedro's allegation that the spouses Rosauro and Angelina resorted to fraud when they caused the cancellation of OCT No. 10075 and the issuance of TCT Nos. 17181, 17182 and 17183 in their name is equally unsupported by evidence. It must be stressed that mere allegations of fraud are insufficient. Intentional acts to deceive and deprive another of his right, or in some manner injure him, must be specifically alleged and proved. For an action for reconveyance based on fraud to prosper, the party seeking reconveyance must prove by clear and convincing evidence his title to the property and the fact of fraud.

4. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; IN CIVIL CASES, THE PARTY MAKING ALLEGATIONS HAS THE BURDEN OF PROVING THEM BY A PREPONDERANCE OF EVIDENCE. —** Petitioners likewise allege that the heirs of Rosauro and Angelina's failure to answer the complaint before the RTC is an admission of the allegations in Pedro's complaint. The argument does not persuade Us. In civil cases, basic is the rule that the party making allegations has the burden of proving them by a preponderance of evidence. Moreover, parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent. This principle equally

holds true, even if the defendant had not been given the opportunity to present evidence because of a default order. The extent of the relief that may be granted can only be as much as has been alleged and proved with preponderant evidence required under Section 1 of Rule 133 of the Revised Rules on Evidence.

5. ID.; CIVIL PROCEDURE; JUDGMENTS; JUDGMENT BY DEFAULT AGAINST A DEFENDANT; IMPLICATIONS; IN CASE AT BAR, FAILURE OF THE DEFENDANTS TO ANSWER IS NOT EQUIVALENT TO IMPLIED ADMISSION OF THE ALLEGATIONS IN THE COMPLAINT. — In *Luxuria Homes, Inc. v. Court of Appeals*, the Court held that a judgment by default against a defendant does not imply a waiver of rights, except that of being heard and of presenting evidence in his favor. It does not imply admission by the defendant of the facts and causes of action of the plaintiff, because the codal section requires the latter to adduce his evidence in support of his allegations as an indispensable condition before final judgment could be given in his favor. Nor could it be interpreted as an admission by the defendant that the plaintiff's causes of action finds support in the law, or that the latter is entitled to the relief prayed for. x x x Clearly, the heirs of Rosauro and Angelina's failure to answer cannot be equivalent to an implied admission of the allegations in Pedro's complaint.

6. CIVIL LAW; TRUSTS; IMPLIED TRUSTS; IN THE ABSENCE OF FRAUD, NO IMPLIED TRUST WAS ESTABLISHED BETWEEN THE PARTIES IN CASE AT BAR. — Petitioners' submission that respondents merely hold the title to the properties in trust for their predecessor Pedro is without merit. Pedro failed to prove by clear and convincing evidence that the spouses Rosauro and Angelina managed, through fraud, to have the real properties subject of this case registered in their name. In the absence of fraud, no implied trust was established between Pedro and the spouses Rosauro and Angelina under Article 1456 of the New Civil Code. TCT Nos. 17181, 17182 and 17183 are deemed to be fairly and regularly issued.

7. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW ARE PROPER; CASE AT BAR. — [P]etitioners claim that respondent BD Bank is a mortgagee

in bad faith, because at the time the property was mortgaged by the spouses Rosauro and Angelina to respondent bank, the said Spouses were not residing in the mortgaged property. As correctly argued by respondent BD Bank, petitions for review under Rule 45 of the Rules of Court may be brought only on questions of law, not on questions of fact. The question on whether the respondent is a mortgagee in bad faith is clearly a question of fact and, therefore, not proper for appeals under Rule 45.

8. **ID.; APPEALS; FACTUAL FINDINGS OF TRIAL COURTS ARE ENTITLED TO GREAT WEIGHT AND RESPECT ON APPEAL, ESPECIALLY WHEN ESTABLISHED BY UNREBUTTED TESTIMONIAL AND DOCUMENTARY EVIDENCE. —** [T]he trial court found that respondent BD Bank made an inspection of the property that was subsequently accepted as collateral for the loan, which defeated petitioners' argument that respondent BD Bank did not exercise due diligence in inspecting and ascertaining the status of the mortgage property. The factual findings of trial courts are entitled to great weight and respect on appeal, especially when established by unrebutted testimonial and documentary evidence. The Court finds the foregoing conclusion drawn by the trial court supported by documentary evidence.

APPEARANCES OF COUNSEL

People's Law Office for petitioners.
Benjamin Relova for Bataan Development Bank.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] and Resolution[2] of the Court of Appeals (CA), dated May 30, 2001 and January 25, 2002, respectively, in CA-G.R. CV No. 46144.

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[1] Penned by Associate Justice Eloy R. Bello, Jr., with Associate Justices Eugenio S. Labitoria and Perlita J. Tria Tirona, concurring, *rollo*, pp. 28-33.

[2] *Rollo,* p. 36.

The antecedent facts are as follows:

On April 15, 1985, Pedro de Guzman filed a Complaint with application for temporary restraining order and preliminary injunction against respondents before the Regional Trial Court (RTC) of Bataan docketed as Civil Case No. 5247. He sought reconveyance of a parcel of land measuring about 300 square meters from the heirs of Rosauro de Guzman and his surviving spouse, Angelina Perona.

Pedro alleged that through unlawful machination, fraud, deceit, and evident bad faith, respondent spouses Rosauro and Angelina caused the cancellation of Original Certificate of Title (OCT) No. 10075 and subdivided the said property into three (3) parcels of land covered by separate Transfer Certificate of Titles in their name.

Records show that OCT No. 10075[3] was issued by the Office of the Register of Deeds for the Province of Bataan on July 25, 1933, containing an area of 3,242 square meters, more or less, half of which was registered under the name of Andrea de Guzman, and the other half in the names of Servando de Guzman's children, namely, Pablo (married to Amelia Alarcon), Jose, Canuto, Cirilo, Leopoldo, David and Maximino.

In 1942, Andrea, Cirilo, Leopoldo and David died intestate. On July 26, 1950, a petition for the issuance of a new owner's duplicate of OCT No. 10075 was filed by Jose de Guzman, one of the registered owners, due to the loss of the owner's copy of OCT No. 10075. Pursuant to the Order[4] of the Court of First Instance of Bataan, dated August 22, 1950, the Register of Deeds of Bataan was directed to issue a new owner's duplicate of OCT No. 10075. Thereafter, by virtue of an Extrajudicial Settlement of Estate[5] executed on October 16, 1952 by Pablo, Jose, Canuto, Veronica Cruz (surviving spouse of Cirilo and in her capacity as legal administratix of their minor children,

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[3] *Id.* at 163.

[4] *Id.* at 174.

[5] *Id.* at 165-167.

Ernesto, Rosauro and Mercedita), Rogelio and Maximino, wherein they agreed to divide and adjudicate among themselves, in equal parts, the property covered by OCT No. 10075, the latter title was canceled and TCT No. T-3885 was issued in its stead. TCT No. T-3885 was later on divided into three parcels of land covered by TCT Nos. 78181, 78182 and 78183.

TCT No. 78181,[6] registered in the name of the spouses Rosauro and Angelina, was mortgaged by the said Spouses to Bataan Development Bank (BD Bank) on March 25, 1980.[7] Due to the failure of the Spouses to pay their indebtedness to BD Bank, the mortgaged property was foreclosed and sold to the bank as the highest bidder.

TCT No. 78182,[8] also registered in the name of the spouses Rosauro and Angelina, was sold by the said Spouses to a certain Carlito Pangilinan and Candida Ramos by virtue of a *Kasulatan ng Bilihang Tuluyan,*[9] dated August 12, 1982. By virtue of the sale, TCT No. 78182 was canceled and superseded by TCT No. 105347.

TCT No. 78183[10] in the name of Pablo, Canuto, Ernesto, Rosauro, Mercedita, Rogelio and Maximino, all surnamed De Guzman, was canceled and superseded by TCT No. T-92048[11] and registered in the name of the spouses Rosauro and Angelina. TCT No. 92048 was mortgaged by Rita A. Paguio, attorney-in-fact of the spouses Rosauro and Angelina,[12] to Republic Planters Bank (RP Bank) on August 11, 1982.[13]

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[6] *Id.* at 168.

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

[8] *Id.* at 169-169A.

[9] *Id.* at 14.

[10] *Id.* at 170-171.

[11] *Id.* at 191-192.

[12] Special Power of Attorney executed by the spouses Rosauro and Angelina in favor of Rita A. Paguio; *id.* at 190.

[13] Records, p. 13.

Pedro alleged that he is the grandson of one Zacarias de Guzman who is the brother of one Servando de Guzman. Servando is the grandfather of Rosauro. In other words, Pedro's father (Ildefonso) and Rosauro's father (Cirilo) are first cousins. Zacarias, Servando, and Andrea were siblings.

Pedro, allegedly acting in behalf of his co-heirs, maintained that he is entitled to share in the estate of Andrea. He claimed that, during the lifetime of Andrea, the house which he occupied had already been adjudicated in his favor. He said that he took care of Andrea, who died in his own house. He prayed that he be recognized as the owner and legitimate possessor of a parcel of land, containing an area of 300 square meters, where his house stands. He alleged that BD Bank accepted the land as collateral from the spouses Angelina and Rosauro without conducting the necessary investigation and verification of the actual status of the land. He further prayed for the cancellation of the corresponding title or titles issued, which may affect the area where his house stands. He, likewise, prayed for payment of damages.

Respondent Angelina and the heirs of Rosauro did not answer the complaint despite service of summons, hence, they were declared in default. In its Answer,[14] BD Bank alleged that Pedro's complaint stated no cause of action, as there was no clear allegation that the parcel of land covered by TCT No. 78181 is the same parcel of land over which he has some right or interest. It also failed to show that Pedro was an heir of Andrea and that he was acting in behalf of his co-heirs. RP Bank, in its defense,[15] alleged that Pedro had no cause of action against the bank. The bank acted in good faith and exercised due diligence and verified that the mortgagor has a good title over the property covered by TCT No. 92048.

In its Decision[16] dated April 14, 1994, the RTC dismissed the complaint. Aggrieved by the Decision, Pedro filed a Notice

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[14] *Id.* at 32-40.

[15] Answer, *id.* at 25-26.

[16] Records, pp. 307-312.

of Appeal,[17] which the CA dismissed in a Resolution dated May 30, 2001, for lack of merit. A motion for reconsideration was filed, which the CA denied in a Resolution dated January 25, 2002.

Pedro died in the interim, thus, his heirs and successors-in-interest (herein petitioners) elevated the case to this Court *via* Petition for Review on *Certiorari*[18] under Rule 45 of the Rules of Court, with the following issues:

A. THE COURT OF APPEALS ERRED IN NOT RULING THAT THE PETITIONERS HAVE ACQUIRED THE LAND COVERED BY TCT NO. 78181 AGAINST ANGELINA PERONA AND HEIRS OF ROSAURO DE GUZMAN THRU ORAL PARTITION.

B. THE COURT OF APPEALS ERRED IN NOT HOLDING THAT THE RESPONDENT BANKS ARE MORTGAGEES IN BAD FAITH.

In the present case, petitioners allege that Pedro acquired the property subject of this case covered by TCT No. 78181 through oral partition. They maintain that respondent BD bank is a mortgagee in bad faith. They, likewise, said that Pedro acquired ownership over the property by virtue of a document executed by Andrea transferring ownership of the property to him. Finally, they are asking for the reconveyance of a parcel of land where Pedro's house is situated.

In its Comment, respondent BD Bank alleges that the issue on whether or not it is a mortgagee in bad faith is a question of fact, and it is not proper for appeal under Rule 45 which deal only with questions of law.

The petition lacks merit.

The petitioner raises two issues in this case, however, upon perusal of the petition, the only issue in this case is whether or not respondent BD Bank is a mortgagee in bad faith.

Petitioners' allegation that their predecessor Pedro acquired the land covered by TCT No. 78181 by means of oral partition

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[17] *Id.* at 313.

[18] *Rollo*, pp. 9-21.

cannot be taken cognizance by this Court. This allegation was never raised before the RTC. In the trial court, Pedro's theory was that the property subject of this case was adjudicated to him by virtue of a document executed by Andrea in his favor. Well settled is the rule that issues and arguments not brought before the trial court cannot be raised for the first time on appeal. Basic considerations of due process impel this rule.[19]

Pedro also claims that Andrea transferred to him the parcel of land measuring about 300 square meters, where his house was erected. However, as correctly pointed out by the CA, this claim was not substantiated by evidence.

Records show that Pedro only paid the real property taxes over the properties on March 13, 1984 and January 16, 1985.[20] Prior to 1984, he never paid any taxes over the property which he alleged as his. The Court, therefore, finds that Pedro's payment of real estate taxes in 1984 and 1985 was only an afterthought to give a semblance of his alleged right over the property, and in preparation for the filing of the complaint for reconveyance in April 15, 1985.

Nonetheless, as between respondents' title, embodied in a certificate of title, and Pedro's title, evidenced only by a tax declaration, the former is evidently far superior and is conclusive and an indefeasible proof of respondents' ownership over the property subject of this case. Respondents' certificate of title is binding upon the whole world. Time and again, the Court has ruled that tax declarations and corresponding tax receipts cannot be used to prove title to or ownership of a real property inasmuch as they are not conclusive evidence of the same.[21]

Pedro's allegation that the spouses Rosauro and Angelina resorted to fraud when they caused the cancellation of OCT

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[19] *Del Rosario v. Bonga,* 402 Phil. 949 (2001).

[20] Records, pp. 160-161.

[21] *Dinah C. Castillo v. Antonio M. Escutin, Aquilina A. Mistas, Marietta A. Linatoc, and the Honorable Court of Appeals*. G.R. No. 171056, March 13, 2009.

No. 10075 and the issuance of TCT Nos. 17181, 17182 and 17183 in their name is equally unsupported by evidence. It must be stressed that mere allegations of fraud are insufficient. Intentional acts to deceive and deprive another of his right, or in some manner injure him, must be specifically alleged and proved.[22] For an action for reconveyance based on fraud to prosper, the party seeking reconveyance must prove by clear and convincing evidence his title to the property and the fact of fraud.[23]

Petitioners likewise allege that the heirs of Rosauro and Angelina's failure to answer the complaint before the RTC is an admission of the allegations in Pedro's complaint. The argument does not persuade Us. In civil cases, basic is the rule that the party making allegations has the burden of proving them by a preponderance of evidence. Moreover, parties must rely on the strength of their own evidence, not upon the weakness of the defense offered by their opponent. This principle equally holds true, even if the defendant had not been given the opportunity to present evidence because of a default order. The extent of the relief that may be granted can only be as much as has been alleged and proved with preponderant evidence required under Section 1 of Rule 133 of the Revised Rules on Evidence.[24]

In *Luxuria Homes, Inc., v. Court of Appeals*,[25] the Court held that a judgment by default against a defendant does not imply a waiver of rights, except that of being heard and of presenting evidence in his favor. It does not imply admission by the defendant of the facts and causes of action of the plaintiff, because the codal section requires the latter to adduce his evidence in support of his allegations as an indispensable condition before

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[22] *Barrera v. Court of Appeals,* G.R. No. 123935, December 14, 2001, 372 SCRA 312, 316-317.

[23] *Id.* at 316.

[24] *Gajudo v. Traders Royal Bank*, G.R. No. 151098, March 21, 2006, 485 SCRA 108, 119-120.

[25] G.R. No. 125986, January 28, 1999, 302 SCRA 315, 326, citing *De los Santos v. De la Cruz*, 37 SCRA 555 (1971).

final judgment could be given in his favor. Nor could it be interpreted as an admission by the defendant that the plaintiff's causes of action finds support in the law, or that the latter is entitled to the relief prayed for.

Additionally, in *Pascua v. Florendo*,[26] the Court held that complainants are not automatically entitled to the relief prayed for, once the defendants are declared in default. Favorable relief can be granted only after the court has ascertained that the relief is warranted by the evidence offered and the facts proven by the presenting party. Otherwise, it would be meaningless to require presentation of evidence if every time the other party is declared in default, a decision would automatically be rendered in favor of the non-defaulting party and exactly according to the tenor of his prayer. This is not contemplated by the Rules nor is it sanctioned by the due process clause.

Clearly, the heirs of Rosauro and Angelina's failure to answer cannot be equivalent to an implied admission of the allegations in Pedro's complaint.

Petitioners' submission that respondents merely hold the title to the properties in trust for their predecessor Pedro is without merit. Pedro failed to prove by clear and convincing evidence that the spouses Rosauro and Angelina managed, through fraud, to have the real properties subject of this case registered in their name. In the absence of fraud, no implied trust was established between Pedro and the spouses Rosauro and Angelina under Article 1456[27] of the New Civil Code. TCT Nos. 17181, 17182 and 17183 are deemed to be fairly and regularly issued.

Delving now on the main issue, petitioners claim that respondent BD Bank is a mortgagee in bad faith, because at the time the property was mortgaged by the spouses Rosauro

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[26] 220 Phil. 588, 595-596 (1985). Cited in *Gajudo v. Traders Royal Bank,* 485 SCRA 108 (2006).

[27] If property is acquired through mistake or fraud, the person obtaining it is, by force of law, considered a trustee of an implied trust for the benefit of the person whom the property comes.

and Angelina to respondent bank, the said Spouses were not residing in the mortgaged property. As correctly argued by respondent BD Bank, petitions for review under Rule 45 of the Rules of Court may be brought only on questions of law, not on questions of fact.[28] The question on whether the respondent is a mortgagee in bad faith is clearly a question of fact and, therefore, not proper for appeals under Rule 45.

Further, the trial court found that respondent BD Bank made an inspection of the property that was subsequently accepted as collateral for the loan,[29] which defeated petitioners' argument that respondent BD Bank did not exercise due diligence in inspecting and ascertaining the status of the mortgage property. The factual findings of trial courts are entitled to great weight and respect on appeal, especially when established by unrebutted testimonial and documentary evidence.[30] The Court finds the foregoing conclusion drawn by the trial court supported by documentary evidence. Records show that after the spouses Rosauro and Angelina applied for a loan with respondent BD bank, the latter, through its appraiser Oscar M. Ronquillo, conducted an inspection and appraisal[31] of the property covered by TCT No. 78181, together with the existing improvements thereon. After the said inspection and appraisal of the property, respondent BD Bank approved the loan[32] in favor of the spouses Rosauro and Angelina and, thereafter, executed a Real Estate Mortgage[33] with the said Spouses. Clearly, respondent bank was able to present sufficient evidence that the mortgage contract emanated from a valid and regular transaction. Respondent bank, before it accepted the collateral, exercised due diligence in verifying

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[28] *Liberty Construction & Development Corporation v. Court of Appeals,* 327 Phil. 490 (1996).

[29] Records, p. 311.

[30] *Liberty Construction & Development Corporation v. Court of Appeals, supra* note 28.

[31] Records, p. 273.

[32] *Id.* at 276.

[33] *Id.* at 277.

the ownership and status of the land and the improvements existing in the property mortgaged. From the above, it is crystal clear that no fraud can be attributed to respondent BD Bank in approving the Real Estate Mortgage and later on extrajudicially foreclosing the subject property.

WHEREFORE, the petition is *DENIED*. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 46144, dated May 30, 2001 and January 25, 2002, respectively, are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 167218. July 2, 2010]

ERECTOR ADVERTISING SIGN GROUP, INC. and ARCH. JIMMY C. AMOROTO, *petitioners, vs.* **EXPEDITO CLOMA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; TERMINATION BY EMPLOYER; REQUIREMENTS FOR A LAWFUL TERMINATION. — The validity of an employee's dismissal from service hinges on the satisfaction of the two substantive requirements for a lawful termination. These are, *first*, whether the employee was accorded due process the basic components of which are the opportunity to be heard and to defend himself. This is the procedural aspect. And *second*, whether the dismissal

is for any of the causes provided in the Labor Code of the Philippines. This constitutes the substantive aspect.

2. **ID.; ID.; ID.; ID.; ID.; DUE PROCESS REQUIREMENT; TWO (2) NOTICES REQUIRED; NOT COMPLIED WITH IN CASE AT BAR. —** With respect to due process requirement, the employer is bound to furnish the employee concerned with two (2) written notices before termination of employment can be legally effected. One is the notice apprising the employee of the particular acts or omissions for which his dismissal is sought — and this may loosely be considered as the proper charge. The other is the notice informing the employee of the management's decision to sever his employment. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, thereby giving him ample opportunity to be heard and defend himself with the assistance of his representative should he so desire. The requirement of notice, it has been stressed, is not a mere technicality but a requirement of due process to which every employee is entitled. In this case, we find that Cloma's dismissal from service did not comply with this basic precept.

3. **ID.; ID.; ID.; ID.; ID.; ID.; ID.; SUSPENSION ORDERS SERVED ON THE EMPLOYEE DID NOT CONSTITUTE THE FIRST NOTICE REQUIRED BY LAW PRIOR TO TERMINATION; DISMISSAL IS PROPER ONLY IF THE GROUNDS MENTIONED IN THE PRE-DISMISSAL NOTICE WERE THE ONES CITED FOR TERMINATION OF EMPLOYMENT. —** [P]etitioner insists that Cloma has been sufficiently informed of the acts constituting the grounds for his termination and that with respect thereto, ample opportunity was thereafter given to him to be heard thereon, only that he did not choose to avail of that opportunity. Petitioner seems to be referring to the May 15 and May 17, 2000 Suspension Orders which it previously served on Cloma. These orders, however, hardly constitute the first notice required by law prior to termination. Here is why: a fleeting glance at these two orders readily reveals that the alleged offenses mentioned therein were not to be used as grounds for termination, but rather merely for suspension. The wording of the orders conveys the idea that as a result of his shortcomings, Cloma was going to be meted the penalty of suspension in accordance with the

provisions of the company's rules and regulations, but not that he might be dismissed from service upon the same grounds. There is not an allusion in the said orders that petitioner was giving Cloma sufficient opportunity to submit his defenses or explanation. Instead, what it implies is that the management has already decided, for causes stated therein, to suspend Cloma from work in the company, and nothing more. Moreover, the May 15, 2000 Order, in particular, could not have constituted the first notice relative to the charge that Cloma has incurred unauthorized absences for two days as stated in the notice of termination. This, inasmuch as the order refers to a four (4)–day absence supposedly incurred between May 12, 2000 and May 15, 2000 for which Cloma has actually been sanctioned with suspension. In this regard, it suffices to say that even assuming that the May 15, 2000 order could validly take the place of the first notice, still, Cloma's dismissal cannot be validly effected, because an employee may be dismissed only if the grounds mentioned in the pre-dismissal notice were the ones cited for the termination of employment. The same is true with the third ground of termination, *i.e.,* that Cloma has frequently been late in reporting for work. Observably, aside from the fact that Cloma, with respect to this ground, has not been furnished a pre-dismissal notice, the notice of termination does not state the inclusive dates on which Cloma actually reported late for his work.

4. **ID.; ID.; ID.; ID.; EXISTENCE OF JUST CAUSES, NOT ESTABLISHED BY SUBSTANTIAL EVIDENCE. —** [W]e agree with the Court of Appeals that not only did petitioner fail to comply with the procedural due process requirements in terminating Cloma's employment, but also that petitioner has not overcome the quantum of substantial evidence needed to establish the existence of just causes for dismissal in this case.

5. **ID.; ID.; ID.; ID.; JUST CAUSES; OFFENSE THAT HAS BEEN ALREADY BEEN PENALIZED WITH SUSPENSION MAY NO LONGER BE USED AS A GROUND FOR THE IMPOSITION OF THE PENALTY OF DISMISSAL. —** [A]nent the charge that Cloma had terrorized the staff of the Outright Division and incited a work stoppage, it is clear, from the May 17, 2000 suspension order, that he has already been penalized with suspension for this offense and, hence,

this act may no longer be added to support the imposition of the ultimate penalty of dismissal from service nor may it be used as an independent ground to that end.

APPEARANCES OF COUNSEL

George A. Soriano for petitioners.
Legal Advocates for Workers Interest (LAWIN) for respondent.

D E C I S I O N

PERALTA, *J.*:

In this petition for review under Rule 45 of the Rules of Court, petitioner Erector Advertising Sign Group, Inc. assails the February 16, 2005 Decision[1] of the Court of Appeals in CA-G.R. SP No. 80027. The challenged Decision affirmed the February 28, 2003 Resolution[2] of the National Labor Relations Commission in NLRC NCR CA No. 028711-01. In turn, the said Decision reversed and set aside the March 30, 2001 Decision[3] of the Labor Arbiter, which dismissed for lack of merit the complaint for illegal dismissal filed by respondent Expedito Cloma.

The basic facts follow.

Petitioner Erector Advertising Sign Group, Inc. is a domestic corporation engaged in the business of constructing billboards and advertising signs. Sometime in the middle of 1996, petitioner engaged the services of Expedito Cloma (Cloma) as company driver and the latter had served as such until his dismissal from service in May 2000.[4]

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[1] Penned by Associate Justice Santiago Javier Ranada, with Associate Justices Marina L. Buzon and Mario L. Guarina III, concurring; *rollo*, pp. 45-51.

[2] Signed by Commissioner Victoriano R. Calaycay, with Presiding Commissioner Raul T. Aquino and Commissioner Angelita A. Gacutan, concurring; *id.* at 32-44.

[3] Signed by Labor Arbiter Ermita T. Abrasaldo-Cuyuca; *id.* at 32-44.

[4] CA *rollo*, pp. 100, 108, 167.

In his Complaint[5] filed with the National Labor Relations Commission (NLRC), Cloma alleged that he was illegally suspended and then dismissed from his employment without due process of law. He likewise claimed his unpaid monetary benefits such as overtime pay, premium pay for worked rest days, service incentive leave pay and 13th month pay, as well as moral, exemplary and actual damages and attorneys fees.

It is conceded by petitioner that Cloma has been suspended several times from work due to frequent tardiness and absenteeism, but the instant case appears to be likewise the result of documented instances of absenteeism without prior notice to and approval from his superior, and of misbehavior. The former happened between May 12 and May 15, 2000 when Cloma supposedly failed to report for work without prior notice and prior leave approval[6] which thus effectively prevented the other workers from being transported to the job site as there was no other driver available; whereas the latter incident happened on May 11, 2000 when allegedly, Cloma, without authority, suddenly barged into the premises of the Outright Division and, without being provoked, threatened the employees with bodily harm if they did not stop from doing their work.[7] This second incident was supposedly narrated fully in a letter dated May 13, 2000 addressed to the personnel manager and signed by one Victor Morales and Ruben Que.[8]

As a result of these incidents, petitioner served on Cloma two (2) Suspension Orders dated May 15, 2000 and May 17, 2000, both signed by Nelson Clavacio (Clavacio), personnel and production manager of petitioner company, and approved by Architect Jimmy C. Amoroto (Amoroto), president and chief executive officer. For easy reference, the suspension orders are reproduced as follows:

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[5] Docketed as NLRC NCR Case No. 00-05-02887-2000; *id.* at 18.

[6] Records, p. 41; CA *rollo*, pp. 24, 29, 37.

[7] *Id.* at 42; *Id.* at 25, 30, 37.

[8] Records, pp. 42-43.

May 15, 2000
Para kay: MR. EXPEDITO CLOMA
Company Driver
Paksa: SUSPENSION ORDER

Dahil sa iyong pagliban mula pa nuong Mayo 12 hanggang Mayo 15, 2000 na wala man lang pasabi o paalam, ikaw ay binibigyan ng tatlong araw na suspensyon na magsisimula ngayon Mayo 15 hanggang Mayo 17, 2000. Ito ay bilang paggawad ng batas at disiplina sa ating sarili at sa iba upang huwag ng pamarisan pa.

*Malinaw na nakasaad s*a Company Rules and Regulations SECTION 1, PARAGRAPH 4: "*Ang pagliban ng walang paalam na sunod-sunod ay may kalakip na kaparusahan. Dalawang araw na absent ay katumbas ng tatlong araw na suspension.*[9]

May 17, 2000
Para kay: MR. EXPEDITO CLOMA
Company Driver
Paksa: SUSPENSION ORDER

Ikaw ay ginagawaran ng isang linggong Suspensyon mula bukas, Mayo 18, 2000 hanggang Mayo 24, 2000. Ito ay dahil sa [sumusunod] na dahilan:

1. *Ang pagpigil sa mga trabahador ni Ms. Anne Dongel na taga-* Outright Division *na magtrabaho nuong Mayo 11, 2000 at pananakot sa mga trabahador ni Ms. Anne Dongel samantalang iba naman ang kanilang* Division. (SECTION 2 PARAGRAPH 2/*PANANAKOT "ISANG LINGGONG SUSPENSYON"*)

Ang iyong suspension ay epektibo kaagad bukas at makakabalik ka lamang sa Mayo 25, 2000. Ang parusang nabanggit ay para sa pagpapairal ng disiplina sa atin at sa ating mga kapwa manggagawa.[10]

When Cloma reported back for work on May 25, 2000, he was taken by surprise when the security guard on duty prevented him from entering the company's premises and, instead, handed

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[9] *Id.* at 41.

[10] *Id.* at 44.

him a termination letter dated May 20, 2000, signed and approved by Clavacio and Amoroto.[11] The letter states:

May 20, 2000
Para kay: MR. EXPEDITO CLOMA
Company Driver
Paksa: Notice of Termination

Ginoong Expedito Cloma:

Malungkot naming ibinabalita sa iyo na napagpasyahan ng Pamunuang ito na tanggalin ka na sa iyong serbisyo bilang "Company Driver." *Ito ay dahil sa mga sumusunod na kadahilanan*:

1. *Ang pagliban ng dalawang araw na wala man lang pasabi o paalam.*
2. *Ang pananakot sa kapwa manggagawa o trabahador na nagresulta sa pagkauwi ng mga trabahador ng* Outright Division.
3. A*ng pagpigil sa operasyon ng ibang* Department *sa pamamalakad ni Ms. Anne Dongel.*
4. *Maraming pagkakataon na* "late" *na naging dahilan ng pagsabotahe ng operasyon ng mga* Production Crews.

Mula sa mga dahilan na nabanggit, ito ay sapat na dahilan upang tanggalin ka sa iyong posisyon, nagpapakita lamang na hindi mo nagampanan ng maayos ang iyong trabaho katulad ng inaasahan sa iyo ng Pamunuang ito.[12]

Ridden with angst and anxiety, Cloma walked away and filed the instant complaint for illegal dismissal.

Following the submission of position papers and other documentary exhibits by both parties, the Labor Arbiter, after evidentiary evaluation, issued its March 30, 2001 Decision dismissing Cloma's complaint for lack of merit.[13] In so ruling, the Labor Arbiter put much weight on the evidence presented

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[11] *Id.* at 45.

[12] *Id.*

[13] Records, p. 72. The Labor Arbiter disposed of the complaint as follows:

by petitioner company bearing on Cloma's frequent tardiness and unauthorized absences, as well as the several incidents of misbehavior and misconduct in which Cloma figured as the protagonist. It went on to say that while the *onus* of proving the existence of the cause for termination and the observance of due process lie on the employer, petitioner company was actually able to establish the validity of Cloma's dismissal by its evidence.[14] It also noted that while the company, by memorandum/notice, had directed Cloma to submit his explanation on his alleged infractions, the latter nevertheless did not comply with the directive and instead ignored the same. In this connection, the Labor Arbiter declared that a plea of denial of procedural due process would not lie when he who had been given an opportunity to be heard had chosen not to avail of such opportunity.[15]

Aggrieved, Cloma appealed to the NLRC.[16] On February 28, 2003, the NLRC issued its Resolution[17] reversing and setting aside the Labor Arbiter's decision.

The NLRC pointed out that not only was Cloma dismissed without due process but also, that he was dismissed without just cause. The NLRC based its finding on the termination letter served by petitioner on Cloma such that with respect to the first ground of termination, *i.e., Ang pagliban ng dalawang araw na wala man lang pasabi o paalam,* the letter did not state the dates when these two absences had been incurred; that in relation to the second and third grounds, *i.e., Ang pananakot sa kapwa manggagawa* x x x and *Ang pagpigil sa operasyon ng ibang Department* x x x, petitioner did not profess having conducted investigation on these matters that would have afforded

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WHEREFORE, judgment is hereby rendered dismissing the complaint for lack of merit.

SO ORDERED.

[14] Records, pp. 69-71.

[15] *Id.* at 72.

[16] *Id.* at 118-127.

[17] *Id.* at 129-140.

Cloma the opportunity to confront his witnesses and that Cloma had already been sanctioned for this offense under the May 17, 2000 suspension order; and that as to the last ground, *i.e., Maraming pagkakataon na* late x x x, the NLRC noted that the best proof on this allegation would have been Cloma's corresponding daily time record but which, however, petitioner failed to make of record at the hearing of the case.[18] Hence, finding that Cloma was dismissed without just cause and without due process, the NLRC ordered petitioner to pay full backwages, allowances and other benefits, as well as separation pay in lieu of reinstatement.[19] The appeal was disposed of as follows:

WHEREFORE, premises considered, Complainant's appeal is GRANTED. The Labor Arbiter's decision in the above-entitled case is hereby REVERSED and SET ASIDE. A new one is entered declaring that Complainant's dismissal from employment is illegal. Respondents are hereby ordered to jointly as (sic) severally pay Complainant the amount of ₱271,673.08 as backwages and separation pay, plus ten percent (10%) of his total monetary award as attorney's fees.

SO ORDERED.[20]

Petitioner's motion for reconsideration was denied,[21] and forthwith it elevated the case to the Court of Appeals on petition for *certiorari*.[22]

On February 16, 2005, the Court of Appeals rendered the assailed Decision[23] adopting the findings and conclusions of the NLRC as follows:

WHEREFORE, the instant petition is DENIED. The resolution of the National Labor Relations Commission dated 28 February 2003

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[18] *Id.* at 137.

[19] *Id.* at 137-139.

[20] *Id.* at 139.

[21] *Id.* at 163.

[22] CA *rollo*, pp. 2-16.

[23] *Id.* at 166-172.

reversing the decision of the Labor Arbiter dated 30 March 2001 in NLRC CASE No. 00-05-02887-2000 is hereby AFFIRMED.

SO ORDERED.

Hence, this petition, which raises the sole issue of whether Cloma was dismissed with just cause and with due process of law.

Petitioner insists that the just cause for Cloma's termination abounds in the records, alluding to several infractions and violations of company rules and regulations for which he has been suspended many times from work. In addition, it likewise enumerates a number of Cloma's other acts of misbehavior – such as reporting for work under the influence of alcohol, picking fights with co-workers and others — which the management merely let pass but which, nevertheless, could constitute valid grounds for dismissal. Yet significantly, petitioner admits that it is Cloma's repeated infractions which gave the company the motivation to finally terminate his services.[24]

Also, petitioner maintains that it observed due process in deciding to dismiss Cloma from service. It claims that the decision to let go of Cloma was the result of a thorough consideration of the totality of the many infractions he has committed, as well as of his general behavior toward his work. It reasons that ample time, prior to May 20, 2000, has been afforded Cloma so that he could explain why he should not be dismissed, but he nevertheless failed to comply despite the fact that he was residing only a few houses away from the company.[25]

Commenting on the petition, Cloma maintains that petitioner's evidence is insubstantial to support the theory that the dismissal has complied with due process and is with just cause. He stresses that the evidence presented by petitioner hardly supports the grounds relied on for his termination and that, more importantly, petitioner did not comply with the two-notice rule required by law to validate an employee's dismissal from service, that is, a written notice stating the cause for termination and a written

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[24] *Id.* at 12.

[25] *Rollo*, p. 19.

notice of the intention to terminate employment stating clearly the reason therefor.[26]

We find no merit in the petition.

The validity of an employee's dismissal from service hinges on the satisfaction of the two substantive requirements for a lawful termination. These are, *first*, whether the employee was accorded due process the basic components of which are the opportunity to be heard and to defend himself. This is the procedural aspect. And *second*, whether the dismissal is for any of the causes provided in the Labor Code of the Philippines. This constitutes the substantive aspect.[27]

With respect to due process requirement, the employer is bound to furnish the employee concerned with two (2) written notices before termination of employment can be legally effected. One is the notice apprising the employee of the particular acts or omissions for which his dismissal is sought — and this may loosely be considered as the proper charge. The other is the notice informing the employee of the management's decision to sever his employment. This decision, however, must come only after the employee is given a reasonable period from receipt of the first notice within which to answer the charge, thereby giving him ample opportunity to be heard and defend himself with the assistance of his representative should he so desire. The requirement of notice, it has been stressed, is not a mere technicality but a requirement of due process to which every employee is entitled.[28]

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

[27] *Pepsi Cola Distributors of the Philippines, Inc. v. National Labor Relations Commission*, G.R. No. 106831, May 6, 1997, 272 SCRA 267, 274-275; *New Ever Marketing, Inc. v. Court of Appeal*s, G.R. No. 140555, July 14, 2005, 463 SCRA 284, 294-295.

[28] *Mendoza v. National Labor Relations Commission*, 350 Phil. 486, 496-497, (1998); *Pastor Austria v. National Labor Relations Commission*, 371 Phil. 340, 357 (1999); *Amadeo Fishing Corporation v. Nierra*, G.R. No. 163099, October 4, 2005, 472 SCRA 13, 33; *New Ever Marketing, Inc. v. Court of Appeals, supra* note 28.

In this case, we find that Cloma's dismissal from service did not comply with this basic precept.

We recall that the notice of termination served by petitioner on Cloma cites three reasons why the management has arrived at the decision to dismiss him from service: *first*, his absence from work for two (2) days without prior notice and approval; *second*, his act of barging into the premises of the Outright Division and threatening the members of the said division with bodily harm if they did not stop doing their work; and *third*, his frequent tardiness in reporting for work.

Certainly, nowhere in the records does it appear that Cloma attempted to deny these allegations, yet it is equally certain that the records do not contain any suggestion that petitioner, with respect to these three grounds with which Cloma is charged, has tried to notify the latter of the said charges. Indeed, we find that petitioner has not complied with the basic requirement of serving a pre-dismissal notice on Cloma. What is clear from the records is that the only notice that was given to Cloma prior to his termination is the May 20, 2000 notice of termination informing him that his employment in the company has been severed for the causes mentioned.

Be that as it may, petitioner insists that Cloma has been sufficiently informed of the acts constituting the grounds for his termination and that with respect thereto, ample opportunity was thereafter given to him to be heard thereon, only that he did not choose to avail of that opportunity. Petitioner seems to be referring to the May 15 and May 17, 2000 Suspension Orders which it previously served on Cloma. These orders, however, hardly constitute the first notice required by law prior to termination. Here is why: a fleeting glance at these two orders readily reveals that the alleged offenses mentioned therein were not to be used as grounds for termination, but rather merely for suspension. The wording of the orders conveys the idea that as a result of his shortcomings, Cloma was going to be meted the penalty of suspension in accordance with the provisions of the company's rules and regulations, but not that he might be dismissed from service upon the same grounds. There is not an

allusion in the said orders that petitioner was giving Cloma sufficient opportunity to submit his defenses or explanation. Instead, what it implies is that the management has already decided, for causes stated therein, to suspend Cloma from work in the company, and nothing more.

Moreover, the May 15, 2000 Order, in particular, could not have constituted the first notice relative to the charge that Cloma has incurred unauthorized absences for two days as stated in the notice of termination. This, inasmuch as the order refers to a four (4)–day absence supposedly incurred between May 12, 2000 and May 15, 2000 for which Cloma has actually been sanctioned with suspension. In this regard, it suffices to say that even assuming that the May 15, 2000 order could validly take the place of the first notice, still, Cloma's dismissal cannot be validly effected, because an employee may be dismissed only if the grounds mentioned in the pre-dismissal notice were the ones cited for the termination of employment.[29] The same is true with the third ground of termination, *i.e.,* that Cloma has frequently been late in reporting for work. Observably, aside from the fact that Cloma, with respect to this ground, has not been furnished a pre-dismissal notice, the notice of termination does not state the inclusive dates on which Cloma actually reported late for his work.

Moreover, we agree with the Court of Appeals that not only did petitioner fail to comply with the procedural due process requirements in terminating Cloma's employment, but also that petitioner has not overcome the quantum of substantial evidence needed to establish the existence of just causes for dismissal in this case.

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[29] *Glaxo Wellcome Philippines, Inc. v. Nagkakaisang Empleyado ng Wellcome-DFA (NEW-DFA)*, G.R. No. 149349, March 11, 2005, 453 SCRA 256, 274, citing *Kwikway Engineering Works v. National Labor Relations Commission*, 195 SCRA 526 (1991), *BPI Credit Corporation v. National Labor Relations Commission,* 234 SCRA 441, (1994) and *Gold City Integrated Port Services, Inc. v. National Labor Relations Commission,* 189 SCRA 811, (1990).

With respect to the charges of frequent tardiness and incurring an unauthorized two-day leave of absence, it is plain in the records that the same have not been sufficiently proved by petitioner. For one, petitioner could not identify the dates when Cloma incurred the alleged tardiness in reporting for work. Add to that the fact that Cloma's daily time records, which would have been the best evidence on the matter, have not been made of record when they are actually within petitioner's power to produce and submit at the trial. The same applies to the charge of unauthorized absences.

Finally, anent the charge that Cloma had terrorized the staff of the Outright Division and incited a work stoppage, it is clear, from the May 17, 2000 suspension order, that he has already been penalized with suspension for this offense and, hence, this act may no longer be added to support the imposition of the ultimate penalty of dismissal from service nor may it be used as an independent ground to that end.[30]

All told, we find that no error has been committed by the Court of Appeals in ruling that Cloma's dismissal from service was both without just cause and without due process of law.

WHEREFORE, the petition is *DENIED*. The February 16, 2005 Decision of the Court of Appeals in CA-G.R. SP No. 80027, affirming the February 28, 2003 Resolution of the National Labor Relations Commission in NLRC NCR CA No. 028711-01, is hereby *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

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[30] *Pepsi Cola Distributors of the Philippines*, *Inc. v. National Labor Relations Commission, supra* note 27, at 278.

SECOND DIVISION

[G.R. No. 167824. July 2, 2010]

GERALDINE GAW GUY and GRACE GUY CHEU, *petitioners*, *vs.* **ALVIN AGUSTIN T. IGNACIO,** *respondent*.

[G.R. No. 168622. July 2, 2010]

GERALDINE GAW GUY and GRACE GUY CHEU, *petitioners, vs.* **THE BOARD OF COMMISSIONERS OF THE BUREAU OF IMMIGRATION, HON. MARICEL U. SALCEDO, MAYNARDO MARINAS, RICARDO CABOCHAN and ELISEO EXCONDE,** *respondents*.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; PRIMARY JURISDICTION OF BOARD OF COMMISSIONERS OVER DEPORTATION PROCEEDINGS; SUBSTANTIAL CLAIM OF CITIZENSHIP AS AN EXCEPTION; A CASE OF. —** Petitioners rely on *Board of Commissioners (CID) v. Dela Rosa*, wherein this Court ruled that when the claim of citizenship is so substantial as to reasonably believe it to be true, a respondent in a deportation proceeding can seek judicial relief to enjoin respondent BOC from proceeding with the deportation case. In particular, petitioners cited the following portions in this Court's decision: True, it is beyond cavil that the Bureau of Immigration has the exclusive authority and jurisdiction to try and hear cases against an alleged alien, and in the process, determine also their citizenship. And a mere claim of citizenship cannot operate to divest the Board of Commissioners of its jurisdiction in deportation proceedings. However, the **rule enunciated in the above-cases admits of an exception, at least insofar as deportation proceedings are concerned.** Thus, what if the claim to citizenship of the alleged deportee is satisfactory? Should the deportation proceedings be allowed to continue or should the question of citizenship be ventilated in a judicial proceeding? In *Chua*

Hiong vs. Deportation Board (96 Phil. 665 [1955]), this Court answered the question in the affirmative, and We quote: **When the evidence submitted by a respondent is conclusive of his citizenship, the right to immediate review should also be recognized and the courts should promptly enjoin the deportation proceedings. A citizen is entitled to live in peace, without molestation from any official or authority, and if he is disturbed by a deportation proceeding, he has the unquestionable right to resort to the courts for his protection, either by a writ of *habeas corpus* or of prohibition, on the legal ground that the Board lacks jurisdiction.** If he is a citizen and evidence thereof is satisfactory, there is no sense nor justice in allowing the deportation proceedings to continue, granting him the remedy only after the Board has finished its investigation of his undesirability. **x x x And if the right (to peace) is precious and valuable at all, it must also be protected on time, to prevent undue harassment at the hands of ill-meaning or misinformed administrative officials. Of what use is this much boasted right to peace and liberty if it can be availed of only after the Deportation Board has unjustly trampled upon it, besmirching the citizen's name before the bar of public opinion? The doctrine of primary jurisdiction of petitioners Board of Commissioners over deportation proceedings is, therefore, not without exception.** Judicial intervention, however, should be granted in cases where the claim of citizenship is so substantial that there are reasonable grounds to believe that the claim is correct. **In other words, the remedy should be allowed only on sound discretion of a competent court in a proper proceeding. It appearing from the records that respondent's claim of citizenship is substantial, as We shall show later, judicial intervention should be allowed.** The present case, as correctly pointed out by petitioners and wrongfully found by the CA, falls within the above-cited exception considering that proof of their Philippine citizenship had been adduced, such as, the identification numbers issued by the Bureau of Immigration confirming their Philippine citizenship, they have duly exercised and enjoyed all the rights and privileges exclusively accorded to Filipino citizens, *i.e.*, their Philippine passports issued by the Department of Foreign Affairs. In *BOC v. Dela Rosa*, it is required that before judicial intervention is sought, the claim of citizenship of a respondent in a deportation proceeding must be so substantial that there

are reasonable grounds to believe that such claim is correct. In the said case, the proof adduced by the respondent therein was so substantial and conclusive as to his citizenship that it warranted a judicial intervention. In the present case, there is a substantial or conclusive evidence that petitioners are Filipino citizens. Without necessarily judging the case on its merits, as to whether petitioners had lost their Filipino citizenship by having a Canadian passport, the fact still remains, through the evidence adduced and undisputed by the respondents, that they are naturalized Filipinos, unless proven otherwise. However, this Court cannot pass upon the issue of petitioners' citizenship as this was not raised as an issue. The issue in this petition is on the matter of jurisdiction, and as discussed above, the trial court has jurisdiction to pass upon the issue whether petitioners have abandoned their Filipino citizenship or have acquired dual citizenship within the confines of the law.

2. ID.; ID.; ID.; DOCTRINE OF PRIMARY JURISDICTION AND DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; EXPLAINED; EXCEPTIONS. — The court cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to resolving the same, where the question demands the exercise of sound administrative discretion requiring special knowledge, experience and services in determining technical and intricate matters of fact. In cases where the doctrine of primary jurisdiction is clearly applicable, the court cannot arrogate unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence. Above all else, this Court still upholds the doctrine of primary jurisdiction. As enunciated in *Republic v. Lacap*: The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes. The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation. Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative

tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the administrative tribunal to determine technical and intricate matters of fact. Nonetheless, the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. There are many accepted exceptions, such as: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot; (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings. x x x

APPEARANCES OF COUNSEL

Cadiz & Tabayoyong for petitioners.
Fernandez & Surtida Law Office for Alvin Agustin T. Ignacio.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure seeking, among others, to annul and set aside the Decisions dated January 6, 2005[2] and

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[1] *Rollo*, (G.R. No. 167824), pp. 3-152; *rollo*, (G.R. No. 168622), pp. 3-138.

[2] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Romeo A. Brawner and Mariano C. del Castillo (now a member of this Court), concurring; CA *rollo* (CA-G.R. SP No. 86432), pp. 254-261.

April 29, 2005[3] and Resolutions dated March 10, 2005[4] and June 21, 2005[5] rendered by the Court of Appeals (CA), reversing and setting aside the Writ of Preliminary Injunction issued by the Regional Trial Court[6] (RTC), Branch 37, Manila.

The antecedent facts follow.

The father of petitioners Geraldine Gaw Guy and Grace Guy Cheu became a naturalized[7] Filipino citizen sometime in 1959. The said petitioners, being minors at that time, were also recognized[8] as Filipino citizens.

Respondent Atty. Alvin Agustin T. Ignacio, filed a Complaint[9] dated March 5, 2004 for blacklisting and deportation against petitioners Geraldine and Grace before the Bureau of Immigration (BI) on the basis that the latter two are Canadian citizens who are illegally working in the Philippines, petitioners having been issued Canadian passports.

Acting upon the Complaint, respondent Maricel U. Salcedo, Special Prosecutor, Special Task Force of the BI Commissioner, directed the petitioners, through the issuance of a *subpoenae,*[10] to appear before her and to bring pertinent documents relative to their current immigration status, to which the petitioners objected by filing with the Special Task Force of the BI Commissioner a Comment/Opposition with Motion *Ad Cautelam* to Quash Re: Subpoena[11] dated 30 April 2004 (*Duces Tecum/Ad Testificandum*),

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[3] Penned by Associate Justice Mariano C. del Castillo, with Associate Justices Regalado E. Maambong and Magdangal M. de Leon, concurring; CA *rollo* (CA-G.R. SP No. 86298), pp. 391-397.

[4] CA *rollo* (CA-G.R. SP No. 86432), pp. 350-351.

[5] CA *rollo* (CA-G.R. SP No. 86298), p. 427.

[6] Records, Vol. II, pp. 373-378.

[7] *Id.* at 48-53.

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

[9] *Id.* at 29-31.

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

[11] *Id.* at 36-44.

which was eventually denied by respondent Salcedo in an Order[12] dated May 14, 2004.

Respondent Board of Commissioners (BOC) filed a Charge Sheet[13] dated June 1, 2004 for Violation of Sections 37 (a) 7, 45 (e) and 45-A of the Philippine Immigration Act of 1940, as amended, which reads as follows:

> The undersigned Special Prosecutor charges GRACE GUY CHEU and GERALDINE GAW GUY, both Canadian citizens, for working without permit, for fraudulently representing themselves as Philippine citizens in order to evade immigration laws and for failure to comply with the *subpoena duces tecum/ad testificandum*, in violation of the Philippine Immigration Act of 1940, as amended, committed as follows:
>
> > That respondents GRACE GUY CHEU and GERALDINE GAW GUY, knowingly, willfully and unlawfully engage in gainful activities in the Philippines without appropriate permit by working as the Vice-President for Finance & Treasurer and General Manager, respectively, of Northern Islands Company, Inc., with office address at No. 3 Mercury Avenue, Libis, Quezon City;
> >
> > That both respondents, knowingly, willfully and fraudulently misrepresent themselves as Philippine citizens as reflected in the general Information Sheet of Northern Islands Company, Inc., for 2004, in order to evade any requirement of the Philippine Immigration Laws;
> >
> > That both respondents, duly served with *subpoenas duces tecum/ad testificandum*, dated April 20, 2004, knowingly, willfully and unlawfully failed to comply with requirements thereof.
>
> CONTRARY TO LAW.

As a remedy, petitioners filed a Petition for *Certiorari* with Damages and a Prayer for Issuance of a Temporary Restraining Order and Preliminary Injunction[14] dated May 31, 2004 before the RTC of Manila, Branch 37.[15]

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[12] *Id.* at 45.

[13] *Id.* at 67-68.

[14] Records, Vol. I, pp. 1-53.

[15] Docketed as SCA No. 04-110179.

The trial court, after hearing petitioner's application for issuance of a temporary restraining order (TRO) and writ of preliminary injunction, issued an Order[16] dated June 28, 2004, the dispositive portion of which reads:

WHEREFORE, premises considered, the application for temporary restraining order is hereby GRANTED. The respondents and all persons acting in their behalf and those under their instructions are directed to cease and desist from continuing with the deportation proceedings involving the petitioners. In the meantime set the case for hearing on preliminary injunction on July 5 and 6, 2004, both at 2:00 o'clock in the afternoon and the respondents are directed to show cause why writ of preliminary injunction should not issue.

SO ORDERED.

On July 5, 2004, public respondents filed their Answer[17] and on July 13, 2004, filed a Supplement (To the Special and Affirmative Defenses/Opposition to the Issuance of a Writ of Preliminary Injunction).[18] The parties were then directed to file their respective memoranda as to the application for issuance of a writ of preliminary injunction and public respondents' special and affirmative defenses. On July 16, 2004, public respondents as well as the petitioners,[19] filed their respective Memoranda.[20] On the same day, respondent Atty. Ignacio filed his Answer[21] to the petition.

In an Order[22] dated July 19, 2004, the trial court granted the application for preliminary injunction enjoining public respondents from further continuing with the deportation proceedings. The Order reads, in part:

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[16] *Supra* note 6.

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

[18] Records, Vol. II, pp. 335-341.

[19] *Id.* at 366-372.

[20] *Id.* at 345-366.

[21] *Id.* at 380-394.

[22] *Id.* at 373-378.

In view of the foregoing, the Court finds that, indeed, there exists a pressing reason to issue a writ of preliminary injunction to protect the rights of the petitioners pending hearing of the main case on the merits and unless this Court issues a writ, grave irreparable injury would be caused against the petitioners.

WHEREFORE, premises considered, the application for the Writ of Preliminary Injunction is hereby GRANTED. The respondents and all persons acting on their behalf and those under their instructions are directed to cease and desist from continuing with the deportation proceedings involving the petitioners during the pendency of the instant case. The petitioners are directed to post a bond in the amount of ₱50,000.00 to answer for whatever damages that may be sustained by the respondent should the court finally resolve that the petitioners are not entitled thereto.

SO ORDERED.

As a consequence, public respondents, on September 10, 2004, filed a Petition for *Certiorari* with Prayer for Issuance of Temporary Restraining Order and Writ of Preliminary Injunction[23] before the CA[24] and, on September 17, 2004, respondent Atty. Ignacio filed a Petition for *Certiorari,*[25] also with the CA.[26] Both petitions prayed for the nullification of the Orders dated June 28, 2004 and July 19, 2004 issued by the RTC in Civil Case No. 04-110179 and for the dismissal of the petition therein. Later on, petitioner Geraldine filed a Motion to Consolidate both petitions.

On January 6, 2005, the Ninth Division of the CA granted the petition filed by respondent Atty. Ignacio and annulled the

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[23] *Supra* note 3.

[24] Docketed as CA-G.R. SP No. 86298 and raffled off to the Eighth Division and entitled, *The Board of Commissioners of the Bureau of Immigration, Atty. Maricel I. Salcedo, Maynardo Marinas, Ricardo Cabochan and Eliseo Exconde v. The Regional Trial Court of Manila, Branch 37, and Geraldine Gaw Guy and Grace Guy Cheu.*

[25] *Supra* note 2.

[26] Docketed as CA-GR SP No. 86432 and raffled off to the Ninth Division and entitled, *Alvin Agustin T. Ignacio v. Hon. Vicente A. Hidalgo, Presiding Judge of the Regional Trial Court of Manila, Branch 37, Geraldine Gaw Guy and Grace Gaw Cheu.*

writ of preliminary injunction issued by the trial court, the dispositive portion of the Decision[27] reads:

> WHEREFORE, the instant petition is GRANTED and the Order of the Regional Trial Court, Branch 37, Manila, dated July 19, 2004, is hereby ANNULLED and SET ASIDE.
>
> SO ORDERED.

On January 21, 2005, petitioners filed a Motion for Reconsideration.[28]

On March 1, 2005, petitioners reiterated[29] their prayer for the consolidation of the petitions in the Eighth and Ninth Divisions. In its Resolution[30] dated March 10, 2005, the CA Ninth Division denied petitioners' Motion for Reconsideration.

Hence, petitioners filed before this Court a Petition for Review on *Certiorari*[31] dated March 31, 2005 praying for the reversal of the Decision rendered by the CA's Ninth Division, which is now docketed as G.R. No. 167824.

Thereafter, the CA's Eighth Division rendered its own Decision[32] dated April 29, 2005 granting the petition therein and nullifying the Orders dated June 28 and July 19, 2004 in Civil Case No. 04-110179, the dispositive portion of which reads as follows:

> WHEREFORE, finding the instant petition impressed with merit and in accordance with our decision in CA-G.R. SP No. 86432, the same is GIVEN DUE COURSE and is GRANTED. The assailed Orders of the respondent court dated 28 June and 19 July 2004 are hereby NULLIFIED and SET ASIDE.
>
> SO ORDERED.

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[27] *Supra* note 2, at 261.

[28] CA *rollo*, pp. 309-320.

[29] *Id.* at 332-337.

[30] *Id.* at 350-351.

[31] *Supra* note 1.

[32] *Supra* note 3.

Petitioners filed their Motion for Reconsideration[33] from the said Decision, which the CA denied in its Resolution[34] dated June 21, 2005.

Thus, petitioners filed before this Court a Petition for Review on *Certiorari*[35] dated July 12, 2005 seeking to reverse and set aside the said Decision and Resolution rendered by the Eighth Division of the CA and is now docketed as G.R. No. 168622. In its Resolution[36] dated August 10, 2005, the Court dismissed the said petition and said dismissal, despite petitioners' motion for reconsideration,[37] was affirmed in a Resolution[38] dated October 17, 2005. This Court, however, upon another motion for reconsideration[39] filed by the petitioners, reinstated the petition and ordered its consolidation with G.R. No. 167824.[40]

On September 7, 2007, a Manifestation[41] was filed informing this Court that petitioner Grace Guy Cheu died intestate on August 12, 2007 in the United States of America.

Petitioners raised the following grounds in their Consolidated Memorandum[42] dated March 27, 2007:

I.

THE COURT OF APPEALS GRAVELY ABUSED ITS DISCRETION AND ERRED IN HOLDING THAT THE LOWER COURT HAS NO JURISDICTION OVER CIVIL CASE NO. 04-110179 AND ISSUE A WRIT OF PRELIMINARY INJUNCTION THEREIN

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[33] CA *rollo*, pp. 404-416.

[34] *Id.* at 427.

[35] *Supra* note 1.

[36] *Rollo* (G.R. No. 168622), p. 139.

[37] *Id.* at 140-144.

[38] *Id.* at 161.

[39] *Id.* at 162-166.

[40] *Id.* at 169.

[41] *Id.* at 366-369.

[42] *Id.* at 235-291.

CONSIDERING THAT THE INSTANT CASE IS AN EXCEPTION TO THE RULE ON PRIMARY JURISDICTION DOCTRINE AND WARRANTS PETITIONERS' IMMEDIATE RESORT TO JUDICIAL INTERVENTION.

A.

CONSIDERING THAT PROOF OF PETITIONERS' PHILIPPINE CITIZENSHIP IS SUBSTANTIAL, PETITIONERS ARE ALLOWED UNDER THIS HONORABLE COURT'S RULING IN *BID V. DELA ROSA, SUPRA*, TO SEEK INJUNCTIVE RELIEF FROM THE REGIONAL TRIAL COURT TO ENJOIN THE DEPORTATION PROCEEDINGS CONDUCTED AGAINST THEM.

B.

LIKEWISE, CONSIDERING THAT PETITIONERS STAND TO SUFFER GRAVE AND IRREPARABLE INJURIES SHOULD THE DEPORTATION PROCEEDINGS AGAINST THEM BE ALLOWED TO CONTINUE, PETITIONERS ARE ALLOWED UNDER TE (sic) LAW TO IMMEDIATELY SEEK JUDICIAL RELIEF DESPITE THE PENDENCY OF THE ADMINISTRATIVE PROCEEDINGS.

II.

FURTHER, IT IS RESPECTFULLY SUBMITTED THAT THE RULING OF THIS HONORABLE COURT IN *DWIKARNA V. DOMINGO*, 433 SCRA 748 (2004) DID NOT STRIP THE LOWER COURT OF ITS AUTHORITY TO ENTERTAIN THE PETITION IN CIVIL CASE NO. 04-110179 AND TO ISSUE A WRIT OF PRELIMINARY INJUNCTION IN THE AFORESAID CASE.

III.

EVEN IF THE RULING OF THIS HONORABLE COURT IN *DWIKARNA V. DOMINGO, SUPRA*, DID STRIP THE LOWER COURT OF ITS JURISDICTION IN *BID V. DELA ROSA*, *SUPRA*, TO ENJOIN DEPORTATION PROCEEDINGS, THE RULING CAN ONLY HAVE PROSPECTIVE EFFECT.

Basically, petitioners argue that the doctrine of primary jurisdiction, relied upon by the CA in its decision, does not apply in the present case because it falls under an exception.

Citing *Board of Commissioners (CID) v. Dela Rosa*,[43] petitioners assert that immediate judicial intervention in deportation proceedings is allowed where the claim of citizenship is so substantial that there are reasonable grounds to believe that the claim is correct. In connection therewith, petitioners assail the applicability of *Dwikarna v. Domingo* in the present case, which the CA relied upon in ruling against the same petitioners.

After a careful study of the arguments presented by the parties, this Court finds the petition meritorious.

Petitioners rely on *Board of Commissioners (CID) v. Dela Rosa*,[44] wherein this Court ruled that when the claim of citizenship is so substantial as to reasonably believe it to be true, a respondent in a deportation proceeding can seek judicial relief to enjoin respondent BOC from proceeding with the deportation case. In particular, petitioners cited the following portions in this Court's decision:

> True, it is beyond cavil that the Bureau of Immigration has the exclusive authority and jurisdiction to try and hear cases against an alleged alien, and in the process, determine also their citizenship (*Lao vs. Court of Appeals*, 180 SCRA 756 [1089]). And a mere claim of citizenship cannot operate to divest the Board of Commissioners of its jurisdiction in deportation proceedings (*Miranda vs. Deportation Board*, 94 Phil. 531 [1951]).
>
> However, the **rule enunciated in the above-cases admits of an exception, at least insofar as deportation proceedings are concerned.** Thus, what if the claim to citizenship of the alleged deportee is satisfactory? Should the deportation proceedings be allowed to continue or should the question of citizenship be ventilated in a judicial proceeding? In *Chua Hiong vs. Deportation Board* (96 Phil. 665 [1955]), this Court answered the question in the affirmative, and We quote:
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>> **When the evidence submitted by a respondent is conclusive of his citizenship, the right to immediate review should also be recognized and the courts should promptly enjoin the**

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[43] G.R. Nos. 95122-23 and G.R. Nos. 95612-13, May 31, 1991, 197 SCRA 853, 874-875.

[44] *Supra* note 43.

> **deportation proceedings. A citizen is entitled to live in peace, without molestation from any official or authority, and if he is disturbed by a deportation proceeding, he has the unquestionable right to resort to the courts for his protection, either by a writ of *habeas corpus* or of prohibition, on the legal ground that the Board lacks jurisdiction.** If he is a citizen and evidence thereof is satisfactory, there is no sense nor justice in allowing the deportation proceedings to continue, granting him the remedy only after the Board has finished its investigation of his undesirability.
>
> **x x x And if the right (to peace) is precious and valuable at all, it must also be protected on time, to prevent undue harassment at the hands of ill-meaning or misinformed administrative officials. Of what use is this much boasted right to peace and liberty if it can be availed of only after the Deportation Board has unjustly trampled upon it, besmirching the citizen's name before the bar of public opinion?**
>
> **The doctrine of primary jurisdiction of petitioners Board of Commissioners over deportation proceedings is, therefore, not without exception *(Calayday vs. Vivo*, 33 SCRA 413 [1970]; *Vivo vs. Montesa*, 24 SCRA 155 [1967]).** Judicial intervention, however, should be granted in cases where the claim of citizenship is so substantial that there are reasonable grounds to believe that the claim is correct. **In other words, the remedy should be allowed only on sound discretion of a competent court in a proper proceeding (*Chua Hiong v. Deportation Board*, *supra*; *Co vs. Deportation Board*, 78 SCRA 107 [1977]). It appearing from the records that respondent's claim of citizenship is substantial, as We shall show later, judicial intervention should be allowed.**[45]

The present case, as correctly pointed out by petitioners and wrongfully found by the CA, falls within the above-cited exception considering that proof of their Philippine citizenship had been adduced, such as, the identification numbers[46] issued by the

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[45] *Id.* (Emphasis supplied.)

[46] Marked as Annexes "D" and "E" in the Comment of petitioners Grace and Geraldine, respectively; CA *rollo*, 257, 313.

Bureau of Immigration confirming their Philippine citizenship, they have duly exercised and enjoyed all the rights and privileges exclusively accorded to Filipino citizens, *i.e.*, their Philippine passports[47] issued by the Department of Foreign Affairs.

In *BOC v. Dela Rosa*, it is required that before judicial intervention is sought, the claim of citizenship of a respondent in a deportation proceeding must be so substantial that there are reasonable grounds to believe that such claim is correct. In the said case, the proof adduced by the respondent therein was so substantial and conclusive as to his citizenship that it warranted a judicial intervention. In the present case, there is a substantial or conclusive evidence that petitioners are Filipino citizens. Without necessarily judging the case on its merits, as to whether petitioners had lost their Filipino citizenship by having a Canadian passport, the fact still remains, through the evidence adduced and undisputed by the respondents, that they are naturalized Filipinos, unless proven otherwise.

However, this Court cannot pass upon the issue of petitioners' citizenship as this was not raised as an issue. The issue in this petition is on the matter of jurisdiction, and as discussed above, the trial court has jurisdiction to pass upon the issue whether petitioners have abandoned their Filipino citizenship or have acquired dual citizenship within the confines of the law.

In this regard, it must be remembered though that this Court's ruling in *Dwikarna v. Domingo* did not abandon the doctrine laid down in *BOC v. Dela Rosa*. The exception remains. *Dwikarna* merely reiterated the doctrine of primary jurisdiction when this Court ruled that **if the petitioner is dissatisfied with the decision of the Board of Commissioners of the Bureau of Immigration, he can move for its reconsideration and if his motion is denied, then he can elevate his case by way of a petition for review before the Court of Appeals, pursuant to Section 1, Rule 43 of the Rules of Civil Procedure.** However, utmost caution must be exercised in availing of the exception laid down in *BOC v. Dela Rosa* in order to avoid trampling on

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[47] Copies marked as Annexes "C" and "F", *id.*

the time-honored doctrine of primary jurisdiction. The court cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to resolving the same, where the question demands the exercise of sound administrative discretion requiring special knowledge, experience and services in determining technical and intricate matters of fact.[48] In cases where the doctrine of primary jurisdiction is clearly applicable, the court cannot arrogate unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence.[49]

Above all else, this Court still upholds the doctrine of primary jurisdiction. As enunciated in *Republic v. Lacap*:[50]

The general rule is that before a party may seek the intervention of the court, he should first avail of all the means afforded him by administrative processes.[51] The issues which administrative agencies are authorized to decide should not be summarily taken from them and submitted to a court without first giving such administrative agency the opportunity to dispose of the same after due deliberation.[52]

Corollary to the doctrine of exhaustion of administrative remedies is the doctrine of primary jurisdiction; that is, courts cannot or will not determine a controversy involving a question which is within the jurisdiction of the administrative tribunal prior to the resolution of that question by the administrative tribunal, where the question demands the exercise of sound administrative discretion requiring the special knowledge, experience and services of the

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[48] *Omictin v. Court of Appeals,* G.R. No. 148004, January 22, 2007, 512 SCRA 70, 82, citing *Pambujan Sur United Mine Workers v. Samar Mining Co., Inc*., 94 Phil. 932 (1954).

[49] *Machete v. Court of Appeals,* G.R. No. 109093, November 20, 1995, 250 SCRA 176, 182.

[50] G.R. No. 158253, March 2, 2007, 517 SCRA 255.

[51] *Associate Communications and Wireless Services (ACWS), Ltd. v. Dumlao,* 440 Phil. 787, 801-802 (2002); *Zabat v. Court of Appeals*, 393 Phil. 195, 206 (2000).

[52] *ACWS, Ltd. v. Dumlao, supra,* at 802.

administrative tribunal to determine technical and intricate matters of fact.[53]

Nonetheless, the doctrine of exhaustion of administrative remedies and the corollary doctrine of primary jurisdiction, which are based on sound public policy and practical considerations, are not inflexible rules. There are many accepted exceptions, such as: (a) where there is estoppel on the part of the party invoking the doctrine; (b) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (c) where there is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (d) where the amount involved is relatively small so as to make the rule impractical and oppressive; (e) where the question involved is purely legal and will ultimately have to be decided by the courts of justice;[54] (f) where judicial intervention is urgent; (g) when its application may cause great and irreparable damage; (h) where the controverted acts violate due process; (i) when the issue of non-exhaustion of administrative remedies has been rendered moot;[55] (j) when there is no other plain, speedy and adequate remedy; (k) when strong public interest is involved; and, (l) in *quo warranto* proceedings x x x[56]

WHEREFORE, the petition is *GRANTED*. Consequently, the Decisions dated January 6, 2005 and April 29, 2005, and the Resolutions dated March 10, 2005 and June 21, 2005 of the Court of Appeals, nullifying and setting aside the Writ of Preliminary Injunction issued by the Regional Trial Court (RTC), Branch 37, Manila, are hereby *NULLIFIED* and *SET ASIDE*. The cases are hereby remanded to the trial court for further proceedings, with dispatch.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

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[53] *Paloma v. Mora*, G.R. No. 157783, September 23, 2005, 470 SCRA 711, 725; *Fabia v. Court of Appeals*, 437 Phil. 389, 403 (2002).

[54] *Rocamora v. Regional Trial Court-Cebu (Branch VIII)*, No. 65037, November 23, 1988, 167 SCRA 615, 623.

[55] *Carale v. Abarintos*, 336 Phil. 126, 137 (1997).

[56] *Castro v. Sec. Gloria*, 415 Phil. 645, 651-652 (2001).

SECOND DIVISION

[G.R. No. 168495. July 2, 2010]

DANSART SECURITY FORCE & ALLIED SERVICES COMPANY and DANILO A. SARTE, *petitioners, vs.* **JEAN O. BAGOY,**[*] *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF FACT MAY BE REVIEWED AS A RULE; EXCEPTION. —** The issue boils down to whether the DOLE Certifications should be considered as sufficient proof that petitioners paid respondent proper wages and all other monetary benefits to which she was entitled as an employee. The foregoing question is a factual one which, as a general rule, cannot be entertained in a petition for review on *certiorari* where only questions of law are allowed. Considering, however, that the Labor Arbiter's findings were reversed by the NLRC, whose Decision was in turn overturned by the CA, reinstating the Labor Arbiter's Decision, it behooves the Court to re-examine the records and resolve the conflicting rulings.
2. **ID.; EVIDENCE; BURDEN OF PROOF; BURDEN OF PROVING PAYMENT OF MONETARY CLAIMS RESTS ON THE EMPLOYER; IN CASE AT BAR, PETITIONERS FAILED TO DISCHARGE THE BURDEN OF PROOF. —** The Court has repeatedly ruled that any doubt arising from the evaluation of evidence as between the employer and the employee must be resolved in favor of the latter. Moreover, it is settled jurisprudence that the burden of proving payment of monetary claims rests on the employer. Thus, as reiterated in *G & M Philippines, Inc. v. Cuambot*, to wit: x x x one who pleads payment has the burden of proving it. **The reason for the rule is that the pertinent personnel files, payrolls, records,**

[*] The Court of Appeals is dropped as a respondent in accordance with Section 4, Rule 45 of the Rules of Court, which states that the petition shall not implead the lower courts or judges thereof either as petitioners or respondents.

remittances and other similar documents — which will show that overtime, differentials, service incentive leave, and other claims of workers have been paid — are not in the possession of the worker but in the custody and absolute control of the employer. Thus, the burden of showing with legal certainty that the obligation has been discharged with payment falls on the debtor, in accordance with the rule that one who pleads payment has the burden of proving it. x x x In this case, petitioners failed to discharge such burden of proof. The Certifications from the DOLE stated that there are no pending labor cases against petitioners filed before said office, but said certifications "do not cover cases filed before the National Labor Relations Commission and the National Conciliation and Mediation Board." The Order dated January 17, 2001 issued by the DOLE, in fact, showed that in the year 2000, petitioner security agency was found to have **committed the following violations: underpayment of overtime pay, underpayment of 13th month pay, underpayment of 5 days Service Incentive Leave Pay, and underpayment of night shift differential pay**. Then, said Order stated that, since petitioner security agency had submitted "[p]ayrolls showing backwages of the above-noted violations amounting to x x x (₱443,512.51) benefitting 279 guards" to show compliance with labor laws, "the DOLE considered the inspection closed and terminated." For the years 2001 and 2002, the DOLE Reports stated only that based on records submitted by petitioners, it had no violations. Verily, such documents from the DOLE do not conclusively prove that respondent, in particular, has been paid all her salaries and other benefits in full. In fact, the Order dated January 17, 2001 even bolsters respondent's claim that she had not been paid overtime pay, 13th month pay, and Service Incentive Leave Pay. The statement in said Order, that backwages for 279 guards had been paid, does not in any way prove that respondent is one of those 279 guards, since petitioners failed to present personnel files, payrolls, remittances, and other similar documents which would have proven payment of respondent's money claims. It was entirely within petitioners' power to present such employment records that should necessarily be in their possession; hence, failure to present such evidence must be taken against them.

APPEARANCES OF COUNSEL

Ernesto N. Dinopol, Jr. for petitioners.
Public Attorney's Office for respondent.

D E C I S I O N

PERALTA, *J*.:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] dated January 17, 2005 of the Court of Appeals (CA), in CA-G.R. SP No. 84758 reversing the judgment of the National Labor Relations Commission (NLRC), and the CA Resolution[2] dated June 8, 2005 denying herein petitioner's motion for reconsideration, be reversed and set aside.

The undisputed facts are as follows.

Respondent Jean O. Bagoy was employed by Dansart Security Force and Allied Services Company to guard the establishments of its various clients such as Ironcorn, Chowking and Hindu Temple. However, from April 1999 until November 2001, respondent had allegedly been caught sleeping on the job and incurred absences without leave, for which he was given notices of disciplinary action.

On May 14, 2002, respondent filed with the Regional Arbitration Branch a Complaint[3] against petitioners for underpayment of salaries and non-payment of overtime pay, holiday pay, premium pay, 13th month pay and service incentive leave pay. In her Position Paper, respondent alleged: (1) that

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[1] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Regalado E. Maambong and Lucenito N. Tagle, concurring; *rollo,* pp. 20-32.

[2] Penned by Associate Justice Martin S. Villarama, Jr., with Associate Justices Lucas P. Bersamin (now a member of this Court) and Lucenito N. Tagle, concurring; *id.* at 34.

[3] Records, p.1.

she had been required to report for work daily from 7:00 a.m to 7:00 p.m. with a salary rate of ₱166.00 per day, which was increased to ₱180.00 in January 2001; (2) that she was required to work even on Sundays and holidays but was not paid holiday pay, 13th month pay and service incentive leave pay; and (3) that since December 2001, she had been on floating status, tantamount to constructive dismissal.

Petitioners countered that it was respondent who abandoned her work beginning November 2001. Petitioners, likewise, presented several reports issued by the National Capital Region, Department of Labor and Employment (DOLE) stating that all mandatory wage increases and other related monetary benefits were complied with by petitioner security agency, in rebuttal of respondent's claim of non-payment of wages and benefits.

On January 31, 2003, the Labor Arbiter issued a Decision[4] favorable to respondent with regard to her money claims, but did not rule on the issue of illegal dismissal as this was not included in her complaint. The dispositive portion of the Decision reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered ordering the respondents Dansart Security Force and Allied Co. and/or Danilo Sarte to pay complainant Jean O. Bagoy the amount of ONE HUNDRED SEVENTY-NINE THOUSAND ONE HUNDRED NINETY-SIX PESOS (₱179,196.00) representing [her] monetary awards as above-computed.
>
> All other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[5]

The foregoing Decision was appealed to the NLRC which in turn issued its Decision[6] dated September 30, 2003, reversing the Labor Arbiter's ruling. The NLRC held that the DOLE reports, stating that petitioner security agency had been complying with

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[4] *Rollo*, pp. 36-41.

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

[6] *Id.* at 43-54.

all mandatory wage increases and other monetary benefits, should be given proper respect. The dispositive portion of the NLRC Decision is set forth hereunder:

WHEREFORE, in view of the foregoing, the Decision appealed from is hereby **SET ASIDE** and a new one entered declaring the complaint **DISMISSED** for lack of merit.

SO ORDERED.[7]

Respondent moved for reconsideration of the NLRC Decision, but the same was denied in a Resolution[8] dated February 20, 2004.

Respondent then filed a petition for *certiorari* with the CA under Rule 65 of the Rules of Court and, on January 17, 2005, the CA rendered the assailed Decision which disposed, thus:

WHEREFORE, premises considered, the present petition is hereby PARTLY GIVEN DUE COURSE and the writ prayed for, GRANTED. The challenged decision and resolution of the NLRC are hereby ANNULLED and SET ASIDE, and the Decision dated January 31, 2003 of Labor Arbiter Fatima Jambaro-Franco in NLRC NCR Case No. 00-06-03073-02 is hereby REINSTATED.

No pronouncement as to costs.

SO ORDERED.[9]

Petitioners' motion for reconsideration of the above Decision was denied *per* Resolution of the Court of Appeals dated June 8, 2005. Hence, this petition where it is alleged that:

WITH DUE RESPECT, THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FAILING TO GIVE CONSIDERATION TO THE VALID AND CONCLUSIVE FINDINGS OF THE DEPARTMENT OF LABOR AND EMPLOYMENT THAT PETITIONER DID NOT VIOLATE THE LABOR STANDARDS PROVISIONS OF THE LABOR CODE.[10]

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

[8] Records, p. 120.

[9] *Rollo*, p. 31.

[10] *Id.* at 12.

The petition lacks merit.

The issue boils down to whether the DOLE Certifications should be considered as sufficient proof that petitioners paid respondent proper wages and all other monetary benefits to which she was entitled as an employee.

The foregoing question is a factual one which, as a general rule, cannot be entertained in a petition for review on *certiorari* where only questions of law are allowed.[11] Considering, however, that the Labor Arbiter's findings were reversed by the NLRC, whose Decision was in turn overturned by the CA, reinstating the Labor Arbiter's Decision, it behooves the Court to re-examine the records and resolve the conflicting rulings.[12]

The Labor Arbiter, as sustained by the CA, ruled that the DOLE reports stating that petitioners have not violated any provision of the Labor Code, nor is there any pending case with said government agency filed against the respondent as of May 16, 2002, and the Order of the DOLE Regional Director dated January 17, 2001 stating that petitioner security agency has complied with the payment of backwages for 279 guards, are insufficient to prove that petitioners have indeed paid respondent whatever is due her. On the other hand, the NLRC considered the very same pieces of evidence as substantial proof of payment.

Petitioners do not deny that said DOLE reports and Order are the only evidence they presented to prove payment of respondent's money claims. Petitioners only assail the weight ascribed by the Labor Arbiter and the CA to the evidence, asseverating that such documents from the DOLE must be given greater importance as the NLRC did.

The Court has repeatedly ruled that any doubt arising from the evaluation of evidence as between the employer and the

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[11] Rules of Court, Rule 45, Sec. 1.

[12] *Cabalen Management Co., Inc. v. Quiambao*, G.R. No. 169494, March 14, 2007, 518 SCRA 342, 348-349.

employee must be resolved in favor of the latter.[13] Moreover, it is settled jurisprudence that the burden of proving payment of monetary claims rests on the employer.[14] Thus, as reiterated in *G & M Philippines, Inc. v. Cuambot*,[15] to wit:

> x x x one who pleads payment has the burden of proving it. **The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that overtime, differentials, service incentive leave, and other claims of workers have been paid — are not in the possession of the worker but in the custody and absolute control of the employer. Thus, the burden of showing with legal certainty that the obligation has been discharged with payment falls on the debtor,** in accordance with the rule that one who pleads payment has the burden of proving it. x x x [16]

In this case, petitioners failed to discharge such burden of proof. The Certifications[17] from the DOLE stated that there are no pending labor cases against petitioners filed before said office, but said certifications "do not cover cases filed before the National Labor Relations Commission and the National Conciliation and Mediation Board." The Order[18] dated January 17, 2001 issued by the DOLE, in fact, showed that in the year 2000, petitioner security agency was found to have **committed the following violations: underpayment of overtime pay, underpayment of 13th month pay, underpayment of 5 days Service Incentive Leave Pay, and underpayment of night shift differential pay**. Then, said Order stated that, since petitioner

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[13] *Marival Trading, Inc. v. National Labor Relations Commission,* G.R. No. 169600, June 26, 2007, 525 SCRA 708, 731; *G & M Philippines, Inc. v. Cuambot*, G.R. No. 162308, November 22, 2006, 507 SCRA 552, 569-570.

[14] *G & M Philippines, Inc. v. Cruz,* G.R. No. 140495, April 15, 2005, 456 SCRA 215, 221.

[15] *G & M Philippines, Inc. v. Cuambot*, *supra* note 13.

[16] *Id.* at 570.

[17] Annexes "9-1" to "9-4", CA *rollo*, pp. 48, 51.

[18] *Id.* at 52.

security agency had submitted "[p]ayrolls showing backwages of the above-noted violations amounting to x x x (₱443,512.51) benefitting 279 guards" to show compliance with labor laws, "the DOLE considered the inspection closed and terminated." For the years 2001and 2002, the DOLE Reports[19] stated only that based on records submitted by petitioners, it had no violations. Verily, such documents from the DOLE do not conclusively prove that respondent, in particular, has been paid all her salaries and other benefits in full. In fact, the Order dated January 17, 2001 even bolsters respondent's claim that she had not been paid overtime pay, 13th month pay, and Service Incentive Leave Pay. The statement in said Order, that backwages for 279 guards had been paid, does not in any way prove that respondent is one of those 279 guards, since petitioners failed to present personnel files, payrolls, remittances, and other similar documents which would have proven payment of respondent's money claims. It was entirely within petitioners' power to present such employment records that should necessarily be in their possession; hence, failure to present such evidence must be taken against them.

IN VIEW OF THE FOREGOING, the Petition is *DENIED* for lack of merit. The Decision of the Court of Appeals dated January 17, 2005, in CA-G.R. SP. No. 84758, is *AFFIRMED*. Costs against petitioners.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

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[19] *Id.* at 47, 50.

SECOND DIVISION

[G.R. No. 168627. July 2, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **REYNALDO BAYON *y* RAMOS,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; CRIMES AGAINST PROPERTY; THEFT; ELEMENTS; WHEN QUALIFIED. —** The elements of the crime of theft are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things. Under Article 310 of the Revised Penal Code, theft becomes qualified "if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is a motor vehicle, mail matter or large cattle, or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance."

2. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; WHEN SUFFICIENT FOR CONVICTION; EXPLAINED. —** For circumstantial evidence to be sufficient for conviction, the following conditions must be satisfied: (a) There is more than one circumstance; (b) The facts from which the circumstances are derived are proven; and (c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Circumstantial evidence suffices to convict an accused only if the circumstances proved constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others as the guilty person; the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.

3. ID.; ID.; ID.; ID.; PIECES OF CIRCUMSTANTIAL EVIDENCE RELIED UPON BY THE TRIAL AND APPELLATE COURTS ARE INSUFFICIENT FOR CONVICTION; UNLAWFUL TAKING, NOT ESTABLISHED; ELUCIDATED. — The Court finds that the pieces of circumstantial evidence relied upon by the appellate court are insufficient to convict appellant of the crime of qualified theft. In the first circumstance, the Court notes that appellant was not the only stay-in helper of Atty. Limoso, as the latter testified that he had two housemaids. Although Atty. Limoso testified that only appellant, as his masseur, had access to his room, this is doubtful, considering the Filipino lifestyle, in which a household helper is normally tasked to clean the room of his/her employer. Further, in the second circumstance, the disappearance of appellant's clothes from Atty. Limoso's house after the discovery of the loss of the aforementioned valuables cannot be construed as flight by appellant, since appellant was talking with the guards in the compound where Atty. Limoso's residence was located when he was arrested by the police. The two pieces of circumstantial evidence cited by the trial court and affirmed by the appellate court do not form an unbroken chain that point to appellant as the author of the crime; hence, their conclusion becomes merely conjectural. Notably, the prosecution failed to establish the element of unlawful taking by appellant. Since appellant's statement during the custodial investigation was inadmissible in evidence as he was not assisted by counsel, the prosecution could have presented the person to whom appellant allegedly sold the pieces of jewelry as witness, but it did not do so. It could have been the missing link that would have strengthened the evidence of the prosecution.

4. ID.; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE NOT TO BE DISTURBED BY THE SUPREME COURT; EXCEPTIONS; A CASE OF. — The general rule is that factual findings of the trial court, when affirmed by the Court of Appeals, are not to be disturbed by this Court. However, the Court may disregard such findings of the trial and appellate courts (1) when they are grounded on speculation, surmises or conjectures; (2) when there is grave abuse of discretion in the appreciation of facts; and (3) when the findings of fact are conclusions without mention of the

specific evidence on which they are based or are premised on the absence of evidence. The Court finds the circumstantial evidence relied upon by the trial and appellate courts in convicting appellant to be insufficient in proving his guilt beyond reasonable doubt absent any substantial evidence of unlawful taking by appellant.

5. **ID.; EVIDENCE; BURDEN OF PROOF; BURDEN OF PROVING THE GUILT OF THE ACCUSED RESTS ON THE PROSECUTION; THE ACCUSED NEED NOT OFFER EVIDENCE IN HIS BEHALF. —** The burden of proving the guilt of the accused rests on the prosecution; the accused need not even offer evidence in his behalf. The constitutional mandate of innocence prevails, unless the prosecution succeeds in proving by satisfactory evidence the guilt beyond reasonable doubt of the accused. It failed to do so in this case.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

This an appeal from the Decision[1] dated May 31, 2005 of the Court of Appeals in CA-G.R. CR No. 28161. The Court of Appeals affirmed the Decision of the Regional Trial Court (RTC) of Quezon City, Branch 104 in Criminal Case No. Q-03-116291, finding appellant Reynaldo Bayon guilty beyond reasonable doubt of the crime of qualified theft.

On March 31, 2003, appellant Reynaldo Bayon was charged with theft in an Information[2] that reads:

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[1] Penned by Associate Justice Renato C. Dacudao, with Associate Justices Edgardo F. Sundiam and Rosalinda Asuncion-Vicente, concurring; *rollo*, pp. 2-14.

[2] Records, pp. 2-3.

Criminal Case No. Q-03-116290

That on or about the 29th day of March 2003, in Quezon City, Philippines, the said accused did then and there willfully, unlawfully and feloniously with intent of gain and without the knowledge and consent of the owner thereof, take, steal and carry away the following, to wit:

one (1) Rado Diastar wrist watch worth --------- ₱12,000.00
one (1) Seiko Diver's watch worth ---------------₱ 2,000.00
one (1) bolo of undetermined value
Total -----------₱14,000.00

belonging to EDUARDO CUNANAN *Y* CANDELARIA to the damage and prejudice of the said owner in the aforesaid amount of ₱14,000.00 Philippine Currency.

CONTRARY TO LAW.

On the same day, appellant was also charged with qualified theft in another lnformation[3] that reads:

Criminal Case No. Q-03-116291

That on or about the 29th day of March 2003, in Quezon City, Philippines, the said accused, being, then a stay-in helper of ARTURO LIMOSO *Y* LOOT at his residence located at No. 45 Belmonte Street, New Manila, this City, and as such has free access to the different rooms of the said house, with grave abuse of confidence, with intent to gain and without the knowledge and consent of the owner thereof, did then and there willfully, unlawfully and feloniously take, steal and carry away the following items, to wit:

one (1) white gold Rolex wrist watch worth ------- ₱300,000.00
one (1) Jordan gold wrist watch worth --------------- 65,000.00
five (5) pcs. gold ring worth ------------------------- 125,000.00
two (2) pcs. gold necklace worth ₱25,000.00 each --- 50,000.00
Total ------------------ ₱540,000.00

all in the total amount of ₱540,000.00 Philippine Currency, belonging to ARTURO LIMOSO *Y* LOOT, to his damage and prejudice in the amount aforementioned.

CONTRARY TO LAW.

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[3] *Id.* at 4-5.

When arraigned on May 6, 2003, appellant pleaded not guilty to both charges.[4] The pre-trial was terminated without stipulations. Thereafter, joint trial of the cases ensued.

The prosecution presented three witnesses, namely, private complainants Atty. Arturo Limoso and Eduardo Cunanan, and Police Officer Paul Greg Esparta. It dispensed with the testimonies of Police Officers Marmando Pallasigue and Edmund Rizon, in view of the stipulation of the parties as follows: (1) the police officer recovered a Rolex watch from a person in Bulacan; (2) the complainant was never present in all the stages of the search for the watch; (3) the police officer turned over the watch to the complainant; and (4) the accused was not assisted by counsel during the search for the watch.[5] The parties also stipulated on the existence of the Affidavit[6] of Police Officer Marmando Pallasigue.

The defense presented the appellant as its lone witness.

The evidence of the prosecution established that on February 10, 2002, private complainant Atty. Arturo Limoso, after suffering a stroke, hired appellant as his masseur and stay-in helper in his house located at No. 45 Belmonte Street, San Jose Compound, New Manila, Quezon City.[7]

At about 7:30 a.m. of March 29, 2003, private complainant Eduardo Cunanan, who was a tenant in one of the rooms of Atty. Limoso's house, reported to Atty. Limoso the loss of his two wristwatches: a Seiko Diver's watch worth ₱2,000.00 and a Rado Diastar watch worth ₱12,000.00. Atty. Limoso assured Cunanan that he would investigate the matter. Thereafter, Atty. Limoso asked his household helpers, including appellant, regarding the missing wristwatches. When confronted by Atty. Limoso, appellant denied any involvement in the loss of Cunanan's wristwatches.[8]

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[4] *Id.* at 29.

[5] *Id.* at 64.

[6] Exhibit "D", *id.* at 13.

[7] TSN, June 16, 2003, pp. 4-5.

[8] *Id.* at 6-7; TSN, August 26, 2003, pp. 3-4.

A few hours later, Atty. Limoso suspected that he could also be a victim of theft. So he went to his locker, and discovered that the key to his vault was missing. He placed the said key on the wall with his other keys. However, he was able to open his vault using his duplicate key. He then found that his Rolex watch worth ₱300,000.00, Jordan gold watch worth ₱65,000.00, five gold rings worth ₱125,000.00 and two pieces of gold necklace worth ₱50,000.00 that were all kept inside the vault were missing.[9]

Atty. Limoso became suspicious that appellant was the one responsible for the theft after he made an inquiry from the security guards of the compound. He was informed that appellant used to leave his house at 10:00 p.m. and returned at around 4:00 a.m. the following day; that appellant used to borrow money from the household helpers of the neighboring houses; and that most of the time appellant was nowhere to be found. Moreover, as the one massaging him (Atty. Limoso), appellant had access to his room.[10]

Atty. Limoso again confronted appellant and told him to just return the stolen things with no questions asked. Appellant replied that he was not the one responsible for the theft. Atty. Limoso then reported the incident to the police.[11]

At about 4:00 p.m. of March 29, 2003, the police arrived at Atty. Limoso's house. Appellant could not be found, and all his clothes were gone. The police stayed in the house until the evening. At about 10:00 p.m., the police were tipped off that appellant was at the guardhouse. They immediately proceeded to the guardhouse, apprehended appellant, and brought him to the police station.[12]

At the police station, appellant was investigated without the assistance of a counsel. Through the investigation, the police was able to trace Atty. Limoso's Rolex watch to a sidewalk

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[9] TSN, June 16, 2003, pp. 7-8, 12-13; TSN, July 28, 2003, p. 4.

[10] TSN, June 16, 2003, p. 10.

[11] *Id.* at 9, 11.

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

jeweler, who, upon being investigated, told the police that the watch was already sold to another person. Atty. Limoso recovered the stolen Rolex watch after paying ₱20,000.00 to the buyer who lived in Bulacan. Atty. Limoso, however, did not recover his Jordan gold watch, rings and necklaces.[13]

Appellant interposed the defense of denial. He testified that, at about 7:00 p.m. of March 29, 2003, he was at the house of his employer, private complainant Atty. Arturo Limoso, at No. 45 Belmonte Street, San Jose Compound, New Manila, Quezon City. At about 8:00 p.m., while he was at the guardhouse of the compound and talking to the security guards assigned there, he was suddenly arrested by the police and was brought to the police station. He did not know the reason for his arrest. Although he was informed of his rights, he did not know what they meant.[14]

On February 17, 2004, the trial court rendered a Decision[15] finding appellant guilty beyond reasonable doubt of the crime of qualified theft in Criminal Case No. Q-03-116291, but he was acquitted of the same crime in Criminal Case No. Q-03-116290 on the ground of reasonable doubt. The dispositive portion of the Decision reads:

> WHEREFORE, the Court finds the accused, REYNALDO BAYON *Y* RAMOS, guilty beyond reasonable doubt in Criminal Case No. Q03-116291 of the crime of QUALIFIED THEFT defined and penalized in Article 310, in relation to Article 309, paragraph 1 of the Revised Penal Code and sentences him to an indeterminate penalty of ten years and one day of *prision mayor*, as minimum, to twenty (20) years of *reclusion temporal*, as maximum, as well as orders him to return the Jordan gold watch worth ₱65,000.00, the five gold rings worth ₱125,000.00 and two pieces of gold necklace worth ₱25,000.00 [each] to Atty. Arturo Limoso or pay the value thereof.

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[13] TSN, June 16, 2003, pp. 12-13; TSN, September 3, 2003, pp. 9-10; TSN, September 8, 2003, pp. 5-6.

[14] TSN, January 6, 2004, pp. 2-4.

[15] CA *rollo,* pp. 30-39.

In Criminal Case No. Q03-116290, judgment is hereby rendered acquitting Reynaldo Bayon *y* Ramos of the offense charged on ground of reasonable doubt.

SO ORDERED.[16]

The trial court stated that the prosecution did not offer any direct evidence that appellant stole the missing items belonging to complainants Eduardo Cunanan and Atty. Limoso. It held that appellant's statement of admission during the custodial investigation was inadmissable against him, because he was not assisted by counsel; hence, there is doubt as to appellant's guilt in Criminal Case No. Q-03-116290 for theft of the watches and bolo owned by private complainant Eduardo Cunanan.

However, in Criminal Case No. Q-03-116291 for theft of the valuables of Atty. Limoso, the trial court found that appellant's culpability was proven by the prosecution through the following pieces of circumstantial evidence: (1) as a stay-in helper of Atty. Limoso, appellant had access to Atty. Limoso's room, where his vault containing the missing pieces of jewelry were kept, and where the key to the vault was placed; and (2) upon discovery of the loss of the missing items, the police could no longer find appellant's clothes in Atty. Limoso's house.

Appellant appealed the trial court's decision to the Court of Appeals, contending that the trial court erred in convicting him in Criminal Case No. Q-03-116291. He asserted that the circumstantial evidence presented against him by the prosecution was insufficient to prove his guilt beyond reasonable doubt, and that there was nothing whatsoever that would link him to the commission of the crime of theft.[17]

In its Decision[18] dated May 31, 2005, the Court of Appeals affirmed the decision of the trial court with modification in the penalty imposed. The dispositive portion of the Decision reads:

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[16] *Id.* at 38-39.

[17] CA Decision, *rollo*, p. 10.

[18] *Rollo*, pp. 2-14.

UPON THE VIEW WE TAKE OF THIS CASE, THUS, the Decision appealed from is AFFIRMED, subject to the MODIFICATION that the accused-appellant is sentenced to suffer the penalty of *reclusion perpetua*, with all the accessories of the penalty imposed under Article 40 of the Revised Penal Code.[19]

Hence, this appeal by appellant.

The main issue is whether or not the Court of Appeals erred in finding appellant Reynaldo Bayon guilty beyond reasonable doubt of the crime of qualified theft in Criminal Case No. Q-03-116291.

The petition is granted.

Article 308 of the Revised Penal Code defines the crime of theft as follows:

> Art. 308. *Who are liable for theft*. — Theft is committed by any person who, with intent to gain, but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

The elements of the crime of theft are: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.[20]

Under Article 310[21] of the Revised Penal Code, theft becomes qualified "if committed by a domestic servant, or with grave

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[19] *Id.* at 14.

[20] *Astudillo v. People*, G.R. Nos. 159734 & 159745, November 30, 2006, 509 SCRA 302, 324.

[21] Art. 310. *Qualified theft.* — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

abuse of confidence, or if the property stolen is a motor vehicle, mail matter or large cattle, or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance."

In this case, the Court of Appeals affirmed the trial court's conviction of appellant based on circumstantial evidence.

For circumstantial evidence to be sufficient for conviction, the following conditions must be satisfied:

(a) There is more than one circumstance;
(b) The facts from which the circumstances are derived are proven; and
(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[22]

Circumstantial evidence suffices to convict an accused only if the circumstances proved constitute an unbroken chain which leads to one fair and reasonable conclusion that points to the accused, to the exclusion of all others as the guilty person; the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with any other hypothesis except that of guilty.[23]

In this case, appellant was convicted of the crime of qualified theft based on these pieces of circumstantial evidence:

(1) As a stay-in helper of Atty. Arturo Limoso, the [accused-appellant] had access to the latter's room where his vault containing the missing items was kept and where the key to the vault was placed;

(2) Upon discovery by Atty. Limoso of the loss of the missing items, the police could no longer find in Atty. Limoso's house the clothes of the [accused-appellant.][24]

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[22] *People v. Castro*, G.R. No. 170415, September 19, 2008, 566 SCRA 92, 100.

[23] *Id.*

[24] CA Decision, *rollo*, p. 11.

The Court finds that the pieces of circumstantial evidence relied upon by the appellate court are insufficient to convict appellant of the crime of qualified theft. In the first circumstance, the Court notes that appellant was not the only stay-in helper of Atty. Limoso, as the latter testified that he had two housemaids.[25] Although Atty. Limoso testified that only appellant, as his masseur, had access to his room, this is doubtful, considering the Filipino lifestyle, in which a household helper is normally tasked to clean the room of his/her employer. Further, in the second circumstance, the disappearance of appellant's clothes from Atty. Limoso's house after the discovery of the loss of the aforementioned valuables cannot be construed as flight by appellant, since appellant was talking with the guards in the compound where Atty. Limoso's residence was located when he was arrested by the police.

The two pieces of circumstantial evidence cited by the trial court and affirmed by the appellate court do not form an unbroken chain that point to appellant as the author of the crime; hence, their conclusion becomes merely conjectural. Notably, the prosecution failed to establish the element of unlawful taking by appellant. Since appellant's statement during the custodial investigation was inadmissible in evidence as he was not assisted by counsel,[26] the prosecution could have presented the person to whom appellant allegedly sold the pieces of jewelry as witness, but it did not do so. It could have been the missing link that would have strengthened the evidence of the prosecution.

The general rule is that factual findings of the trial court, when affirmed by the Court of Appeals, are not to be disturbed by this

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[25] TSN, July 28, 2003, p. 4.

[26] The Philippine Constitution, Art III, Sec. 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived, except in writing and in the presence of counsel.

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(2) **Any confession or admission obtained in violation of this or Section 17 hereof shall be inadmissible in evidence against him**. (Emphasis supplied.)

Court. However, the Court may disregard such findings of the trial and appellate courts (1) when they are grounded on speculation, surmises or conjectures; (2) when there is grave abuse of discretion in the appreciation of facts; and (3) when the findings of fact are conclusions without mention of the specific evidence on which they are based or are premised on the absence of evidence.[27]

The Court finds the circumstantial evidence relied upon by the trial and appellate courts in convicting appellant to be insufficient in proving his guilt beyond reasonable doubt absent any substantial evidence of unlawful taking by appellant.

The burden of proving the guilt of the accused rests on the prosecution; the accused need not even offer evidence in his behalf.[28] The constitutional mandate of innocence prevails, unless the prosecution succeeds in proving by satisfactory evidence the guilt beyond reasonable doubt of the accused.[29] It failed to do so in this case.

WHEREFORE, the appeal is *GRANTED*. The Decision of the Court of Appeals dated May 31, 2005 in CA-G.R. CR No. 28161, convicting appellant Reynaldo Bayon *y* Ramos of the crime of qualified theft, is *REVERSED* and *SET ASIDE*. Appellant Reynaldo Bayon is *ACQUITTED* of the crime charged on reasonable doubt. The City Warden of the Quezon City Jail, EDSA, Kamuning, is *DIRECTED* to cause the release of Reynaldo Bayon from confinement without *DELAY*, unless he is being lawfully held for another cause, and to *INFORM* the Court of his release or the reasons for his continued confinement within ten (10) days from notice of this Decision.

No costs.

SO ORDERED.

Carpio (Chairperson), Bersamin,[*] *Abad,* and *Mendoza, JJ.,* concur.

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[27] *Arce v. People*, 429 Phil. 328, 334 (2002).

[28] *Id.* at 335.

[29] *Id.* at 336.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Raffle dated June 1, 2009.

SECOND DIVISION

[G.R. No. 168655. July 2, 2010]

J. CASIM CONSTRUCTION SUPPLIES, INC., *petitioner*, *vs*. **REGISTRAR OF DEEDS OF LAS PIÑAS,** *respondent*. **INTESTATE ESTATE OF BRUNEO F. CASIM,** (Purported) *intervenor*.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; *LIS PENDENS*; DEFINED; PURPOSE. —** *Lis pendens* — which literally means pending suit — refers to the jurisdiction, power or control which a court acquires over the property involved in a suit, pending the continuance of the action, and until final judgment. Founded upon public policy and necessity, *lis pendens* is intended to keep the properties in litigation within the power of the court until the litigation is terminated, and to prevent the defeat of the judgment or decree by subsequent alienation. Its notice is an announcement to the whole world that a particular property is in litigation and serves as a warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over said property.

2. **ID.; ID.; ID.; NOTICE OF *LIS PENDENS*, WHEN MAY BE CANCELLED BY THE TRIAL COURT. —** A notice of *lis pendens,* once duly registered, may be cancelled by the trial court before which the action involving the property is pending. This power is said to be inherent in the trial court and is exercised only under express provisions of law. Accordingly, Section 14, Rule 13 of the 1997 Rules of Civil Procedure authorizes the trial court to cancel a notice of *lis pendens* where it is properly shown that the purpose of its annotation is for molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be annotated. Be that as it may, the power to cancel a notice of *lis pendens* is exercised only under exceptional circumstances, such as: where such circumstances are imputable to the party who caused the annotation; where the litigation was unduly prolonged to the prejudice of the other party because of several continuances procured by petitioner; where the case which is the basis for

the *lis pendens* notation was dismissed for *non prosequitur* on the part of the plaintiff; or where judgment was rendered against the party who caused such a notation. In such instances, said notice is deemed *ipso facto* cancelled.

3. ID.; ID.; ID.; POWER OF THE TRIAL COURT TO CANCEL THE NOTICE OF *LIS PENDENS* IS INHERENT AS THE SAME IS MERELY ANCILLARY TO THE MAIN ACTION; CASE AT BAR. — A necessary incident of registering a notice of *lis pendens* is that the property covered thereby is effectively placed, until the litigation attains finality, under the power and control of the court having jurisdiction over the case to which the notice relates. In this sense, parties dealing with the given property are charged with the knowledge of the existence of the action and are deemed to take the property subject to the outcome of the litigation. It is also in this sense that the power possessed by a trial court to cancel the notice of *lis pendens* is said to be inherent as the same is merely ancillary to the main action. Thus, in *Vda. de Kilayko v. Judge Tengco, Heirs of Maria Marasigan v. Intermediate Appellate Court* and *Tanchoco v. Aquino,* it was held that the precautionary notice of *lis pendens* may be ordered cancelled at any time by the court having jurisdiction over the main action inasmuch as the same is merely an incident to the said action. x x x Clearly, the action for cancellation of the notice of *lis pendens* in this case must have been filed not before the court *a quo* via an original action but rather, before the RTC of Makati City, Branch 62 as an incident of the annulment case in relation to which its registration was sought. Thus, it is the latter court that has jurisdiction over the main case referred to in the notice and it is that same court which exercises power and control over the real property subject of the notice.

4. CIVIL LAW; LAND TITLES AND DEEDS; PRESIDENTIAL DECREE NO. 1529; CANCELLATION OF *LIS PENDENS*, AFTER FINAL JUDGMENT; RULE. — To be sure, petitioner is not altogether precluded from pursuing a specific remedy, only that the suitable course of action legally available is not judicial but rather administrative. Section 77 of P.D. No. 1529 provides the appropriate measure to have a notice of *lis pendens* cancelled out from the title, that is by presenting to the Register of Deeds, after finality of the judgment rendered in the main action, a certificate executed by the clerk of court before which

the main action was pending to the effect that the case has already been finally decided by the court, stating the manner of the disposal thereof. Section 77 materially states: x x x At any time after final judgment in favor of the defendant, **or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land and/or buildings involved, in any case in which a memorandum or notice of *lis pendens* has been registered as provided in the preceding section, the notice of *lis pendens* shall be deemed cancelled upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof.**

5. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL ISSUES ARE NOT PROPER. —** [P]etitioner tends to make an issue out of the fact that while the original TCT on file with the Register of Deeds does contain the annotations and notice referred to in this petition, its owner's duplicate copy of the title nevertheless does not reflect the same non-chronological inscriptions. From this, petitioner submits its puerile argument that the said annotations appearing on the original copy of the TCT are all a forgery, and goes on to assert the indefeasibility of its Torrens title as well as its supposed status as an innocent purchaser for value in good faith. Yet we decline to rule on these assumptions principally because they raise matters that call for factual determination which certainly are beyond the competence of the Court to dispose of in this petition.

APPEARANCES OF COUNSEL

Castronuevo Law Office for petitioner.
Siguion Reyna Montecillo & Ongsiako for intervenor Intestate Estate of Bruneo F. Casim.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review under Rule 45 of the Rules of Court, taken directly on a pure question of law from the April

14, 2005 Resolution[1] and June 24, 2005 Order[2] issued by the Regional Trial Court (RTC) of Las Piñas City, Branch 253 in Civil Case No. LP-04-0071[3] — one for cancellation of notice of *lis pendens.* The assailed Resolution dismissed for lack of jurisdiction the petition filed by J. Casim Construction Supplies, Inc. for cancellation of notice of *lis pendens* annotated on its certificate of title, whereas the assailed Order denied reconsideration.

The facts follow.

Petitioner, represented herein by Rogelio C. Casim, is a duly organized domestic corporation[4] in whose name Transfer Certificate of Title (TCT) No. 49936,[5] covering a 10,715-square meter land was registered. Sometime in 1982, petitioner acquired the covered property by virtue of a Deed of Absolute Sale[6] and as a result the mother title, TCT No. 30459 was cancelled and TCT No. 49936 was issued in its stead.[7]

On March 22, 2004, petitioner filed with the RTC of Las Piñas City, Branch 253 an original petition for the cancellation of the notice of *lis pendens,* as well as of all the other entries of involuntary encumbrances annotated on the original copy of TCT No. 49936. Invoking the inherent power of the trial court to grant relief according to the petition, petitioner prayed that the notice of *lis pendens* as well as all the other annotations on the said title be cancelled. Petitioner claimed that its owner's duplicate copy of the TCT was clean at the time of its delivery and that it was surprised to learn later on that the original copy

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[1] *Rollo*, pp. 31-33A.

[2] Presided by Judge Elizabeth Yu-Garay; *id.* at 34.

[3] The case was entitled, "*In the Matter of Cancellation of the Notice of Lis Pendens and Other Entries in TCT No. 49936.*"

[4] *Rollo*, p. 54.

[5] *Id.* at 55.

[6] *Id.* at 78-80.

[7] *Id.* at 85.

of its TCT, on file with the Register of Deeds, contained several entries which all signified that the covered property had been subjected to various claims. The subject notice of *lis pendens* is one of such entries.[8] The notations appearing on the title's memorandum of encumbrances are as follows:

Entry No. 81-8334/T-30459 – ADVERSE CLAIM – In an affidavit duly subscribed and sworn to, BRUNO F. CASIM claims, among other things, that he has the right and interest over the property described herein in accordance with Doc. No. 336; Page No. 69; Book No. 1; s. of 1981 of Not. Pub. of Makati, M.M., Romarie G. Villonco, dated August 4, 1981.
Date of inscription – Aug. 5, 1981 – 2:55 p.m.
(Sgd) VICTORIANO S. TORRES, Actg. Reg. of Deeds

Entry No. 82-4676/T-49936 – CANCELLATION OF ADVERSE CLAIM inscribed hereon under Entry No. 81-8334/T-30459 in accordance with Doc. No. 247; Page 50; Book No. CXLI; s. of 1982 of Not. Pub. of Pasay City, M.M., Julian G. Tubig, dated April 21, 1982.
Date of inscription – April 21, 1982 – 8:40 a.m.
(Sgd) VICTORIANO S. TORRES, Actg. Reg. of Deeds

Entry No. 82-4678/T-49936 – AFFIDAVIT – In accordance with the affidavit duly executed by the herein registered owners, this title is hereby cancelled and in lieu thereof TCT No. 49936/T-228 has been issued in accordance with Doc. No. 249; Page No. 80; Book No. CXLI; s. of 1982 of Not. Pub. of Pasay City, M.M., Julian G. Tubig, dated April 21, 1982.
Date of inscription – April 21, 1982 – 8:44 a.m.
(Sgd) VICTORIANO S. TORRES, Actg. Reg. of Deeds

Entry No. 81-12423/T-30459 – NOTICE OF *LIS PENDENS*: By virtue of the notice of *Lis Pendens* presented and filed by CESAR P. MANALAYSAY, counsel for the plaintiff, notice is hereby given that a petition for review has been commenced and now pending in the Court of First Instance of Rizal, Branch XXIX, Pasay, M.M, in Civil Case No. LP-9438-P, BRUNEO F. CASIM, Plaintiff, vs. SPS. JESUS A. CASIM & MARGARITA CHAVEZ and Sps. Urbano Nobleza and Cristita J. Nobleza, and Filomena C. Antonio, Defendants, involving the property described herein.

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[8] *Id.* at 38, 43-45.

Date of the instrument - Sept. 17, 1981
Date of the inscription - Sept. 18, 1981 - 3:55 p.m.
(Sgd) VICTORIANO S. TORRES, Actg. Reg. of Deeds[9]

To justify the cancellation, petitioner alleged that the notice of *lis pendens,* in particular, was a forgery judging from the inconsistencies in the inscriber's signature as well as from the fact that the notice was entered non-chronologically, that is, the date thereof is much earlier than that of the preceding entry. In this regard, it noted the lack of any transaction record on file with the Register of Deeds that would support the notice of *lis pendens* annotation.[10]

Petitioner also stated that while Section 59 of Presidential Decree (P.D.) No. 1529 requires the carry-over of subsisting encumbrances in the new issuances of TCTs, petitioner's duplicate copy of the title did not contain any such carry-over, which means that it was an innocent purchaser for value, especially since it was never a party to the civil case referred to in the notice of *lis pendens.* Lastly, it alludes to the indefeasibility of its title despite the fact that the mother title, TCT No. 30459, might have suffered from certain defects and constraints.[11]

The Intestate Estate of Bruneo F. Casim, representing Bruneo F. Casim, intervened in the instant case and filed a Comment/ Opposition[12] in which it maintained that the RTC of Las Piñas did not have jurisdiction over the present action, because the matter of canceling a notice of *lis pendens* lies within the jurisdiction of the court before which the main action referred to in the notice is pending. In this regard, it emphasized that the case referred to in the said notice had already attained finality as the Supreme Court had issued an entry of judgment therein and that the RTC of Makati City had ordered execution in that case.[13]

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[9] *Id.* at 86.

[10] *Id.* at 40-43.

[11] *Id.* at 43-49.

[12] *Id.* at 191-210.

[13] *Id.* at 192-193, 195-196.

It cited the lack of legal basis for the petition in that nothing in the allegations hints at any of the legal grounds for the cancellation of notice of *lis pendens.*[14] And, as opposed to petitioner's claim that there was no carry-over of encumbrances made in TCT No. 49936 from the mother title TCT No. 30459, the latter would show that it also had the same inscriptions as those found in TCT No. 49936 only that they were entered in the original copy on file with the Register of Deeds. Also, as per Certification[15] issued by the Register of Deeds, petitioner's claim of lack of transaction record could not stand, because the said certification stated merely that the corresponding transaction record could no longer be retrieved and might, therefore, be considered as either lost or destroyed.

On April 14, 2005, the trial court, ruling that it did not have jurisdiction over the action, resolved to dismiss the petition and declared that the action must have been filed before the same court and in the same action in relation to which the annotation of the notice of *lis pendens* had been sought. Anent the allegation that the entries in the TCT were forged, the trial court pointed out that not only did petitioner resort to the wrong forum to determine the existence of forgery, but also that forgery could not be presumed merely from the alleged non-chronological entries in the TCT but instead must be positively proved. In this connection, the trial court noted petitioner's failure to name exactly who had committed the forgery, as well as the lack of evidence on which the allegation could be based.[16] The petition was disposed of as follows:

IN VIEW OF THE FOREGOING, the instant petition is hereby DISMISSED.

SO ORDERED.[17]

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[14] *Id.* at 194.

[15] *Id.* at 75.

[16] *Id.* at 33-33A.

[17] *Id.* at 33A.

Petitioner moved for reconsideration,[18] but it was denied in the trial court's June 24, 2005 Order.[19]

Now, raising the purely legal question of whether the RTC of Las Piñas City, Branch 253 has jurisdiction in an original action to cancel the notice of *lis pendens* annotated on the subject title as an incident in a previous case, petitioner, in this present petition, ascribes error to the trial court in dismissing its petition for cancellation. An action for cancellation of notice of *lis pendens,* petitioner believes, is not always ancillary to an existing main action because a trial court has the inherent power to cause such cancellation, especially in this case that petitioner was never a party to the litigation to which the notice of *lis pendens* relates.[20] Petitioner further posits that the trial court has committed an error in declining to rule on the allegation of forgery, especially since there is no transaction record on file with the Register of Deeds relative to said entries. It likewise points out that granting the notice of *lis pendens* has been properly annotated on the title, the fact that its owner's duplicate title is clean suggests that it was never a party to the civil case referred to in the notice.[21] Finally, petitioner posits that TCT No. 49936 is indefeasible and holds it free from any liens and encumbrances which its mother title, TCT No. 30459, might have suffered.[22]

The Intestate Estate of Bruneo F. Casim (intervenor), in its Comment on the present petition, reiterates that the court *a quo* does not have jurisdiction to order the cancellation of the subject notice of *lis pendens* because it is only the court exercising jurisdiction over the property which may order the same — that is, the court having jurisdiction over the main action in relation to which the registration of the notice has been sought. Also, it notes that even on the assumption that the trial court

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[18] *Id.* at 293-300.

[19] *Id.* at 34.

[20] *Id.* at 8-12.

[21] *Id.* at 14-17.

[22] *Id.* at 23-24.

had such jurisdiction, the petition for cancellation still has no legal basis as petitioner failed to establish the grounds therefor. Also, the subject notice of *lis pendens* was validly carried over to TCT No. 49936 from the mother title, TCT No. 30459.

In its Reply,[23] petitioner, in a semantic slur, dealt primarily with the supposed inconsistencies in intervenor's arguments. Yet the core of its contention is that the non-chronological annotation of the notice stands to be the best evidence of forgery. From this, it advances the notion that forgery of the notice of *lis pendens* suffices as a ground for the cancellation thereof which may be availed of in an independent action by the aggrieved party.

The petition is utterly unmeritorious.

Lis pendens — which literally means pending suit — refers to the jurisdiction, power or control which a court acquires over the property involved in a suit, pending the continuance of the action, and until final judgment.[24] Founded upon public policy and necessity, *lis pendens* is intended to keep the properties in litigation within the power of the court until the litigation is terminated, and to prevent the defeat of the judgment or decree by subsequent alienation.[25] Its notice is an announcement to the whole world that a particular property is in litigation and serves as a warning that one who acquires an interest over said property does so at his own risk, or that he gambles on the result of the litigation over said property.[26]

A notice of *lis pendens,* once duly registered, may be cancelled by the trial court before which the action involving the property is pending. This power is said to be inherent in the trial court

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[23] *Id.* at 366-372.

[24] *St. Mary of the Woods School, Inc. v. Office of the Registry of Deeds of Makati City*, G.R. No. 174290 and G.R. No. 176116, January 20, 2009, 576 SCRA 713, 730; *Heirs of Eugenio Lopez, Sr. v. Enriquez*, G.R. No. 146262, January 21, 2005, 449 SCRA 173, 186; *Romero v. Court of Appeals*, G.R. No. 142406, May 16, 2005, 458 SCRA 483, 492.

[25] *Heirs of Eugenio Lopez, Sr. v. Enriquez, supra*; *Romero v. Court of Appeals*, *supra,* citing *Lim v. Vera Cruz,* 356 SCRA 386, 393 (2001).

[26] *Yared v. Ilarde*, 391 Phil. 722, 730 (2000).

and is exercised only under express provisions of law.[27] Accordingly, Section 14, Rule 13 of the 1997 Rules of Civil Procedure authorizes the trial court to cancel a notice of *lis pendens* where it is properly shown that the purpose of its annotation is for molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be annotated. Be that as it may, the power to cancel a notice of *lis pendens* is exercised only under exceptional circumstances, such as: where such circumstances are imputable to the party who caused the annotation; where the litigation was unduly prolonged to the prejudice of the other party because of several continuances procured by petitioner; where the case which is the basis for the *lis pendens* notation was dismissed for *non prosequitur* on the part of the plaintiff; or where judgment was rendered against the party who caused such a notation. In such instances, said notice is deemed *ipso facto* cancelled.[28]

In theorizing that the RTC of Las Piñas City, Branch 253 has the inherent power to cancel the notice of *lis pendens* that was incidentally registered in relation to Civil Case No. 2137, a case which had been decided by the RTC of Makati City, Branch 62 and affirmed by the Supreme Court on appeal, petitioner advocates that the cancellation of such a notice is not always ancillary to a main action.

The argument fails.

From the available records, it appears that the subject notice of *lis pendens* had been recorded at the instance of Bruneo F. Casim (Bruneo) in relation to Civil Case No. 2137[29] — one for

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[27] *St. Mary of the Woods School, Inc. v. Office of the Registry of Deeds of Makati City*, *supra* note 24; *Fernandez v. Court of Appeals*, 397 Phil. 205, 216 (2000).

[28] *Fernandez v. Court of Appeals*, *supra*, at 217, citing Regalado, Justice Florenz D., *Remedial Law Compendium*, Vol. I, 5th Revised Edition, p. 145, 1988.

[29] The case was initially docketed as Civil Case No. 9134-P at the Court of First Instance of Rizal, but was re-docketed accordingly when it was re-raffled to the RTC of Makati City, Branch 62, following the effectivity of the Judiciary Reorganization Act.

annulment of sale and recovery of real property — which he filed before the RTC of Makati City, Branch 62 against the spouses Jesus and Margarita Casim, predecessors-in-interest and stockholders of petitioner corporation. That case involved the property subject of the present case, then covered by TCT No. 30459. At the close of the trial on the merits therein, the RTC of Makati rendered a decision adverse to Bruneo and dismissed the complaint for lack of merit.[30] Aggrieved, Bruneo lodged an appeal with the Court of Appeals, docketed as CA-G.R. CV No. 54204, which reversed and set aside the trial court's decision.[31] Expectedly, the spouses Jesus and Margarita Casim elevated the case to the Supreme Court, docketed as G.R. No. 151957, but their appeal was dismissed for being filed out of time.[32]

A necessary incident of registering a notice of *lis pendens* is that the property covered thereby is effectively placed, until the litigation attains finality, under the power and control of the court having jurisdiction over the case to which the notice relates.[33] In this sense, parties dealing with the given property are charged with the knowledge of the existence of the action and are deemed to take the property subject to the outcome of the litigation.[34] It is also in this sense that the power possessed by a trial court to cancel the notice of *lis pendens* is said to be inherent as the same is merely ancillary to the main action.[35]

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[30] CA *rollo* (CA-G.R. CV No. 54204), pp. 902-905.

[31] *Id.* at 696-710.

[32] *Id.* at 768.

[33] *Heirs of Eugenio Lopez, Sr. v. Enriquez*, *supra* note 24; *Romero v. Court of Appeals*, *supra* note 24, at 495.

[34] *St. Mary of the Woods School, Inc. v. Office of the Registry of Deeds of Makati City, supra* note 24; *Heirs of Eugenio Lopez, Sr. v. Enriquez, supra* note 24; *Romero v. Court of Appeals, supra* note 24.

[35] *Vda. de Kilayco v. Judge Tengco*, G.R. No. L-45425 and G.R. No. L-45965, March 27, 1992, 207 SCRA 600; *Magdalena Homeowners Association, Inc. v. Court of Appeals*, G.R. No. 60323, April 17, 1990, 184 SCRA 325, 330.

Thus, in *Vda. de Kilayko v. Judge Tengco,*[36] *Heirs of Maria Marasigan v. Intermediate Appellate Court*[37] and *Tanchoco v. Aquino,*[38] it was held that the precautionary notice of *lis pendens* may be ordered cancelled at any time by the court having jurisdiction over the main action inasmuch as the same is merely an incident to the said action. The pronouncement in *Heirs of Eugenio Lopez, Sr. v. Enriquez,* citing *Magdalena Homeowners Association, Inc. v. Court of Appeals,*[39] is equally instructive —

> The notice of *lis pendens* x x x is ordinarily recorded without the intervention of the court where the action is pending. The notice is but an incident in an action, an extrajudicial one, to be sure. It does not affect the merits thereof. It is intended merely to constructively advise, or warn, all people who deal with the property that they so deal with it at their own risk, and whatever rights they may acquire in the property in any voluntary transaction are subject to the results of the action, and may well be inferior and subordinate to those which may be finally determined and laid down therein. **The cancellation of such a precautionary notice is therefore also a mere incident in the action, and may be ordered by the Court having jurisdiction of it at any given time. x x x**[40]

Clearly, the action for cancellation of the notice of *lis pendens* in this case must have been filed not before the court *a quo* via an original action but rather, before the RTC of Makati City, Branch 62 as an incident of the annulment case in relation to which its registration was sought. Thus, it is the latter court that has jurisdiction over the main case referred to in the notice and it is that same court which exercises power and control over the real property subject of the notice.

But even so, the petition could no longer be expected to pursue before the proper forum inasmuch as the decision rendered in

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[36] *Supra*.

[37] G.R. No. 69303, July 23, 1987, 152 SCRA 253.

[38] 238 Phil. 1 (1987).

[39] *Supra* note 35.

[40] *Heirs of Eugenio Lopez, Sr. v. Enriquez, supra* note 24. (Emphasis supplied.)

the annulment case has already attained finality before both the Court of Appeals and the Supreme Court on the appellate level, unless of course there exists substantial and genuine claims against the parties relative to the main case subject of the notice of *lis pendens.*[41] There is none in this case. It is thus well to note that the precautionary notice that has been registered relative to the annulment case then pending before the RTC of Makati City, Branch 62 has served its purpose. With the finality of the decision therein on appeal, the notice has already been rendered *functus officio.* The rights of the parties, as well as of their successors-in-interest, petitioner included, in relation to the subject property, are hence to be decided according the said final decision.

To be sure, petitioner is not altogether precluded from pursuing a specific remedy, only that the suitable course of action legally available is not judicial but rather administrative. Section 77 of P.D. No. 1529 provides the appropriate measure to have a notice of *lis pendens* cancelled out from the title, that is by presenting to the Register of Deeds, after finality of the judgment rendered in the main action, a certificate executed by the clerk of court before which the main action was pending to the effect that the case has already been finally decided by the court, stating the manner of the disposal thereof. Section 77 materially states:

> SEC. 77. *Cancellation of lis pendens.* — Before final judgment, a notice of *lis pendens* may be cancelled upon order of the court, after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be registered. It may also be cancelled by the Register of Deeds upon verified petition of the party who caused the registration thereof.
>
> At any time after final judgment in favor of the defendant, **or other disposition of the action such as to terminate finally all rights of the plaintiff in and to the land and/or buildings involved,**

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[41] See *Garchitorena v. Director of Lands*, 91 Phil. 157 (1952), where the Court suggested than an original action be brought for the cancellation of the notice of *lis pendens* in that case because the parties appeared to have substantial claims against each other relative to the civil case which is the subject of the notice.

in any case in which a memorandum or notice of *lis pendens* has been registered as provided in the preceding section, the notice of *lis pendens* shall be deemed cancelled upon the registration of a certificate of the clerk of court in which the action or proceeding was pending stating the manner of disposal thereof.[42]

Lastly, petitioner tends to make an issue out of the fact that while the original TCT on file with the Register of Deeds does contain the annotations and notice referred to in this petition, its owner's duplicate copy of the title nevertheless does not reflect the same non-chronological inscriptions. From this, petitioner submits its puerile argument that the said annotations appearing on the original copy of the TCT are all a forgery, and goes on to assert the indefeasibility of its Torrens title as well as its supposed status as an innocent purchaser for value in good faith. Yet we decline to rule on these assumptions principally because they raise matters that call for factual determination which certainly are beyond the competence of the Court to dispose of in this petition.

All told, we find that the RTC of Las Piñas City, Branch 253 has committed no reversible error in issuing the assailed Resolution and Order dismissing for lack of jurisdiction the petition for cancellation of notice of *lis pendens* filed by petitioner, and in denying reconsideration.

WHEREFORE, the petition is *DENIED*. The April 14, 2005 Resolution and the June 24, 2005 Order issued by the Regional Trial Court of Las Piñas City, Branch 253, in Civil Case No. LP-04-0071, are hereby *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

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[42] Emphasis supplied.

SECOND DIVISION

[G.R. No. 172102. July 2, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **HANOVER WORLDWIDE TRADING CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; SUBSTANTIAL COMPLIANCE WITH THE REQUIREMENTS RELATING TO THE REGISTRATION OF THE LAND VESTS THE TRIAL COURT JURISDICTION OVER THE CASE. —** As to the first assigned error, however, the Court is not persuaded by petitioner's contention that the RTC did not acquire jurisdiction over the case. It is true that in land registration cases, the applicant must strictly comply with the jurisdictional requirements. In the instant case, though, there is no dispute that respondent complied with the requirements of the law for the court to acquire jurisdiction over the case. With respect to the setting of the initial hearing outside the 90-day period set forth under Section 23 of P.D. 1529, the Court agrees with the CA in ruling that the setting of the initial hearing is the duty of the land registration court and not the applicant. Citing *Republic v. Manna Properties, Inc.,* this Court held in *Republic v. San Lorenzo Development Corporation* that: The duty and the power to set the hearing date lie with the land registration court. After an applicant has filed his application, the law requires the issuance of a court order setting the initial hearing date. The notice of initial hearing is a court document. The notice of initial hearing is signed by the judge and copy of the notice is mailed by the clerk of court to the LRA [Land Registration Authority]. This involves a process to which the party-applicant absolutely has no participation. x x x In the instant case, there is no dispute that sufficient notice of the registration proceedings via publication was duly made. x x x Hence, on the issue of jurisdiction, the Court finds that the RTC did not commit any error in giving due course to respondent's application for registration.

2. **CIVIL LAW; LAND TITLES AND DEEDS; LAND REGISTRATION; REQUISITES. —** As the law now stands, a mere showing of possession and occupation for 30 years or more is not sufficient. Therefore, since the effectivity of P.D. 1073 on January 25, 1977, it must now be shown that possession and occupation of the piece of land by the applicant, by himself or through his predecessors-in-interest, started on June 12, 1945 or earlier. This provision is in total conformity with Section 14 (1) of P.D. 1529. Thus, pursuant to the x x x provisions of law, applicants for registration of title must prove: (1) that the subject land forms part of the disposable and alienable lands of the public domain, and (2) that they have been in open, continuous, exclusive and notorious possession and occupation of the same under a *bona fide* claim of ownership since June 12, 1945, or earlier.

3. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT ARE GENERALLY BINDING ON THE SUPREME COURT; EXCEPTIONS. —** It is true, as respondent argues, that an examination of these requisites involve delving into questions of fact which are not proper in a petition for review on *certiorari*. Factual findings of the court *a quo* are generally binding on this Court, except for certain recognized exceptions, to wit: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures; **(2) When the inference made is manifestly mistaken, absurd or impossible;** (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) When the findings of fact are conflicting; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) When the findings are contrary to those of the trial Court; **(8) When the findings of fact 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 petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record. The Court finds that the instant case falls under the third and ninth exceptions.

4. **CIVIL LAW; LAND TITLES AND DEEDS; LAND REGISTRATION; WHILE TAX DECLARATIONS ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP, THEY CONSTITUTE PROOF OF CLAIM OF OWNERSHIP. —** The pieces of documentary evidence submitted by respondent neither show that its predecessor's possession and occupation of the subject land is for the period or duration required by law. The earliest date of the Tax Declarations presented in evidence by respondent is 1965, the others being 1973, 1980, 1992 and 1993. Respondent failed to present any credible explanation why the realty taxes due on the subject property were only paid starting in 1965. While tax declarations are not conclusive evidence of ownership, they constitute proof of claim of ownership. In the present case, the payment of realty taxes starting 1965 gives rise to the presumption that respondent's predecessors-in-interest claimed ownership or possession of the subject lot only in that year.

5. **REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; IN LAND REGISTRATION CASES, BURDEN OF PROOF RESTS ON THE APPLICANT WHO MUST SHOW BY CLEAR, POSITIVE AND CONVINCING EVIDENCE THAT HIS ALLEGED POSSESSION AND OCCUPATION OF THE LAND IS OF THE NATURE AND DURATION REQUIRED BY LAW. —** Settled is the rule that the burden of proof in land registration cases rests on the applicant who must show by clear, positive and convincing evidence that his alleged possession and occupation of the land is of the nature and duration required by law. Unfortunately, as petitioner contends, the pieces of evidence presented by respondent do not constitute the "well-nigh incontrovertible" proof necessary in cases of this nature.

6. **CIVIL LAW; LAND TITLES AND DEEDS; LAND REGISTRATION; REQUISITES; ALIENABILITY AND DISPOSABILITY OF THE SUBJECT LAND, NOT PROVEN; EXPLAINED. —** x x x [T]he Court notes that respondent failed to prove that the subject lot had been declared alienable and disposable by the DENR Secretary. The well-entrenched rule is that all lands not appearing to be clearly of private dominion presumably belong to the State. The *onus* to overturn, by incontrovertible evidence, the presumption that the land subject of an application for registration is alienable

and disposable rests with the applicant. In the present case, to prove the alienability and disposability of the subject property, Hanover submitted a Certification issued by the Community Environment and Natural Resources Offices (CENRO) attesting that "lot 4488, CAD-545-D, x x x was found to be within "Alienable and Disposable Block-1, land classification project no. 28, per map 2545 of Consolacion, Cebu." However, this certification is not sufficient. In *Republic v. T.A.N. Properties, Inc,* this Court held that it is not enough for the Provincial Environment and Natural Resources Offices (PENRO) or CENRO to certify that a land is alienable and disposable, thus: x x x The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable x x x. In the instant case, even the veracity of the facts stated in the CENRO Certification was not confirmed as only the President and General Manager of respondent corporation identified said Certification submitted by the latter. It is settled that a document or writing admitted as part of the testimony of a witness does not constitute proof of the facts stated therein. In the present case, Hanover's President and General Manager, who identified the CENRO Certification, is a private individual. He was not the one who prepared the Certification. The government official who issued the Certification was not presented before the RTC so that he could have testified regarding its contents. Hence, the RTC should not have accepted the contents of the Certification as proof of the facts stated therein. The contents of the Certification are hearsay, because Hanover's President and General Manager was incompetent to testify on the truth of the contents of such Certification. Even if the subject Certification is presumed duly issued and admissible in evidence, it has no probative value in establishing that the land is alienable and disposable. Moreover, the CENRO is not the official repository or legal custodian of the issuances of the DENR Secretary declaring

the alienability and disposability of public lands. Thus, the CENRO Certification should have been accompanied by an official publication of the DENR Secretary's issuance declaring the land alienable and disposable. Respondent, however, failed to comply with the foregoing requirements.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Romulo B. Lumauig for respondent.

D E C I S I O N

PERALTA, *J*.:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking the reversal and setting aside of the Decision[1] dated May 6, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 70077, which affirmed the August 7, 1997 Decision of the Regional Trial Court (RTC) of Mandaue City, Branch 56, in LAND REG. CASE NO. N-281. Petitioner also assails the CA Resolution[2] dated March 30, 2006, denying its Motion for Reconsideration.

The facts of the case are as follows:

On October 15, 1993, Hanover Worldwide Trading Corporation filed an application for Registration of Title over Lot No. 4488 of Consolacion Cad-545-D (New) under Vs-072219-000396, situated in *Barrio* Sacsac, Consolacion, Cebu, containing an area of One Hundred Three Thousand Three Hundred Fifty (103,350) square meters, more or less, pursuant to Presidential Decree (P.D.) No. 1529, otherwise known as the *Property Registration Decree*. The application stated that Hanover is the owner in fee simple of Lot No. 4488, its title thereto having

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[1] Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Sesinando E. Villon and Enrico A. Lanzanas, concurring; *rollo*, pp. 40-47.

[2] *Rollo*, p. 48.

been obtained through purchase evidenced by a Deed of Absolute Sale.

Attached to the petition are: 1) a Verification Survey Plan; 2) a copy of the approved Technical Description of Lot 4488; 3) a copy of the Deed of Sale in favor of Hanover's President and General Manager; 4) a copy of a Waiver executed by the President and General Manager of Hanover in favor of the latter; 5) a Geodetic Engineer's Certificate attesting that the property was surveyed; 6) a Tax Declaration; 7) a tax clearance; 8) a Municipal Assessor's Certification stating, among others, the assessed value and market value of the property; and 9) a CENRO Certification on the alienability and disposability of the property.

Except for the Republic, there were no other oppositors to the application. The Republic contended, among others, that neither Hanover nor its predecessors-in-interest are in open, continuous, exclusive and notorious possession and occupation of the land in question since June 12, 1945 or prior thereto; the muniments of title, tax declarations and receipts of tax payments attached to or alleged in the application do not constitute competent and sufficient evidence of a *bona fide* acquisition of the lands applied for; Hanover is a private corporation disqualified under the Constitution to hold alienable lands of the public domain; the parcels of land applied for are portions of the public domain belonging to the Republic and are not subject to private appropriation.

The case was then called for trial and respondent proceeded with the presentation of its evidence. The Republic was represented in the proceedings by officers from the Office of the Solicitor General (OSG) and the Department of Environment and Natural Resources (DENR).

On August 7, 1997, the RTC rendered its Decision[3] approving Hanover's application for registration of the subject lot. It held that from the documentary and oral evidence presented by Hanover, the trial court was convinced that Hanover and its

[3] *Id.* at 125-131.

predecessors-in-interest had been in open, public, continuous, notorious and peaceful possession, in the concept of an owner, of the land applied for registration of title, and that it had registrable title thereto in accordance with Section 14 of P.D. 1529.

On appeal by the State, the judgment of the RTC was affirmed by the CA via the presently assailed Decision and Resolution.

Hence, the instant petition based on the following grounds:

I

THE DEFECTIVE AND/OR WANT OF NOTICE BY PUBLICATION OF THE INITIAL HEARING OF THE CASE *A QUO* DID NOT VEST THE TRIAL COURT WITH JURISDICTION TO TAKE COGNIZANCE THEREOF.

II

DEEDS OF SALE AND TAX DECLARATIONS/CLEARANCES DID NOT CONSTITUTE THE "WELL-NIGH INCONTROVERTIBLE" EVIDENCE NECESSARY TO ACQUIRE TITLE THROUGH ADVERSE OCCUPATION.[4]

Petitioner claims that the RTC failed to acquire jurisdiction over the case. It avers that the RTC set the initial hearing of the case on September 25, 1995 in an Order dated June 13, 1995. Petitioner contends, however, that, pursuant to Section 23 of P.D. 1529, the initial hearing of the case must be not earlier than forty-five (45) days and not later than ninety (90) days from the date of the Order setting the date and hour of the initial hearing. Since the RTC Order was issued on June 13, 1995, the initial hearing should have been set not earlier than July 28, 1995 (45 days from June 13, 1995) and not later than September 11, 1995 (90 days from June 13, 1995). Unfortunately, the initial hearing was scheduled and actually held on September 25, 1998, some fourteen (14) days later than the prescribed period.

Petitioner also argues that respondent failed to present incontrovertible evidence in the form of specific facts indicating

[4] *Id*. at 23.

the nature and duration of the occupation of its predecessor-in-interest to prove that the latter has been in possession of the subject lot under a *bona fide* claim of acquisition of ownership since June 12, 1945 or earlier.

The petition is meritorious.

As to the first assigned error, however, the Court is not persuaded by petitioner's contention that the RTC did not acquire jurisdiction over the case. It is true that in land registration cases, the applicant must strictly comply with the jurisdictional requirements. In the instant case, though, there is no dispute that respondent complied with the requirements of the law for the court to acquire jurisdiction over the case.

With respect to the setting of the initial hearing outside the 90-day period set forth under Section 23 of P.D. 1529, the Court agrees with the CA in ruling that the setting of the initial hearing is the duty of the land registration court and not the applicant. Citing *Republic v. Manna Properties, Inc.*,[5] this Court held in *Republic v. San Lorenzo Development Corporation*[6] that:

> The duty and the power to set the hearing date lie with the land registration court. After an applicant has filed his application, the law requires the issuance of a court order setting the initial hearing date. The notice of initial hearing is a court document. The notice of initial hearing is signed by the judge and copy of the notice is mailed by the clerk of court to the LRA [Land Registration Authority]. This involves a process to which the party-applicant absolutely has no participation. x x x
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> x x x x x x x x x
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> x x x a party to an action has no control over the Administrator or the Clerk of Court acting as a land court; he has no right to meddle unduly with the business of such official in the performance of his duties. A party cannot intervene in matters within the exclusive power of the trial court. No fault is attributable to such party if the trial court errs on matters within its sole power. It is unfair to punish

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[5] G.R. No. 146527, January 31, 2005, 450 SCRA 247.

[6] G.R. No. 170724, January 29, 2007, 513 SCRA 294, 300-301.

an applicant for an act or omission over which the applicant has neither responsibility nor control, especially if the applicant has complied with all the requirements of the law.

Moreover, it is evident in Manna Properties, Inc. that what is more important than the date on which the initial hearing is set is the giving of sufficient notice of the registration proceedings via publication. x x x

In the instant case, there is no dispute that sufficient notice of the registration proceedings via publication was duly made.

Moreover, petitioner concedes (a) that respondent should not be entirely faulted if the initial hearing that was conducted on September 25, 1995 was outside the 90-day period set forth under Section 23 of Presidential Decree No. 1529, and (b) that respondent substantially complied with the requirement relating to the registration of the subject land.

Hence, on the issue of jurisdiction, the Court finds that the RTC did not commit any error in giving due course to respondent's application for registration.

The foregoing notwithstanding, the Court agrees with petitioner on the more important issue that respondent failed to present sufficient evidence to prove that it or its predecessors-in-interest possessed and occupied the subject property for the period required by law.

Section 14 (1) of P.D. 1529, as amended, provides:

SEC. 14. *Who may apply*. — The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a bona fide claim of ownership **since June 12, 1945, or earlier**.[7]

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[7] Emphasis supplied.

Likewise, Section 48 (b) of Commonwealth Act 141, as amended by Section 4 of P.D. 1073, states:

> Section 48. The following described citizens of the Philippines, occupying lands of the public domain or claiming to own any such lands or an interest therein, but whose titles have not been perfected or completed, may apply to the Court of First Instance [now Regional Trial Court] of the province where the land is located for confirmation of their claims and the issuance of a certificate of title therefor, under the Land Registration Act, to wit:
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> x x x x x x x x x
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> (b) Those who by themselves or through their predecessors-in-interest have been in open, continuous, exclusive and notorious possession and occupation of agricultural lands of the public domain, under a *bona fide* claim of acquisition of ownership, **since June 12, 1945, or earlier**, immediately preceding the filing of the application for confirmation of title except when prevented by war or *force majeure*. These shall be conclusively presumed to have performed all the conditions essential to a Government grant and shall be entitled to a certificate of title under the provisions of this chapter.[8]

As the law now stands, a mere showing of possession and occupation for 30 years or more is not sufficient. Therefore, since the effectivity of P.D. 1073 on January 25, 1977, it must now be shown that possession and occupation of the piece of land by the applicant, by himself or through his predecessors-in-interest, started on June 12, 1945 or earlier. This provision is in total conformity with Section 14 (1) of P.D. 1529.[9]

Thus, pursuant to the aforequoted provisions of law, applicants for registration of title must prove: (1) that the subject land forms part of the disposable and alienable lands of the public domain, and (2) that they have been in open, continuous, exclusive and notorious possession and occupation of the same under a *bona fide* claim of ownership since June 12, 1945, or earlier.

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[8] Emphasis supplied.

[9] *Republic v. Tsai*, G.R. No. 168184, June 22, 2009, 590 SCRA 423, 433.

It is true, as respondent argues, that an examination of these requisites involve delving into questions of fact which are not proper in a petition for review on *certiorari*. Factual findings of the court *a quo* are generally binding on this Court, except for certain recognized exceptions,[10] to wit:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
(2) When the inference made is manifestly mistaken, absurd or impossible;
(3) Where there is a grave abuse of discretion;
(4) When the judgment is based on a misapprehension of facts;
(5) When the findings of fact are conflicting;
(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
(7) When the findings are contrary to those of the trial Court;
(8) When the findings of fact 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 petitioners' main and reply briefs are not disputed by the respondents; and
(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[11]

The Court finds that the instant case falls under the third and ninth exceptions.

A careful reading of the Decisions of the RTC and the CA will show that there is neither finding nor discussion by both the trial and appellate courts which would support their conclusion that respondent's predecessors-in-interest had open, continuous, exclusive and notorious possession and occupation of the disputed parcel of land since June 12, 1945 or earlier.

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[10] *Ong v. Republic*, G.R. No. 175746, March 12, 2008, 548 SCRA 160, 166.

[11] *Manila Electric Company v. Vda. de Santiago*, G.R. No. 170482, September 4, 2009, 598 SCRA 315, 321-322. (Emphasis supplied.)

No testimonial evidence was presented to prove that respondent or its predecessors-in-interest had been possessing and occupying the subject property since June 12, 1945 or earlier. Hanover's President and General Manager testified only with respect to his claim that he was the former owner of the subject property and that he acquired the same from the heirs of a certain Damiano Bontoyan; that he caused the payment of realty taxes due on the property; that a tax declaration was issued in favor of Hanover; that Hanover caused a survey of the subject lot, duly approved by the Bureau of Lands; and that his and Hanover's possession of the property started in 1990.[12]

The pieces of documentary evidence submitted by respondent neither show that its predecessor's possession and occupation of the subject land is for the period or duration required by law. The earliest date of the Tax Declarations presented in evidence by respondent is 1965, the others being 1973, 1980, 1992 and 1993. Respondent failed to present any credible explanation why the realty taxes due on the subject property were only paid starting in 1965. While tax declarations are not conclusive evidence of ownership, they constitute proof of claim of ownership.[13] In the present case, the payment of realty taxes starting 1965 gives rise to the presumption that respondent's predecessors-in-interest claimed ownership or possession of the subject lot only in that year.

Settled is the rule that the burden of proof in land registration cases rests on the applicant who must show by clear, positive and convincing evidence that his alleged possession and occupation of the land is of the nature and duration required by law.[14] Unfortunately, as petitioner contends, the pieces of evidence presented by respondent do not constitute the "well-nigh incontrovertible" proof necessary in cases of this nature.

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[12] See TSN, February 3, 1997, pp. 2-8.

[13] *Spouses Melchor and Saturnina Alde v. Ronald B. Bernal, et al.*, G.R. No. 169336, March 18, 2010.

[14] *Ong v. Republic*, *supra* note 10, at 168.

Lastly, the Court notes that respondent failed to prove that the subject lot had been declared alienable and disposable by the DENR Secretary.

The well-entrenched rule is that all lands not appearing to be clearly of private dominion presumably belong to the State.[15] The *onus* to overturn, by incontrovertible evidence, the presumption that the land subject of an application for registration is alienable and disposable rests with the applicant.[16]

In the present case, to prove the alienability and disposability of the subject property, Hanover submitted a Certification issued by the Community Environment and Natural Resources Offices (CENRO) attesting that "lot 4488, CAD-545-D, containing an area of ONE HUNDRED THREE THOUSAND THREE HUNDRED FIFTY (103,350) square meters, more or less, situated at Sacsac, Consolacion, Cebu" was found to be within "Alienable and Disposable Block-1, land classification project no. 28, per map 2545 of Consolacion, Cebu." However, this certification is not sufficient.

In *Republic v. T.A.N. Properties, Inc.*[17] this Court held that it is not enough for the Provincial Environment and Natural Resources Offices (PENRO) or CENRO to certify that a land is alienable and disposable, thus:

> x x x The applicant for land registration must prove that the DENR Secretary had approved the land classification and released the land of the public domain as alienable and disposable, and that the land subject of the application for registration falls within the approved area per verification through survey by the PENRO or CENRO. In addition, the applicant for land registration must present a copy of the original classification approved by the DENR Secretary and certified as a true copy by the legal custodian of the official records. These facts must be established to prove that the land is alienable and disposable x x x.[18]

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[15] *Republic v. T.A.N. Properties, Inc.*, G.R. No. 154953, June 26, 2008, 555 SCRA 477, 486.

[16] *Id.*

[17] *Id.*

[18] *Id.* at 489.

In the instant case, even the veracity of the facts stated in the CENRO Certification was not confirmed as only the President and General Manager of respondent corporation identified said Certification submitted by the latter. It is settled that a document or writing admitted as part of the testimony of a witness does not constitute proof of the facts stated therein.[19] In the present case, Hanover's President and General Manager, who identified the CENRO Certification, is a private individual. He was not the one who prepared the Certification. The government official who issued the Certification was not presented before the RTC so that he could have testified regarding its contents. Hence, the RTC should not have accepted the contents of the Certification as proof of the facts stated therein. The contents of the Certification are hearsay, because Hanover's President and General Manager was incompetent to testify on the truth of the contents of such Certification. Even if the subject Certification is presumed duly issued and admissible in evidence, it has no probative value in establishing that the land is alienable and disposable.[20]

Moreover, the CENRO is not the official repository or legal custodian of the issuances of the DENR Secretary declaring the alienability and disposability of public lands.[21] Thus, the CENRO Certification should have been accompanied by an official publication of the DENR Secretary's issuance declaring the land alienable and disposable.

Respondent, however, failed to comply with the foregoing requirements.

WHEREFORE, the petition is *GRANTED*. The May 6, 2005 Decision and March 30, 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 70077 and the August 7, 1997 Decision of the Regional Trial Court of Mandaue City, Branch 56 in Land Registration Case No. N-281 are *SET ASIDE*. Respondent Hanover Worldwide Trading Corporation's application for registration

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[19] *Id*. at 491.

[20] *Id*.

[21] *Id.* at 490.

of Lot No. 4488 of Consolacion Cad-545-D (New), under Vs-072219-000396, Barrio Sacsac, Consolacion, Cebu, is *DENIED*.

SO ORDERED.

Carpio (Chairperson), Bersamin,[*] *Abad,* and *Mendoza, JJ.,* concur.

EN BANC

[G.R. No. 191938. July 2, 2010]

ABRAHAM KAHLIL B. MITRA, *petitioner, vs.* **COMMISSION ON ELECTIONS, ANTONIO V. GONZALES, and ORLANDO R. BALBON, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; EXPLAINED. — As a concept, "grave abuse of discretion" defies exact definition; generally, it refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction"; the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. Mere abuse of discretion is not enough; it must be grave. We have held, too, that the use of *wrong or irrelevant considerations* in deciding an issue is sufficient to taint a decision-maker's action with grave abuse of discretion.

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[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Raffle dated June 9, 2010.

2. ID.; ID.; ID.; PETITION IS SUFFICIENT IN FORM WITH RESPECT TO THE REQUISITE ALLEGATION OF JURISDICTIONAL ERROR. — In light of our limited authority to review findings of fact, we do not *ordinarily* review in a *certiorari* case the COMELEC's appreciation and evaluation of evidence. Any misstep by the COMELEC in this regard generally involves an error of judgment, not of jurisdiction. In exceptional cases, however, when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable, the Court is not only obliged, but has the constitutional duty to intervene. When grave abuse of discretion is present, resulting errors arising from the grave abuse *mutate* from error of judgment to one of jurisdiction. Our reading of the petition shows that it is sufficient in form with respect to the requisite allegation of jurisdictional error. Mitra clearly *alleged* the COMELEC acts that were supposedly tainted with grave abuse of discretion. Thus, we do not agree with the respondents' contention that the petition on its face raises mere errors of judgment that are outside our *certiorari* jurisdiction. Whether the allegations of "grave abuse" are duly supported and substantiated is another matter and is the subject of the discussions below.

3. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; CERTIFICATE OF CANDIDACY; MATERIAL FACTS, DEFINED. — Section 74, in relation to **Section 78,** of the Omnibus Election Code (*OEC*) governs the cancellation of, and grant or denial of due course to, COCs. The combined application of these sections requires that the candidate's stated facts in the COC be true, under pain of the COC's denial or cancellation if any false representation of a material fact is made. x x x The false representation that these provisions mention must necessarily pertain to a material fact. The critical material facts are those that refer to a candidate's qualifications for elective office, such as his or her citizenship and residence. The candidate's status as a registered voter in the political unit where he or she is a candidate similarly falls under this classification as it is a requirement that, by law (the Local Government Code), must be reflected in the COC. The reason for this is obvious: the candidate, if he or she wins, will work for and represent the political unit where he or she ran as a candidate.

4. ID.; ID.; ID.; ID.; ID.; FALSE REPRESENTATION PERTAINING TO MATERIAL FACTS MUST BE MADE WITH THE INTENTION TO DECEIVE THE ELECTORATE AS TO THE CANDIDATE'S QUALIFICATIONS FOR PUBLIC OFFICE; DELIBERATE MATERIAL MISREPRESENTATION, NOT COMMITTED IN CASE AT BAR. — The false representation under Section 78 must likewise be a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible." Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office. Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws. **Based on these standards, we find that Mitra did not commit any deliberate material misrepresentation in his COC**. The COMELEC gravely abused its discretion in its appreciation of the evidence, leading it to conclude that Mitra is not a resident of Aborlan, Palawan. The COMELEC, too, failed to critically consider whether Mitra deliberately attempted to mislead, misinform or hide a fact that would otherwise render him ineligible for the position of Governor of Palawan. x x x We do not believe that he committed any deliberate misrepresentation given what he knew of his transfer, as shown by the moves he had made to carry it out. From the evidentiary perspective, we hold that the evidence confirming residence in Aborlan decidedly tilts in Mitra's favor; even assuming the worst for Mitra, the evidence in his favor cannot go below the level of an *equipoise, i.e.,* when weighed, Mitra's evidence of transfer and residence in Aborlan cannot be overcome by the respondents' evidence that he remained a Puerto Princesa City resident. Under the situation *prevailing when Mitra filed his COC*, we cannot conclude that Mitra committed any misrepresentation, much less a deliberate one, about his residence.

5. ID.; REPUBLIC ACT 7160 (LOCAL GOVERNMENT CODE); ELECTIVE OFFICIALS; QUALIFICATIONS; RESIDENCY REQUIREMENT; THE LAW RECOGNIZES IMPLICITLY THAT THERE CAN BE A CHANGE OF DOMICILE OR RESIDENCE, BUT IMPOSES ONLY THE CONDITION THAT RESIDENCE AT THE NEW PLACE SHOULD AT LEAST BE FOR A YEAR. — From the start, Mitra never hid his intention to transfer his residence from Puerto Princesa City to Aborlan *to comply with the residence requirement of a candidate for an elective provincial office*. Republic Act No. 7160, otherwise known as the Local Government Code, does not abhor this intended transfer of residence, as its Section 39 merely requires an elective local official to be a resident of the local government unit where he intends to run **for at least one (1) year immediately preceding the day of the election**. In other words, the law itself recognizes implicitly that there can be a change of domicile or residence, but imposes only the condition that residence at the new place should at least be for a year. Of course, as a continuing requirement or qualification, the elected official must remain a resident there for the rest of his term.

6. ID.; ID.; ID.; ID.; ID.; ID.; ACQUISITION OF DOMICILE OF CHOICE, REQUISITES. — To acquire a domicile of choice, jurisprudence, which the COMELEC correctly invoked, requires the following: (1) residence or bodily presence in a new locality; (2) an intention to remain there; and (3) an intention to abandon the old domicile.

7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; IN CASE AT BAR, THE COMELEC'S APPLICATION OF SUBJECTIVE NON-LEGAL STANDARDS AND THE GROSS MISAPPRECIATION OF THE EVIDENCE IS TAINTED WITH GRAVE ABUSE OF DISCRETION; EXPLAINED. — In considering the residency issue, the COMELEC practically focused solely on its consideration of Mitra's residence at Maligaya Feedmill, on the basis of mere photographs of the premises. In the COMELEC's view (expressly voiced out by the Division and fully concurred in by the *En Banc*), the Maligaya Feedmill building could not have been Mitra's residence because it *is cold and utterly devoid of any indication of Mitra's personality* and *that it lacks loving attention and*

details inherent in every home to make it one's residence. This was the main reason that the COMELEC relied upon for its conclusion. Such assessment, in our view, based on the interior design and furnishings of a dwelling as shown by and examined only through photographs, is far from reasonable; the COMELEC thereby determined the fitness of a dwelling as a person's residence *based solely on very personal and subjective assessment standards* when the law is replete with standards that can be used. Where a dwelling qualifies as a residence – *i.e.,* the dwelling where a person permanently intends to return to and to remain — his or her capacity or inclination to decorate the place, or the lack of it, is immaterial. Examined further, the COMELEC's reasoning is not only intensely subjective but also flimsy, to the point of grave abuse of discretion when compared with the surrounding indicators showing that Mitra has indeed been physically present in Aborlan for the required period with every intent to settle there. Specifically, it was lost on the COMELEC majority (but not on the Dissent) that Mitra made definite, although incremental transfer moves, as shown by the undisputed business interests he has established in Aborlan in 2008; by the lease of a dwelling where he established his base; by the purchase of a lot for his permanent home; by his transfer of registration as a voter in March 2009; and by the construction of a house all viewed against the backdrop of a bachelor Representative who spent most of his working hours in Manila, who had a whole congressional district to take care of, and who was establishing at the same time his significant presence in the whole Province of Palawan. From these perspectives, we cannot but conclude that the COMELEC's approach — *i.e.*, the application of subjective non-legal standards and the gross misappreciation of the evidence — is tainted with grave abuse of discretion, as the COMELEC used wrong considerations and grossly misread the evidence in arriving at its conclusion. In using subjective standards, the COMELEC committed an act not otherwise within the contemplation of law on an evidentiary point that served as a major basis for its conclusion in the case.

8. **POLITICAL LAW; REPUBLIC ACT NO. 7160 (LOCAL GOVERNMENT CODE); ELECTIVE OFFICIALS; QUALIFICATIONS; RESIDENCY REQUIREMENT; PURPOSE, SATISFIED IN CASE AT BAR. —** Citing jurisprudence, we began this *ponencia* with a discussion of

the purpose of the residency requirement under the law. By law, this residency can be anywhere within the Province of Palawan, except for Puerto Princesa City because of its reclassification as a highly urbanized city. Thus, residency in Aborlan is completely consistent with the purpose of the law, as Mitra thereby declared and proved his required physical presence in the Province of Palawan. We also consider that even before his transfer of residence, he already had intimate knowledge of the Province of Palawan, particularly of the whole 2nd legislative district that he represented for three terms. For that matter, even the respondents themselves impliedly acknowledged that the Mitras, as a family, have been identified with elective public service and politics in the Province of Palawan. This means to us that Mitra grew up in the politics of Palawan. We can reasonably conclude from all these that Mitra is not oblivious to the needs, difficulties, aspirations, potential for growth and development, and all matters vital to the common welfare of the constituency he intends to serve. Mitra who is no stranger to Palawan has merely been compelled – after serving three terms as representative of the congressional district that includes Puerto Princesa City and Aborlan — by legal developments to transfer his residence to Aborlan to qualify as a Province of Palawan voter. To put it differently, were it not for the reclassification of Puerto Princesa City from a component city to a highly urbanized city, Mitra would not have encountered any legal obstacle to his intended gubernatorial bid based on his knowledge of and sensitivity to the needs of the Palawan electorate.

9. ID.; ELECTION LAWS; OMNIBUS ELECTION CODE (B.P. BLG. 881); CERTIFICATE OF CANDIDACY; MANDATORY REQUIREMENTS OF CERTIFICATE OF CANDIDACY ARE CONSIDERED MERELY DIRECTORY AFTER THE PEOPLE SHALL HAVE SPOKEN; NOT APPLICABLE WHERE A MATERIAL CERTIFICATE OF CANDIDACY MISREPRESENTATION UNDER OATH IS MADE; CASE AT BAR. — We have applied in past cases the principle that the manifest will of the people as expressed through the ballot must be given fullest effect; in case of doubt, political laws must be interpreted to give life and spirit to the popular mandate. Thus, we have held that *while provisions relating to certificates of candidacy are in mandatory terms, it is an established rule of interpretation as regards election*

laws, that mandatory provisions, requiring certain steps before elections, will be construed as directory after the elections, to give effect to the will of the people. Quite recently, however, we warned against a blanket and unqualified reading and application of this ruling, as it may carry dangerous significance to the rule of law and the integrity of our elections. For one, such blanket/unqualified reading may provide a way around the law that effectively negates election requirements aimed at providing the electorate with the basic information for an informed choice about a candidate's eligibility and fitness for office. Short of adopting a clear cut standard, we thus made the following clarification: We distinguish our ruling in this case from others that we have made in the past by the clarification that COC defects *beyond matters of form* and that involve *material misrepresentations* cannot avail of the benefit of our ruling that COC mandatory requirements before elections are considered merely directory after the people shall have spoken. A mandatory and material election law requirement involves more than the will of the people in any given locality. Where a *material COC misrepresentation under oath* is made, thereby violating both our election and criminal laws, we are faced as well with an assault on the will of the people of the Philippines as expressed in our laws. In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate will. Earlier, *Frivaldo v. COMELEC* provided the following test: [T]his Court has repeatedly stressed the importance of giving effect to the sovereign will in order to ensure the survival of our democracy. In any action involving the possibility of a reversal of the popular electoral choice, this Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority. **To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.**

With the conclusion that Mitra did not commit any material misrepresentation in his COC, we see no reason in this case to appeal to the primacy of the electorate's will. We cannot deny, however, that the people of Palawan have spoken in an election where residency qualification had been squarely raised and their voice has erased any doubt about their verdict on Mitra's qualifications.

VELASCO, JR., *J.*, *dissenting opinion*:

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; 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*. —** Contrary to the opinion of the *ponent*e, it is without a doubt that the petition is wanting in form and substance to merit this Court's exercise of its *certiorari* jurisdiction. The instant petition miserably failed to show any error of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC to merit this Court's review of the COMELEC's factual findings. It is a time tested rule that in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings and decisions rendered by the COMELEC on matters falling within its competence shall not be interfered with by this Court. Furthermore, We do not ordinarily review the COMELEC's appreciation and evaluation of evidence since any error on this regard generally involves an error of judgment, not an error of jurisdiction. 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*.

2. **ID.; ID.; REVIEW OF JUDGMENTS AND FINAL ORDERS OR RESOLUTIONS OF THE COMMISSION ON ELECTIONS; FINDINGS OF FACT OF THE COMMISSION SUPPORTED BY SUBSTANTIAL EVIDENCE SHALL BE FINAL AND NON-REVIEWABLE; CASE AT BAR. —** [I]t should be pointed out that the COMELEC based its ruling

and conclusions on substantial evidence. Mitra failed to demonstrate which finding of the COMELEC is or are not supported by evidence. Thus, Section 5 of Rule 64 should apply, thereby, preventing Us from further reviewing the factual findings of the COMELEC. Sec. 5 of Rule 64 states: Sec. 5. *Form and contents of petition*. — x x x The petition shall state the facts with certainty, present clearly the issues involved, set forth the grounds and brief arguments relied upon for review, and pray for judgment annulling or modifying the questioned judgment, final order or resolution. **Findings of fact of the Commission supported by substantial evidence shall be final and non-reviewable**. x x x With this, the *ponencia* is clearly in error when it substituted the factual findings of the COMELEC based on substantial evidence with its own findings of facts which are based on controverted or unsubstantiated evidence. Thus, inasmuch as Mitra failed to adduce evidence to demonstrate grave abuse of discretion and since the factual findings of the COMELEC are based on substantial evidence, this Court should not re-evaluate and calibrate the factual findings of the COMELEC.

3. **POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE (B.P. BLG. 881); COMMISSION ON ELECTIONS; GRANTED JURISDICTION OVER PETITION TO DENY DUE COURSE TO OR CANCEL A CERTIFICATE OF CANDIDACY. —** The COMELEC is the constitutional body entrusted with the exclusive jurisdiction over all contests relating to the qualifications of all regional, provincial, and city officials. The basis for a petition to deny due course to or cancel a certificate of candidacy is found in Section 78 of the Omnibus Election Code (OEC), while that for a petition for *quo warranto* is found in Section 253 of the OEC. These are two different causes of action which may both result in the disqualification of a candidate. It is settled that the COMELEC has jurisdiction over a petition filed under Section 78 of the OEC. If a candidate states a material representation in his COC that is false, as in this case, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate of candidacy. xxx It is thus clear that the COMELEC has jurisdiction over the petition and properly exercised it when it denied due course to and cancelled Mitra's certificate of candidacy.

4. REMEDIAL LAW; EVIDENCE; FACTUAL DETERMINATION THROUGH SUMMARY PROCEEDINGS CANNOT BE DISTURBED, ABSENT EVIDENCE OF GROSS VIOLATION OF DUE PROCESS OR GRAVE ABUSE OF DISCRETION. — A formal trial-type hearing is not always essential to due process. Absent evidence of gross violation of due process or grave abuse of discretion, factual determination through summary proceedings cannot be disturbed. As properly pointed out by the Solicitor General, Mitra cannot insist on a full blown trial on the merits, *to wit*: Moreover, petitioner cannot insist on a full-blown trial on the merits. The proceedings in a petition to deny due course to or cancel a Certificate of Candidacy is summary. The parties are only required to submit their position papers together with affidavits, counter-affidavits, and other documentary evidence *in lieu* of oral testimony. When there is a need for clarification of certain matters, at the discretion of the Commission *En Banc* or Division, the parties may be allowed to cross-examine the affiants. In the present case, petitioner was given the opportunity to submit a Memorandum, as he in fact did. He cannot be heard now to complain on the sufficiency of the proceedings before the public respondent. Moreover, the rulings of the COMELEC are not based on sheer speculation as Mitra and the *ponencia* would have it. It is clear from the assailed Resolutions that the COMELEC based its decisions on several facts which, taken together, prove that Mitra's claimed residence in the mezzanine of a feeds factory is unbelievable and is a mere afterthought.

5. ID.; ID.; QUANTUM OF EVIDENCE IN A QUASI-JUDICIAL OR ADMINISTRATIVE PROCEEDING; SATISFIED IN CASE AT BAR. — Unlike in criminal cases where the quantum of evidence necessary to convict an accused is "proof beyond reasonable doubt," the quantum of evidence necessary to prove a candidate's disqualification in a quasi-judicial or administrative proceeding needs only such relevant evidence as a reasonable mind will accept to support a conclusion." Moreover, as the private respondents have successfully established — and Mitra has admitted, that Puerto Princessa City is Mitra's domicile of origin, the burden was then shifted to Mitra to prove that he had indeed actually and physically transferred to Aborlan, Palawan. Unfortunately for Mitra, he did not overcome his burden. It is also clear that the private

respondents have mustered enough evidence to satisfy the quantum of evidence in this case.

6. **POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE (B.P. BLG. NO. 881); PETITION TO DENY DUE COURSE TO OR CANCEL A CERTIFICATE OF CANDIDACY; DELIBERATE ATTEMPT TO MISLEAD, MISINFORM, AND HIDE THE TRUE STATE OF ONE'S RESIDENCE WHICH WOULD OTHERWISE RENDER HIM INELIGIBLE MUST BE PROVEN; APPLICATION IN CASE AT BAR. —** To deny due course to or cancel a candidate's certificate of candidacy under Section 78 of the OEC, it must be proven that there was deliberate attempt to mislead, misinform, and hide the true state of his residence, which would otherwise render him ineligible. In light of the discussion above, it is clear that Mitra deliberately indicated Sitio Maligaya, Barangay Isaub, Aborlan, Palawan, when in truth and in fact, he is still a resident of Puerto Princesa City. Thus, it is irrelevant, contrary to the *ponente*'s view, whether the candidate surreptitiously or openly transferred his residence. What is important is whether the candidate knowingly indicated a residence — which he is not a resident of, just to make him eligible for an elective position. Clearly, Mitra indicated Sitio Maligaya, Isaub, Aborlan, Palawan, as his residence in his COC, though he is not a resident thereof, just to make him eligible to be a candidate for Governor of the Province of Palawan, thereby violating the law and meriting his disqualification from being a candidate.

APPEARANCES OF COUNSEL

Brillantes Navarro Jumamil Arcilla Escolin Martinez & Vivero Law Offices for petitioner.
The Solicitor General for public respondent.
Victorio Castillo Atanante Law Offices for private respondents.

DECISION

BRION, *J.*:

The minimum requirement under our Constitution[1] and election laws[2] for the candidates' residency in the political unit they seek to represent has never been intended to be an empty formalistic condition; it carries with it a very specific purpose: to prevent "stranger[s] or newcomer[s] unacquainted with the conditions and needs of a community" from seeking elective offices in that community.[3]

The requirement is rooted in the recognition that officials of districts or localities should not only be acquainted with the metes and bounds of their constituencies; more importantly, they should know their constituencies and the unique circumstances of their constituents — their needs, difficulties, aspirations, potentials for growth and development, and all matters vital to their common welfare. Familiarity, or the opportunity to be familiar, with these circumstances can only come with residency in the constituency to be represented.

The purpose of the residency requirement is "best met by individuals who have either had actual residence in the area for

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[1] Section 3, Article X of the 1987 Constitution pertinently provides:

Section 3. The Congress shall enact a local government code which shall provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units.

[2] Section 39 of the Local Government Code of 1991 states:

SEC. 39. *Qualifications*. — (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city, or province x x x where he intends to be elected; **a resident therein for at least one (1) year immediately preceding the day of the election**; and able to read and write Filipino or any other local language or dialect.

[3] *Torayno, Sr. v. COMELEC*, G.R. No. 137329, August 9, 2000, 337 SCRA 574, 584, citing *Romualdez-Marcos v. COMELEC*, 248 SCRA 300, 313 (1995), per Kapunan, *J.*; citing *Gallego v. Vera,* 73 Phil. 453, 459 (1941).

a given period or who have been domiciled in the same area either by origin or by choice."[4] At the same time, the constituents themselves can best know and evaluate the candidates' qualifications and fitness for office if these candidates have lived among them.[5]

Read and understood in this manner, residency can readily be appreciated as a requirement that goes into the heart of our democratic system; it directly supports the purpose of representation — electing those who can best serve the community because of their knowledge and sensitivity to its needs. It likewise adds meaning and substance to the voters' freedom of choice in the electoral exercise that characterizes every democracy.

In the present case, the respondent Commission on Elections (*COMELEC*) canceled the certificate of candidacy (*COC*) of petitioner Abraham Kahlil B. Mitra for allegedly misrepresenting that he is a resident of the Municipality of Aborlan, Province of Palawan where he ran for the position of Governor. Mitra came to this Court to seek the reversal of the cancellation.[6]

The Antecedents

When his COC for the position of Governor of Palawan was declared cancelled, Mitra was the incumbent Representative of the Second District of Palawan. This district then included, among other territories, the Municipality of Aborlan and Puerto Princesa City. He was elected Representative as a domiciliary of Puerto Princesa City, and represented the legislative district for three (3) terms immediately before the elections of 2010.[7]

On March 26, 2007 (or before the end of Mitra's second term as Representative), Puerto Princesa City was reclassified as a "highly urbanized city" and thus ceased to be a component city of the Province of Palawan. The direct legal consequence

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[4] *Ibid.*

[5] *Id.* at 587.

[6] *Rollo*, pp. 3-259.

[7] *Id.* at 61.

of this new status was the ineligibility of Puerto Princesa City residents from voting for candidates for elective provincial officials.[8]

On March 20, 2009, with the intention of running for the position of Governor, Mitra applied for the transfer of his Voter's Registration Record from Precinct No. 03720 of *Brgy*. Sta. Monica, Puerto Princesa City, to *Sitio* Maligaya, *Brgy*. Isaub, Municipality of Aborlan, Province of Palawan. He subsequently filed his COC for the position of Governor of Palawan as a resident of Aborlan.[9]

Soon thereafter, respondents *Antonio V. Gonzales and Orlando R. Balbon, Jr.* (*the respondents*) filed a **petition to deny due course or to cancel Mitra's COC**.[10] They essentially argued that Mitra remains a resident of Puerto Princesa City who has not yet established residence in Aborlan, and is therefore not qualified to run for Governor of Palawan. Mitra insisted in his Answer that he has successfully abandoned Puerto Princesa City as his domicile of origin, and has established a new domicile in Aborlan since 2008.[11]

The Parties' Claims and Evidence

The respondents' petition before the COMELEC claimed that Mitra's COC should be cancelled under the following factual premises: (a) Mitra bought, in June 2009, a parcel of land in Aborlan where he began to construct a house, but up to the time of the filing of the petition to deny due course or to cancel Mitra's COC, the house had yet to be completed; (b) in the document of sale, Puerto Princesa City was stated as Mitra's residence (attached as Annex "J" of the Respondents' Petition before the COMELEC);[12] (c) Mitra's Puerto Princesa City

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[8] *Ibid.*

[9] *Ibid.*

[10] *Id.* at 88-138.

[11] *Id.* at 139-215.

[12] *Id.* at 32-133.

residence was similarly stated in his application for a building permit (attached as Annex "K" of the Respondents' Petition before the COMELEC);[13] and (d) Mitra's community tax certificate states that his residence was Puerto Princesa City (attached as Annex "M" of the Respondents' Petition before the COMELEC).[14] The respondents presented several affidavits attesting to the non-completion of the construction of the house,[15] and asserted that without a fully constructed house, Mitra could not claim residence in Aborlan.

Mitra denied the respondents' allegations in his Answer. He claimed that the respondents misled the COMELEC by presenting photographs of his unfinished house on the land he purchased from a certain Rexter Temple. He claimed, on the contrary, that his residence is located inside the premises of the Maligaya Feedmill and Farm (*Maligaya Feedmill*) which the owner, Carme Caspe, leased to him; and that he purchased a farm and presently has an experimental pineapple plantation and a cock farm. The transfer of his residence, he claimed, began in 2008.[16]

He submitted the following: (a) the *Sinumpaang Salaysay* of Ricardo Temple; Florame T. Gabrillo, the *Punong Barangay* of Isaub, Aborlan; Marissa U. Zumarraga, Councilor of Aborlan; Virginia J. Agpao and Elsa M. Dalisay, both *Sangguniang Barangay* members of Isaub, Aborlan, attesting that Mitra resides in their locality;[17] (b) photographs of the residential portion of the Maligaya Feedmill[18] where he claims to reside, and of his Aborlan experimental pineapple plantation, farm, farmhouse and cock farm;[19] (c) the lease contract over the Maligaya Feedmill;[20]

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[13] *Id.* at 135.

[14] *Id.* at 137.

[15] *Id.* at 116-121.

[16] *Supra* note 11.

[17] *Rollo*, pp. 172-193.

[18] *Id.* at 200-205.

[19] *Id.* at 206-212.

[20] *Id.* at 169-171.

(d) the community tax certificate he claims he himself secured, stating that Aborlan is his residence;[21] and (e) an updated identification card issued by the House of Representatives stating that Aborlan is his residence.[22]

To refute Mitra's claimed residence in Aborlan – specifically, that he resides at the Maligaya Feedmill property – the respondents additionally submitted: (a) the affidavits of the 14 *Punong Barangays* of Aborlan and of six residents of Aborlan, all stating that Mitra is not a resident of Aborlan and has never been seen in that municipality; (b) a Certification from the *Barangay* Captain of Sta. Monica, Puerto Princesa City stating that Mitra was a resident of that *barangay* as of November 16, 2009; (c) the affidavit of Commodore Nicanor Hernandez attesting that Mitra continues to reside in Puerto Princesa City; and (d) 24 affidavits of former employees, workers, Aborlan residents and a customer of the Maligaya Feedmill attesting that they have never seen Mitra during the time he claimed to have lived there and that the area where Mitra supposedly lives is, in fact, the office of the feedmill and is unlivable due to noise and pollution.[23]

The Ruling of the COMELEC's First Division[24]

The Law. The First Division defined the governing law with the statement that residence means domicile under the Court's consistent rulings since 1928 in *Nuval v. Guray.*[25] Domicile imports not only the intent to reside in a fixed place but also personal presence in that place, coupled with conduct indicative of this intention.[26]

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[21] *Id.* at 198.

[22] *Id.* at 215.

[23] See Attachments in the Respondents' Memorandum filed before the COMELEC; and the Decision of the First Division of the COMELEC, *id.* at 58-68.

[24] *Ibid.*

[25] 52 Phil. 645, 651 (1928).

[26] *Rollo*, p. 62.

To acquire a new domicile — a domicile by choice — the following must concur: (1) residence or bodily presence in a new locality; (2) an intention to remain there; and (3) an intention to abandon the old domicile. In other words, there must be an *animus non revertendi* with respect to the old domicile, and an *animus manendi* at the domicile of choice. The intent to remain in or at the domicile of choice must be for an indefinite period of time and the acts of the person must be consistent with this intent.[27]

The First Division's Evaluation of the Parties' Evidence. Based on its consideration of the submitted evidence (including various affidavits submitted by both parties and the photographs of the room that Mitra claims to be his residence) and citing jurisprudence, the First Division granted the respondents' petition to cancel Mitra's COC.

To the First Division, Mitra's submitted pictures are telling; they show a small, sparsely furnished room that is evidently unlived in, located at the second floor of a structure that appears to be a factory or a warehouse; the residence appears hastily set-up, cold, and utterly devoid of any indication of Mitra's personality such as old family photographs and memorabilia collected through the years. What the supposed residence lacks, in the First Division's perception, are the loving attention and details inherent in every home to make it one's residence; perhaps, at most, this small room could have served as Mitra's resting area whenever he visited the locality, but nothing more than this.[28]

These observations — coupled with the statements from former employees and customers of the Maligaya Feedmill that the claimed residence is located in an unsavory location (for its noise and pollution), and that it had been in fact Maligaya Feedmill's office just a few months back — militated against Mitra's claim. These pieces of information made it clear, to the First Division, that this room is not the home that a residence is supposed to be.[29]

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[27] *Id.* at 62-63.

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

[29] *Ibid.*

A person's domicile of origin is not easily lost, the First Division further said. The fact that Mitra registered as a voter in Aborlan, has a cock farm, a farm, a rest house and an experimental pineapple plantation in Maligaya Feedmill, was occasionally seen staying in Aborlan, and held meetings with Aborlan constituents does not necessarily establish Mitra's status as an Aborlan resident, or prove his abandonment of his domicile of origin in Puerto Princesa City. Mere absence from one's residence or domicile of origin to pursue studies, engage in business, or practice one's vocation is not sufficient to constitute abandonment or loss of domicile. Registration or voting in a place other than one's domicile does not eliminate an individual's *animus revertendi* to his domicile of origin; the natural desire and longing of every person to return to the place of birth and his strong feeling of attachment to this place can only be shown to have been overcome by a positive proof of abandonment of this place for another.[30]

Also, the First Division said that Mitra's witnesses' sworn statements appear to have been prepared by the same person, as they use similar wordings, allegations, and contents; thus, putting into question the credibility of the statements. Furthermore, the lease contract over the Maligaya Feedmill between Mitra and Carme Caspe is effective only up to February 28, 2010, thus casting doubt on Mitra's claim of residency in Aborlan.[31]

The COMELEC *En Banc* Ruling

The COMELEC *en banc* — in a divided decision[32] — subsequently denied Mitra's motion to reconsider the First Division ruling under the following outlined reasons.

First, registration as a voter of Aborlan is not sufficient evidence that Mitra has successfully abandoned his domicile of origin.[33]

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[30] *Ibid.*

[31] *Id.* at 67.

[32] Dated May 4, 2010. Chairman Jose A.R. Melo, no part; Commissioners Nicodemo T. Ferrer, Armando C. Velasco, Elias R. Yusoph and Gregorio Y. Larrazabal, concurring; Commissioners Rene V. Sarmiento and Lucenito N. Tagle, dissenting. *Id.* at 70-82.

[33] *Id.* at 74-76.

Second, mere intent cannot supplant the express requirement of the law; the "physical presence" required to establish domicile connotes actual, factual and *bona fide* residence in a given locality. The COMELEC *en banc* agreed with the First Division's evidentiary findings on this point.[34]

Third, the First Division's Resolution was based on a careful and judicious examination and consideration of all evidence submitted by the parties. The summary nature of the proceedings is not necessarily offensive to a party's right to due process.[35]

Fourth, ***Fernandez v. House of Representatives Electoral Tribunal***[36] is not on all fours with the present case — *Fernandez* stemmed from a *quo warranto* case while the present case involves a petition to deny due course or cancel the COC. Likewise, Fernandez successfully proved that his transfer to Sta. Rosa City, Laguna several years prior to his candidacy was prompted by valid reasons, *i.e.*, existence of his business in the area and the enrolment of his children at Sta. Rosa schools, thereby erasing doubts as to the *bona fide* nature of his transfer. In the present case, the COMELEC *en banc* found that Mitra admitted that his transfer to Aborlan in 2008 was prompted by his plans to run for governor in the 2010 national and local elections. The COMELEC *en banc* also noted that *Fernandez* involved an individual who had earned an overwhelming mandate from the electorate. The COMELEC *en banc*'s ruling on Mitra's case, on the other hand, came before the 2010 elections; thus, the people had not then voted.[37]

In his ***Dissent***,[38] Commissioner Sarmiento points out that the following acts of Mitra, taken collectively, indubitably prove a change of domicile from Puerto Princesa to Aborlan:

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[34] *Id.* at 76-77.

[35] *Id.* at 77-79.

[36] G.R. No. 187478, December 21, 2009.

[37] *Rollo*, pp. 79-81.

[38] *Id.* at 83-85; supported by Commissioner Lucenito N. Tagle.

(a) in January 2008, [Mitra] started a pineapple growing project in a rented farmland near Maligaya Feedmill and Farm located in Barangay Isaub, Aborlan;

(b) in February 2008, [Mitra] leased the residential portion of the said Maligaya Feedmill;

(c) in March 2008, after the said residential portion has been refurbished and renovated, [Mitra] started to occupy and reside in the said premises;

(d) in 2009, [Mitra] purchased his own farmland in the same *barangay* but continued the lease involving the Maligaya Feedmill, the contract of which was even renewed until February 2010; and

(e) [Mitra] caused the construction of a house in the purchased lot which has been recently completed.[39]

The Petition

Mitra supports his petition with the following ARGUMENTS:

6.1 x x x COMELEC's GRAVE ABUSE is most patent as IT forgets, wittingly or unwittingly that the solitary GROUND to deny due course to a COC is the ***DELIBERATE*** false material representation to ***DECEIVE***, and not the issue of the candidate's eligibility which should be resolved in an appropriate *QUO WARRANTO* proceedings post election.[40]

6.2 Deny Due Course Petitions under Section 78 of the OEC, being SUMMARILY decided and resolved, the same must be exercised most sparingly, with utmost care and extreme caution; and construed most strictly against the proponent/s, and liberally in favor of the candidate sought to be eliminated. When exercised otherwise and with apparent biased in favor of the proponents, as in this instance, GRAVE ABUSE OF DISCRETION necessarily sets in.[41]

6.3 The mandate to be extremely cautious and careful in the SUMMARY exercise of the awesome power to simplistically cancel

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[39] *Id.* at 84.

[40] *Id.* at 17.

[41] *Id.* at 21.

[one's] candidacy x x x is further made manifest by the availability of a *QUO WARRANTO* proceeding appropriately prosecuted post election.[42]

6.4 Absent any formal HEARINGS and Presentation of Evidence; Lacking the actual inspection and verification; and without actual confrontation of affiants/alleged witnesses — ALL the "conclusions" of COMELEC on the RESIDENCE issue, were indeed predicted (sic) on sheer SPECULATION[.][43]

6.5 A grievous procedural flaw, FATAL in character. THE BURDEN OF PROOF MUST ALWAYS BE PLACED ON THE SHOULDERS OF THE PROPONENT/s. Not so in the present controversy, where COMELEC's assailed decision/s were devoted exclusively to the alleged weakness of MITRA's submissions and COMELEC's speculative conclusions, rather than on the strength of proponents' unverified and unconfirmed submissions and unconfronted sworn statements of supposed affiants[.][44]

The petition also asks for ancillary injunctive relief. We granted the application for injunctive relief by issuing a *status quo ante* order, allowing Mitra to be voted upon in the May 10, 2010 elections.[45]

The respondents' Comment[46] states the following counter-arguments:

a. Procedural Arguments:

II. THE INSTANT PETITION FAILED TO ATTACH CERTIFIED TRUE COPIES OF THE MATERIAL PORTIONS OF THE RECORDS REFERRED TO THEREIN IN GROSS CONTRAVENTION OF SECTION 5 OF RULE 64 OF THE RULES OF COURT. CONSEQUENTLY, IT MUST BE DISMISSED OUTRIGHT.

III. THE INSTANT PETITION RAISES MERE ERRORS OF JUDGMENT, WHICH ARE OUTSIDE THIS HONORABLE COURT'S *CERTIORARI* JURISDICTION.

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[42] *Id.* at 25.

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

[44] *Id.* at 42-43.

[45] Resolution dated May 7, 2010; *id.* at 971-973.

[46] *Id.* at 268-360.

b. Arguments on the Merits

I. X X X

B. THE LAW, IN IMPOSING A RESIDENCY REQUIREMENT, MANDATES NOT ONLY FAMILIARITY WITH THE NEEDS AND CONDITIONS OF THE LOCALITY, BUT ALSO ACTUAL PHYSICAL, PERSONAL AND PERMANENT RESIDENCE THEREIN. PETITIONER'S SUPPOSED FAMILIARITY WITH THE "NEEDS, DIFFICULTIES, ASPIRATIONS, POTENTIALS (*SIC*) FOR GROWTH AND ALL MATTERS VITAL TO THE WELFARE OF HIS CONSTITUENCY WHICH CONSTITUTES ONE/THIRD OF THE WHOLE PROVINCE OF PALAWAN" AS A THREE-TERM CONGRESSMAN <u>ABSENT SUCH RESIDENCE</u> DOES NOT SUFFICE TO MEET THE RESIDENCY REQUIREMENT OF THE LAW.

IV. FINDINGS OF FACTS OF ADMINISTRATIVE BODIES SUCH AS THE COMELEC, ARE ACCORDED GREAT RESPECT, IF NOT FINALITY BY THE COURTS, ESPECIALLY IF SUPPORTED BY SUBSTANTIAL EVIDENCE. BECAUSE THE FINDINGS OF FACTS OF THE COMELEC IN THE INSTANT CASE ARE OVERWHELMINGLY SUPPORTED BY SUBSTANTIAL EVIDENCE, THIS HONORABLE COURT MAY NOT REVERSE SUCH FINDINGS.

V. THE COMELEC DID NOT COMMIT ANY GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN ISSUING THE ASSAILED RESOLUTION DATED 04 MAY 2010.

A. THE COMELEC CORRECTLY RULED THAT PETITIONER'S REGISTRATION AS A VOTER IN ABORLAN, PALAWAN IS NOT SUFFICIENT EVIDENCE THAT HE HAS SUCCESSFULLY ABANDONED HIS DOMICILE OF ORIGIN AT PUERTO PRINCESA CITY, PALAWAN.

B. THE COMELEC CORRECTLY RULED THAT PETITIONER'S MERE INTENT TO TRANSFER RESIDENCE TO ABORLAN, PALAWAN, ABSENT ACTUAL, FACTUAL,

AND *BONA FIDE* RESIDENCE THEREIN DOES NOT SUFFICE TO PROVE HIS TRANSFER OF RESIDENCE FROM PUERTO PRINCESA, PALAWAN TO ABORLAN, PALAWAN.

C. THE COMELEC THOROUGHLY EVALUATED THE EVIDENCE, AND CORRECTLY ARRIVED AT THE ASSAILED DECISION ONLY AFTER MUCH DELIBERATION AND CAREFUL ASSESSMENT OF THE EVIDENCE, ALBEIT THROUGH SUMMARY PROCEEDINGS PARTICIPATED IN ACTIVELY BY PETITIONER. THE COMELEC CORRECTLY DID NOT GIVE CREDENCE TO THE TESTIMONIES OF PETITIONER'S WITNESSES FOR BEING INCREDIBLE AND CONTRARY TO THE PHYSICAL EVIDENCE, ESPECIALLY PERTAINING TO HIS ALLEGED RESIDENCE AT THE FEEDMILL PROPERTY.

D. THE COMELEC CORRECTLY RULED THAT PETITIONER HAS NOT TRANSFERRED HIS RESIDENCE FROM PUERTO PRINCESA, PALAWAN TO ABORLAN, PALAWAN.

E. THE ALLEGED LEASE OF THE RESIDENTIAL PORTION OF THE FEEDMILL PROPERTY IS A SHAM.

VI. GIVEN HIS STATURE AS A MEMBER OF THE PROMINENT MITRA CLAN OF PALAWAN, AND AS A 3-TERM CONGRESSMAN, IT IS HIGHLY INCREDIBLE THAT A SMALL ROOM IN A FEEDMILL HAS SERVED AS HIS RESIDENCE SINCE 2008.

VII. THE COMELEC CORRECTLY RULED THAT PETITIONER MAY NOT INVOKE THE CASE OF FERNANDEZ *V*. HRET AS PETITIONER IS NOT SIMILARLY SITUATED AS DAN FERNANDEZ.

VIII. THE MATERIAL STATEMENT IN PETITIONER'S COC RESPECTING HIS RESIDENCE HAS BEEN SHOWN TO BE FALSE. BY MAKING SUCH FALSE STATEMENT, PETITIONER DELIBERATELY TRIED TO MISLEAD AND TO MISINFORM THE ELECTORATE AS TO HIS ACTUAL RESIDENCE. HENCE, HIS COC WAS CORRECTLY DENIED DUE COURSE AND CANCELED.

In the recently concluded elections of May 10, 2010, Mitra obtained the most number of votes for Governor and was accordingly proclaimed winner of the Palawan gubernatorial contest.[47]

We required the respondents and the COMELEC to comment on the petition.[48] They complied on May 6, 2010[49] and June 2, 2010, respectively.[50] On May 17, 2010, the petitioner filed a "Supplemental Petition."[51]

On May 26, 2010, the respondents filed a "Supplemental Comment (with Omnibus Motion to Annul Proclamation and for Early Resolution)" to the petitioner's "Supplemental Petition."[52] We deemed the case ready for resolution on the basis of these submissions.

The Court's Ruling

We find the petition meritorious.

The Limited Review in Certiorari Petitions under Rule 64, in relation to Rule 65 of the Rules of Court

A preliminary matter before us is the respondents' jurisdictional objection based on the issues raised in the present petition. The respondents assert that the questions Mitra brought to us are beyond our *certiorari* jurisdiction. Specifically, the respondents contend that Mitra's petition merely seeks to correct errors of

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[47] See the Petitioner's Manifestation dated May 24, 2010. The petitioner garnered 146,847 votes while candidate Jose C. Alvarez garnered the second highest with 131,872 votes. *Id.* at 1012-1019. See also: COMELEC Comment of June 2, 2010, attached to which is the Certificate of Proclamation for Mitra as Governor-elect. *Id.* at 1076-1078.

[48] *Supra* note 45.

[49] *Supra* note 46.

[50] *Id.* at 1062-1080.

[51] *Id.* at 1001-1005.

[52] *Id.* at 1024-1061.

the COMELEC in appreciating the parties' evidence — a question we cannot entertain under our limited *certiorari* jurisdiction.

Mitra brought his case before us pursuant to Rule 64, in relation to Rule 65 of the Rules of Court.[53] Our review, therefore, is based on a very limited ground — the jurisdictional issue of whether the COMELEC acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.

Whether the COMELEC, by law, has jurisdiction over a case or matter brought to it is resolved by considering the black-letter provisions of the Constitution and pertinent election laws, and we see no disputed issue on this point. Other than the respondents' procedural objections which we will fully discuss below, the present case rests on the allegation of grave abuse of discretion — an issue that generally is not as simple to resolve.

As a concept, "grave abuse of discretion" defies exact definition; generally, it refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction"; the abuse of discretion must be patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[54] Mere abuse of discretion is not enough; it must be grave.[55] We have held, too, that the use of *wrong or irrelevant considerations* in deciding an issue is sufficient to taint a decision-maker's action with grave abuse of discretion.[56]

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[53] Section 2, Rule 64 of the Rules of Court states:

SEC. 2. *Mode of review*. — A judgment or final order or resolution of the Commission on Elections and the Commission on Audit may be brought by the aggrieved party to the Supreme Court on *certiorari* under Rule 65, except as hereinafter provided.

[54] *Quintos v. COMELEC*, 440 Phil. 1045 (2002).

[55] *Suliguin v. COMELEC*, G.R. No. 166046, March 23, 2006, 485 SCRA 219.

[56] *Varias v. COMELEC*, G.R. No. 189078, February 11, 2010.

Closely related with the limited focus of the present petition is the condition, under Section 5, Rule 64 of the Rules of Court, that *findings of fact of the COMELEC, supported by substantial evidence, shall be final and non-reviewable*. Substantial evidence is that degree of evidence that *a reasonable mind* might accept to support a conclusion.[57]

In light of our limited authority to review findings of fact, we do not *ordinarily* review in a *certiorari* case the COMELEC's appreciation and evaluation of evidence. Any misstep by the COMELEC in this regard generally involves an error of judgment, not of jurisdiction.

In exceptional cases, however, when the COMELEC's action on the appreciation and evaluation of evidence oversteps the limits of its discretion to the point of being grossly unreasonable, the Court is not only obliged, but has the constitutional duty to intervene.[58] When grave abuse of discretion is present, resulting errors arising from the grave abuse *mutate* from error of judgment to one of jurisdiction.[59]

Our reading of the petition shows that it is sufficient in form with respect to the requisite allegation of jurisdictional error. Mitra clearly *alleged* the COMELEC acts that were supposedly tainted with grave abuse of discretion. Thus, we do not agree with the respondents' contention that the petition on its face raises mere errors of judgment that are outside our *certiorari* jurisdiction. Whether the allegations of "grave abuse" are duly supported and substantiated is another matter and is the subject of the discussions below.

Nature of the Case under Review:
COC Denial/Cancellation Proceedings

The present petition arose from a ***petition to deny due course or to cancel Mitra's COC.*** This is the context of and take-off

[57] *Id.,* citing Section 5, Rule 134 of the Rules of Court.

[58] Section 1, par. 2, Article VIII of the Constitution.

[59] *Supra* note 56, citing *De Guzman v. COMELEC*, G.R. No. 159713, March 31, 2004, 426 SCRA 698.

point for our review. From this perspective, the nature and requisites of the COC cancellation proceedings are primary considerations in resolving the present petition.[60]

Section 74, in relation to **Section 78,** of the Omnibus Election Code (*OEC*) governs the cancellation of, and grant or denial of due course to, COCs. The combined application of these sections requires that the candidate's stated facts in the COC be true, under pain of the COC's denial or cancellation if any false representation of a material fact is made. To quote these provisions:

SEC. 74. ***Contents of certificate of candidacy.*** — The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the *Batasang Pambansa*, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and **that the facts stated in the certificate of candidacy are true to the best of his knowledge**.

x x x x x x x x x

SEC. 78. ***Petition to deny due course to or cancel a certificate of candidacy***. — A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground that ***any material representation contained therein as required under Section 74 hereof is false***. The petition may be filed at any time not later than twenty-five days from the time of the filing of the certificate of candidacy and shall be decided, after due notice and hearing not later than fifteen days before the election.

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[60] See *Velasco v. COMELEC*, G.R. No. 180051, December 24, 2008, 575 SCRA 590, 602-603.

The false representation that these provisions mention must necessarily pertain to a material fact. The critical material facts are those that refer to a candidate's qualifications for elective office, such as his or her citizenship and residence. The candidate's status as a registered voter in the political unit where he or she is a candidate similarly falls under this classification as it is a requirement that, by law (the Local Government Code), must be reflected in the COC. The reason for this is obvious: the candidate, if he or she wins, will work for and represent the political unit where he or she ran as a candidate.[61]

The false representation under Section 78 must likewise be a "deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible." Given the purpose of the requirement, it must be made with the intention to deceive the electorate as to the would-be candidate's qualifications for public office.[62] Thus, the misrepresentation that Section 78 addresses cannot be the result of a mere innocuous mistake, and cannot exist in a situation where the intent to deceive is patently absent, or where no deception on the electorate results. The deliberate character of the misrepresentation necessarily follows from a consideration of the consequences of any material falsity: a candidate who falsifies a material fact cannot run; if he runs and is elected, he cannot serve; in both cases, he can be prosecuted for violation of the election laws.

Based on these standards, we find that Mitra did not commit any deliberate material misrepresentation in his COC. The COMELEC gravely abused its discretion in its appreciation of the evidence, leading it to conclude that Mitra is not a resident of Aborlan, Palawan. The COMELEC, too, failed to critically consider whether Mitra deliberately attempted to mislead, misinform or hide a fact that would otherwise render him ineligible for the position of Governor of Palawan.

Under the evidentiary situation of the case, there is clearly no basis for the

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[61] *Id.* at 603-604.

[62] *Id.* at 604.

conclusion that Mitra deliberately attempted to mislead the Palawan electorate.

From the start, Mitra never hid his intention to transfer his residence from Puerto Princesa City to Aborlan *to comply with the residence requirement of a candidate for an elective provincial office*. Republic Act No. 7160, otherwise known as the Local Government Code, does not abhor this intended transfer of residence, as its Section 39 merely requires an elective local official to be a resident of the local government unit where he intends to run **for at least one (1) year immediately preceding the day of the election**. In other words, the law itself recognizes implicitly that there can be a change of domicile or residence, but imposes only the condition that residence at the new place should at least be for a year. Of course, as a continuing requirement or qualification, the elected official must remain a resident there for the rest of his term.

Mitra's domicile of origin is undisputedly Puerto Princesa City. For him to qualify as Governor — in light of the relatively recent change of status of Puerto Princesa City from a component city to a highly urbanized city whose residents can no longer vote for provincial officials — he had to abandon his domicile of origin and acquire a new one within the local government unit where he intended to run; this would be his domicile of choice. To acquire a domicile of choice, jurisprudence, which the COMELEC correctly invoked, requires the following:

(1) residence or bodily presence in a new locality;

(2) an intention to remain there; and

(3) an intention to abandon the old domicile.[63]

The contentious issues in Mitra's case relate to his bodily presence, or the lack of it, in Aborlan, and the declaration he made on this point. The respondents anchor their cause of action on the alleged falsity of Mitra's statement that he is a resident

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[63] See *Fernandez v. HRET*, *supra* note 36.

of Aborlan. To support this contention, the respondents claim that the construction of the supposed Mitra residence or house, other than the leased premises in Maligaya Feedmill, has yet to be completed, leaving Mitra with no habitable place in Aborlan. When Mitra successfully refuted this original claim, the respondents presented sworn statements of Aborlan residents contradicting Mitra's claimed physical residence at the Maligaya Feedmill building in Aborlan. They likewise point out, by sworn statements, that this alleged residence could not be considered a house that Mitra could properly consider his residence, on the view that the feedmill place is beneath what Mitra — a three-term congressman and a member of the Mitra political clan of Palawan — would occupy.

Mitra, on the other hand, presented sworn statements of various persons (including the seller of the land he purchased, the lessor of the Maligaya Feedmill, and the *Punong Barangay* of the site of his residence) attesting to his physical residence in Aborlan; photographs of the residential portion of Maligaya Feedmill where he resides, and of his experimental pineapple plantation, farm, farmhouse and cock farm; the lease contract over the Maligaya Feedmill; and the deed of sale of the lot where he has started constructing his house. He clarified, too, that he does not claim residence in Aborlan at the house then under construction; his actual residence is the mezzanine portion of the Maligaya Feedmill building.

Faced with the seemingly directly contradictory evidence, the COMELEC apparently grossly misread its import and, because it used wrong considerations, was led into its faulty conclusion.

The seeming contradictions arose from the sworn statements of some Aborlan residents attesting that they never saw Mitra in Aborlan; these are controverted by similar sworn statements by other Aborlan residents that Mitra physically resides in Aborlan. The number of witnesses and their conflicting claims for and against Mitra's residency appear to have sidetracked the COMELEC. Substantial evidence, however, is not a simple question of number; reason demands that the focus be on what these differing statements say.

For example, the sworn statements that Mitra has never been seen in Aborlan border on the unbelievable and loudly speak of their inherent weakness as evidence.

Mitra has established business interests in Aborlan, a fact which the respondents have never disputed. He was then the incumbent three-term Representative who, as early as 2008, already entertained thoughts of running for Governor in 2010. It is not disputed, too, that Mitra has started the construction of a house on a lot he bought from Rexter Temple; the site is very near the Maligaya Feedmill that he leased from its owner, Carme Caspe.

While Mitra might not have stayed in Aborlan nor in Palawan for most of 2008 and 2009 because his office and activities as a Representative were in Manila, it is hardly credible that he would not be seen in Aborlan. In this regard, the sworn statement of the *Punong Barangay* of Isaub, Aborlan should carry a lot more weight than the statements of *punong barangay* officials elsewhere since it is the business of a *punong barangay* to know who the residents are in his own *barangay*. The COMELEC apparently missed all these because it was fixated on the perceived coldness and impersonality of Mitra's dwelling.

The parties' submitted documentary evidence likewise requires careful consideration for the correct appraisal of its evidentiary value. On the one hand, the document of sale of the Temple property, the building permit for the house under construction, and the community tax certificate used in these transactions all stated that Mitra's residence was Puerto Princesa City. On the other hand, Mitra introduced a notarized contract of lease — supported by the sworn explanation of the lessor (Carme Caspe) — showing that he indeed leased Maligaya Feedmill. He submitted, too, a residence certificate showing Aborlan as his residence, and an identification card of the House of Representatives showing Aborlan as his residence.

We cannot give full evidentiary weight to the contract of sale as evidence relating to Mitra's residence for two reasons. *First*, it is a *unilateral contract* executed by the seller (Rexter Temple); thus, his statement and belief as to Mitra's personal

circumstances cannot be taken as conclusive against the latter. *Second*, the sale involved several vendees, including Mitra's brother (Ramon B. Mitra) and one Peter Winston T. Gonzales; his co-vendees still live in Puerto Princesa City; hence, they were all loosely and collectively described to have their residence in Puerto Princesa City.[64] Parenthetically, the document simply stated: "I, REXTER TEMPLE, of legal age, Filipino, single and resident of Isaub, Aborlan, Palawan, hereby by these presents, x x x do hereby *SELL*, *TRANSFER* and *CONVEY* unto the said Vendees, ABRAHAM KAHLIL B. MITRA, single; RAMON B. MITRA, married to Mary Ann Mitra; PETER WINSTON T. GONZALES, married to Florecita R. Gonzales, all of legal ages and residents [of] Rancho Sta. Monica, Brgy. Sta. Monica, Puerto Princesa City, their heirs and assigns."[65] Thus, the contract contained a mere general statement that loosely described the vendees as Puerto Princesa City residents. This general statement solely came from the vendor.

The building permit, on the other hand, was filed by Mitra's representative, an architect named John Quillope, who apparently likewise filled the form. That Mitra only signed the building permit form is readily discernible from an examination of the face of the form; even the statement on his community tax certificate bearing a Puerto Princesa City residence does not appear in his handwriting.[66] Significantly, Mitra's secretary — Lilia Camora – attested that it was she who secured the community tax certificate for Mitra in February 2009 without the latter's knowledge.[67] Annex "M" of the respondents' Petition before

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[64] *Rollo*, p. 132.

[65] *Ibid.*

[66] See Annex "M" of the Respondents Petition before the COMELEC dated December 5, 2009. *Id.* at 137.

[67] In her Affidavit dated December 9, 2009, Lilia Camora alleged that:

2. Part of my duties as District Staff is to keep the records of Congressman Mitra including the renewal of various documents, permits and license.
3. In February 2009, considering that there are documents requiring an updated Community Tax Certificate of Congressman Mitra, I

the COMELEC indeed shows that the community tax certificate did not bear the signature of Mitra.[68] Mitra secured his own certificate in Aborlan on March 18, 2009. This community tax certificate carries his own signature.[69] Parenthetically, *per* Carme Caspe's statement, Mitra leased the feedmill residence in February 2008 and started moving in his belongings in March 2008, confirming the veracity of his Aborlan presence at the time he secured his community tax certificate.[70] In these lights, the February 3, 2009 community tax certificate, if at all, carries very little evidentiary value.

The respondents expectedly attacked the validity of the lease contract; they contended in their Memorandum that the feedmill was situated in a forest land that cannot be leased, and that the contract, while notarized, was not registered with the required notarial office of the court.[71]

The validity of the lease contract, however, is not the issue before us; what concerns us is the question of whether Mitra did indeed enter into an agreement for the lease, or strictly for the use, of the Maligaya Feedmill as his residence (while his house, on the lot he bought, was under construction) and whether

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took it upon myself to secure a Community Tax Certificate in Barangay Sta. Monica, Puerto Princesa City for Congressman Mitra without his knowledge and consent.

4. Although I am aware that he already changed his residence, considering that I do not know the exact address of his new residence, **I decided to place his old residence in Puerto Princesa City in the Community Tax Certificate issued** without any intention of malice or to do harm to anyone but simply to comply with my record keeping duties.

5. **In fact, the issued Community Tax Certificate does not bear any signature or thumbprint of Congressman Mitra.** [Emphasis supplied] *Id.* at 197.

[68] *Id.* at 137.

[69] *Id.* at 198.

[70] *Id.* at 163.

[71] See the Respondents' Memorandum before the COMELEC *en banc* dated February 23, 2010. *Id.* at 925-930.

he indeed resided there. The notary's compliance with the notarial law likewise assumes no materiality as it is a defect not imputable to Mitra; what is important is the parties' affirmation before a notary public of the contract's genuineness and due execution.

A sworn statement that has no counterpart in the respondents' evidence in so far as it provides details (particularly when read with the statement of Ricardo Temple)[72] is Carme Caspe's statement[73] on how Mitra's transfer of residence took place. Read together, these statements attest that *the transfer of residence was accomplished, not in one single move but, through an incremental process that started in early 2008 and was in place by March 2009*, although the house Mitra intended to be his permanent home was not yet then completed.[74]

In considering the residency issue, the COMELEC practically focused solely on its consideration of Mitra's residence at Maligaya Feedmill, on the basis of mere photographs of the premises. In the COMELEC's view (expressly voiced out by the Division and fully concurred in by the *En Banc*), the Maligaya

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[72] In his December 7, 2009 Sworn Statement, Ricardo Temple alleged that: (1) he is a "*Kagawad*" of Barangay Isaub, Aborlan, Palawan; (2) he knew Congressman Abraham Kahlil B. Mitra (*Cong. Mitra*) since the year 2001; (3) on January 2008, Cong. Mitra frequently visited Brgy. Isaub to establish his Pineapple Farm Project in a plot of leased land near the Maligaya Feedmill; (4) in March 2008, Cong. Mitra told him that he intended to permanently reside at Maligaya Feedmill and that he was interested in purchasing a lot where he could build his new house; (5) after a few months, he sold a lot, belonging to his son located in Sitio Maligaya, Isaub, Aborlan, Palawan which was situated near the Maligaya Feedmill and Farm to Cong. Mitra to which the latter paid in full in April 2009; (6) on June 5, 2009, Rexter Temple and Cong. Mitra executed a Deed of Sale over the lot; (7) starting April 2009, Cong. Mitra commenced the construction of a fence surrounding the lot, a farmhouse and a water system; (8) in June 2009, Cong. Mitra initiated the construction of a concrete house on the lot; (9) in June 2009, Cong. Mitra's fighting cocks arrived in Sitio Maligaya; and (10) at present, Cong. Mitra continues to reside at Maligaya Feedmill pending the completion of his house in Sitio Maligaya. *Id.* at 172-173.

[73] *Id.* at 163-164.

[74] See also, in this regard, the Dissent of Commissioner Rene Sarmiento; *id.* at 83-85.

Feedmill building could not have been Mitra's residence because it *is cold and utterly devoid of any indication of Mitra's personality* and *that it lacks loving attention and details inherent in every home to make it one's residence*.[75] This was the main reason that the COMELEC relied upon for its conclusion.

Such assessment, in our view, based on the interior design and furnishings of a dwelling as shown by and examined only through photographs, is far from reasonable; the COMELEC thereby determined the fitness of a dwelling as a person's residence *based solely on very personal and subjective assessment standards* when the law is replete with standards that can be used. Where a dwelling qualifies as a residence — *i.e.,* the dwelling where a person permanently intends to return to and to remain[76] — his or her capacity or inclination to decorate the place, or the lack of it, is immaterial.

Examined further, the COMELEC's reasoning is not only intensely subjective but also flimsy, to the point of grave abuse of discretion when compared with the surrounding indicators showing that Mitra has indeed been physically present in Aborlan for the required period with every intent to settle there. Specifically, it was lost on the COMELEC majority (but not on the Dissent) that Mitra made definite, although incremental transfer moves, as shown by the undisputed business interests he has established in Aborlan in 2008; by the lease of a dwelling where he established his base; by the purchase of a lot for his permanent home; by his transfer of registration as a voter in March 2009; and by the construction of a house all viewed against the backdrop of a bachelor Representative who spent most of his working hours in Manila, who had a whole congressional

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[75] *Supra* note 23, at 65-66.

[76] The term "residence" is to be understood not in its common acceptation as referring to "dwelling" or "habitation," but rather to "domicile" or legal residence, that is "the place where a party actually or constructively has his permanent home, where he, no matter where he may be found at any given time, eventually intends to return and remain (*animus manendi*). *Coquilla v. COMELEC*, G.R. No. 151914, July 31, 2002, 385 SCRA 607, 616, citing *Aquino v. COMELEC*, 248 SCRA 400, 420 (1995).

district to take care of, and who was establishing at the same time his significant presence in the whole Province of Palawan.

From these perspectives, we cannot but conclude that the COMELEC's approach — *i.e.*, the application of subjective non-legal standards and the gross misappreciation of the evidence — is tainted with grave abuse of discretion, as the COMELEC used wrong considerations and grossly misread the evidence in arriving at its conclusion. In using subjective standards, the COMELEC committed an act not otherwise within the contemplation of law on an evidentiary point that served as a major basis for its conclusion in the case.

With this analysis and conclusion in mind, we come to the critical question of whether Mitra deliberately misrepresented that his residence is in Aborlan to deceive and mislead the people of the Province of Palawan.

We do not believe that he committed any deliberate misrepresentation given what he knew of his transfer, as shown by the moves he had made to carry it out. From the evidentiary perspective, we hold that the evidence confirming residence in Aborlan decidedly tilts in Mitra's favor; even assuming the worst for Mitra, the evidence in his favor cannot go below the level of an *equipoise, i.e.,* when weighed, Mitra's evidence of transfer and residence in Aborlan cannot be overcome by the respondents' evidence that he remained a Puerto Princesa City resident. Under the situation *prevailing when Mitra filed his COC*, we cannot conclude that Mitra committed any misrepresentation, much less a deliberate one, about his residence.

The character of Mitra's representation before the COMELEC is an aspect of the case that the COMELEC completely failed to consider as it focused mainly on the character of Mitra's feedmill residence. For this reason, the COMELEC was led into error — one that goes beyond an ordinary error of judgment. By failing to take into account whether there had been a deliberate misrepresentation in Mitra's COC, the COMELEC committed the grave abuse of simply assuming that an error in the COC was necessarily a deliberate falsity in a material representation. In this case, it doubly erred because there was no falsity; as the

carefully considered evidence shows, Mitra did indeed transfer his residence within the period required by Section 74 of the OEC.

The respondents significantly ask us in this case to adopt the same faulty approach of using subjective norms, as they now argue that *given his stature as a member of the prominent Mitra clan of Palawan, and as a three term congressman, it is highly incredible that a small room in a feed mill has served as his residence since 2008*.[77]

We reject this suggested approach outright for the same reason we condemned the COMELEC's use of subjective non-legal standards. Mitra's feed mill dwelling cannot be considered in isolation and separately from the circumstances of his transfer of residence, specifically, his *expressed intent* to transfer to a residence outside of Puerto Princesa City to make him eligible to run for a provincial position; his preparatory moves starting in early 2008; his initial transfer through a leased dwelling; the purchase of a lot for his permanent home; and the construction of a house in this lot that, parenthetically, is adjacent to the premises he leased pending the completion of his house. These incremental moves do not offend reason at all, in the way that the COMELEC's highly subjective non-legal standards do.

Thus, we can only conclude, in the context of the cancellation proceeding before us, that the respondents have not presented a convincing case sufficient to overcome Mitra's evidence of effective transfer to and residence in Aborlan and the validity of his representation on this point in his COC, while the COMELEC could not even present any legally acceptable basis to conclude that Mitra's statement in his COC regarding his residence was a misrepresentation.

Mitra has significant relationship with, and intimate knowledge of, the constituency he wishes to serve.

Citing jurisprudence, we began this *ponencia* with a discussion of the purpose of the residency requirement under the law. By

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[77] See the Respondents' Comment, *supra* note 46.

law, this residency can be anywhere within the Province of Palawan, except for Puerto Princesa City because of its reclassification as a highly urbanized city. Thus, residency in Aborlan is completely consistent with the purpose of the law, as Mitra thereby declared and proved his required physical presence in the Province of Palawan.

We also consider that even before his transfer of residence, he already had intimate knowledge of the Province of Palawan, particularly of the whole 2nd legislative district that he represented for three terms. For that matter, even the respondents themselves impliedly acknowledged that the Mitras, as a family, have been identified with elective public service and politics in the Province of Palawan.[78] This means to us that Mitra grew up in the politics of Palawan.

We can reasonably conclude from all these that Mitra is not oblivious to the needs, difficulties, aspirations, potential for growth and development, and all matters vital to the common welfare of the constituency he intends to serve. Mitra who is no stranger to Palawan has merely been compelled — after serving three terms as representative of the congressional district that includes Puerto Princesa City and Aborlan — by legal developments to transfer his residence to Aborlan to qualify as a Province of Palawan voter. To put it differently, were it not for the reclassification of Puerto Princesa City from a component city to a highly urbanized city, Mitra would not have encountered any legal obstacle to his intended gubernatorial bid based on his knowledge of and sensitivity to the needs of the Palawan electorate.

This case, incidentally, is not the first that we have encountered where a former elective official had to transfer residence in order to continue his public service in another political unit that he could not legally access, as a candidate, without a change of residence.

In *Torayno, Sr. v. COMELEC,*[79] former Governor Vicente Y. Emano re-occupied a house he owned and had leased out in

[78] *Supra* note 45, at 333-336.

[79] *Supra* note 3, at 587.

Cagayan de Oro City to qualify as a candidate for the post of Mayor of that city (like Puerto Princesa City, a highly urbanized city whose residents cannot vote for and be voted upon as elective provincial officials). We said in that case that —

> In other words, the actual, physical and personal presence of herein private respondent in Cagayan de Oro City is substantial enough to show his intention to fulfill the duties of mayor and for the voters to evaluate his qualifications for the mayorship. Petitioners' very legalistic, academic and technical approach to the residence requirement does not satisfy this simple, practical and common-sense rationale for the residence requirement.

In *Asistio v. Hon. Trinidad Pe-Aguirre*,[80] we also had occasion to rule on the residency and right to vote of former Congressman Luis A. Asistio who had been a congressman for Caloocan in 1992, 1995, 1998 and 2004, and, in the words of the Decision, "is known to be among the prominent political families in Caloocan City."[81] We recognized Asistio's position that a mistake had been committed in his residency statement, and concluded that the mistake is not "proof that Asistio has abandoned his domicile in Caloocan City, or that he has established residence outside of Caloocan City." By this recognition, we confirmed that Asistio has not committed any deliberate misrepresentation in his COC.

These cases are to be distinguished from the case of *Velasco v. COMELEC*[82] where the COMELEC cancelled the COC of Velasco, a mayoralty candidate, on the basis of *his undisputed knowledge, at the time he filed his COC, that his inclusion and registration as a voter had been denied*. His failure to register as a voter was a material fact that he had clearly withheld from the COMELEC; he knew of the denial of his application to register and yet concealed his non-voter status when he filed his COC. Thus, we affirmed the COMELEC's action in cancelling his COC.

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[80] G.R. No. 191124, April 27, 2010.

[81] *Ibid.*

[82] *Supra* note 60.

If there is any similarity at all in *Velasco* and the present case, that similarity is in the recognition in both cases of the rule of law. In *Velasco*, we recognized — based on the law — that a basic defect existed prior to his candidacy, leading to his disqualification and the vice-mayor-elect's assumption to the office. In the present case, we recognize the validity of Mitra's COC, again on the basis of substantive and procedural law, and *no occasion arises for the vice-governor-elect to assume the gubernatorial post*.

Mitra has been proclaimed winner in the electoral contest and has therefore the mandate of the electorate to serve

We have applied in past cases the principle that the manifest will of the people as expressed through the ballot must be given fullest effect; in case of doubt, political laws must be interpreted to give life and spirit to the popular mandate.[83] Thus, we have held that *while provisions relating to certificates of candidacy are in mandatory terms, it is an established rule of interpretation as regards election laws, that mandatory provisions, requiring certain steps before elections, will be construed as directory after the elections, to give effect to the will of the people*.[84]

Quite recently, however, we warned against a blanket and unqualified reading and application of this ruling, as it may carry dangerous significance to the rule of law and the integrity of our elections. For one, such blanket/unqualified reading may provide a way around the law that effectively negates election requirements aimed at providing the electorate with the basic information for an informed choice about a candidate's eligibility and fitness for office.[85] Short of adopting a clear cut standard, we thus made the following clarification:

> We distinguish our ruling in this case from others that we have made in the past by the clarification that COC defects *beyond matters*

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[83] *Supra* note 3, at 587-588.

[84] *Supra* note 60.

[85] *Ibid.*

of form and that involve *material misrepresentations* cannot avail of the benefit of our ruling that COC mandatory requirements before elections are considered merely directory after the people shall have spoken. A mandatory and material election law requirement involves more than the will of the people in any given locality. Where a *material COC misrepresentation under oath* is made, thereby violating both our election and criminal laws, we are faced as well with an assault on the will of the people of the Philippines as expressed in our laws. In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate will.[86]

Earlier, *Frivaldo v. COMELEC*[87] provided the following test:

[T]his Court has repeatedly stressed the importance of giving effect to the sovereign will in order to ensure the survival of our democracy. In any action involving the possibility of a reversal of the popular electoral choice, this Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority. **To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.** [Emphasis supplied.]

With the conclusion that Mitra did not commit any material misrepresentation in his COC, we see no reason in this case to appeal to the primacy of the electorate's will. We cannot deny, however, that the people of Palawan have spoken in an election where residency qualification had been squarely raised and their voice has erased any doubt about their verdict on Mitra's qualifications.

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[86] *Id.* at 615.

[87] G.R. Nos. 120295 and 123755, June 28, 1996, 257 SCRA 727, 771-772.

WHEREFORE, premises considered, we *GRANT* the petition and *ANNUL* the assailed *COMELEC* Resolutions in *Antonio V. Gonzales and Orlando R. Balbon, Jr. v. Abraham Kahlil B. Mitra* (SPA No. 09-038 [C]). We *DENY* the respondents' petition to cancel Abraham Kahlil Mitra's Certificate of Candidacy. No costs.

SO ORDERED.

Carpio, Carpio Morales, Nachura, Leonardo-de Castro, Peralta, Bersamin, del Castillo, Abad, Villarama, Jr., and *Mendoza, JJ.,* concur.

Corona, C.J. and Perez, J., joined the dissent of Mr. Justice Velasco, Jr.

Velasco, Jr., J., see dissenting opinion.

DISSENTING OPINION

VELASCO, JR., *J.*:

I register my dissent to the *ponencia* granting the petition.

The facts, as found by the Commission on Elections (COMELEC) First Division, are as follows:

> Respondent Abraham Kahlil B. Mitra (for brevity, "Mitra") is the incumbent Representative of the Second District of Palawan which includes, among others, the Municipality of Aborlan and Puerto Princesa City. Mitra likewise admitted that he was a long time resident of Puerto Princesa City which domicile he abandoned in 2008 in favor of [the] Municipality of Aborlan.
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> On 26 March 2007, Puerto Princesa City ceased to be a component city of the Province of Palawan after it was classified as a "Highly Urbanized City." Consequently, its residents are no longer eligible to vote for candidates for elective provincial officials such as Governor, Vice-Governor, and the members of the Sangguniang Panlalawigan.
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> On 20 March 2009, with the intention of running for the position of Governor, Mitra applied for the transfer of his Voters Registration Record from Precinct No. 03720 of Barangay Sta. Monica, Puerto

Princesa City to Sitio Maligaya, Barangay Isaub, Municipality of Aborlan, Province of Palawan.

Eventually, on 28 November 2009, Mitra filed his Certificate of Candidacy for the position of Governor of the Province of Palawan. Petitioners Antonio V. Gonzales (for brevity, "Gonzales") and Orlando R. Balbon, Jr. (for brevity, "Balbon") thereafter filed the present petition to Deny Due Course of to Cancel Certificate of Candidacy.[1]

In their Petition[2] to deny due course to or cancel the Certificate of Candidacy (COC) of Abraham Kahlil B. Mitra (Mitra) before the COMELEC, private respondents Antonio V. Gonzales (Gonzales) and Orlando R. Balbon, Jr. (Balbon) claim that contrary to what Mitra had stated in his COC and in his application for transfer of Voter's Registration Records, Mitra has not established legal residence or even semblance of residency in Sitio Maligaya, Barangay Isaub, Aborlan, Palawan.[3] To prove the foregoing, they proffer the following arguments and factual premises: (a) That Mitra bought a parcel of land in Barangay Isaub, Aborlan, Palawan, together with Ramon B. Mitra and Winston T. Gonzales only on 05 June 2009, which house remained unfinished and uninhabitable at the time of the filing of the petition;[4] (b) That Mitra remains a resident of Sta. Monica Puerto Princesa City as shown by the following: (i) deed of sale executed by Rexter Temple — that indicated that Mitra's residence is in Puerto Princesa;[5] (ii) application for building permit dated 15 July 2009, wherein Puerto Princesa is also indicated as Mitra's residence;[6] (iii) Certification issued by the *Punong Barangay*

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[1] *Rollo*, pp. 59-68.

[2] *Id.* at 361-379.

[3] (Petition to Deny Due Course to or Cancel Certificate of Candidacy) *Ibid.*, p. 6.

[4] (Petition to Deny Due Course to or Cancel Certificate of Candidacy, Annex "J") *Ibid.*, pp. 610-611.

[5] (Petition to Deny Due Course to or Cancel Certificate of Candidacy, Annex "J") *Id.*

[6] (Petition to Deny Due Course to or Cancel Certificate of Candidacy, Annex "K") *Id.*

of Sta. Monica, Puerto Princesa City, dated 11 November 2009, stating that Mitra is a *bona fide* resident of Sta. Monica, Puerto Princesa and that Mitra obtained his Community Tax Certificate from the said *barangay* on 03 February 2009;[7] (iv) A certified true copy of Mitra's Community Tax Certificate that he secured from Barangay Sta. Monica, Puerto Princesa, which he used in his application for a building permit, which application, Mitra signed twice.[8] Private respondents further presented numerous sworn statements executed by some residents of Sitio Maligaya attesting to the fact that they have not seen Mitra in their locality but that they know of the unfinished house that he is building.[9]

In his answer to the petition to deny due course or cancel his COC, Mitra denied private respondents' allegations and claimed that he was a constant visitor to Aborlan, even before he transferred his residence thereto.[10] **Mitra also asserts that his legal residence and domicile in Aborlan, Palawan is not the unfinished house, but the residential portion of the farmhouse of the Maligaya Feedmill and Farm**.[11] Mitra adds that he regularly meets with his Aborlan constituents, and all of his other visitors from Puerto Princesa, Manila and elsewhere at the farmhouse.[12] Mitra presented the following to prove his assertions: (a) Sworn statement of Carme E. Caspe, stating that Mitra had started a "pineapple growing project" in Aborlan; and that Mitra had been renting the residential portion of the Maligaya Feedmill since February 2008;[13] (b) Letter-Agreement

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[7] (Petition to Deny Due Course to or Cancel Certificate of Candidacy, Annex "L") *Id.*

[8] (Petition to Deny Due Course to or Cancel Certificate of Candidacy, Annex "M") *Id.*

[9] (Petition to Deny Due Course to or Cancel Certificate of Candidacy, Annexes "C", "D", "E", "F", and "G") *Id.*

[10] *Rollo*, p. 415.

[11] *Id.* at 415-416 and 421-422.

[12] *Id.* at 415.

[13] *Id.* at 434-435.

between Carme E. Caspe and Mitra confirming the lease of the residential portion of the Maligaya Feedmill and Farm, dated 18 February 2008;[14] (c) Lease Contract over the ff: (i) Chicken layer house; (ii) Chicken growing house; and (iii) a portion of the residential area at the Maligaya Feedmill;[15] (d) Photographs of the residential portion of the Maligaya Feedmill; and photographs of Mitra's supposed pineapple growing farm, farmhouse, and cock farm;[16] and (e) A copy of Mitra's Community Tax Certificate issued in Aborlan dated 18 March 2009.[17] Mitra also presented several sworn statements, including that of the *Punong Barangay* of Isaub, Aborlan, stating among others that Mitra resides in their locality.

After the hearing on 21 December 2009, the COMELEC First Division ordered the parties to submit their memoranda.

In their memorandum, private respondents claim that Mitra's residence at the Maligaya Feedmill is a mere afterthought after it was shown in their petition that his house is still unfinished and uninhabitable.[18] Private respondents further claim that the lease contract was a sham by presenting the Special Land Use Permit covering the Maligaya Feedmill which authorizes the land's use only as a feedmill and which prohibits its sublease to other parties;[19] and by stressing on the point that though the lease contract appears to have been notarized on 02 February 2009, such document was not recorded in the Notarial Register of the notary public and was not submitted to the Notarial Section of the RTC Makati, even when the notary's report was only submitted on 24 July 2009. In addition, private respondents submitted a joint affidavit of 14 *Punong Barangays* of Aborlan stating that Mitra does not reside in Aborlan; several sworn

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[14] *Id.* at 438.

[15] *Id.* at 439-441.

[16] *Id.* at 470-484.

[17] *Id.* at 468.

[18] *Id.* at 499-502.

[19] *Id.* at 616-618.

statements[20] of certain residents of Aborlan, and former employees and customers of the Maligaya Feedmill and Farm stating among others that: (a) the feedmill is not suitable as a residential area because of the noise and pollution in the area;[21] (b) the supposed residence of Mitra in the mezzanine of the feedmill is not suitable for residential purposes because it does not have bathroom and kitchen facilities, and that the said space is actually the office of the Maligaya Feedmill where its business is conducted;[22] (c) that most of them, though working at the feedmill, have not seen Mitra in the premises of the feedmill;[23] and those of them that have, attest that he only visits there to talk to Dr. Caspe and does not stay too long.[24] Private respondents also presented the sworn statements of five witnesses for Mitra who have recanted their previous statements.[25] Private respondents further presented in addition to the certification of the *Punong Barangay* of Sta. Monica Puerto Princesa,[26] the affidavit of Mitra's neighbor who stated that he has observed and knows that Mitra still resides in their house in Puerto Princesa City.[27]

On the merits, Mitra stated in his memorandum that his COC does not contain false material representation; that his legal residence and domicile for purposes of the 10 May 2010 elections is the residential portion of the feedmill and not the unfinished house; and that Mitra has successfully abandoned his Puerto Princesa City.[28] Mitra additionally submitted four sworn statements to support his position.[29]

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[20] *Id.* at 731-766.

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* at 733.

[25] *Id.* at 767-771.

[26] *Supra* note 7, at 614.

[27] *Supra* note 19, at 730.

[28] *Ibid.* at 776.

[29] *Rollo*, pp. 800-804.

Ruling of the COMELEC First Division

On 10 February 2010, the COMELEC First Division held that Mitra had failed to prove that he had effected an abandonment of his domicile of origin and successfully established a new domicile of choice. The pertinent portion and the *fallo* of the Resolution read as follows:

Although the law imposes no property qualification on anyone who seeks to run as governor, an appreciation of the respondent's alleged "residence" through the evidence he presented is key in enabling Us to determine whether the same is truly his home and residence. A home need not be a palace or a castle in order to be considered [as] such. What is controlling is the manifest intention of the occupant which may be gleaned from his treatment of his "residence."

A judicious consideration of all the evidence submitted, including various affidavits proffered by both parties and photographs of the small room which respondent claims to be his residence, and guided by jurisprudence discussed herein, this Commission is inclined to grant the petition.

The pictures presented by Mitra of his supposed "residence" are telling. The said pictures show a small, sparsely furnished room which is evidently unlived in and which is located on the second floor of a structure that appears like a factory or a warehouse. These pictures likewise show that the "residence" appears hastily set-up, cold, and utterly devoid of any personalty which would have imprinted Mitra's personality thereto such as old family photographs and memorabilia collected through the years. In fact, an appreciation of Mitra's supposed "residence" raises doubts whether or not he indeed lives there. Verily, what is lacking therein are the loving attention and details inherent in every home to make it one's residence. Perhaps, at most, and to this Commission's mind, this small room could have served as Mitra's resting area whenever he visited the said locality but nothing more.

This observation coupled with the numerous statements from former employees and customers of Maligaya Feed Mill and Farm that Mitra's residence is located in an unsavoury location, considering the noise and pollution of being in a factory area, and that the same, in fact, had been Maligaya Feed Mill's office just a few months back, militates against Mitra's claim that the same has been his residence since

early 2008. These information make it clear to this Commission that this room is not a home.

A person's domicile of origin is not easily lost. The fact that Mitra has registered as a voter in Aborlan, has a cockfarm, a farm, a resthouse, and an experimental pineapple plantation in Maligaya Feed Mill; was occasionally seen staying in Aborlan; and held meetings therein with his constituents does not *ipso facto* prove his status as a resident therein and his alleged abandonment of his domicile of origin in Puerto Princesa City.

Mere absence from one's residence or domicile of origin to pursue studies, engage in business, or practice one's [vocation], is not sufficient to constitute abandonment or less of residence. Registration or voting in a place other than one's domicile does not eliminate such an individual's *animus revertendi* to his domicile or residence of origin, which finds justification in the natural desire and longing of every person to return to the place of birth which strong feeling of attachment must be over come by positive proof of abandonment for another.

Also, this Commission takes note of Mitra's witnesses' sworn statements which appear to have been prepared by the same person, the said statements having used similar wordings, allegations and contents, thereby putting into question the credibility of these affiants. Furthermore, the lease contract over the Maligaya Feed Mill between Mitra and Dr. Carme E. Caspe shows its effectivity until 28 February 2010 only, further casting doubts on Mitra's status as a resident of Aborlan.

In the instant case, Mitra, through his external actions and through the evidence he presented, failed to prove, to Our satisfaction, that he had effected an abandonment of his domicile or origin in Puerto Princesa City and has successfully established a new domicile of choice in Aborlan, Palawan. It may be so that Mitra has decided to abandon his domicile of origin, but until Mitra has shown and proved, through evidence and by his own actions, that he has successfully established a new domicile somewhere else, his domicile of origin continues to be his residence. Consequently, Mitra, not being a resident of Aborlan and being domiciled in Puerto Princesa City, is not qualified to be a candidate for the position of Governor of the Province of Palawan.

WHEREFORE, premises considered, the instant Petition is GRANTED and the certificate of candidacy of respondent Abraham Kahlil B. Mitra is **DENIED DUE COURSE** and **CANCELLED**.

SO ORDERED.[30]

From this Resolution, Mitra moved for reconsideration, praying to reconsider and set aside the Resolution of the COMELEC First Division. Mitra argues that the transfer of his registration as a voter to Aborlan clearly shows that he has successfully abandoned his domicile of origin; that his intention to abandon Puerto Princesa City and to transfer to Aborlan, Palawan is most evident through his actions; that the private respondents failed to indubitably establish his disqualification through the summary proceedings conducted by the COMELEC; and that he did not make any deliberate false misrepresentation in his COC in respect of his residence in Aborlan, Palawan. Mitra also prays for the application of the *Fernandez v. HRET* case.[31]

Ruling of the COMELEC *En Banc*

On 04 May 2010, six days before the elections, the COMELEC *En Banc*, voting four to two, came up with its Resolution denying Mitra's motion for reconsideration and wholly affirming the 10 February 2010 Resolution of the COMELEC First Division. The *fallo* of the Resolution reads:

WHEREFORE, premises considered, the instant motion for reconsideration is **DENIED** for lack of merit. The First Division's Resolution dated 10 February 2010 is hereby **AFFIRMED**.

SO ORDERED.

Immediately thereafter, Mitra filed before this Court the instant petition with a prayer for the issuance of a *status quo* order or a temporary restraining order. We granted the application for injunctive relief by issuing a *status quo* order and allowing Mitra to be voted for in the 10 May 2010 elections. A supplemental petition was filed by Mitra, which was answered by private

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[30] *Id.* at 59-68.

[31] G.R. No. 187478, 21 December 2009.

respondents in their supplemental comment. In the interim, Mitra emerged as the candidate who obtained the highest votes and was proclaimed as Governor of the Province of Palawan on 14 May 2010.

In his petition, Mitra presents the following issues for our consideration:

1. The issue of a candidate's eligibility should be resolved in an appropriate *Quo Warranto* proceedings after an election;

2. The COMELEC committed grave abuse of discretion in ruling strictly against Mitra and liberally in favor of private respondents;

3. The COMELEC committed grave abuse of discretion in deciding the petition to deny due course to or cancel certificate of candidacy in a summary proceedings where a *Quo Warranto* proceeding is most appropriate;

4. With the lack of a formal hearing and presentation of evidence; actual inspection and verification of the residence; and without actual confrontation of the witnesses, the conclusions of the COMELEC were predicated on sheer speculation; and

5. The burden of proof should have been placed on the private respondents and the COMELEC should not have based its resolutions on the alleged weakness of Mitra's submissions.[32]

The petition should be dismissed.

Contrary to the opinion of the *ponent*e, it is without a doubt that the petition is wanting in form and substance to merit this Court's exercise of its *certiorari* jurisdiction. The instant petition miserably failed to show any error of jurisdiction or grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the COMELEC to merit this Court's review of the COMELEC's factual findings. It is a time tested rule that in the absence of grave abuse of discretion or any jurisdictional infirmity or error of law, the factual findings, conclusions, rulings and decisions rendered by the COMELEC on matters falling

[32] *Rollo*, pp. 21-48.

within its competence shall not be interfered with by this Court.[33] Furthermore, We do not ordinarily review the COMELEC's appreciation and evaluation of evidence since any error on this regard generally involves an error of judgment, not an error of jurisdiction.[34] 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*.[35] We note the Solicitor General's comment on the matter:

> There is no reason for this Honorable Court to disturb the factual findings of public respondent. It is axiomatic that factual findings of administrative agencies which have acquired expertise in their field are binding and conclusive on the court. An application for *certiorari* against actions of public respondent is confined to instances of grave abuse of discretion amounting to patent and substantial denial of due process, considering that public respondent is presumed to be most competent in matters falling within its domain.
>
> Moreover, the evaluation and calibration of the evidence necessarily involves consideration of factual issues — an exercise that is not appropriate for a petition for review on *certiorari* under Rule 45. This rule provides that the parties may raise only questions of law, because the Supreme Court is not a trier of facts. Otherwise stated, it is not this Honorable Court's function to review, examine and evaluate or weigh the probative value of the evidence presented. A question of fact would arise in such event. While there may be exceptions to this rule, petitioners miserably failed to show why the exceptions should be applied here.

The private respondents[36] and the Solicitor General[37] are in unison in pointing out that Mitra had failed to establish that

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[33] *Ernesto M. Punzalan v. Commission on Elections, et al.*, G.R. No. 126669, 27 April 1998, 289 SCRA 702.

[34] *Lydia R. Pagaduan v. Commission on Elections, et al.*, G.R. No. 172278, 29 March 2007, 519 SCRA 512.

[35] *Ibid.* citing *Pp. v. Court of Appeals*, G.R. No. 142051, 24 February 2004, 423 SCRA 605.

[36] *Rollo*, pp. 268-359.

[37] *Id.* at 1062-1080.

the COMELEC committed any error of jurisdiction or grave abuse of discretion. Nonetheless, the *ponencia* supports its review of the factual findings of the COMELEC on the mere fact that Mitra had alleged in his petition that the COMELEC committed grave abuse of discretion.[38] The *ponencia* did not even specify which of Mitra's issues merited this Court's exercise of its limited *certiorari* jurisdiction. It merely concluded that grave abuse of discretion was committed and proceeded to evaluate and calibrate the evidence submitted by the parties. A mere allegation of grave abuse of discretion, no matter how adamant, should not merit affirmative action from this Court when the same is not supported by clear and convincing examples or evidence. Otherwise, we will be constrained to review the factual findings on each and every case submitted to our jurisdiction.

It is further noteworthy that the Solicitor General opines that the COMELEC did not commit grave abuse of discretion:

> With the power of public respondent well-defined, it is incumbent on petitioner to prove that there is a capricious, arbitrary and whimsical exercise of power. The writ of *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.
>
> Here, [there] is no abuse of power, much less one that is capricious, arbitrary and whimsical warranting the issuance of the extraordinary writ of *certiorari*. Petitioner evidently made a material representation that is false when he declared in his Certificate of Candidacy that he is a resident of Aborlan, Palawan. By his own admission, he is merely "in the process of constructing his very own residential house in the same area of Aborlan." This is an admission against interest which is the best evidence as it affords the greatest certainty of the facts in dispute. Indeed, a man's acts, conduct, and declaration, *wherever made*, if voluntary, are admissible against him, for the reason that it is fair to presume that they correspond with the truth, and it is his fault if they do not.

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[38] *Ponencia*, p. 15.

Moreover, it should be pointed out that the COMELEC based its ruling and conclusions on substantial evidence. Mitra failed to demonstrate which finding of the COMELEC is or are not supported by evidence. Thus, Section 5 of Rule 64 should apply, thereby, preventing Us from further reviewing the factual findings of the COMELEC. Sec. 5 of Rule 64 states:

> Sec. 5. *Form and contents of petition*. — x x x The petition shall state the facts with certainty, present clearly the issues involved, set forth the grounds and brief arguments relied upon for review, and pray for judgment annulling or modifying the questioned judgment, final order or resolution. **Findings of fact of the Commission supported by substantial evidence shall be final and non-reviewable**.
>
> x x x (Emphasis added.)

With this, the *ponencia* is clearly in error when it substituted the factual findings of the COMELEC based on substantial evidence with its own findings of facts which are based on controverted or unsubstantiated evidence. Thus, inasmuch as Mitra failed to adduce evidence to demonstrate grave abuse of discretion and since the factual findings of the COMELEC are based on substantial evidence, this Court should not re-evaluate and calibrate the factual findings of the COMELEC.

Nonetheless, to offer a final determination on the merits of the case, I will discuss the main arguments set forth by Mitra.

Mitra claims that the COMELEC has no jurisdiction to entertain a petition to deny due course or cancel a certificate of candidacy when an action for *quo warranto* is available after the elections.

This contention is without merit.

The COMELEC is the constitutional body entrusted with the exclusive jurisdiction over all contests relating to the qualifications of all regional, provincial, and city officials.[39] The basis for a

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[39] SEC. 2(2), Article IX C, 1987 CONSTITUTION OF THE REPUBLIC OF THE PHILIPPINES.

petition to deny due course to or cancel a certificate of candidacy is found in Section 78 of the Omnibus Election Code (OEC), while that for a petition for *quo warranto* is found in Section 253 of the OEC. These are two different causes of action which may both result in the disqualification of a candidate.[40] It is settled that the COMELEC has jurisdiction over a petition filed under Section 78 of the OEC.[41] If a candidate states a material representation in his COC that is false, as in this case, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate of candidacy. We note the opinion of the Solicitor General, *to wit*:

> The powers and functions of public respondent, conferred upon it by the 1987 Constitution and the Omnibus Election Code, embrace the power to resolve controversies arising from the enforcement of election laws, and to be the sole judge of all pre-proclamation controversies; and of all contests relating to the elections, returns, and qualifications.
>
> In the exercise of the said jurisdiction, its is within the competence of public respondent to determine whether false representation as to material facts was made in the Certificate of Candidacy, that will include, among others, the residence of the candidate. x x x
>
> x x x x x x x x x
>
> The distinction between a summary proceeding under Section 78 of the Omnibus Election Code and *quo warranto* proceeding is well-established, to wit:
>
>> Lest it be misunderstood, the denial of due course to or the cancellation of the Certificate of Candidacy (CoC) is not based on the lack of qualifications but on a finding that the candidate made a material representation that is false, which may relate to the qualifications required of the public office he/she is running for. It is noted that the candidate states in his/her CoC that he/she is eligible for the office he/she seeks. Section

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[40] *Mike A. Fermin v. Commission on Elections, et al.*, G.R. No. 179695, 18 December 2008, 574 SCRA 782.

[41] *Jamela Salic Maruhom v. Commission on Elections, et al.*, G.R. No. 179430, 27 July 2009, 594 SCRA 108.

> 78 of the Omnibus Election Code (OEC), therefore, is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. If the candidate subsequently states a material representation in the CoC that is false, the COMELEC, following the law, is empowered to deny due course to or cancel such certificate. Indeed, the Court has already likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the OEC since they **both deal with the eligibility or qualification of a candidate, with the distinction mainly in the facts that a "Section 78" petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate**.

Accordingly, public respondent properly took cognizance of the petition for cancellation of [the] Certificate of Candidacy.

It is thus clear that the COMELEC has jurisdiction over the petition and properly exercised it when it denied due course to and cancelled Mitra's certificate of candidacy.

Mitra claims that the COMELEC committed grave abuse of discretion in ruling strictly against Mitra and liberally in favor of private respondents.

This issue is without merit. This issue and argument is without legal and factual basis. This claim is a bare allegation that is not supported by evidence and Mitra failed to demonstrate that the COMELEC was biased against him and in favor of private respondents. It also appears on record that Mitra was given every opportunity to submit pleadings, motions and evidence in support thereof at every stage of the proceeding.

Mitra's third and fourth issues are intertwined and will be discussed together. Mitra argues that a summary proceeding should not have been conducted where a full-blown trial is more appropriate. He adds that because of the lack of a formal hearing and proper presentation of evidence; the lack of an actual inspection and verification of the residence; and without actual confrontation of the witnesses, the conclusions of the COMELEC were predicated on sheer speculation.

These arguments are untenable.

A formal trial-type hearing is not always essential to due process.[42] Absent evidence of gross violation of due process or grave abuse of discretion, factual determination through summary proceedings cannot be disturbed. As properly pointed out by the Solicitor General, Mitra cannot insist on a full blown trial on the merits, *to wit*:

> Moreover, petitioner cannot insist on a full-blown trial on the merits. The proceedings in a petition to deny due course to or cancel a Certificate of Candidacy is summary. The parties are only required to submit their position papers together with affidavits, counter-affidavits, and other documentary evidence *in lieu* of oral testimony. When there is a need for clarification of certain matters, at the discretion of the Commission *En Banc* or Division, the parties may be allowed to cross-examine the affiants. In the present case, petitioner was given the opportunity to submit a Memorandum, as he in fact did. He cannot be heard now to complain on the sufficiency of the proceedings before the public respondent.

Moreover, the rulings of the COMELEC are not based on sheer speculation as Mitra and the *ponencia* would have it. It is clear from the assailed Resolutions that the COMELEC based its decisions on several facts which, taken together, prove that Mitra's claimed residence in the mezzanine of a feeds factory is unbelievable and is a mere afterthought.

Mitra makes much issue of the COMELEC's appreciation of the pictures[43] which he himself submitted to prove his residence in the mezzanine of the feeds factory. The *ponencia* would even deduce that COMELEC's main reason for its conclusion is that the images appearing on the photographs appear "*cold and utterly devoid of any indication of Mitra's personality* and *that it lacks loving attention and details inherent in every home to make it one's residence.*" The *ponencia* even went as far as to use this particular conclusion of the COMELEC to taint its ruling with grave abuse of discretion.

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[42] *Batul v. COMELEC*, G.R. No. 157687, 26 February 2004, 424 SCRA 26.

[43] *Rollo*, pp. 470-484.

A careful reading of the assailed resolution, however, shows that the COMELEC, indeed, made a judicious consideration of the evidence submitted by both parties. The impression made by the COMELEC on Mitra's supposed residence is not a *personal and subjective* standard on which it based its conclusion. **Rather, the said statements were made to support its observation that Mitra's supposed residence was "*unlived in*" and "*hastily set-up*."**[44] Contrary to the view of the *ponencia*, the COMELEC was not assailing Mitra's residence for its interior decoration but was merely indicating their impression of his supposed room from the evidence he submitted which show that, indeed, Mitra does not actually reside at that supposed room at the mezzanine of the Feedmill.

Moreover, the COMELEC also discussed the other evidence to support their ruling, aside from its accurate observation on the state of Mitra's supposed residence at the feeds factory, they stated as follows:

> **This observation coupled with the numerous statements from former employees and customers of Maligaya Feed Mill and Farm that Mitra's residence is located in an unsavoury location, considering the noise and pollution of being in a factory area, and that the same, in fact, had been Maligaya Feed Mill's office just a few months back, militates against Mitra's claim that the same has been his residence since early 2008. These information make it clear to this Commission that this room is not a home**.[45]

The COMELEC further pointed out, and I agree, that the effectivity of the lease covering the room in the mezzanine of the feeds factory is only until 28 February 2010, thereby disproving Mitra's claim in his Answer, that this room is his legal residence and domicile in Aborlan, Palawan.[46]

Thus, it is clear that the COMELEC's findings of facts on which it based its conclusions are not based on sheer speculation

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[44] *Id.* at 59-68.

[45] *Id.* at 66.

[46] *Id.* at 67.

and do not illustrate or demonstrate an error of jurisdiction or grave abuse of discretion.

As his final issue, Mitra claims that the burden of proof should have been placed on the private respondents; and the COMELEC should not have based its resolutions on the alleged weakness of Mitra's submissions.

Unlike in criminal cases where the quantum of evidence necessary to convict an accused is "proof beyond reasonable doubt,"[47] the quantum of evidence necessary to prove a candidate's disqualification in a quasi-judicial or administrative proceeding needs only such relevant evidence as a reasonable mind will accept to support a conclusion."[48] Moreover, as the private respondents have successfully established – and Mitra has admitted, that Puerto Princessa City is Mitra's domicile of origin, the burden was then shifted to Mitra to prove that he had indeed actually and physically transferred to Aborlan, Palawan. Unfortunately for Mitra, he did not overcome his burden.

It is also clear that the private respondents have mustered enough evidence to satisfy the quantum of evidence in this case. Private respondents have submitted competent and credible evidence to show that (a) Mitra's house in Aborlan was recently bought and was even unfinished at the time of the filing of the petition;[49] (b) <u>the lease contract was a mere afterthought and is a spurious document considering that the Feedmill premises cannot be subleased to other people</u>[50] <u>and that the same, though, notarized on 02 February 2009 is not recorded and was not even part of the notary's report submitted on 24 July 2009</u>;[51] (c) Mitra's supposed residence at the feeds factory was a not a residential area but the office of the Maligaya Feedmill and Farm (this

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[47] *Hon. Primo C. Miro v. Reynaldo M. Dosono*, G.R. No. 170697, 30 April 2010.

[48] *Ibid.*

[49] *Rollo*, pp. 386-406.

[50] *Id.* at 616-618.

[51] Memorandum for Private Respondents "O" and "P".

fact was never explained nor controverted by Mitra);[52] (d) Mitra still continued to frequent his house in Puerto Princesa (this fact admitted by Mitra and his witnesses);[53] (e) at the time of purchase of his lot in Aborlan, Mitra was identified by the vendor as from Puerto Princesa City;[54] (f) that even until 15 July 2009, Mitra himself indicated in the Application for Building Permit that he is still a resident of Puerto Princesa City;[55] and (g) that even until 9 November 2009, Mitra is still a *bona fide* resident of Puerto Princesa City.[56]

On the other hand, it should have been incumbent for Mitra to prove that he had actually transferred his residence from his domicile of origin in Puerto Princesa to his alleged domicile of choice in Aborlan, Palawan. He, however, failed to controvert the evidence submitted by private respondents.

It is puzzling why Mitra did not submit evidence to controvert private respondent's submission that the lease contract is a sham and a mere afterthought, and that his supposed residence at the feeds factory is not habitable — considering the noise and pollution of the factory, and because it has no comfort room and kitchen, and more importantly, that his supposed room is actually the office of the Maligaya Feedmill and Farm. No less than the employees and customers of the feeds factory attest to the fact that there is no residential portion at the feeds factory and that Mitra's supposed residence is the office of the Maligaya Feedmill where they regularly transact business.[57]

In view of the *ponente*'s extensive discussion on his appreciation and evaluation of the evidence submitted before the COMELEC, there is a need to further discuss the same in the light of the evidence submitted by the parties.

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[52] *Rollo*, pp. 731-766.

[53] *Id.* at 237, 861, 863, 865, 868.

[54] *Id.* at 610-611.

[55] *Id.* at 613.

[56] *Id.* at 614.

[57] *Id.* at 731-766.

The *ponencia* failed to give due weight to the contract of sale[58] where the vendor clearly indicated that Mitra is a resident of Puerto Princesa City. This only shows that Mitra is not known to be a resident of Sitio Maligaya, Barangay Isaub, Aborlan, contrary to his claim that he has been a resident of Aborlan since 2008. The *ponencia* claims that the address Puerto Princesa City refers to the address of Mitra's co-vendees, Ramon B. Mitra and Peter Winston T. Gonzales. This conclusion of the *ponencia* is clearly without basis. No evidence was submitted to prove that Mitra's co-vendees are residents of Puerto Princesa and not registered voters of Aborlan.

The *ponencia* also fails to give due credit to the Application for Building Permit, dated 15 July 2009, signed by Mitra himself, twice, which indicates on at least two entries therein that Mitra's residence is Puerto Princesa City.[59] The *ponente* holds that it is apparent that Mitra was not the one who prepared the document as seen from the *statement of his community tax certificate bearing a Puerto Princesa City residence*, which *does not appear in his handwriting*. This conclusion of the *ponente* is again without factual basis. It does not appear on record that Mitra ever submitted his handwriting specimen. Thus, there is no basis to determine whether a particular hand-written statement is Mitra's or not. The *ponente*, however, fails to appreciate that there is another entry on this very same document which clearly states that Mitra's residence is "STA. MONICA PUERTO PRINCESA CITY," in big bold letters, printed just above Mitra's name and signature.[60] Whether it was John Quillope who prepared the said document is immaterial because Mitra himself signed the document twice. Moreover, the *ponencia* fails to appreciate that the CTC used by Mitra in this application is the CTC issued in Puerto Princesa City on 03 February 2009 and not the one he supposedly obtained on 18 March 2009 from Barangay Isaub, Aborlan, Palawan. The *ponente* explains that it was Mitra's staff, Lilia Camora, who obtained the CTC from Puerto Princesa

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[58] (Petition to Deny Due Course, Annex "J") *Rollo*, p. 132.

[59] *Rollo*, p. 613.

[60] *Id.*

City. It is however lost on the *ponente* that the Barangay Captain of Sta. Monica, Puerto Princesa City issued a Certification stating that it was Mitra himself and not Lilia Camora who obtained a CTC on 03 February 2009; and, even if it was Lilia Camora, who obtained the CTC, it is evident that Mitra, nonetheless, used this Puerto Princesa CTC in his application, instead of the supposed CTC issued in Aborlan. In any case, John Quillope's and Lilia Camora's explanations are without much evidentiary value given that even as late as 15 July 2009, while they appear to have closely worked with Mitra in Palawan, both of them were unaware of his supposed new residence in Aborlan and still persisted on holding that Puerto Princesa City is Mitra's residence — clearly, confirming that Puerto Princesa City is, indeed, his true and actual residence.

The *ponencia* also gives too much weight on Carme Caspe's sworn statement, holding that the same was not controverted by the private respondents. This, again, is without factual basis. Private respondents have presented the statements of former employees of the Maligaya Feedmill who attest to the fact that Mitra was not a resident of the Maligaya Feedmill and that the room, where Mitra supposedly resides, is actually the business office of the Maligaya Feedmill — a fact which Mitra never controverted.

Furthermore, I do not agree with the *ponente*'s conclusion that the *transfer of residence was accomplished, not in one single move, but through an incremental process that started in 2008 but was in place by March 2009, although the house Mitra intended to be his permanent home was not yet completed.* Again, this conclusion of the *ponente* has no legal or factual basis. By March 2009, the home that he intended to be his permanent home was not only incomplete and uninhabitable, but also a mere figment of his imagination. Mitra, admittedly, acquired the lot from Rexter Temple, only on 05 June 2009[61] and only began to construct a house thereon much later. It is also clear from Mitra's submissions[62] before the COMELEC

[61] *Rollo*, pp. 412-414.

[62] *Id.* at 415-416.

that this house is not his legal residence and domicile. Thus, the *ponente* and dissenting opinion of Commissioner Sarmiento, are in error.

Also, Mitra's supposed business interests does not have much evidentiary value since, save for bare allegations, the records are bereft of any evidence to prove that Mitra **owns and operates** this supposed pineapple growing project in Aborlan which allegedly started in 2008. It appears on record that the supposed lease over the residential area of the feeds factory does not contain any reference to the supposed experimental pineapple growing project.

The *ponencia* also holds that Mitra did not commit any deliberate material misrepresentation in his COC since Mitra *never hid his intention to transfer his residence*.

To deny due course to or cancel a candidate's certificate of candidacy under Section 78 of the OEC, it must be proven that there was deliberate attempt to mislead, misinform, and hide the true state of his residence, which would otherwise render him ineligible.[63] In light of the discussion above, it is clear that Mitra deliberately indicated Sitio Maligaya, Barangay Isaub, Aborlan, Palawan, when in truth and in fact, he is still a resident of Puerto Princesa City. Thus, it is irrelevant, contrary to the *ponente*'s view, whether the candidate surreptitiously or openly transferred his residence. What is important is whether the candidate knowingly indicated a residence — which he is not a resident of, just to make him eligible for an elective position. Clearly, Mitra indicated Sitio Maligaya, Isaub, Aborlan, Palawan, as his residence in his COC, though he is not a resident thereof, just to make him eligible to be a candidate for Governor of the Province of Palawan, thereby violating the law and meriting his disqualification from being a candidate.

It is also the *ponente*'s view that *from an evidentiary perspective, the evidence confirming residence at Aborlan*

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[63] *Nardo M. Velasco v. Commission on Elections, et al.*, G.R. No. 180051, 24 December 2008, 575 SCRA 590.

decidedly tilts in Mitra's favor; even assuming the worst for Mitra, the evidence in his favor cannot go below the level of an equipoise. As discussed above, and contrary to this *ponencia*, Mitra's evidence is clearly wanting. He evidently failed to refute and controvert damaging evidence against his claim of residence at the feeds factory. Weighed against the evidence submitted by private respondents, Mitra's evidence is inadequate to support a conclusion that he has been a resident of Aborlan since 2008.

Thus, it is my view that the COMELEC correctly denied due course to and cancelled Mitra's COC in view of the overwhelming evidence submitted by private respondents. The petition of petitioner Mitra must fall to the ground for lack of factual and legal basis.

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Grave abuse of discretion — Defined as a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. (Mitra *vs*. COMELEC, G.R. No. 191938, July 02, 2010) p. 753

— When grave abuse of discretion is present, resulting error arising from the grave abuse mutate from error of judgment to one of jurisdiction. *(Id.)*

— When present. (Angeles City *vs*. Angeles Electric Corp., G.R. No. 166134, June 29, 2010) p. 43

Petition for — 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. (Mitra *vs.* COMELEC, G.R. No. 191938, July 02, 2010; *Velasco, Jr., J., dissenting opinion*) p. 753

Question of law — Includes issue on the applicability of the "fresh period rule" on appeal. (Panolino *vs*. Tajala, G.R. No. 183616, June 29, 2010) p. 313

CIRCUMSTANTIAL EVIDENCE

When sufficient for conviction — The requisites are: (1) there must be more than one circumstance to convict; (2) the facts on which the inference of guilt is based must be proved; and (3) the combination of all the circumstances such as to produce a conviction beyond reasonable doubt. (People *vs*. Bayon, G.R. No. 168627, July 02, 2010) p. 713

COMMON CARRIERS

Concept — Defined. (Sps. Cruz *vs*. Sun Holidays, Inc., G.R. No. 186312, June 29, 2010) p. 396

— Non-charging of a separate fee or fare for the services is inconsequential. *(Id.)*

Diligence required — Extraordinary diligence is required from common carriers. (Sps. Cruz *vs*. Sun Holidays, Inc., G.R. No. 186312, June 29, 2010) p. 396

— Extraordinary diligence required of common carriers demand that they take care of the goods or lives entrusted to them as if they were their own. *(Id.)*

— Statutory presumption of negligence may be overcome by evidence that the carrier exercised extraordinary diligence. *(Id.)*

Liability of — Requisites to free common carrier from liability on ground of fortuitous event. (Sps. Cruz *vs*. Sun Holidays, Inc., G.R. No. 186312, June 29, 2010) p. 396

— Rule in case of breach of contract of carriage resulting in the death of a passenger. *(Id.)*

COMPLEX CRIMES

Concept — Defined. (People *vs*. Elarcosa, G.R. No. 186539, June 29, 2010) p. 427

— Kinds. *(Id.)*

— Not applicable when three (3) crimes of murder resulted from several individual and distinct acts. *(Id.)*

COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657)

Just compensation — Determined by the Regional Trial Court. (Land Bank of the Phils. *vs*. Fortune Savings and Loan Assn., Inc., G.R. No. 177511, June 29, 2010) p. 172

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Buy-bust operation — Absent participation of the Philippine Drug Enforcement Agency therein is not critical. (People *vs*. Berdadero, G.R. No. 179710, June 29, 2010) p. 199

Chain of custody rule — Link in the chain of custody of illegal drugs, from the moment they were seized from the accused to the moment they are offered in evidence must be established. (People *vs*. Mapan Le, G.R. NNo. 188976, June 29, 2010) p. 586

— Non-compliance with the procedure does not render an accused's arrest illegal or the items seized/confiscated from him inadmissible. (People *vs*. Pampillona, G.R. No. 186527, June 29, 2010) p. 414

— Non-compliance with the requirement shall not render void or invalid the seizures and custody as long as the integrity and evidentiary value of the seized items are properly preserved. *(Id.)*

(People *vs*. Berdadero, G.R. No. 179710, June 29, 2010) p. 199

— Procedural requirements. (People *vs*. Andongan, G.R. No. 184595, June 29, 2010) p. 320

Illegal sale of drugs — Elements. (People *vs*. Mapan Le, G.R. No. 188976, June 29, 2010) p. 586

(People *vs*. Pampillona, G.R. No. 186527, June 29, 2010) p. 414

— Imposable penalty. *(Id.)*

— Marked money used in the buy-bust operation is not indispensable but merely corroborative in nature. (People *vs*. Mapan Le, G.R. No. 188976, June 29, 2010) p. 586

CONSPIRACY

Existence of — Agreement to commit a crime may be inferred from acts that point to a joint purpose and design, concerted action, and community of interest. (People *vs*. Elarcosa, G.R. No. 186539, June 29, 2010) p. 427

— Established when two or more persons come to an agreement concerning the commission of a felon and decide to commit it. (People *vs*. Bautista, G.R. No. 188601, June 29, 2010) p. 535

Liability of conspirators— When an accused may be held guilty as a co-principal by reason of conspiracy. (People *vs*. Bautista, G.R. No. 188601, June 29, 2010) p. 535

CONTRACTS

Consideration as an element — Incomplete payment of purchase price cannot be equated to the inadequacy of the price. (Orduña *vs*. Fuentebella, G.R. 176841, June 29, 2010) p. 151

Contract of adhesion — Binding as ordinary contracts. (Asian Construction and Dev't. Corp. *vs*. Cathay Pacific Steel Corp., G.R. No. 167942, June 29, 2010) p. 127

Effect of — A contract voluntarily entered into by the parties is the law between them and all issues or controversies shall be resolved mainly by the provisions in the contract. (Phil. Amsement and Gaming Corp. *vs*. Fontana Dev't. Corp., G.R. No. 187972, June 29, 2010) p. 472

— Courts have no choice but to enforce such contracts so long as they are not contrary to law, morals, good customs or public policy. *(Id.)*

Principle of autonomy of contracts — Rule and exceptions. (Asian Construction and Dev't. Corp. *vs*. Cathay Pacific Steel Corp., G.R. No. 167942, June 29, 2010) p. 127

Statute of Frauds — Not applicable to contracts partially consummated. (Orduña *vs*. Fuentebella, G.R. 176841, June 29, 2010) p. 151

— Purpose of the requirement that there be a written agreement. *(Id.)*

COURT PERSONNEL

Duties — Court personnel should act and behave beyond reproach and with a heavy burden of responsibility. (Judge Beltran *vs*. Pagulayan, A.M. No. P-05-2014, June 29. 2010) p. 13

Gross misconduct — Committed in case a court employee extorts from a party litigant by falsely using the name of complainant-judge. (Judge Beltran *vs.* Pagulayan, A.M. No. P-05-2014, June 29, 2010) p. 13

— Punishable by dismissal. *(Id.)*

— Where the penalty of dismissal cannot be imposed due to retirement, forfeiture of retirement benefits is warranted. *(Id.)*

COURTS

Period for disposition of cases — Cases or matters before the lower courts should be decided within ninety (90) days. (Request of Judge Batingana, RTC, Br. 6, Mati, Davao Oriental for Extension of Time to Decide Civil Case No. 2049, A.M. No. 09-2-74-RTC, June 29, 2010) p. 9

DAMAGES

Actual damages — Competent proof of the actual amount of loss is necessary. (OMC Carriers, Inc. *vs.* Sps. Nabua, G.R. No. 148974, July 02, 2010) p. 634

Attorney's fees — Its award must be for a justifiable reason. (OMC Carriers, Inc. *vs.* Sps. Nabua, G.R. No. 148974, July 02, 2010) p. 634

— When may be awarded. (Asian Construction and Dev't. Corp. *vs.* Cathay Pacific Steel Corp., G.R. No. 167942, June 29, 2010) p. 127

Award of — Designed to allow the plaintiff to obtain means, diversion or amusements that will serve to alleviate the moral suffering he/she has undergone due to the defendant's culpable action and must perforce, be proportional to the suffering inflicted. (OMC Carriers, Inc. *vs.* Sps. Nabua, G.R. No. 148974, July 02, 2010) p. 634

— Not intended to enrich a plaintiff at the expense of the defendant. *(Id.)*

Compensation for loss of earning capacity — Evidence must be presented that the victim, if not yet employed at the time of death, was reasonably certain to complete the training for a specific profession. (OMC Carriers, Inc. *vs*. Sps. Nabua, G.R. No. 148974, July 02, 2010) p. 634

Indemnity for death — Fixed by jurisprudence at ₱50,000.00. (OMC Carriers, Inc. *vs*. Sps. Nabua, G.R. No. 148974, July 02, 2010) p. 634

Indemnity for loss of earning capacity — Formula for computation. (Sps. Cruz *vs*. Sun Holidays, Inc., G.R. No. 186312, June 29, 2010) p. 396

DANGEROUS DRUGS

Illegal possession of dangerous drugs — Elements in the prosecution thereof. (People *vs*. Miguel, G.R. No. 180505, June 29, 2010) p. 214

— Imposable penalty. *(Id.)*

Illegal sale of — Elements. (People *vs*. Miguel, G.R. No. 180505, June 29, 2010) p. 214

(People *vs*. Berdadero, G.R. No. 179710, June 29, 2010) p. 199

— Imposable penalty. (People *vs*. Miguel, G.R. No. 180505, June 29, 2010) p. 214

— Non-presentation of poseur-buyer is fatal only if there is no other eyewitness to the illicit transaction. (People *vs*. Berdadero, G.R. No. 179710, June 29, 2010) p. 199

Illegal sale of shabu — Imposable penalty. (People *vs*. Berdadero, G.R. No. 179710, June 29, 2010) p. 199

DEFAULT

Judgment by default against a defendant — Could not be interpreted as an admission by the defendant that the plaintiff's causes of action find support in the law, or that the latter is entitled to the relief prayed for. (Heirs of Pedro de Guzman *vs*. Perona, G.R. No. 152266, July 02, 2010) p. 663

— Does not imply a waiver of rights, except that of being heard and of presenting evidence in his favor. *(Id.)*

— Does not imply an admission by the defendant of the facts and causes of action of the plaintiff, because the codal section requires the latter to adduce his evidence in support of his allegations as an indispensable condition before final judgment could be given in his favor. *(Id.)*

DENIAL OF THE ACCUSED

Defense of — Cannot prevail over positive testimonies of witnesses. (People *vs*. Pampillona, G.R. No. 186527, June 29, 2010) p. 414

(People *vs*. Miguel, G.R. No. 180505, June 29, 2010) p. 214

— Cannot prevail over the positive identification of accused. (People *vs*. Gallo, G.R. No. 187730, June 29, 2010) p. 450

DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB)

Jurisdiction — Does not include power to issue a writ of certiorari. (Fernandez *vs*. Fulgueras, G.R. 178575, June 29, 2010) p. 178

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Domicile of choice — Requisites for acquisition. (Mitra *vs*. COMELEC, G.R. No. 191938, July 02, 2010) p. 753

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Prohibited pleadings — Include a petition for certiorari. (Victorias Milling Co., Inc. *vs*. CA, G.R. No. 168062, June 29, 2010) p. 137

EMPLOYEES' COMPENSATION

Compensable illness — Myocardial infarction is included. (Oriental Shipmanagement Co., Inc. *vs*. Bastol, G.R. No. 186289, June 29, 2010) p. 358

Disability — When considered permanent. (Oriental Shipmanagement Co., Inc. *vs*. Bastol, G.R. No. 186289, June 29, 2010) p. 358

Permanent disability claim — Defined. (Oriental Shipmanagement Co., Inc. *vs*. Bastol, G.R. No. 186289, June 29, 2010) p. 358

— It is not the injury which is compensated but rather the incapacity to work resulting in the impairment of one's earning capacity. *(Id.)*

— Requirements. *(Id.)*

EMPLOYER-EMPLOYEE RELATIONSHIP

Control test — Application in case of insurance agents. (Tongko *vs*. Manufacturers Life Insurance Co. [Phil.], Inc., G.R. No. 167622, June 29, 2010) p. 57

— Elucidated. (Tongko *vs*. Manufacturers Life Insurance Co. [Phil.], Inc., G.R. No. 167622, June 29, 2010; *Carpio-Morales, J., separate dissenting opinion*) p. 57

— Indicators to determine the presence of control in cases involving insurance managers. *(Id.)*

— Presence of control over the means and methods must always be in relation to the attainment of the result or the goal. *(Id.)*

Existence of — Absence of a management contract is irrelevant to the issue of the presence of said relationship. (Tongko *vs*. Manufacturers Life Insurance Co. [Phil.], Inc., G.R. No. 167622, June 29, 2010; *Velasco, Jr., J., dissenting opinion*) p. 57

— Elements for determination. *(Id.)*

— Exists even if compensation is paid by way of commission. *(Id.)*

— Four-fold test. *(Id.)*

— Never left for the parties to determine. *(Id.)*

EMPLOYMENT, TERMINATION OF

Backwages — Shall be computed from the time of illegal dismissal until the date the decision becomes final. (Malig-on *vs*. Equitable General Services, Inc., G.R. No. 185269, June 29, 2010) p. 330

Constructive dismissal — The act of "off-detailing" an employee is equivalent to constructive dismissal where his floating status exceeds six months. (Malig-on *vs*. Equitable General Services, Inc., G.R. No. 185269, June 29, 2010) p. 330

Due process requirement — Suspension orders served on the employee do not constitute the first notice required by law prior to termination. (Erector Advertising Sign Group, Inc. *vs*. Cloma, G.R. No. 167218, July 02, 2010) p. 675

— Two (2) written notices are required. *(Id.)*

Illegal dismissal — An illegally dismissed employee is entitled to two reliefs, backwages and reinstatement. (Malig-on *vs*. Equitable General Services, Inc., G.R. No. 185269, June 29, 2010) p. 330

— When corporate officers are solidarily liable with the corporation in the dismissal of employees. (Alba *vs*. Yupangco, G.R. No. 188233, June 29, 2010) p. 514

Just causes — An offense that has been already been penalized with suspension may no longer be used as a ground for the imposition of the penalty of dismissal. (Erector Advertising Sign Group, Inc. *vs*. Cloma, G.R. No. 167218, July 02, 2010) p. 675

— Must be established by substantial evidence. *(Id.)*

Resignation — Burden of proving that the employee willingly resigned from the work rests with the employer. (Malig-on *vs*. Equitable General Services, Inc., G.R. No. 185269, June 29, 2010) p. 330

— The employee's filing of a complaint for unjust dismissal after tendering a resignation is inconsistent with genuine resignation. *(Id.)*

Separation pay — May be awarded in lieu of reinstatement. (Malig-on *vs*. Equitable General Services, Inc., G.R. No. 185269, June 29, 2010) p. 330

Valid termination — Dismissal must be for a just or authorized cause, and the employee must be afforded an opportunity to be heard and to defend himself. (Erector Advertising Sign Group, Inc. *vs.* Cloma, G.R. No. 167218, July 02, 2010) p. 675

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Estafa by means of deceit — Elements. (People *vs.* Gallo, G.R. No. 187730, June 29, 2010) p. 450

EVIDENCE

Burden of proof in land registration cases — Rests on the applicant who must show by clear, positive and convincing evidence that his alleged possession and occupation of the land is of the nature and duration required by law. (Rep. of the Phils. *vs.* Hanover Worldwide Trading Corp., G.R. No. 172102, July 02, 2010) p. 739

Circumstantial evidence — Sufficient for conviction if there is more than one circumstance, the facts from which the inferences are derived have been proven and the combination of all circumstances is such as to produce a conviction beyond reasonable doubt. (People *vs.* Bayon, G.R. No. 168627, July 02, 2010) p. 713

Guilt of the accused — Burden of proving the guilt of the accused beyond reasonable doubt lies with the prosecution. (People *vs.* Bayon, G.R. No. 168627, July 02, 2010) p. 713

(People *vs.* Basada, G.R. No. 185840, June 29, 2010) p. 338

In-court identification of accused — Sufficient to establish the accused's identity as one of the malefactors. (People *vs.* Pepino, G.R. No. 183479, June 29, 2010) p. 297

Preponderance of evidence — Quantum of proof required in administrative cases against lawyers. (Mecaral *vs.* Atty. Velasquez, A.C. No. 8392, June 29, 2010) p. 1

Weight and sufficiency of evidence in civil cases — The party making allegations has the burden of proving them by

preponderance of evidence. (Heirs of Pedro de Guzman *vs*. Perona, G.R. No. 152266, July 02, 2010) p. 663

EXEMPTING CIRCUMSTANCES

Insanity — Burden of proof lies on the person who pleads insanity. (People *vs*. Tibon, G.R. No. 188320, June 29, 2010) p. 521

— Proof of an accused's insanity must relate to the time immediately preceding or coetaneous with the commission of the offense charged. *(Id.)*

— Uncontrolled jealousy, anger and/or despondency are not equivalent to insanity. *(Id.)*

EXHAUSTION OF ADMINISTRATIVE REMEDIES

Doctrine of — Application of the doctrine corollary to the doctrine of primary jurisdiction, explained. (Gaw Guy *vs*. Ignacio, G.R. No. 167824, July 02, 2010) p. 689

— Requires that when an administrative remedy is provided by law, relief must be sought by exhausting this remedy before judicial intervention may be availed of; exception. *(Id.)*

FLIGHT OF THE ACCUSED

Effect of — It clearly evinces consciousness of guilt and a silent admission of culpability. (People *vs*. Bautista, G.R. No. 188601, June 29, 2010) p. 535

FRAME-UP

Defense of — Generally viewed with caution for it is easy to contrive and difficult to disprove. (People *vs*. Pampillona, G.R. No. 186527, June 29, 2010) p. 414

— Inherently a weak defense commonly used in drug-related cases. (People *vs*. Berdadero, G.R. No. 179710, June 29, 2010) p. 199

HABEAS CORPUS

Illegal detention — A restrictive custody and monitoring of movements or whereabouts of police officers under investigation by their supervisors is not a form of illegal detention or restraint of liberty. (Ampatuan *vs*. Judge Macaraig, G.R. No. 182497, June 29, 2010) p. 269

Writ of — A prime specification of an application for a writ is an actual and effective, and not merely a nominal or moral, illegal restraint of liberty. (Ampatuan *vs*. Judge Macaraig, G.R. No. 182497, June 29, 2010) p. 269

— Criterion for issuance of the writ. *(Id.)*

— Does not cover restrictive custody provided under R.A. No. 8551 (Phil. National Police Reform and Reorganization of 1998) and R.A. No. 6975 (Department of Local Government Act of 1990). *(Id.)*

— Should not be issued when the custody over the person is by virtue of a judicial process or a valid judgment. *(Id.)*

— Will be refused absent proof that the petitioner is being restrained of his liberty. *(Id.)*

— Will not be issued as a matter of course or as a mere perfunctory operation on the filing of the petition; judicial discretion is required. *(Id.)*

HEARSAY RULE, EXCEPTIONS TO

Dying declaration — A piece of evidence of the highest order. (People *vs*. Sanchez, G.R. No. 188610, June 29, 2010) p. 560

— Requisites. (People *vs*. Serenas, G.R. No. 188124, June 29, 2010) p. 495

HOMICIDE

Commission of — Civil liabilities of accused. (People *vs*. Basada, G.R. No. 185840, June 29, 2010) p. 338

IMMIGRATION AND DEPORTATION

Primary jurisdiction of Board of Commissioners over deportation proceedings — Claim of citizenship of a respondent as an exception must be so substantial that there are reasonable grounds to believe that such claim is correct. (Gaw Guy *vs.* Ignacio, G.R. No. 167824, July 02, 2010) p. 689

INJUNCTION

Writ of preliminary injunction — Its issuance rests entirely within the discretion of the court and will not be interfered with, except where there is grave abuse of discretion. (Angeles City *vs.* Angeles Electric Corp., G.R. No. 166134, June 29, 2010) p. 43

— Requisites. *(Id.)*

INSURANCE

Insurance agency — Elements of control specific to insurance agency should not be read as elements of control in an employment relationship governed by the Labor Code. (Tongko *vs.* Manufacturers Life Insurance Co. [Phil.], Inc., G.R. No. 167622, June 29, 2010) p. 57

— Income is dependent on result, not on the means and manner of selling. *(Id.)*

— Indicators to determine the presence of control in cases involving insurance managers. (Tongko *vs.* Manufacturers Life Insurance Co. [Phil.], Inc., G.R. No. 167622, June 29, 2010; *Carpio-Morales, J., separate dissenting opinion*) p. 57

— When established. (Tongko *vs.* Manufacturers Life Insurance Co. [Phil.], Inc., G.R. No. 167622, June 29, 2010) p. 57

Insurance agents — Codes of Conduct imposed on agents in the sale of insurance are not per se indicative of labor law control. (Tongko *vs.* Manufacturers Life Insurance Co. [Phil.], Inc., G.R. No. 167622, June 29, 2010) p. 57

— May at the same time be an employee of a life insurance company. (Tongko *vs*. Manufacturers Life Insurance Co. [Phil.], Inc., G.R. No. 167622, June 29, 2010; *Carpio-Morales, J., separate dissenting opinion*) p. 57

— Qualification and duties, cited. (Tongko *vs*. Manufacturers Life Insurance Co. [Phil.], Inc., G.R. No. 167622, June 29, 2010) p. 57

INTEREST

Imposition of — Twelve percent (12%) interest per annum on the outstanding obligation imposed from the time of demand. (Marsman Drysdale Land, Inc. *vs*. Phil. Geoanalytics, Inc., G.R. No. 183374, June 29, 2010) p. 284

JUDGES

Undue delay in rendering a decision or order — Classified as a less serious charge. (Request of Judge Batingana, RTC, Br. 6, Mati, Davao Oriental for Extension of Time to Decide Civil Case No. 2049, A.M. No. 09-2-74-RTC, June 29, 2010) p. 9

— Judges should be mindful that any delay in the administration of justice, no matter how brief, deprives the litigant of his right to a speedy disposition of his case. *(Id.)*

JUDGMENTS

Alias writ of execution — Must conform to the tenor of the judgment. (Alba *vs*. Yupangco, G.R. No. 188233, June 29, 2010) p. 514

Doctrine of finality of judgment — Modification of a final and executory judgment is impermissible; exceptions. (Alba *vs*. Yupangco, G.R. No. 188233, June 29, 2010) p. 514

Promulgation of — Effect of failure of accused to attend during the promulgation of the judgment. (People *vs*. Pepino, G.R. No. 183479, June 29, 2010) p. 297

Res judicata — When not applicable. (Oriental Shipmanagement Co., Inc. *vs*. Bastol, G.R. No. 186289, June 29, 2010) p. 358

JURISDICTION

Concept — Jurisdiction is conferred only by a statute. (Fernandez *vs*. Fulgueras, G.R. 178575, June 29, 2010) p. 178

— Jurisdiction is determined by the allegations of the complaint irrespective of whether plaintiff is entitled to all or some of the claims or reliefs asserted. (Phil. Amusement and Gaming Corp. *vs*. Fontana Dev't. Corp., G.R. No. 187972, June 29, 2010) p. 472

Doctrine of primary administrative jurisdiction — Application and exceptions. (Gaw Guy *vs*. Ignacio, G.R. No. 167824, July 02, 2010) p. 689

— Application corollary to the doctrine of exhaustion of administrative remedies. *(Id.)*

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Commission of — Civil liabilities of accused. (People *vs*. Bautista, G.R. No. 188601, June 29, 2010) p. 535

(People *vs*. Pepino, G.R. No. 183479, June 29, 2010) p. 297

— Elements. *(Id.)*

— Imposable penalty. *(Id.)*

— When established. (People *vs*. Bautista, G.R. No. 188601, June 29, 2010) p. 535

LABOR LAWS

Construction in favor of labor — Application. (Tongko *vs*. Manufacturers Life Insurance Co. [Phil.], Inc., G.R. No. 167622, June 29, 2010; *Velasco, Jr., J., dissenting opinion*) p. 57

— Applies only when a doubt exists in the implementation and application of the Labor Code and its Implementing Rules. (Tongko *vs*. Manufacturers Life Insurance Co. [Phil.], Inc., G.R. No. 167622, June 29, 2010) p. 57

LABOR RELATIONS

Labor disputes — Doubts resolved in favor of the laborer. (Interorient Maritime Enterprises, Inc. *vs.* Remo, G.R. No. 181112, June 29, 2010) p. 240

Money claims — Burden of proving payment of monetary claims rests on the employer. (Dansart Security Force & Allied Services Co. *vs.* Bagoy, G.R. No. 168495, July 02, 2010) p. 705

Quitclaims, waivers and releases — When considered proper. (Interorient Maritime Enterprises, Inc. *vs.* Remo, G.R. No. 181112, June 29, 2010) p. 240

LAND REGISTRATION ACT (ACT NO. 496)

Application for registration — Requirement of alienability and disposability of the subject land must be proven. (Rep. of the Phils. *vs.* Hanover Worldwide Trading Corp., G.R. No. 172102, July 02, 2010) p. 739

Burden of proof in land registration cases — Rest on the applicant who must show by clear, positive and convincing evidence that his alleged possession and occupation of the land is of the nature and duration required by law. (Rep. of the Phils. *vs.* Hanover Worldwide Trading Corp., G.R. No. 172102, July 02, 2010) p. 739

Certificate of Title — Superior and indefeasible proof of ownership of property as against a tax declaration which is not conclusive evidence of title to or ownership of property. (Heirs of Pedro de Guzman *vs.* Perona, G.R. No. 152266, July 02, 2010) p. 663

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Action for reconveyance of fraudulently registered land — Prescription is not applicable against a party in possession of the subject land. (Orduña *vs.* Fuentebella, G.R. 176841, June 29, 2010) p. 151

Land titles — Reliance on the correctness of a certificate of title is not sufficient where the subject property is in the possession of persons other than the seller. (Orduña *vs.* Fuentebella, G.R. 176841, June 29, 2010) p. 151

LEGAL FEES

Appellate docket fees — Must be paid within the reglementary period for perfecting an appeal. (Province of Camarines Sur *vs*. Heirs of Agustin Pato, G.R. No. 151084, July 02, 2010) p. 654

LIS PENDENS

Cancellation of notice of lis pendens after final judgment — Rule under P.D. No. 1529 (Property Registration Decree). (J. Casim Construction Supplies, Inc. *vs*. Registrar of Deeds of Las Piñas, G.R. No. 168655, July 02, 2010) p. 725

Concept — Defined and purpose. (J. Casim Construction Supplies, Inc. *vs*. Registrar of Deeds of Las Piñas, G.R. No. 168655, July 02, 2010) p. 725

Notice of lis pendens — Power of the trial court to cancel the notice of lis pendens is inherent as the same is merely ancillary to the main action. (J. Casim Construction Supplies, Inc. *vs*. Registrar of Deeds of Las Piñas, G.R. No. 168655, July 02, 2010) p. 725

— When may be cancelled by the trial court. *(Id.)*

LOCAL GOVERNMENT CODE (R.A. NO. 7160)

Residency requirement for elective local officials — Purpose. (Mitra *vs*. COMELEC, G.R. No. 191938, July 02, 2010) p. 753

— The law recognizes implicitly that there can be a change of domicile or residence, but imposes only the condition that residence at the new place should at least be for a year. *(Id.)*

LOSS OF EARNING CAPACITY

Compensation for — Evidence must be presented that the victim, if not yet employed at the time of death, was reasonably certain to complete training for a specific profession. (OMC Carriers, Inc. *vs*. Sps. Nabua, G.R. No. 148974, July 02, 2010) p. 634

MARRIAGE, ANNULMENT OF

Rule of procedure applicable — Effect of non-enforcement of Article 40 of the Family Code. (Jarillo *vs*. People, G.R. No. 164435, June 29, 2010) p. 25

— Should be applied retroactively. *(Id.)*

MIGRANT WORKERS AND OVERSEAS FILIPINO ACT OF 1995 (R.A. NO. 8042)

Illegal recruitment — May be committed by a person with license under Section 6 of the Act. (People *vs*. Gallo, G.R. No. 187730, June 29, 2010) p. 450

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Grounds — Duplicity of offenses charged in the information is a ground. (People *vs*. Elarcosa, G.R. No. 186539, June 29, 2010) p. 427

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Commission of — Civil liabilities of the accused; cited. (People *vs*. Sanchez, G.R. No. 188610, June 29, 2010) p. 560

(People *vs*. Serenas, G.R. No. 188124, June 29, 2010) p. 495

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— Defined. (People *vs*. Sanchez, G.R. No. 188610, June 29, 2010) p. 560

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NATIONAL LABOR RELATIONS COMMISSION

Clarificatory hearings — When required. (Oriental Shipmanagement Co., Inc. *vs*. Bastol, G.R. No. 186289, June 29, 2010) p. 358

Rules of procedure — Belated submission of additional documentary evidence after the case was already submitted for decision is not considered improper. (Oriental Shipmanagement Co., Inc. *vs*. Bastol, G.R. No. 186289, June 29, 2010) p. 358

— Proceedings before the Labor Arbiter are non-litigious and summary in nature. *(Id.)*

— The Labor Arbiter has full discretion to determine, motu propio, on whether to conduct a hearing or not. *(Id.)*

— The Labor Arbiter is allowed to admit affidavits as evidence despite the non-presentation of the affiants for cross-examination by the adverse party. *(Id.)*

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Solidary obligation — When it arises. (Marsman Drysdale Land, Inc. *vs*. Phil. Geoanalytics, Inc., G.R. No. 183374, June 29, 2010) p. 284

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— When proper. *(Id.)*

Novation — Elucidated. (Azarcon *vs*. People, G.R. No. 185906, June 29, 2010) p. 347

— Essential requisites. *(Id.)*

OMNIBUS ELECTION CODE

Certificate of candidacy — False representation pertaining to material facts must be made with the intention to deceive the electorate as to the candidate's qualifications for public office. (Mitra *vs*. COMELEC, G.R. No. 191938, July 02, 2010) p. 753

— Mandatory requirements of a Certificate of Candidacy are considered merely directory after the people shall have spoken; not applicable where a material certificate of candidacy misrepresentation under oath is made. *(Id.)*

Disqualification of candidate — Quantum of proof necessary is only such relevant evidence as a reasonable mind will

accept to support a conclusion. (Mitra *vs*. COMELEC, G.R. No. 191938, July 02, 2010; *Velasco, Jr., J., dissenting opinion*) p. 753

Grant or denial of certificate of candidacy — Deliberate attempt to mislead, misinform, and hide the true state of one's residence which would otherwise render him ineligible must be proven. (Mitra *vs*. COMELEC, G.R. No. 191938, July 02, 2010; *Velasco, Jr., J., dissenting opinion*) p. 753

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Proof of ownership — Tax declaration does not prove ownership, but is an evidence of claim to possession of the land. (Rep. of the Phils. *vs*. Hanover Worldwide Trading Corp., G.R. No. 172102, July 02, 2010) p. 739

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— Distinguished from murder and homicide. *(Id.)*

— Elements. *(Id.)*

— Imposable penalty. *(Id.)*

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— Rule on division of losses. *(Id.)*

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How party-list representatives are chosen — Rule. (Amores *vs*. HRET, G.R. No. 189600, June 29, 2010) p. 600

Youth sector — Age requirement for nominees. (Amores *vs*. HRET, G.R. No. 189600, June 29, 2010) p. 600

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PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR)

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PAGCOR Charter (P.D. No. 1869) — Requires registration and affiliation of all persons primarily engaged in gambling with PAGCOR. (Phil. Amusement and Gaming Corp. *vs*. Fontana Dev't. Corp., G.R. No. 187972, June 29, 2010) p. 472

Powers — Include the power to regulate and control all games of chance within the Philippines. (Phil. Amusement and Gaming Corp. *vs*. Fontana Dev't. Corp., G.R. No. 187972, June 29, 2010) p. 472

PHILIPPINE NATIONAL POLICE REFORM AND REORGANIZATION ACT OF 1998 (R.A. NO. 8551)

Restrictive custody of police officers under investigation — Not a form of illegal detention or restraint of liberty. (Ampatuan *vs.* Judge Macaraig, G.R. No. 182497, June 29, 2010) p. 269

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— Verification by the complainant's counsel is sufficient compliance with the rule. *(Id.)*

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Presumption of regularity in the performance of official functions — Does not arise where the evidence for the prosecution is flawed. (People *vs.* Andongan, G.R. No. 184595, June 29, 2010) p. 320

— Presumption of regularity in the handling of the exhibits by the public officers and the presumption that they properly discharged their duties applies absent convincing evidence of improper motive. (People *vs.* Mapan Le, G.R. No. 188976, June 29, 2010) p. 586

— Presumption of regularity in the preparation of the pre-operation report, when established. (People *vs.* Pampillona, G.R. No. 186527, June 29, 2010) p. 414

— Stands unless substantially rebutted by the defense. *(Id.)*

— Upheld in the absence of improper motive. (People *vs.* Miguel, G.R. No. 180505, June 29, 2010) p. 214

Presumption of negligence on the part of the employer in the selection and supervision of his employees — May be overcome by a clear showing on the part of the employer that he has exercised the care and diligence of a good

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— Test of due supervision must be satisfied. *(Id.)*

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Application for registration — Applicant must prove that the subject land forms part of the disposable and alienable lands of public domain and that he has been in open, continuous, exclusive, and notorious possession and occupation of the same under a bona fide claim of ownership since June 12, 1945, or earlier. (Rep. of the Phils. *vs*. Hanover Worldwide Trading Corp., G.R. No. 172102, July 02, 2010) p. 739

PUBLIC OFFICE

Qualifications for public office — Considered continuing requirement and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. (Amores *vs*. HRET, G.R. No. 189600, June 29, 2010) p. 600

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Evident premeditation — Requisites. (People *vs*. Sanchez, G.R. No. 188610, June 29, 2010) p. 560

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— Must be established by clear and convincing evidence as conclusively as the killing itself. (People *vs*. Elarcosa, G.R. No. 186539, June 29, 2010) p. 427

— Not appreciated when victim was forewarned of the aggression against her and her family by the accused. (People *vs*. Sanchez, G.R. No. 188610, June 29, 2010) p. 560

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Persons liable — Teachers or head of art/trade establishments are liable for damages caused by students in their custody. (St. Joseph's College *vs*. Miranda, G.R. No. 182353, June 29, 2010) p. 256

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— Test of due supervision must be satisfied. *(Id.)*

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Commission of — Elements. (People *vs.* Llamas, G.R. No. 190616, June 29, 2010) p. 611

— Exact date of the commission of the rape is not an element of the crime. *(Id.)*

Penalty — Proper penalty where victim is under 18 years of age and the offender is her father. (People *vs*. Llamas, G.R. No. 190616, June 29, 2010) p. 611

Prosecution of rape cases — A medical report on the victim is not indispensable therein. (People *vs*. Llamas, G.R. No. 190616, June 29, 2010) p. 611

— Youth and immaturity are generally badges of truth and sincerity. *(Id.)*

RECONVEYANCE

Action for reconveyance based on fraud — A party must prove by clear and convincing evidence his title to the property and the fact of fraud. (Heirs of Pedro de Guzman *vs*. Perona, G.R. No. 152266, July 02, 2010) p. 663

RECRUITMENT AND PLACEMENT

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Illegal recruitment — Elements. (People *vs*. Gallo, G.R. No. 187730, June 29, 2010) p. 450

— May be committed by a person with a license under Section 6 of R.A. No. 8042. *(Id.)*

REGIONAL TRIAL COURT

As a land registration court — Has the duty and the power to set the initial hearing. (Rep. of the Phils. *vs*. Hanover Worldwide Trading Corp., G.R. No. 172102, July 02, 2010) p. 739

Jurisdiction — Exclusive over cases where the subject of litigation is incapable of pecuniary estimation which includes a complaint for injunction and a breach of contract. (Phil. Amusement and Gaming Corp. *vs*. Fontana Dev't. Corp., G.R. No. 187972, June 29, 2010) p. 472

ROBBERY WITH HOMICIDE

Commission of — It is necessary that the robbery itself be proved as conclusively as any other essential element of the crime. (People *vs*. Elarcosa, G.R. No. 186539, June 29, 2010) p. 427

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and should investigate the rights of the person in possession. (Deanon *vs*. Mag-abo, G.R. No. 179549, June 29, 2010) p. 184

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— When qualified. *(Id.)*

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— Inconsistencies in the testimonies of witnesses, when referring to minor, trivial or inconsequential circumstances, even strengthen the credibility of the witnesses, because they eliminate doubts that such testimony had been coached or rehearsed. (People *vs*. Bautista, G.R. No. 188601, June 29, 2010) p. 535

(People *vs*. Mapan Le, G.R. No. 188976, June 29, 2010) p. 586

(People *vs*. Miguel, G.R. No. 180505, June 29, 2010) p. 214

— Stands in the absence of ill-motive to falsely testify against the accused. (People *vs*. Llamas, G.R. No. 190616, June 29, 2010) p. 611

(People *vs*. Elarcosa, G.R. No. 186539, June 29, 2010) p. 427

(People *vs*. Pampillona, G.R. No. 186527, June 29, 2010) p. 414

— Testimonies are entitled to full faith and credit when prosecution witnesses were not moved by any improper motive in testifying against the accused. (People *vs*. Bautista, G.R. No. 188601, June 29, 2010) p. 535

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REFERENCES

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4 Paras, Civil Code of the Philippines Annotated 723
(13th Ed., 1995) 165
Regalado, Justice Florenz D., Remedial Law Compendium,
Vol. I, 5th Revised Edition, p. 145, 1988 734
I Regalado, Remedial Law Compendium 472-473
(6th Rev. Ed.) 382
Reyes, The Revised Penal Code, 16th Ed., 2006, p. 471 576
Tolentino, Civil Code of the Philippines,
Vol. IV (1973 Edition) 37
Vitug, Jose C. and Acosta, Ernesto D., Tax Law
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