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OF THE

PHILIPPINES

FROM

JULY 12, 2010 TO JULY 26, 2010

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MANILA
2014

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by

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[G.R. No. 170464. July 12, 2010]

LAMBERT PAWNBROKERS and JEWELRY CORPORATION and LAMBERT LIM, *petitioners, vs.* **HELEN BINAMIRA,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; PROPRIETY THEREOF; WHEN FACTUAL MATTERS CONSIDERED.— As a rule, a petition for *certiorari* under Rule 65 is valid only when the question involved is an error of jurisdiction, or when there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court or tribunals exercising quasi-judicial functions. Hence, courts exercising *certiorari* jurisdiction should refrain from reviewing factual assessments of the respondent court or agency. Occasionally, however, they are constrained to wade into factual matters when the evidence on record does not support those factual findings; or when too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record, as in the present case.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; RETRENCHMENT; PROPRIETY THEREOF.— Retrenchment is the termination of employment initiated by the employer through no fault of and without prejudice to the employees. It is resorted to during periods

of business recession, industrial depression, seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant to a new production program, or automation. It is a management prerogative resorted to avoid or minimize business losses, and is recognized by Article 283 of the Labor Code, which reads: Art. 283. *Closure of establishment and reduction of personnel*.- The employer may also terminate the employment of any employee due to x x x retrenchment **to prevent losses** or the closing or cessation of operations of the establishment x x x by serving a written notice on the worker and the DOLE at least one month before the intended date thereof. x x x In case of retrenchment to prevent losses, the separation pay shall be equivalent to one (1) month pay or at least one-half month for every year of service whichever is higher. x x x

3. ID.; ID.; ID.; ELEMENTS.— To effect a valid retrenchment, the following elements must be present: (1) the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious and real, or only if expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) the employer serves written notice both to the employee/s concerned and the DOLE at least one month before the intended date of retrenchment; (3) the employer pays the retrenched employee separation pay in an amount prescribed by the Code; (4) the employer exercises its prerogative to retrench in good faith; and (5) the employer uses fair and reasonable criteria in ascertaining who would be retrenched or retained.

4. ID.; ID.; REDUNDANCY; PROPRIETY THEREOF.— Redundancy exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the enterprise. A redundant position is one rendered superfluous by any number of factors, such as over hiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company, or phasing out of a service activity previously undertaken by the business. Under these conditions, the employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business.

5. ID.; ID.; ID.; REQUISITES.— For the implementation of a redundancy program to be valid, the employer must comply with the following requisites: (1) written notice served on both the employees and the DOLE at least one month prior to the intended date of termination of employment; (2) payment of separation pay equivalent to at least one month pay for every year of service; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.

6. ID.; ID.; ILLEGAL DISMISSAL; OFFICERS OF CORPORATION NOT LIABLE UNLESS THEY ACTED IN BAD FAITH.— As a general rule, only the employer-corporation, partnership or association or any other entity, and not its officers, which may be held liable for illegal dismissal of employees or for other wrongful acts. This is as it should be because a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it. A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent. It is settled that in the absence of malice and bad faith, a stockholder or an officer of a corporation cannot be made personally liable for corporate liabilities. They are only solidarily liable with the corporation for the illegal termination of services of employees if they acted with malice or bad faith. In *Philippine American Life and General Insurance v. Gramaje*, bad faith is defined as a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purpose. It implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity. x x x The lack of authorized or just cause to terminate one's employment and the failure to observe due process do not *ipso facto* mean that the corporate officer acted with malice or bad faith. There must be independent proof of malice or bad faith which is lacking in the present case.

7. ID.; ID.; ID.; RELIEF ALLOWED UNDER THE LAW.— An illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to this full

> backwages, inclusive of allowances, and to her other benefits or their monetary equivalent, computed from the time the compensation was withheld up to the time of actual reinstatement. Where reinstatement is no longer feasible, separation pay equivalent to at least one month salary or one month salary for every year of service, whichever is higher, a fraction of at least six months being considered as one whole year, should be awarded to respondent. x x x A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without authorized cause and due process. x x x However, the award of attorney's fee is warranted pursuant to Article 111 of the Labor Code. Ten (10%) percent of the total award is usually the reasonable amount of attorney's fees awarded. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.

APPEARANCES OF COUNSEL

Pepito & Pepito Law Offices for petitioners.
Romualdo G. Buno and *Boler B. Binamira* for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

It is fundamental that an employer is liable for illegal dismissal when it terminates the services of the employee without just or authorized cause and without due process of law.

This Petition for Review on *Certiorari*[1] assails the Decision[2] dated August 4, 2005 of the Court of Appeals (CA) in CA-G.R. CEB SP No. 00010, which reversed and set aside the Resolutions

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[1] *Rollo*, pp. 21-42.

[2] CA *rollo*, pp. 323-331; penned by Associate Justice Vicente L. Yap and concurred in by Associate Justices Isaias P. Dicdican and Enrico A. Lanzanas.

dated July 30, 2003[3] and May 31, 2004[4] issued by the National Labor Relations Commission (NLRC) in NLRC Case No. V-000454-00 (RAB VII-01-0003-99-B).

Factual Antecedents

Petitioner Lambert Lim (Lim) is a Malaysian national operating various businesses in Cebu and Bohol one of which is Lambert Pawnbrokers and Jewelry Corporation. Lim is married to Rhodora Binamira, daughter of Atty. Boler Binamira, Sr., (Atty. Binamira), who is also the counsel and father-in-law of respondent Helen Binamira (Helen). Lambert Pawnbrokers and Jewelry Corporation – Tagbilaran Branch hired Helen as an appraiser in July 1995 and designated her as Vault Custodian in 1996.

On September 14, 1998, Helen received a letter[5] from Lim terminating her employment effective that same day. Lim cited business losses necessitating retrenchment as the reason for the termination.

Helen thus filed a case for illegal dismissal against petitioners docketed as NLRC RAB-VII CASE NO. 01-0003-99-B.[6] In her Position Paper[7] Helen alleged that she was dismissed without cause and the benefit of due process. She claimed that she was a mere casualty of the war of attrition between Lim and the Binamira family. Moreover, she claimed that there was no proof that the company was suffering from business losses.

In their Position Paper,[8] petitioners asserted that they had no choice but to retrench respondent due to economic reverses. The corporation suffered a marked decline in profits as well as

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

[4] *Id.* at 185-187.

[5] CA *rollo*, p. 46.

[6] *Id.* at 21-32.

[7] *Id.* at 21-26.

[8] *Id.* at 33-46.

substantial and persistent increase in losses. In its Statement of Income and Expenses, its gross income for 1998 dropped from ₱1million to ₱665,000.00.

Ruling of the Labor Arbiter

On November 26, 1999, Labor Arbiter Geoffrey P. Villahermosa rendered a Decision[9] which held that Helen was not illegally dismissed but was validly retrenched. The dispositive portion of the Labor Arbiter's Decision reads:

> WHEREFORE, all the foregoing premises being considered judgment is hereby rendered declaring the respondent not guilty of illegally terminating the complainant but is however directed to pay the complainant her retrenchment benefit in the amount of Seven Thousand Five Hundred Pesos (₱7,500.00), considering that she was receiving a monthly salary of ₱5,000.00 and rendered service for three (3) years.
>
> SO ORDERED.[10]

Ruling of the NLRC

On appeal, the NLRC reversed and set aside the Decision of the Labor Arbiter. It observed that for retrenchment to be valid, a written notice shall be given to the employee and to the Department of Labor and Employment (DOLE) at least one month prior to the intended date thereof. Since none was given in this case, then the retrenchment of Helen was not valid. The dispositive portion of the Decision[11] reads:

> WHEREFORE, premises duly considered, the decision of the Labor Arbiter dated 26 November 1999 is hereby REVERSED and SET ASIDE and respondents are ordered to reinstate complainant Helen Binamira to her former position without loss of seniority rights

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[9] *Id.* at 98-104.

[10] *Id.* at 103.

[11] *Id.* at 135-138; penned by Commissioner Edgardo M. Enarlan and concurred in by Presiding Commissioner Irenea E. Ceniza and Commissioner Oscar S. Uy.

and with full backwages from the time of her dismissal up to the promulgation of this decision.

Other claims are denied for lack of merit.

SO ORDERED.[12]

Petitioners filed a Motion for Reconsideration.[13] On July 30, 2003, the NLRC set aside its Decision dated September 27, 2002 and entered a new one, the dispositive portion of which reads:

> WHEREFORE, the Decision of November [sic] 27, 2002 is hereby SET ASIDE and a New One Entered declaring as valid the redundancy of the position of the complainant. Accordingly respondent is hereby ordered to pay the complainant her redundancy pay of one month for every year of service and in lieu of notice, she should also be paid one (1) month salary as indemnity.
>
> SO ORDERED.[14]

In arriving at this conclusion, the NLRC opined that what was actually implemented by the petitioners was not retrenchment due to serious business losses but termination due to redundancy. The NLRC observed that the Tagbilaran operations was overstaffed thus necessitating the termination of some employees. Moreover, the redundancy program was not properly implemented because no written notices were furnished the employee and the DOLE one month before the intended date of termination.

The Motion for Reconsideration filed by Helen was denied by the NLRC through its Resolution[15] dated May 31, 2004.

Ruling of the Court of Appeals

On petition for *certiorari*,[16] the CA found that both the Labor Arbiter and the NLRC failed to consider substantial evidence

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[12] *Id.* at 137.

[13] *Id.* at 139-154.

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

[15] *Id.* at 185-187.

[16] *Id.* at 3-204, inclusive of attachments.

showing that the exercise of management prerogative, in this instance, was done in bad faith and in violation of the employee's right to due process. The CA ruled that there was no redundancy because the position of vault custodian is a requisite, necessary and desirable position in the pawnshop business. There was likewise no retrenchment because none of the conditions for retrenchment is present in this case.

On August 4, 2005, the CA issued its Decision which provides:

WHEREFORE, the Resolution dated July 30, 2003 and May 31, 2004 issued by the National Labor Relations Commission in NLRC Case No. V-000454-00 (RAB VII-01-0003-99-B), is hereby REVERSED and SET ASIDE.

A new Decision is hereby entered declaring the dismissal of petitioner, Helen B. Binamira, as illegal and directing the private respondents, Lambert's Pawnbroker and Jewelry Corporation and Lambert Lim, jointly and solidarily, to pay to the petitioner, the following monetary awards:

1. Backwages from the date of her illegal suspension and dismissal until she is reinstated;

2. Considering that reinstatement is not feasible in view of the strained relations between the employer and the employee, separation pay is hereby decreed at the rate of one (1) month's pay for every year of service;

3. Moral damages in the amount of Twenty Five Thousand Pesos (₱25,000.00);

4. Exemplary damages in the amount of Twenty Five Thousand Pesos (₱25,000.00);

5. Attorney's fees in the amount equivalent to Ten Percent (10%) of the monetary awards herein above enumerated; and

6. Costs.

SO ORDERED.[17]

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[17] *Id.* at 330-331.

The Motion for Reconsideration filed by petitioners was denied by the CA through its Resolution[18] dated November 7, 2005.

Issues

Hence, this petition raising the following issues:

I.

Whether the CA gravely erred in reversing, through the extra-ordinary remedy of *certiorari*, the findings of facts of both the Labor Arbiter and the NLRC that the dismissal of respondent was with valid and legal basis.

II.

Whether the CA gravely erred in reversing, through the extra-ordinary remedy of *certiorari*, the unanimous findings of fact of both the Labor Arbiter and the NLRC that the dismissal of respondent was not attended by bad faith or fraud.

III.

Whether the CA erred in reversing, through the extra-ordinary remedy of *certiorari*, the findings of facts of both the Labor Arbiter and the NLRC based merely on the allegations and evidences made and submitted by the former counsel, adviser and business partner of petitioners.[19]

Petitioners' Arguments

Petitioners assail the propriety of the reversal by the CA of the factual findings of both the Labor Arbiter and the NLRC on a Petition for *Certiorari* under Rule 65. Petitioners posit that a writ of *certiorari* is proper only to correct errors of jurisdiction or when there is grave abuse of discretion tantamount to lack or excess of jurisdiction committed by the labor tribunals. They asserted that where the issue or question involved affects the wisdom or legal soundness of a decision, the same is beyond the province of a special civil action for *certiorari*.

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[18] *Id.* at 452-456.

[19] *Rollo,* 27.

Petitioners further contend that the CA erred in ruling that the dismissal was not valid and that it was done in bad faith.

Respondent's Arguments

On the other hand, Helen avers that the contradictory findings of fact of the Labor Arbiter and the NLRC justifies the CA to review the findings of fact of the labor tribunals. She further submits that both labor tribunals failed to consider substantial evidence showing that petitioners' exercise of management prerogative was done in utter bad faith and in violation of her right to due process.

Our Ruling

The petition is without merit.

The CA correctly reviewed the factual findings of the labor tribunals.

As a rule, a petition for *certiorari* under Rule 65 is valid only when the question involved is an error of jurisdiction, or when there is grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the court or tribunals exercising quasi-judicial functions. Hence, courts exercising *certiorari* jurisdiction should refrain from reviewing factual assessments of the respondent court or agency. Occasionally, however, they are constrained to wade into factual matters when the evidence on record does not support those factual findings; or when too much is concluded, inferred or deduced from the bare or incomplete facts appearing on record,[20] as in the present case.

We find that the CA rightfully reviewed the correctness of the labor tribunals' factual findings not only because of the foregoing inadequacies, but also because the NLRC and the Labor Arbiter came up with conflicting findings. The Labor Arbiter found that Helen's dismissal was valid on account of retrenchment due to economic reverses. On the other hand, the

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[20] *Pascua v. National Labor Relations Commission*, 351 Phil. 48, 61 (1998).

NLRC originally ruled that Helen's dismissal was illegal as none of the requisites of a valid retrenchment was present. However, upon motion for reconsideration, the NLRC changed its posture and ruled that the dismissal was valid on the ground of redundancy due to over-hiring. Considering the diverse findings of the Labor Arbiter and the NLRC, it behooved upon the CA in the exercise of its *certiorari* jurisdiction to determine which findings are more in conformity with the evidentiary facts.

There was no valid dismissal based on retrenchment.

Retrenchment is the termination of employment initiated by the employer through no fault of and without prejudice to the employees. It is resorted to during periods of business recession, industrial depression, seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant to a new production program, or automation.[21] It is a management prerogative resorted to avoid or minimize business losses, and is recognized by Article 283 of the Labor Code, which reads:

> Art. 283. *Closure of establishment and reduction of personnel*.- The employer may also terminate the employment of any employee due to x x x retrenchment **to prevent losses** or the closing or cessation of operations of the establishment x x x by serving a written notice on the worker and the DOLE at least one month before the intended date thereof. x x x In case of retrenchment to prevent losses, the separation pay shall be equivalent to one (1) month pay or at least one-half month for every year of service whichever is higher. x x x (Emphasis ours)

To effect a valid retrenchment, the following elements must be present: (1) the retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious and real, or only if expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) the employer serves

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[21] *Anabe v. Asian Construction*, G.R. No. 183233, December 23, 2009.

written notice both to the employee/s concerned and the DOLE at least one month before the intended date of retrenchment; (3) the employer pays the retrenched employee separation pay in an amount prescribed by the Code; (4) the employer exercises its prerogative to retrench in good faith; and (5) the employer uses fair and reasonable criteria in ascertaining who would be retrenched or retained.[22]

The losses must be supported by sufficient and convincing evidence. The normal method of discharging this is by the submission of financial statements duly audited by independent external auditors. In this case, however, the Statement of Income and Expenses[23] for the year 1997-1998 submitted by the petitioners was prepared only on January 12, 1999. Thus, it is highly improbable that the management already knew on September 14, 1998, the date of Helen's retrenchment, that they would be incurring substantial losses.

At any rate, we perused over the financial statements submitted by petitioners and we find no evidence at all that the company was suffering from business losses. In fact, in their Position Paper, petitioners merely alleged a sharp drop in its income in 1998 from ₱1million to only ₱665,000.00. This is not the business losses contemplated by the Labor Code that would justify a valid retrenchment. A mere decline in gross income cannot in any manner be considered as serious business losses. It should be substantial, sustained and real.

To make matters worse, there was also no showing that petitioners adopted other cost-saving measures before resorting to retrenchment. They also did not use any fair and reasonable criteria in ascertaining who would be retrenched. Finally, no written notices were served on the employee and the DOLE prior to the implementation of the retrenchment. Helen received her notice only on September 14, 1998, the day when her termination would supposedly take effect. This is in clear violation

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[22] *Id.*

[23] CA *rollo,* p. 45.

of the Labor Code provision which requires notice at least one month prior to the intended date of termination.

There was no valid dismissal based on redundancy.

Redundancy, on the other hand, exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the enterprise. A redundant position is one rendered superfluous by any number of factors, such as over hiring of workers, decreased volume of business, dropping of a particular product line previously manufactured by the company, or phasing out of a service activity previously undertaken by the business. Under these conditions, the employer has no legal obligation to keep in its payroll more employees than are necessary for the operation of its business.[24]

For the implementation of a redundancy program to be valid, the employer must comply with the following requisites: (1) written notice served on both the employees and the DOLE at least one month prior to the intended date of termination of employment; (2) payment of separation pay equivalent to at least one month pay for every year of service; (3) good faith in abolishing the redundant positions; and (4) fair and reasonable criteria in ascertaining what positions are to be declared redundant and accordingly abolished.[25]

In this case, there is no proof that the essential requisites for a valid redundancy program as a ground for the termination of the employment of respondent are present. There was no showing that the function of respondent is superfluous or that the business was suffering from a serious downturn that would warrant redundancy considering that such serious business downturn was the ground cited by petitioners in the termination letter sent to respondent.[26]

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[24] *Asian Alcohol Corporation v. National Labor Relations Commission,* 364 Phil. 912, 930 (1999).

[25] *Philippine Carpet Employees Association (PHILCEA) v. Sto. Tomas*, G.R. No. 168719, February 22, 2006, 483 SCRA 128, 145-146.

[26] CA *rollo,* p. 46.

In fine, Helen's dismissal is illegal for lack of just or authorized cause and failure to observe due process of law.

Lambert Pawnbrokers and Jewelry Corporation is solely liable for the illegal dismissal of respondent.

As a general rule, only the employer-corporation, partnership or association or any other entity, and not its officers, which may be held liable for illegal dismissal of employees or for other wrongful acts. This is as it should be because a corporation is a juridical entity with legal personality separate and distinct from those acting for and in its behalf and, in general, from the people comprising it.[27] A corporation, as a juridical entity, may act only through its directors, officers and employees. Obligations incurred as a result of the directors' and officers' acts as corporate agents, are not their personal liability but the direct responsibility of the corporation they represent.[28] It is settled that in the absence of malice and bad faith, a stockholder or an officer of a corporation cannot be made personally liable for corporate liabilities. [29] They are only solidarily liable with the corporation for the illegal termination of services of employees if they acted with malice or bad faith. In *Philippine American Life and General Insurance v. Gramaje*,[30] bad faith is defined as a state of mind affirmatively operating with furtive design or with some motive of self-interest or ill will or for ulterior purpose. It implies a conscious and intentional design to do a wrongful act for a dishonest purpose or moral obliquity.

In the present case, malice or bad faith on the part of Lim as a corporate officer was not sufficiently proven to justify a ruling holding him solidarily liable with the corporation. The lack of

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[27] *Equitable Banking Corporation v. National Labor Relations Commission*, 339 Phil. 541, 566 (1977).

[28] *Santos v. National Labor Relations Commission*, 325 Phil. 145, 156 (1996).

[29] *Tan v. Timbal*, 478 Phil. 497, 505 (2004).

[30] 484 Phil. 880, 891 (2004).

authorized or just cause to terminate one's employment and the failure to observe due process do not *ipso facto* mean that the corporate officer acted with malice or bad faith. There must be independent proof of malice or bad faith which is lacking in the present case.

There is no violation of attorney-client relationship.

We find no merit in petitioners' assertion that Atty. Binamira gravely breached and abused the rule on privileged communication under the Rules of Court and the Code of Professional Responsibility of Lawyers when he represented Helen in the present case. Notably, this issue was never raised before the labor tribunals and was raised for the first time only on appeal. Moreover, records show that although petitioners previously employed Atty. Binamira to manage several businesses, there is no showing that they likewise engaged his professional services as a lawyer. Likewise, at the time the instant complaint was filed, Atty. Binamira was no longer under the employ of petitioners.

Respondent is entitled to the following relief under the law.

An illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to this full backwages, inclusive of allowances, and to her other benefits or their monetary equivalent, computed from the time the compensation was withheld up to the time of actual reinstatement. Where reinstatement is no longer feasible, separation pay equivalent to at least one month salary or one month salary for every year of service, whichever is higher, a fraction of at least six months being considered as one whole year, should be awarded to respondent.

In this case, Helen is entitled to her full backwages from the time she was illegally dismissed on September 14, 1998. Considering the strained relations between the parties, reinstatement is no longer feasible. Consequently, Helen is also entitled to receive separation pay equivalent to one month salary for every year of service.

A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee

to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without authorized cause and due process.[31]

Considering that there is no clear and convincing evidence showing that the termination of Helen's services had been carried out in an arbitrary, capricious and malicious manner, the award of moral and exemplary damages is not warranted.

Consequently, the moral and exemplary damages awarded by the CA are hereby deleted.

However, the award of attorney's fee is warranted pursuant to Article 111 of the Labor Code. Ten (10%) percent of the total award is usually the reasonable amount of attorney's fees awarded. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.[32]

WHEREFORE, the instant petition for review on *certiorari* is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CEB SP No. 00010 dated August 4, 2005 finding the dismissal of respondent Helen B. Binamira as illegal is *AFFIRMED WITH MODIFICATIONS* that respondent is entitled to receive full backwages from the time she was illegally dismissed on September 14, 1998 as well as to separation pay in lieu of reinstatement equivalent to one month salary for every year of service. The amounts awarded as moral damages and exemplary damages are deleted for lack of basis. Finally, only petitioner Lambert Pawnbrokers and Jewelry Corporation is found liable for the illegal dismissal of respondent.

SO ORDERED.

Corona, C.J. (Chairperson), Brion,[*] *Abad,*[**] and *Perez, JJ.*, concur.

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[31] *Manila Water Company, Inc. v. Peña*, 478 Phil. 68, 84 (2004).

[32] *Quijano v. Mercury Drug Corporation and National Labor Relations Commission*, 354 Phil. 112, 127 (1998).

[*] Per Special Order No. 856 dated July 1, 2010.

[**] Per Special Order No. 869 dated July 5, 2010.

SECOND DIVISION

[G.R. No. 154560. July 13, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **SANDIGANBAYAN (SECOND DIVISION), TERNATE DEVELOPMENT CORPORATION, FANTASIA FILIPINA RESORTS, INC., MONTE SOL DEVELOPMENT CORPORATION, OCEAN VILLAS CONDOMINIUM CORPORATION, OLAS DEL MAR DEVELOPMENT CORPORATION, PHILIPPINE VILLAGE HOTEL, PHILROAD CONSTRUCTION CORPORATION, PUERTO AZUL BEACH AND COUNTRY CLUB, INC., SILAHIS INTERNATIONAL HOTEL, SULO DOBBS FOOD SERVICES, INC., NOTION AND POTIONS, INC., and SUN AND SHADE MERCHANDISE, INC.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; NOT PROPER WHERE APPEAL IS THE PROPER REMEDY TO BE AVAILED.— An order of dismissal is a final order, which is the proper subject of an appeal through a petition for review. Where appeal is available, the special civil action of *certiorari* will not be entertained even if it is filed on ground of grave abuse of discretion as in this case. The remedies of appeal and special civil action of *certiorari* are mutually exclusive. One cannot take the place of the other.

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; NOT PRESENT WHEN THE SANDIGANBAYAN DISMISSED THE COMPLAINT AGAINST THE CORPORATION ORGANIZED WITH ILL-GOTTEN WEALTH AS JUDGMENT MAY BE DIRECTED AGAINST THE DEFENDANT'S SHARES OF STOCK.— For an act to be struck down as having been done with grave abuse of discretion, such abuse must be patent and gross, a screaming aberration, to use a phrase. The Sandiganbayan's dismissal of the complaint as against respondent corporations cannot be regarded as falling in this category. For one thing, the Sandiganbayan merely relied on this Court's ruling in the *Republic* case that impleading corporations, which are alleged to have been capitalized with

ill-gotten wealth, is unnecessary since judgment may be rendered against the individual defendants, divesting them of their shares of stock. In the more recent case of *Universal Broadcasting Corporation v. Sandiganbayan (5th Dvision)*, the Court again said that when corporations are organized with ill-gotten wealth but are not themselves guilty of wrongdoing and are merely the *res* of the actions, there is no need to implead them. Judgment may simply be directed against the shares of stock that were issued in consideration of ill-gotten wealth.

3. ID.; CIVIL PROCEDURE; ACTIONS; CAUSE OF ACTION; ELEMENTS.— A cause of action has three elements: 1) plaintiff's right under the law; (2) the defendant's obligation to abide by such right; and (3) defendant's subsequent violation of the same that entitles the plaintiff to sue for recompense.

4. POLITICAL LAW; PCGG RULES AND REGULATIONS; SEQUESTRATION ORDERS; WHEN VALID.— The April 11, 1986 PCGG Rules and Regulations required the signatures of at least two commissioners on a sequestration order. The Court has held that the two signatures are the best evidence of the Commission's approval; otherwise, the order is as in this case null and void. What is more, sequestration orders may only issue upon a showing of a *prima facie* case that the properties are ill-gotten wealth. Section 26, Article XVIII of the Constitution mandates this. In *Presidential Commission on Good Government v. Tan*, the Court said that while sequestration orders may issue *ex parte*, a *prima facie* factual foundation that the sequestered properties are ill-gotten wealth is required.

5. ID.; ID.; ID.; ISSUANCE BASED ON THE PRESUMPTION THAT THE PCGG ACTED PURSUANT TO LAW AND BASED ON *PRIMA FACIE* EVIDENCE, NOT APPRECIATED; LIFTING OF SEQUESTRATION ORDERS, MADE PROPER.— With all the sequestration orders, there is no clear showing of a *prima facie* case that the sequestered properties were ill-gotten wealth. As discussed earlier, the amended complaint stated no cause of action against the respondent corporations while, except for general averments, the orders themselves did not state the reasons behind their issuance. Confronted with this, the Government simply asserts that the PCGG may be presumed to have acted pursuant to law

and based on *prima facie* evidence. But, the Government cannot simply rely on such a presumption which undermines the basic constitutional principle that public officers and employees must at all times be accountable to the people. Indeed, sequestration is an extraordinary and harsh remedy. As such, it should be confined to its lawful parameters and exercised, with due regard, in the words of its enabling laws, to the requirements of fairness, due process and justice. Besides, the lifting of the orders will not necessarily be fatal to the main case since it does not *ipso facto* mean that the sequestered properties are *not* ill-gotten. The effect of the lifting of the sequestration simply means that the government may not act as conservator or may not exercise administrative or housekeeping powers over the corporations. Historically, such option has not fared well.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Madrid Danao & Associates for private respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the propriety of amending a complaint for recovery of alleged ill-gotten wealth by impleading corporate entities already listed down in the original complaint as assets and shell corporations of the defendant individuals.

The Facts and the Case

From 1986 to 1988, the Presidential Commission on Good Government (PCGG) issued various sequestration orders against the assets, records, and documents of several corporations owned by Modesto Enriquez, Trinidad Diaz-Enriquez, Rebecco Panlilio, Erlinda Enriquez-Panlilio, Leandro Enriquez, Don M. Ferry, Roman A. Cruz, Jr., and Gregorio R. Castillo (collectively the Enriquez group), all of whom were alleged associates of the spouses Ferdinand and Imelda Marcos. The corporations were:

Corporation	Date of Sequestration
Philippine Village Hotel (Philippine Village)	June 6, 1986[1]
Philroad Construction Corporation (Philroad)	
Silahis International Hotel (Silahis)	May 31, 1986[2]
Fantasia Filipina Resorts, Inc. (Fantasia)	
Monte Sol Development Corporation (Monte Sol)	
Olas del Mar Development Corporation (Olas del Mar)	
Puerto Azul Beach and Country Club, Inc. (Puerto Azul)	
Ternate Development Corporation (Ternate)	March 10, 1986 and April 4, 1988.[3]

On July 23, 1987 petitioner Republic of the Philippines (the Government), through the PCGG, filed a complaint[4] with the Sandiganbayan against former President Marcos, his wife Imelda, and the Enriquez group of individuals for reconveyance, reversion, accounting, restitution, and damages, in Civil Case 0014. Annexed to the complaint was a list of corporations where the individual defendants allegedly owned shares of stock.[5] The list included the above-named respondent corporations and, in addition, respondents Notions and Potions, Inc. (Notions and Potions), Ocean Villas Condominium Corp. (Ocean Villas), Sulo Dobbs Food Services (Sulo Dobbs), and Sun and Shade Merchandise, Inc. (Sun and Shade), among others.

In October 1991 the Government moved for the admission of an amended complaint[6] in Civil Case 0014 to implead respondent corporations, except for Notions and Potions and Sun and Shade, as defendants. It alleged that the corporations

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[1] *Rollo*, p. 485.

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

[3] *Id.* at 488-490.

[4] *Id.* at 55-81.

[5] *Id.* at 78.

[6] *Id.* at 82-105.

were beneficially owned or controlled by the individual defendants and that the latter used them as fronts to defeat public convenience, protect fraudulent schemes, or evade obligations and liabilities under the law.

Meantime, respondents Silahis, Philippine Village, and Ternate separately challenged the sequestration orders that the PCGG earlier issued against them. They filed petitions for prohibition with application for a writ of preliminary injunction before the Sandiganbayan, alleging that no judicial action had been filed against them within six months from the ratification of the Constitution or from the issuance of the sequestration orders as required under Section 26,[7] Article XVIII of the Constitution. The Sandiganbayan issued a writ of preliminary injunction.[8]

The Government elevated the matter to this Court through *certiorari* in G.R. 104065, 104168, and 105205. Acting on these cases and several others, the Court in *Republic of the Philippines v. Sandiganbayan*[9] set aside the writ of injunction. It held that the corporations need not be formally impleaded to maintain the existing sequestrations. Moreover, a complaint which identified and alleged that the corporations served as repositories of ill-gotten wealth may be considered a judicial action as

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[7] Section 26. The authority to issue sequestration or freeze orders under Proclamation No. 3 dated March 25, 1986 in relation to the recovery of ill-gotten wealth shall remain operative for not more than eighteen months after the ratification of this Constitution. However, in the national interest, as certified by the President, the Congress may extend said period.

A sequestration or freeze order shall be issued only upon showing of a *prima facie* case. The order and the list of the sequestered or frozen properties shall forthwith be registered with the proper court. For orders issued before the ratification of this Constitution, the corresponding judicial action or proceeding shall be filed within six months from its ratification. For those issued after such ratification, the judicial action or proceeding shall be commenced within six months from the issuance thereof.

The sequestration or freeze order is deemed automatically lifted if no judicial action of proceeding is commenced as herein provided.

[8] *Rollo*, pp. 129-131.

[9] 310 Phil. 401 (1995).

contemplated in the Constitution. Lastly, the Court said that even assuming the corporations had to be impleaded, the complaints could be amended at any time during the pendency of the actions.[10]

Here, the Sandiganbayan eventually admitted the amended complaint in Civil Case 0014.[11] Respondents Ternate, Monte Sol, and Olas del Mar then filed a motion to dismiss and to lift sequestration.[12] Citing the *Republic* case, they claimed that they did not have to be impleaded as defendants and that the Government had no cause of action against them. They also sought a hearing that would require the Government to present *prima facie* evidence that would justify their sequestration and, in its absence, that the sequestration orders be deemed automatically lifted.

Respondents Fantasia, Silahis, Philippine Village, Philroad, Puerto Azul, Sulo Dobbs, and Ocean Villas later followed suit and filed a similar motion.[13] In addition, respondents Philippine Village, Silahis, Monte Sol, Ternate, Sulo Dobbs, Fantasia, Puerto Azul, Ocean Villas, Notions and Potions, and Sun and Shade filed separate motions for the issuance of temporary restraining orders and preliminary injunctions to prevent the implementation of the sequestration orders against them.

On February 7, 2002 the Sandiganbayan granted the motions to dismiss.[14] Citing the *Republic* case, it held that impleading the corporations as defendants was unnecessary. The Government filed a motion for reconsideration but the Sandiganbayan denied the same, further pointing out that the amended complaint stated no cause of action against the defendant corporations. It also lifted the orders of sequestration against them.[15] Aggrieved,

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[10] *Id.* at 516-517.

[11] *Rollo*, pp. 147-159.

[12] *Id.* at 106-120.

[13] *Id.* at 132-137.

[14] *Id.* at 50-53.

[15] *Id.* at 54.

the Government filed this petition for *certiorari* under Rule 65 of the Rules of Court.

With the filing of the petition, the Sandiganbayan in Civil Case 0014 allowed the postponement of pre-trial hearings in deference to this Court. But since the Court did not issue a temporary restraining order, the Sandiganbayan resumed hearings in the case on October 1, 2007. But the Government failed to appear despite due notice. Consequently, the Sandiganbayan dismissed the case against the remaining individual defendants without prejudice.[16]

The Issues Presented

The threshold issue presented in this case is whether or not the present petition for *certiorari* under Rule 65 is the proper remedy in assailing the resolutions of the Sandiganbayan.

The substantive issues are:

1. Whether or not the Sandiganbayan gravely abused its discretion in dismissing the complaint against respondent corporations on the grounds that there was no need for it and that the amendment did not state a cause of action against such corporations; and

2. Whether or not the Sandiganbayan gravely abused its discretion in lifting the sequestration orders against the subject corporations.

The Court's Rulings

One. With respect to the threshold issue, the Government clearly availed itself of the wrong remedy in filing this special civil action of *certiorari* under Rule 65 of the Rules of Court. An order of dismissal is a final order,[17] which is the proper subject of an appeal through a petition for review. Where appeal

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[16] *Id.* at 609.

[17] *San Miguel Bukid Homeowners Association, Inc. v. The City of Mandaluyong*, G.R. No. 153653, October 2, 2009, 602 SCRA 30, 35.

is available, the special civil action of *certiorari* will not be entertained even if it is filed on ground of grave abuse of discretion as in this case. The remedies of appeal and special civil action of *certiorari* are mutually exclusive. One cannot take the place of the other. [18] And, while there are known exceptions to this rule, none has been shown here.

At any rate, even if the procedural flaw is disregarded, the Court finds that the Sandiganbayan committed no grave abuse of discretion in dismissing the complaint and lifting the sequestration orders against respondent corporations.

Two. For an act to be struck down as having been done with grave abuse of discretion, such abuse must be patent and gross, a screaming aberration, to use a phrase. The Sandiganbayan's dismissal of the complaint as against respondent corporations cannot be regarded as falling in this category. For one thing, the Sandiganbayan merely relied on this Court's ruling in the *Republic* case that impleading corporations, which are alleged to have been capitalized with ill-gotten wealth, is unnecessary since judgment may be rendered against the individual defendants, divesting them of their shares of stock.[19]

In the more recent case of *Universal Broadcasting Corporation v. Sandiganbayan (5th Division)*,[20] the Court again said that when corporations are organized with ill-gotten wealth but are not themselves guilty of wrongdoing and are merely the *res* of the actions, there is no need to implead them. Judgment may simply be directed against the shares of stock that were issued in consideration of ill-gotten wealth.[21]

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[18] *Madrigal Transport, Inc. v. Lapanday Holdings Corporation*, 479 Phil. 768, 782-783 (2004).

[19] *Supra* note 9, at 509-511.

[20] G.R. No. 160677, August 10, 2007, 529 SCRA 782, 787-788.

[21] In *Republic v. Sandiganbayan* [*supra* note 9, at 510-511], the Court held that there is no need to implead firms which are merely the *res* of the actions in ill-gotten wealth cases and that judgment may simply be directed against the assets, thus:

Nor did the Sandiganbayan gravely abuse its discretion when it dismissed the complaint against respondent corporations on the ground that it stated no cause of action against them. A cause of action has three elements: 1) plaintiff's right under the law; (2) the defendant's obligation to abide by such right; and (3) defendant's subsequent violation of the same that entitles the plaintiff to sue for recompense.[22] The complaint makes no allegations that respondent corporations have done some acts that have violated a right vested by law in the Government.

Indeed, the amended complaint states that it is a civil action against the individual defendants for their alleged misappropriation and theft of public funds, plunder of the nation's wealth, extortion, blackmail, bribery, embezzlement and other acts of corruption, betrayal of public trust and brazen abuse of power.[23] Here, the Government makes no allegations that respondent corporations as such committed these acts.

The Government claims that its Answer to Interrogatories[24] enumerates the documentary evidence it intended to use to prove

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C. *Impleading Unnecessary Re Firms which are the Res of the Actions*

> And as to corporations organized with ill-gotten wealth, but are not themselves guilty of misappropriation, fraud or other illicit conduct – in other words, the companies themselves are the object or thing involved in the action, **the *res* thereof – there is no need to implead them either.** Indeed, their impleading is not proper on the strength alone of their having been formed with ill-gotten funds, absent any other particular wrongdoing on their part. **The judgment may simply be directed against the shares of stock shown to have been issued in consideration of ill-gotten wealth.**
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> x x x In this light, *they are simply the res in the actions for the recovery of illegally acquired wealth*, and there is, in principle, no cause of action against them and no ground to implead them as defendants in said actions. (Italics adopted, bold supplied)

[22] *Camarines Sur IV Electric Cooperative, Inc. v. Aquino*, G.R. No. 167691, September 23, 2008, 566 SCRA 263, 268.

[23] *Rollo*, pp. 83-84.

[24] *Id.* at 260-289.

its case against the corporations. But the Government cannot prove more than it alleged in its complaint. Its Answer to Interrogatories is not part of its complaint. Besides, the evidence described in that document referred to alleged anomalous transfers and sales of shares of stock by the individual defendants. The document does not refer to corporate acts.

Three. The Government argues that, assuming the dismissal of the complaint as to respondent corporations was justified, the Sandiganbayan did not have to lift the sequestration orders against them. But, while it is true that impleading respondent corporations is not necessary for maintaining the sequestration orders already issued against them, such sequestration orders should still be quashed for an altogether another reason. The April 11, 1986 PCGG Rules and Regulations required the signatures of at least two commissioners on a sequestration order.[25] The Court has held that the two signatures are the best evidence of the Commission's approval; otherwise, the order is as in this case null and void.[26]

What is more, sequestration orders may only issue upon a showing of a *prima facie* case that the properties are ill-gotten wealth. Section 26, Article XVIII of the Constitution mandates this. In *Presidential Commission on Good Government v. Tan*,[27] the Court said that while sequestration orders may issue *ex parte*, a *prima facie* factual foundation that the sequestered properties are ill-gotten wealth is required.[28]

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

[26] *Trans Middle East (Phils.) v. Sandiganbayan*, G.R. No. 172556, June 9, 2006, 490 SCRA 455, 483, citing *Republic of the Philippines v. Sandiganbayan*, 355 Phil. 181, 194 (1998).

[27] G.R. Nos. 173553-56, December 7, 2007, 539 SCRA 464, 479.

[28] *Id.* at 483-484, citing *Bataan Shipyard & Engineering Co., Inc. v. Presidential Commission on Good Government*, 234 Phil. 180, 211 (1987).

Here, the June 6 and May 31, 1986 sequestration orders against Philippine Village, Philroad, and Silahis were signed only by one commissioner. They are, therefore, void. The Court also notes that the March 10, 1986 order was issued solely against Ternate. Two years later, however, the PCGG suddenly issued the April 4, 1988 "Supplemental Writ of Sequestration," this time including Fantasia, Monte Sol, Olas del Mar, and Puerto Azul. The PCGG alleged that these corporations were affiliates and shell companies of Puerto Azul, without stating the basis for these findings. Meanwhile, none of the above orders included respondents Notions and Potions, Ocean Villas, Sulo Dobbs, and Sun and Shade.

With all the sequestration orders, there is no clear showing of a *prima facie* case that the sequestered properties were ill-gotten wealth. As discussed earlier, the amended complaint stated no cause of action against the respondent corporations while, except for general averments, the orders themselves did not state the reasons behind their issuance. Confronted with this, the Government simply asserts that the PCGG may be presumed to have acted pursuant to law and based on *prima facie* evidence.

But, the Government cannot simply rely on such a presumption which undermines the basic constitutional principle that public officers and employees must at all times be accountable to the people.[29] Indeed, sequestration is an extraordinary and harsh remedy. As such, it should be confined to its lawful parameters and exercised, with due regard, in the words of its enabling laws, to the requirements of fairness, due process and justice.[30]

Besides, the lifting of the orders will not necessarily be fatal to the main case since it does not *ipso facto* mean that the sequestered properties are *not* ill-gotten. The effect of the lifting of the sequestration simply means that the government may not act as conservator or may not exercise administrative or

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[29] *Id.* at 484.

[30] Concurring Opinion of Justice Ameurfina Melencio-Herrera in the case of *Bataan Shipyard & Engineering Co., Inc.*, *supra* note 28, at 250.

housekeeping powers over the corporations.[31] Historically, such option has not fared well.

WHEREFORE, the Court *DISMISSES* the petition for lack of merit and *AFFIRMS* the challenged resolutions of the Sandiganbayan dated February 7, 2002 and June 14, 2002.

SO ORDERED.

Carpio, Villarama, Jr.,[*] *Perez,*[**] and *Mendoza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 161602. July 13, 2010]

ALFREDO T. ROMUALDEZ, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN (THIRD DIVISION) and THE REPUBLIC OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; OMBUDSMAN; GENERAL INVESTIGATORY POWERS; AUTHORITY TO INVESTIGATE FORFEITURE CASES FOR ALLEGED ILL-GOTTEN WEALTH AMASSED BEFORE FEBRUARY 25, 1986, UPHELD.— [In] *Republic v. Sandiganbayan*, the

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[31] *Presidential Commission on Good Government v. Sandiganbayan*, 418 Phil. 8, 20 (2001).

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 858 dated July 1, 2010.

[**] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 863 dated July 5, 2010.

Ombudsman has under its general investigatory powers the authority to investigate forfeiture cases where the alleged ill-gotten wealth had been amassed before February 25, 1986. Thus: **Nonetheless, while we do not discount the authority of the Ombudsman, we believe and so hold that the exercise of his correlative powers to both investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth is restricted only to cases for the recovery of ill-gotten and/or unexplained wealth which were amassed after February 25, 1986. Prior to said date, the Ombudsman is without authority to *initiate* such forfeiture proceedings. We, however, uphold his authority to *investigate* cases for the forfeiture or recovery of such ill-gotten and/or unexplained wealth amassed even before the aforementioned date, pursuant to his general investigatory power under Section 15(1) of Republic Act No. 6770.**

2. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; VALIDITY OF PROCEEDINGS DOES NOT NECESSARILY REQUIRE THE PRESENCE OF ACCUSED.— The Ombudsman could not be faulted for proceeding with the investigation of the Romualdezes' cases when they did not show up despite notice being sent to them at their last known residence. As the Court held in a case: **The New Rules on Criminal Procedure "does not require as a condition *sine qua non* to the validity of the proceedings [in the preliminary investigation] the presence of the accused for as long as efforts to reach him were made, and an opportunity to controvert the evidence of the complainant is accorded him. The obvious purpose of the rule is to block attempts of unscrupulous respondents to thwart the prosecution of offenses by hiding themselves or by employing dilatory tactics."**

APPEARANCES OF COUNSEL

Enrico Q. Fernando for petitioner.
The Solicitor General for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the Ombudsman's authority to conduct preliminary investigation in a forfeiture case where the petitioner allegedly amassed ill-gotten wealth before February 25, 1986.

The Facts and the Case

On March 6, 1996 respondent Republic of the Philippines (Republic) filed an action for the forfeiture of alleged unlawfully acquired property with the Sandiganbayan in Civil Case 0167 against petitioner Alfredo T. Romualdez and his wife Agnes Sison Romualdez as well as against Romson Realty, Inc., R & S Transport, Inc., Fidelity Management, Inc., and Dio Island Resort, Inc. (collectively, the Romualdezes) pursuant to Republic Act (R.A.) 1379.[1]

On January 16, 2000 the Romualdezes filed a motion to dismiss the action on grounds of a) violation of their right to a speedy disposition of their case; b) lack of jurisdiction of the Sandiganbayan over the action; c) prematurity; d) prescription; and e) *litis pendentia*. On September 11, 2002 the Sandiganbayan denied the motion. It also denied on March 10, 2003 their subsequent motion for reconsideration.

On March 31, 2003 the Romualdezes next filed a motion for preliminary investigation and to suspend proceedings.[2] They claim that since Civil Case 0167 was a forfeiture proceeding filed under R.A. 1379, the Ombudsman should have first conducted a "previous inquiry similar to preliminary investigations in criminal cases" before the filing of the case pursuant to Section 2 of the law.[3]

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[1] "An Act Declaring Forfeiture in Favor of the State of any Property Found to have been Unlawfully Acquired by any Public Officer or Employee and Providing for the Proceedings therefor."

[2] *Rollo*, pp. 62-68.

[3] Section 2. Filing of petition. Whenever any public officer or employee has acquired during his incumbency an amount of property which is manifestly

In its ***Comment***[4] on the motion, the Republic pointed out that the Office of the Ombudsman in fact conducted such a preliminary investigation in 1991 in OMB-0-91-0820[5] and issued on January 22, 1992 a resolution, recommending the endorsement of the matter to the Office of the Solicitor General (OSG) for the filing of the forfeiture case.

On August 13, 2003 the Sandiganbayan issued a resolution,[6] denying the Romualdezes' March 31, 2003 motion. It also denied by resolution on December 3, 2003 their subsequent motion for reconsideration.[7] Thus, the Romualdezes filed the present

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out of proportion to his salary as such public officer or employee and to his other lawful income and the income from legitimately acquired property, said property shall be presumed *prima facie* to have been unlawfully acquired. The Solicitor General, upon complaint by any taxpayer to the city or provincial fiscal who **shall conduct a previous inquiry similar to preliminary investigations in criminal cases** and shall certify to the Solicitor General that there is reasonable ground to believe that there has been committed a violation of this Act and the respondent is probably guilty thereof, shall file, in the name and on behalf of the Republic of the Philippines, in the Court of First Instance of the city or province where said public officer or employee resides or holds office, a petition for a writ commanding said officer or employee to show cause why the property aforesaid, or any part thereof, should not be declared property of the State: Provided, That no such petition shall be filed within one year before any general election or within three months before any special election.

The resignation, dismissal or separation of the officer or employee from his office or employment in the Government or in the Government-owned or controlled corporation shall not be a bar to the filing of the petition: Provided, however, That the right to file such petition shall prescribe after four years from the date of the resignation, dismissal or separation or expiration of the term of the office or employee concerned, except as to those who have ceased to hold office within ten years prior to the approval of this Act, in which case the proceedings shall prescribe after four years from the approval hereof. (Emphasis supplied)

[4] *Rollo*, pp. 71-73.

[5] "*Presidential Commission on Good Government v. Alfredo Romualdez.*"

[6] *Rollo*, p. 31. Adopted and approved by Associate Justices Godofredo L. Legaspi, Raoul V. Victorino, and Norberto Y. Geraldez.

[7] *Id.* at 32-36. Penned by Associate Justice Godofredo L. Legaspi, and with the concurrence of Associate Justices Raoul V. Victorino and Norberto Y. Geraldez.

petition for *certiorari* and prohibition, seeking to annul the Sandiganbayan's rulings and prevent it from further proceeding with Civil Case 0167 until another preliminary investigation is conducted in their case.

The Question Presented

The sole question presented in this case is whether or not the preliminary investigation that the Ombudsman conducted in OMB-0-91-0820 in 1991 satisfied the requirement of the law in forfeiture cases.

The Ruling of the Court

The Romualdezes point out that the Office of the Ombudsman should not have conducted an investigation of their case, since its authority to investigate ill-gotten or unexplained wealth cases pertained only to wealth amassed **after February 25, 1986** and not before that date.[8] Since the Romualdezes acquired the allegedly ill-gotten wealth involved in their case as early as 1970, then the Ombudsman had no authority to conduct the investigation that it did in OMB-0-91-0820. In the absence of a prior valid preliminary investigation, the forfeiture proceedings in Civil Case 0167 cannot continue.

In addition, the Romualdezes insist that it was improper for the Ombudsman to have conducted its investigation in their absence. The spouses Alfredo and Agnes Romualdez were in the United States when that investigation took place. They were thus denied their right to be heard in that investigation.

But, as the Sandiganbayan correctly pointed out, quoting *Republic v. Sandiganbayan*,[9] the Ombudsman has under its general investigatory powers the authority to investigate forfeiture cases where the alleged ill-gotten wealth had been amassed before February 25, 1986. Thus:

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[8] Citing Section 15(1) of Republic Act 6770, *Republic v. Sandiganbayan*, G.R. No. 90529, August 16, 1991, 200 SCRA 667, 682-683.

[9] *Id.* at 667.

Nonetheless, while we do not discount the authority of the Ombudsman, we believe and so hold that the exercise of his correlative powers to both investigate and initiate the proper action for the recovery of ill-gotten and/or unexplained wealth is restricted only to cases for the recovery of ill-gotten and/or unexplained wealth which were amassed after February 25, 1986. Prior to said date, the Ombudsman is without authority to *initiate* such forfeiture proceedings. We, however, uphold his authority to *investigate* cases for the forfeiture or recovery of such ill-gotten and/or unexplained wealth amassed even before the aforementioned date, pursuant to his general investigatory power under Section 15(1) of Republic Act No. 6770.[10] (Emphasis supplied)

And, although it was the Ombudsman who conducted the preliminary investigation, it was the OSG that instituted the action in Civil Case 0167 in line with the Court's ruling in the above-cited *Republic* and other cases that followed.

The Court cannot also subscribe to the Romualdezes' claim that they are entitled to a new preliminary investigation since they had no opportunity to take part in the one held in 1991, in OMB-0-91-0820. They admit that the subpoena for that investigation had been sent to their last known residence at the time it was conducted.[11] The Republic categorically insists that the appropriate subpoena had been served on the Romualdezes.[12]

Actually, the lament of the spouses was that they left the Philippines because of danger to their lives after the EDSA revolution of February 1986 and so could not take part in the proceedings against them. While it is true that the Court characterized the departure of the Romualdezes as forced upon them by the uncertainty of the situation in 1986, it also said that such was the case only until things shall have stabilized.[13]

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[10] *Supra* note 8.

[11] *Rollo*, p. 17.

[12] *Id.* at 147-148.

[13] *Romualdez v. Regional Trial Court, Branch 7, Tacloban City*, G.R. No. 104960, September 14, 1993, 226 SCRA 408, 415.

The Court will take judicial notice of the fact that the people's ratification of the 1987 Constitution on February 2, 1987 signaled the return to normalcy of the political situation in the Philippines. Consequently, the Romualdezes had no valid excuse for not responding to the subpoena served on them at their last known address in 1991, which they do not deny having received.

The Ombudsman could not be faulted for proceeding with the investigation of the Romualdezes' cases when they did not show up despite notice being sent to them at their last known residence. As the Court held in a case:

The New Rules on Criminal Procedure "does not require as a condition *sine qua non* to the validity of the proceedings [in the preliminary investigation] the presence of the accused for as long as efforts to reach him were made, and an opportunity to controvert the evidence of the complainant is accorded him. The obvious purpose of the rule is to block attempts of unscrupulous respondents to thwart the prosecution of offenses by hiding themselves or by employing dilatory tactics."[14]

In sum, no reason exists for suspending or interrupting the conduct of the forfeiture proceedings before the Sandiganbayan.

WHEREFORE, the Court *DISMISSES* the petition for lack of merit.

SO ORDERED.

Carpio (Chairperson), Villarama, Jr.,[*] *Perez,*[**] and *Mendoza, JJ.,* concur.

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[14] *Mercado v. Court of Appeals*, 315 Phil. 657, 662 (1995).

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 858 dated July 1, 2010.

[**] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 863 dated July 5, 2010.

THIRD DIVISION

[G.R. No. 163825. July 13, 2010]

VIOLETA TUDTUD BANATE, MARY MELGRID M. CORTEL, BONIFACIO CORTEL, ROSENDO MAGLASANG, and PATROCINIA MONILAR, *petitioners, vs.* **PHILIPPINE COUNTRYSIDE RURAL BANK (LILOAN, CEBU), INC. and TEOFILO SOON, JR.,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; MORTGAGE; BLANKET MORTGAGE LAW; ELUCIDATED; CASE AT BAR.— As a general rule, a mortgage liability is usually limited to the amount mentioned in the contract. However, the amounts named as consideration in a contract of mortgage do not limit the amount for which the mortgage may stand as security if, from the four corners of the instrument, the *intent to secure future and other indebtedness* can be gathered. This stipulation is *valid and binding* between the parties and is known as the "*blanket mortgage clause*" (also known as the "dragnet clause)." In the present case, the mortgage contract indisputably provides that the subject properties serve as security, not only for the payment of the subject loan, but also for "*such other loans or advances already obtained, or still to be obtained*." The cross-collateral stipulation in the mortgage contract between the parties is thus simply a variety of a dragnet clause. After agreeing to such stipulation, the petitioners cannot insist that the subject properties be released from mortgage since the security covers not only the subject loan but the two other loans as well.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; CLASSIFICATION; EXTINCTIVE OR MODIFICATORY; ELUCIDATED.— Novation, in its broad concept, may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent that it remains

compatible with the amendatory agreement. An extinctive novation results either by changing the object or principal conditions (objective or real), or by substituting the person of the debtor or subrogating a third person in the rights of the creditor (subjective or personal). Under this mode, novation would have **dual functions** – one to extinguish an existing obligation, the other to substitute a new one in its place – requiring a conflux 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. x x x Novation presupposes not only the extinguishment or modification of an existing obligation but, more importantly, the creation of a valid new obligation. For the consequent creation of a new contractual obligation, consent of both parties is, thus, required. As a general rule, no form of words or writing is necessary to give effect to a novation. Nevertheless, where either or both parties involved are juridical entities, proof that the second contract was executed by persons with the proper authority to bind their respective principals is necessary.

3. COMMERCIAL LAW; CORPORATION LAW; BOARD OF DIRECTORS; POWER TO ENTER INTO A CONTRACT; VALID DELEGATION THEREOF.— Section 23 of the Corporation Code expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. The power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation are lodged in the board, subject to the articles of incorporation, bylaws, or relevant provisions of law. In the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation. However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to its officers, committees or agents. The authority of these individuals to bind the corporation is generally derived from law, corporate bylaws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business.

4. ID.; ID.; ID.; ID.; ID.; DELEGATED POWER MAY BE ACTUAL OR APPARENT.— The authority of a corporate officer or agent in dealing with third persons may be actual or apparent.

Actual authority is either express or implied. The extent of an agent's express authority is to be measured by the power delegated to him by the corporation, while the extent of his implied authority is measured by his prior acts which have been ratified or approved, or their benefits accepted by his principal. The doctrine of "apparent authority," on the other hand, with special reference to banks, had long been recognized in this jurisdiction. The existence of apparent authority may be ascertained through: 1) the general manner in which the corporation holds out an officer or agent as having the power to act, or in other words, the apparent authority to act in general, with which it clothes him; or 2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers. Accordingly, the authority to act for and to bind a corporation may be presumed from acts of recognition in other instances when the power was exercised without any objection from its board or shareholders.

5. ID.; ID.; ID.; ID.; ID.; ID.; DOCTRINE OF APPARENT AUTHORITY.— Under the doctrine of apparent authority, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal. The principal's liability, however, is limited only to third persons who have been led reasonably to believe *by the conduct of the principal* that such actual authority exists, although none was given. In other words, apparent authority is determined only by the acts of the principal and not by the acts of the agent. There can be no apparent authority of an agent without acts or conduct on the part of the principal; such acts or conduct must have been known and relied upon in good faith as a result of the exercise of reasonable prudence by a third party as claimant, and such acts or conduct must have produced a change of position to the third party's detriment.

6. ID.; ID.; ID.; ID.; ID.; ID.; ID.; APPARENT AUTHORITY OF BRANCH MANAGER TO NULLIFY SOLEMN AGREEMENTS VALIDLY ENTERED INTO, NOT APPRECIATED.— We would be unduly stretching the doctrine of apparent authority were we to consider the power to undo or nullify solemn agreements validly entered into as within the doctrine's ambit. Although a branch manager, within his

field and as to third persons, is the general agent and is in general charge of the corporation, with apparent authority commensurate with the ordinary business entrusted him and the usual course and conduct thereof, yet the power to modify or nullify corporate contracts remains generally in the board of directors. Being a mere branch manager *alone* is insufficient to support the conclusion that Mondigo has been clothed with "apparent authority" to verbally alter terms of written contracts, especially when viewed against the telling circumstances of this case: the unequivocal provision in the mortgage contract; PCRB's vigorous denial that any agreement to release the mortgage was ever entered into by it; and, the fact that the purported agreement was not even reduced into writing considering its legal effects on the parties' interests. To put it simply, the burden of proving the authority of Mondigo to alter or novate the mortgage contract has not been established. It is a settled rule that persons dealing with an agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of the agent's authority, and in case either is controverted, the burden of proof is upon them to establish it.

APPEARANCES OF COUNSEL

Ma. Antonnette Brillantes-Bolivar and *Gilroy V. Billones* for PCRB.

D E C I S I O N

BRION,[*] *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the December 19, 2003 decision[2] and the May 5,

[*] Designated Acting Chairperson of the Third Division, in view of the leave of absence of Associate Justice Conchita Carpio Morales, per Special Order No. 849 dated June 29, 2010.

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

[2] Penned by Associate Justice Remedios A. Salazar-Fernando, with Associate Justice Eubulo G. Verzola and Associate Justice Edgardo F. Sundiam concurring; *rollo*, pp. 23-36.

2004 resolution[3] of the Court of Appeals (*CA*) in CA-G.R. CV No. 74332. The CA decision reversed the Regional Trial Court (*RTC*) decision[4] of June 27, 2001 granting the petitioners' complaint for specific performance and damages against the respondent Philippine Countryside Rural Bank, Inc. (*PCRB*).[5]

THE FACTUAL ANTECEDENTS

On July 22, 1997, petitioner spouses Rosendo Maglasang and Patrocinia Monilar (*spouses Maglasang*) obtained a loan (*subject loan*) from PCRB for ₱1,070,000.00. The subject loan was evidenced by a promissory note and was payable on January 18, 1998. To secure the payment of the subject loan, the spouses Maglasang executed, in favor of PCRB a real estate mortgage over their property, Lot 12868-H-3-C, [6] including the house constructed thereon (collectively referred to as *subject properties*), owned by petitioners Mary Melgrid and Bonifacio Cortel (*spouses Cortel*), the spouses Maglasang's daughter and son-in-law, respectively. Aside from the subject loan, the spouses Maglasang obtained two other loans from PCRB which were covered by separate promissory notes[7] and secured by mortgages on their other properties.

Sometime in November 1997 (before the subject loan became due), the spouses Maglasang and the spouses Cortel asked PCRB's permission to sell the subject properties. They likewise requested that the subject properties be released from the mortgage since the two other loans were adequately secured by the other mortgages. The spouses Maglasang and the spouses Cortel

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

[4] Penned by Judge Ulric R. Cañete; *id.* at 69-75.

[5] On December 12, 2008, the Monetary Board of the *Bangko Sentral ng Pilipinas* ordered the closure of PCRB, and placed it under the receivership of the Philippine Deposit Insurance Corporation.

[6] Registered under Transfer Certificate of Title No. 82746, with an area of 275 square meters and situated in *Barangay* Pitogo, Consolacion, Cebu City.

[7] Promissory notes dated December 19, 1997 and July 22, 1997.

claimed that the PCRB, acting through its Branch Manager, Pancrasio Mondigo, verbally agreed to their request but required first the full payment of the subject loan. The spouses Maglasang and the spouses Cortel thereafter sold to petitioner Violeta Banate the subject properties for ₱1,750,000.00. The spouses Magsalang and the spouses Cortel used the amount to pay the subject loan with PCRB. After settling the subject loan, PCRB gave the owner's duplicate certificate of title of Lot 12868-H-3-C to Banate, who was able to secure a new title in her name. The title, however, carried the mortgage lien in favor of PCRB, prompting the petitioners to request from PCRB a Deed of Release of Mortgage. As PCRB refused to comply with the petitioners' request, the petitioners instituted an action for specific performance before the RTC to compel PCRB to execute the release deed.

The petitioners additionally sought payment of damages from PCRB, which, they claimed, caused the publication of a news report stating that they "surreptitiously" caused the transfer of ownership of Lot 12868-H-3-C. The petitioners considered the news report false and malicious, as PCRB knew of the sale of the subject properties and, in fact, consented thereto.

PCRB countered the petitioners' allegations by invoking the cross-collateral stipulation in the mortgage deed which states:

> 1. That **as security for the payment of the loan** or advance in principal sum of one million seventy thousand pesos only (₱1,070,000.00) **and such other loans or advances already obtained, or still to be obtained** by the MORTGAGOR(s) as MAKER(s), CO-MAKER(s) or GUARANTOR(s) from the MORTGAGEE plus interest at the rate of _____ per annum and penalty and litigation charges payable on the dates mentioned in the corresponding promissory notes, the MORTGAGOR(s) hereby transfer(s) and convey(s) to MORTGAGEE by way of first mortgage the parcel(s) of land described hereunder, together with the improvements now existing for which may hereafter be made thereon, of which MORTGAGOR(s) represent(s) and warrant(s) that MORTGAGOR(s) is/are the absolute owner(s) and that the same is/are free from all liens and encumbrances;
>
> TRANSFER CERTIFICATE OF TITLE NO. 82746[8]

[8] *Rollo,* p. 62.

Accordingly, PCRB claimed that full payment of the three loans, obtained by the spouses Maglasang, was necessary before any of the mortgages could be released; the settlement of the subject loan merely constituted partial payment of the total obligation. Thus, the payment does not authorize the release of the subject properties from the mortgage lien.

PCRB considered Banate as a buyer in bad faith as she was fully aware of the existing mortgage in its favor when she purchased the subject properties from the spouses Maglasang and the spouses Cortel. It explained that it allowed the release of the owner's duplicate certificate of title to Banate only to enable her to annotate the sale. PCRB claimed that the release of the title should not indicate the corresponding release of the subject properties from the mortgage constituted thereon.

After trial, the RTC ruled in favor of the petitioners. It noted that the petitioners, as "necessitous men," could not have bargained on equal footing with PCRB in executing the mortgage, and concluded that it was a contract of adhesion. Therefore, any obscurity in the mortgage contract should not benefit PCRB.[9]

The RTC observed that the official receipt issued by PCRB stated that the amount owed by the spouses Maglasang under the subject loan was only about ₱1.2 million; that Mary Melgrid Cortel paid the subject loan using the check which Banate issued as payment of the purchase price; and that PCRB authorized the release of the title further indicated that the subject loan had already been settled. Since the subject loan had been fully paid, the RTC considered the petitioners as rightfully entitled to a deed of release of mortgage, pursuant to the verbal agreement that the petitioners made with PCRB's branch manager, Mondigo. Thus, the RTC ordered PCRB to execute a deed of release of mortgage over the subject properties, and to pay the petitioners moral damages and attorney's fees.[10]

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[9] *Id.* at 73.

[10] *Id.* at 75.

On appeal, the CA reversed the RTC's decision. The CA did not consider as valid the petitioners' new agreement with Mondigo, which would novate the original mortgage contract containing the cross-collateral stipulation. It ruled that Mondigo cannot orally amend the mortgage contract between PCRB, and the spouses Maglasang and the spouses Cortel; therefore, the claimed commitment allowing the release of the mortgage on the subject properties cannot bind PCRB. Since the cross-collateral stipulation in the mortgage contract (requiring full settlement of all three loans before the release of any of the mortgages) is clear, the parties must faithfully comply with its terms. The CA did not consider as material the release of the owner's duplicate copy of the title, as it was done merely to allow the annotation of the sale of the subject properties to Banate.[11]

Dismayed with the reversal by the CA of the RTC's ruling, the petitioners filed the present appeal by *certiorari*, claiming that the CA ruling is not in accord with established jurisprudence.

THE PETITION

The petitioners argue that their claims are consistent with their agreement with PCRB; they complied with the required full payment of the subject loan to allow the release of the subject properties from the mortgage. Having carried out their part of the bargain, the petitioners maintain that PCRB must honor its commitment to release the mortgage over the subject properties.

The petitioners disregard the cross-collateral stipulation in the mortgage contract, claiming that it had been novated by the subsequent agreement with Mondigo. Even assuming that the cross-collateral stipulation subsists for lack of authority on the part of Mondigo to novate the mortgage contract, the petitioners contend that PCRB should nevertheless return the amount paid to settle the subject loan since the new agreement should be deemed rescinded.

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[11] *Supra* note 2, at 35.

The basic issues for the Court to resolve are as follows:

1. Whether the purported agreement between the petitioners and Mondigo novated the mortgage contract over the subject properties and is thus binding upon PCRB.
2. If the first issue is resolved negatively, whether Banate can demand restitution of the amount paid for the subject properties on the theory that the new agreement with Mondigo is deemed rescinded.

THE COURT'S RULING

We resolve to deny the petition.

The purported agreement did not novate the mortgage contract, particularly the cross-collateral stipulation thereon

Before we resolve the issues directly posed, we first dwell on the determination of the nature of the cross-collateral stipulation in the mortgage contract. As a general rule, a mortgage liability is usually limited to the amount mentioned in the contract. However, the amounts named as consideration in a contract of mortgage do not limit the amount for which the mortgage may stand as security if, from the four corners of the instrument, the *intent to secure future and other indebtedness* can be gathered. This stipulation is *valid and binding* between the parties and is known as the "*blanket mortgage clause*" (also known as the "dragnet clause)."[12]

In the present case, the mortgage contract indisputably provides that the subject properties serve as security, not only for the payment of the subject loan, but also for "*such other loans or advances already obtained, or still to be obtained*." The cross-collateral stipulation in the mortgage contract between the parties is thus simply a variety of a dragnet clause. After

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[12] *Prudential Bank v. Alviar*, G.R. No. 150197, July 28, 2005, 464 SCRA 353.

agreeing to such stipulation, the petitioners cannot insist that the subject properties be released from mortgage since the security covers not only the subject loan but the two other loans as well.

The petitioners, however, claim that their agreement with Mondigo must be deemed to have novated the mortgage contract. They posit that the full payment of the subject loan extinguished their obligation arising from the mortgage contract, including the stipulated cross-collateral provision. Consequently, consistent with their theory of a novated agreement, the petitioners maintain that it devolves upon PCRB to execute the corresponding Deed of Release of Mortgage.

We find the petitioners' argument unpersuasive. Novation, in its broad concept, may either be extinctive or modificatory. It is extinctive when an old obligation is terminated by the creation of a new obligation that takes the place of the former; it is merely modificatory when the old obligation subsists to the extent that it remains compatible with the amendatory agreement. An extinctive novation results either by changing the object or principal conditions (objective or real), or by substituting the person of the debtor or subrogating a third person in the rights of the creditor (subjective or personal). Under this mode, novation would have **dual functions** – one to extinguish an existing obligation, the other to substitute a new one in its place – requiring a conflux 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.[13]

The second requisite is lacking in this case. Novation presupposes not only the extinguishment or modification of an existing obligation but, more importantly, the creation of a valid new obligation.[14] For the consequent creation of a new contractual

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[13] *Fabrigas v. San Francisco Del Monte, Inc.*, G.R. No. 152346, November 25, 2005, 476 SCRA 253.

[14] Art. 1292 of the Civil Code states:

In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

obligation, consent of both parties is, thus, required. As a general rule, no form of words or writing is necessary to give effect to a novation. Nevertheless, where either or both parties involved are juridical entities, proof that the second contract was executed by persons with the proper authority to bind their respective principals is necessary.[15]

Section 23 of the Corporation Code[16] expressly provides that the corporate powers of all corporations shall be exercised by the board of directors. The power and the responsibility to decide whether the corporation should enter into a contract that will bind the corporation are lodged in the board, subject to the articles of incorporation, bylaws, or relevant provisions of law. In the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.

However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to its officers, committees or agents. The authority of these individuals to bind the corporation is generally derived from law, corporate bylaws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business.[17]

The authority of a corporate officer or agent in dealing with third persons may be actual or apparent. Actual authority is

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[15] De Leon and De Leon, Jr., *Comments and Cases on Obligations and Contracts* (2003 ed.), p. 431, citing *Garcia, Jr. v. Court of Appeals*, G.R. No. 80201, November 20, 1990, 191 SCRA 493.

[16] Section 23. The Board of directors or trustees. - Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees to be elected from among the holders of stocks, or where there are no stocks, from among the members of the corporation, who shall hold office for one (1) year and until their successors are elected and qualified.

[17] *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*, G.R. No. 117847, October 7, 1998, 297 SCRA 170.

either express or implied. The extent of an agent's express authority is to be measured by the power delegated to him by the corporation, while the extent of his implied authority is measured by his prior acts which have been ratified or approved, or their benefits accepted by his principal.[18] The doctrine of "apparent authority," on the other hand, with special reference to banks, had long been recognized in this jurisdiction. The existence of apparent authority may be ascertained through:

> 1) the general manner in which the corporation holds out an officer or agent as having the power to act, or in other words, the apparent authority to act in general, with which it clothes him; or
>
> 2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers.

Accordingly, the authority to act for and to bind a corporation may be presumed from acts of recognition in other instances when the power was exercised without any objection from its board or shareholders.[19]

Notably, the petitioners' action for specific performance is premised on the supposed actual or apparent authority of the branch manager, Mondigo, to release the subject properties from the mortgage, although the other obligations remain unpaid. In light of our discussion above, proof of the branch manager's authority becomes indispensable to support the petitioners' contention. The petitioners make no claim that Mondigo had actual authority from PCRB, whether express or implied. Rather, adopting the trial court's observation, the petitioners posited that PCRB should be held liable for Mondigo's commitment, on the basis of the latter's apparent authority.

We disagree with this position.

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[18] 19 C.J.S. § 994.

[19] *Associated Bank v. Spouses Rafael and Monaliza Pronstroller*, G.R. No. 148444, July 14, 2008, 558 SCRA 113.

Under the doctrine of apparent authority, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal.[20] The principal's liability, however, is limited only to third persons who have been led reasonably to believe *by the conduct of the principal* that such actual authority exists, although none was given. In other words, apparent authority is determined only by the acts of the principal and not by the acts of the agent.[21] There can be no apparent authority of an agent without acts or conduct on the part of the principal; such acts or conduct must have been known and relied upon in good faith as a result of the exercise of reasonable prudence by a third party as claimant, and such acts or conduct must have produced a change of position to the third party's detriment.[22]

In the present case, the decision of the trial court was utterly silent on the manner by which PCRB, as supposed principal, has "clothed" or "held out" its branch manager as having the power to enter into an agreement, as claimed by petitioners. No proof of the course of business, usages and practices of the bank about, or knowledge that the board had or is presumed to have of, its responsible officers' acts regarding bank branch affairs, was ever adduced to establish the branch manager's apparent authority to verbally alter the terms of mortgage contracts.[23] Neither was there any allegation, much less proof, that PCRB ratified Mondigo's act or is estopped to make a contrary claim.[24]

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[20] 2 Am. Jur. §102.

[21] 3 Am. Jur. 2d §79.

[22] *Yun Kwan Byung v. Philippine Amusement and Gaming Corporation*, G.R. No. 163553, December 11, 2009.

[23] *Board of Liquidators v. Kalaw*, August 14, 1967, No. L-18805, 20 SCRA 987.

[24] *Rural Bank of Milaor (Camarines Sur) v. Ocfemia*, G.R. No. 137686, February 8, 2000, 325 SCRA 99.

Further, we would be unduly stretching the doctrine of apparent authority were we to consider the power to undo or nullify solemn agreements validly entered into as within the doctrine's ambit. Although a branch manager, within his field and as to third persons, is the general agent and is in general charge of the corporation, with apparent authority commensurate with the ordinary business entrusted him and the usual course and conduct thereof,[25] yet the power to modify or nullify corporate contracts remains generally in the board of directors.[26] Being a mere branch manager *alone* is insufficient to support the conclusion that Mondigo has been clothed with "apparent authority" to verbally alter terms of written contracts, especially when viewed against the telling circumstances of this case: the unequivocal provision in the mortgage contract; PCRB's vigorous denial that any agreement to release the mortgage was ever entered into by it; and, the fact that the purported agreement was not even reduced into writing considering its legal effects on the parties' interests. To put it simply, the burden of proving the authority of Mondigo to alter or novate the mortgage contract has not been established.[27]

It is a settled rule that persons dealing with an agent are bound at their peril, if they would hold the principal liable, to ascertain not only the fact of agency but also the nature and extent of the agent's authority, and in case either is controverted, the burden of proof is upon them to establish it.[28] As parties to the mortgage contract, the petitioners are expected to abide by its terms. The subsequent purported agreement is of no moment,

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[25] 19 C.J.S. § 1002.

[26] No other officer or agent can make such modification even though he has the power to make the contract, unless authority in this respect has been specially conferred on him (19 C.J.S. 1044).

[27] *San Juan Structural and Steel Fabricators, Inc. v. Court of Appeals*, G.R. No. 129459, September 29, 1998, 296 SCRA 631.

[28] *Manila Memorial Park Cemetery, Inc. v. Linsangan*, G.R. No. 151319, November 22, 2004, 443 SCRA 377.

and cannot prejudice PCRB, as it is beyond Mondigo's actual or apparent authority, as above discussed.

Rescission has no legal basis; there can be no restitution of the amount paid

The petitioners, nonetheless, invoke equity and alternatively pray for the restitution of the amount paid, on the rationale that if PCRB's branch manager was not authorized to accept payment in consideration of separately releasing the mortgage, then the agreement should be deemed rescinded, and the amount paid by them returned.

PCRB, on the other hand, counters that the petitioners' alternative prayer has no legal and factual basis, and insists that the clear agreement of the parties was for the full payment of the subject loan, and in return, PCRB would deliver the title to the subject properties to the buyer, only to enable the latter to obtain a transfer of title in her own name.

We agree with PCRB. Even if we were to assume that the purported agreement has been sufficiently established, since it is not binding on the bank for lack of authority of PCRB's branch manager, then the prayer for restitution of the amount paid would have no legal basis. Of course, it will be asked: what then is the legal significance of the payment made by Banate? Article 2154 of the Civil Code reads:

> Art 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

Notwithstanding the payment made by Banate, she is not entitled to recover anything *from PCRB* under Article 2154. There could not have been any payment by mistake *to PCRB*, as the check which Banate issued as payment was to her co-petitioner Mary Melgrid Cortel (the payee), and not to PCRB. The same check was simply endorsed by the payee to PCRB in payment of the subject loan that the Maglasangs owed PCRB.[29]

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[29] *Rollo*, p. 71.

The mistake, if any, was in the perception of the authority of Mondigo, as branch manager, to verbally alter the mortgage contract, and not as to whether the Cortels, as sellers, were entitled to payment. This mistake (on Mondigo's lack of authority to alter the mortgage) did not affect the validity of the payment made to the bank as the existence of the loan was never disputed. The dispute was merely on the effect of the payment on the security given.[30]

Consequently, no right to recover accrues in Banate's favor as PCRB never dealt with her. The borrowers-mortgagors, on the other hand, merely paid what was really owed. Parenthetically, the subject loan was due on January 18, 1998, but was paid sometime in November 1997. It appears, however, that at the time the complaint was filed, the subject loan had already matured. Consequently, recovery of the amount paid, even under a claim of premature payment, will not prosper.

In light of these conclusions, the claim for moral damages must necessarily fail. On the alleged injurious publication, we quote with approval the CA's ruling on the matter, *viz*:

> Consequently, there is no reason to hold [respondent] PCRB liable to [petitioners] for damages. x x x [Petitioner] Maglasang cannot hold [respondent] PCRB liable for the publication of the extra-judicial sale. There was no evidence submitted to prove that [respondent] PCRB authored the words "Mortgagors surreptitiously caused the transfer of ownership of Lot 12868-H-3-C x x x" contained in the publication since at the bottom was x x x Sheriff Teofilo C. Soon, Jr.'s name. Moreover, there was not even an iota of proof which shows damage on the part of [petitioner] Mary Melgrid M. Cortel.[31]

WHEREFORE, we *DENY* the petitioners' petition for review on *certiorari* for lack of merit, and *AFFIRM* the decision of

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[30] It is necessary that payment be in accordance with the obligation; the person paying as well as the one receiving payment should have the requisite capacity; it should be made by the debtor to the creditor; and at the right time and place. (Tolentino, *Civil Code of the Philippines*, Vol. IV (1991 ed.), p. 274.)

[31] *Rollo*, p. 35.

the Court of Appeals dated December 19, 2003 and its resolution dated May 5, 2004 in CA-G.R. CV No. 74332. No pronouncement as to costs.

SO ORDERED.

Carpio,[**] *Abad,*[***] *Villarama, Jr.* and *Mendoza,*[****] *JJ.*, concur.

SECOND DIVISION

[G.R. No. 171565. July 13, 2010]

ANTONIO B. RAMOS (Deceased), Substituted by his Surviving Heirs, namely, MA. MARGARITA A. RAMOS, ANTONIO A. RAMOS, MA. REGINA RAMOS DE DIOS, JOSE VICENTE A. RAMOS, MA. POMONA RAMOS KO TEH and OSCAR EMERITO A. RAMOS, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES and ROGERIO H. ESCOBAL,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL TO THE COURT OF APPEALS IN CASES DECIDED BY THE

[**] Designated additional Member of the Third Division, in view of the leave of absence of Associate Justice Lucas P. Bersamin, per Special Order No. 859 dated July 1, 2010.

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

[****] Designated additional Member of the Third Division, in view of the leave of absence of Associate Justice Conchita Carpio Morales, per Special Order No. 850 dated June 29, 2010.

REGIONAL TRIAL COURT (RTC) IN THE EXERCISE OF ITS APPELLATE JURISDICTION; NOT THE PROPER REMEDY WHERE PETITION FILED TO THE RTC WAS PETITION BY *CERTIORARI,* UNDER RULE 65.— The Court of Appeals was correct in dismissing the petition outright. Under the Rules, appeals to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42. What was filed by the petitioner before the RTC was a petition for *certiorari* under **Rule 65**. It has long been settled that *certiorari*, as a special civil action, is an original action invoking the original jurisdiction of a court to annul or modify the proceedings of a tribunal, board or officer exercising judicial or quasi-judicial functions. It is an **original and independent action** that is not part of the trial or the proceedings of the complaint filed before the trial court. The petition for *certiorari*, therefore, before the RTC is a separate and distinct action from the criminal cases resolved by the MeTC. It is true that litigation is not a game of technicalities and that the rules of procedure should not be strictly followed in the interest of substantial justice. However, it does not mean that the Rules of Court may be ignored at will. It bears emphasizing that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons. In this case, there was nary a cogent reason to depart from the general rule. Indeed, the ground alone that petitioner resorted to an improper remedy, makes the petition dismissible and undeserving of the Court's attention.

2. ID.; CRIMINAL PROCEDURE; MOTION TO WITHDRAW INFORMATION; JUDICIAL PREROGATIVE ON THE MATTER, ELUCIDATED.— Once a criminal action has been instituted by the filing of the Information with the court, the latter acquires jurisdiction and has the authority to determine whether to dismiss the case or convict or acquit the accused. Where the prosecution is convinced that the evidence is insufficient to establish the guilt of an accused, it cannot be faulted for moving for the withdrawal of the Information. However, in granting or denying the motion to withdraw, the court must judiciously evaluate the evidence in the hands of

the prosecution. The court must itself be convinced that there is indeed no satisfactory evidence against the accused and this conclusion can only be reached after an assessment of the evidence in the possession of the prosecution. In this case, the trial court had sufficiently explained the reasons for granting the motion for the withdrawal of the Information. The Court agrees with the dispositions made by the trial court. Corollarily, the RTC did not err in dismissing the petition (under Rule 65) filed by petitioner challenging the ruling of the MeTC. It bears emphasizing that when the trial court grants a motion of the public prosecutor to withdraw the Information in compliance with the directive of the Secretary of Justice, or to deny the said motion, it does so not out of compliance to or defiance of the directive of the Secretary of Justice, but in sound and faithful exercise of its judicial prerogative. The trial court is the best and sole judge on what to do with the case before it. The rule applies to a motion to withdraw the Information or to dismiss the case even before or after the arraignment of the accused. The prior determination of probable cause by the trial court does not in any way bar a contrary finding upon reassessment of the evidence presented before it.

APPEARANCES OF COUNSEL

The Solicitor General for public respondent.
Medialdea Ata Bello & Guevarra and *Marian Ivy F. Reyes-Fajardo & Ma. Cecilia V. Soria* for private respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a Petition for Review under Rule 45 of the Rules of Court challenging: ***(1)*** the July 29, 2005 Resolution[1] of the Court of Appeals, in *CA-G.R. SP No. 90344*,[2] dismissing outright the petition for review (under Rule 42) filed by petitioner Antonio B.

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[1] *Rollo*, pp. 81-84.

[2] Penned by Associate Justice Edgardo F. Sundiam, with Associate Justice Renato C. Dacudao and Associate Justice Japar B. Dimaampao concurring.

Ramos; and ***(2)*** the February 14, 2006 Resolution[3] of the same court denying his Motion for Reconsideration.

On January 15, 1999, the petitioner filed an Affidavit-Complaint,[4] pertinent portions of which allege:

> 1. I am the lawful assignee of shares of stock covered by the following stock certificates: (a) Travellers Life Assurance of the Philippines, Inc. (TLAP) Stock Certificate Nos. 313 and 314, and (b) Travellers Insurance & Surety Corporation (TRISCO) Stock Certificate Nos. 173 and 174, by virtue of a Deed of Assignment executed by the respondent Emerito M. Ramos, Sr. and his wife (my mother) Susana B. Ramos in my favor in August 1994.
>
> x x x x x x x x x
>
> 2. Sometime in August 13, 1996, Gloria Ramos Lagdameo, EVP/Treasurer of Travellers Insurance & Surety Corporation (TRISCO), and having been entrusted by Antonio B. Ramos with the safekeeping of the aforesaid stock certificates turned over the same to Emerito Ramos, Sr. at his insistence, and as such knew that they were actually indorsed in my name in 1994, as shown in her affidavit, x x x.[5]
>
> 3. After receiving the said stock certificates,
>
> 3.1 the respondents, Emerito M. Ramos, Sr. and Rogerio H. Escobal, conspiring and conniving with one another altered the four (4) aforementioned stock certificates by the erasure of the entry "ANTONIO B. RAMOS" and the superimposition of the type-written entry "E.M. Ramos & Sons, Inc." on the dorsal side of each of the four questioned stock certificates, as supported by the Questioned Documents Report No. 652-998 of the National Bureau of Investigation, and
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> 3.2 The respondent Escobal upon the prodding of and with the criminal assent of the respondent Ramos, and in his own handwriting, altered the true date when Susana B.

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[3] *Rollo*, pp. 86-88.

[4] *Id.* at 89-90.

[5] Annex "B" of Complaint-Affidavit.

> Ramos endorsed both TRISCO and TLAP Stock Certificate Nos. 174 and 314 making it falsely appear that Susana B. Ramos indorsed both Stock Certificates with intent to assign the same on "January 19, 1998" when in truth Travelers Insurance & Surety Corporation (TRISCO) Stock Certificate Nos. 173 and 174, by virtue of a Deed of Assignment, was indorsed in my favor, as early as in August 1994.

x x x x x x x x x

4. The alteration made on the aforementioned genuine documents by the respondents has changed the meaning of the same, for their own personal use and benefit, by:

> 4.1. Making it falsely appear that the assignee of the questioned stock certificates is "E.M. Ramos & Sons" instead of "Antonio B. Ramos," as the lawful and legal assignee of the shares of stock covered by the aforesaid stock certificates.
>
> 4.2. Making it falsely appear that Susana B. Ramos indorsed both Stock Certificates with intent to assign the same on 'January 19, 1998' when she could not have done so because as early as September 1996, Susana B. Ramos was already physically incapable of signing any documents as supported by the statement of Alberto Alcancia, Ricardo Deliza and Analia Ogario, and Maria Cecilia Santiago, and a Medical Summary made on her medical condition by Martesio C. Perez, M.D., affecting therefore the veracity of the above document purporting an assignment made by her in favor of "E.M. RAMOS & SONS, INC." on the said date.

After the preliminary investigation, the Investigating Prosecutor issued a *Resolution, dated April 20, 1999*,[6] finding probable cause and recommending that both respondents Emerito M. Ramos, Sr. and Rogerio H. Escobal be indicted for violation of paragraph 1 of Article 172 in relation to paragraph 6 of Article 171

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[6] *Rollo*, pp. 103-107.

of the Revised Penal Code (RPC).[7] Specifically, Assistant City Prosecutor Arthur O. Malabaguio pointed out that:

The first issue to be resolved is whether or not probable cause exists for falsification of document.

A thorough and careful examination of the evidence presented would show that there is probable cause for falsification of documents.

Respondent Emerito Ramos admitted in his sworn statement that he caused the erasure of the name of the complainant as the assignee in the dorsal portion of the subject certificates of stock and superimposed therein the name E.M. Ramos & Sons, Inc. as the new assignee.

Respondents tried to justify such action by stating that complainant failed to comply with the prestation required of him in the Deed of Assignment executed on 17 August 1994. In the exercise of [their] right of dominion, as Emerito Ramos Sr. and Susana Ramos were still the registered owners of subject shares of stocks, complainant's name was erased and substituted by another in all four stock certificates.

The defense invoked by the respondents is untenable. In the absence of any evidence to the contrary, the deed of assignment executed

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[7] "**Art.** 172. *Falsification by private individuals and use of falsified documents*. – The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than 5,000 pesos shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document;

x x x x x x x x x."

"**Art**. 171. Falsification by public officer, employee, or notary or ecclesiastical minister. – The penalty of *prision mayor* and a fine not to exceed 5,000 shall be imposed upon any officer, employee, or notary who, taking advantage of his official position, shall falsify a document by committing any of the following acts:

x x x x x x x x x

6. Making any alteration or intercalation in a genuine document which changes its meaning.

x x x x x x x x x."

on 17 August 1994 between complainant and spouses Ramos should be treated as valid and subsisting. By virtue of the execution of this document, the name of complainant as assignee appeared on subject certificates of stock.

There is no showing that this deed of assignment was later nullified or declared void by failure of the complainant to fulfill his undertaking as declared in the deed of assignment. On the other hand, respondent Emerito Ramos Sr. by his own unilateral action, rescinded the contract and subsequently decided to assign subject shares of stocks to EMRASON. Complainant questioned this action of Emerito Ramos Sr. and even filed with Securities and Exchange Commission an action for nullity of assignment of shares and other reliefs (SEC Case No. 03-98-5955).

In the absence of proof that there was [a] valid rescission of the first Deed of Assignment, [the] validity of the execution of the Second Deed of Assignment is now placed in question. Respondent Emerito Ramos Sr. could not now invoke defense that substitution of Antonio Ramos to E.M. Ramos and Sons, Inc. was made to speak the truth.

In any case, it was established that respondents made the alterations as borne out by their sworn statements making them liable for falsification of documents.

Anent the date "January 19, 1998" in the subject stock certificates, there appears to be a conflict in relation to the allegations of the opposing parties. Complainant claims that respondents erased the original date and superimposed the same with the date January 19, 1998 making them liable under paragraph (5) (altering true dates) of Article 171 in relation to Article 172 of the Revised Penal Code. Respondents maintain that prior to the filling up of the date, there was already a blank space and respondent Rogerio Escobal was required to fill it up with the date January 19, 1998 to conform with the date the second deed of assignment was made.

Complainant failed to have this part of the document examined by the NBI unlike in the case of the name of the assignee wherein the NBI made its findings. In the absence of this, it is safe to assume, as admitted by the respondents themselves, that the date January 19, 1998 was placed by Rogerio Escobal in a blank space appearing on said documents. Therefore, violation of paragraph 6 and not paragraph 5 of Article 171 in relation to Article 172 of the Revised Penal Code was committed.

The second issue to be resolved is whether or not respondents conspired to commit the offense of falsification of document.

It should be noted that respondent Rogerio Escobal occupies [a] high position in EMRASON (Senior Vice-President thereof). As such, he could have known of the details of the special meeting of the Board of Directors of EMRASON held on January 14, 1998 concerning the assignment of shares of stock of spouses Emerito Ramos and Susana Ramos – the very same shares of stock subject matter of this complaint. He could have known that the Board of Directors of EMRASON accepted the offer of payment by spouses Ramos by way of assignment of subject shares of stock to EMRASON.

At the time respondent Rogerio Escobal assigned the different certificates of stock on April 19, 1998[,] it should be assumed that [, as witness] he read the contents of the documents before affixing his signature. Perusal of the documents would remind him of the subject of [the] special meeting held on January 14, 1998.

Moreover, it was shown by the complainant that it was not true that it was only [on] 19 January 1998 that respondent Rogerio Escobal saw [the] subject certificates[,] as he was present along with Col. Nicolas, Mr. & Mrs. Lagdameo and Mr. Romeo Isidro when the deed of assignment, together with the indorsement of subject stocks certificates[,] were executed in complainant's favor in August 1994.

In fine, complainant was able to establish by sufficient evidence that respondents conspired with one another in erasing his name as assignee in subject stock certificates and substituted it with E.M. RAMOS & SONS, INC.[,] and placing the date January 19, 1998 as the date of execution of the first deed of assignment[,] in violation of paragraph 1 of Article 172 in relation to paragraph 6 of Article 172 of the Revised Penal Code.

WHEREFORE, premises considered, it is respectfully recommended that both respondents be indicted for violation of above-mentioned provisions of law.

Corollarily, four (4) separate Informations,[8] charging private respondents Emerito Ramos, Sr. and Rogerio H. Escobal with the crime of Falsification of Commercial Document under

[8] *Rollo,* pp. 108-115.

paragraph 1 of Article 172 in relation to paragraph 6 of Article 171 of the RPC, were filed. Those were docketed as Criminal Case Nos. 94961-94964, and raffled to the Metropolitan Trial Court *(MeTC)* of Quezon City, Branch 43.

When these cases were called for arraignment and pre-trial, counsel for the accused manifested that an Omnibus Motion to Dismiss the cases against Ramos, Sr. had been filed on the ground that he already passed away. Counsel also moved for the deferment of the arraignment of the other accused, Rogerio Escobal *(Escobal)*, considering that there was, before the Office of the Assistant City Prosecutor, a pending Motion for Reconsideration[9] of the *Resolution (dated April 20, 1999)* recommending the filing of these cases. The MeTC denied the latter motion and ordered the entry of a plea of NOT guilty because private respondent refused to enter a plea.[10]

The Motion for Reconsideration presented two ***(2)*** issues, to wit: ***(1)*** whether or not probable cause exists for falsification of document; and ***(2)*** whether or not respondents conspired to commit the offense of falsification of document.[11]

Anent the *first issue*, private respondent Escobal argued that Article 1191[12] of the Civil Code finds application. He explained that on the basis of the said provision, private respondent Ramos, Sr. cannot be held criminally liable for the consequences of the performance of a lawful act, *i.e.*, the rescission of the Deed of

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[9] *Id.* at 117-127.

[10] *Id.* at 116.

[11] *Id.* at 118.

[12] ART. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.

The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.

x x x x x x x x x.

Assignment executed earlier in favor of complainant *(petitioner Ramos),* who failed to comply with the prestations required of him under the Deed, which rescission necessarily resulted in the cancellation or erasure of the name of complainant as assignee in the subject stock certificates.

As regards the *second issue*, private respondent Escobal averred that conspiracy was NOT proved as the crime itself through clear and convincing evidence.

On *November 23, 1999*, the Office of the City Prosecutor issued a Resolution[13] granting the Motion for Reconsideration and recommending that the Informations against both accused be withdrawn. The Office of the City Prosecutor made the following explanations:

(1) The Deed of Assignment executed on August 17, 1994 clearly indicated the obligation of complainant *(petitioner Ramos)* to transfer his one-tenth (1/10) share in the real properties located in North Susana and North Olympus subdivisions and one-tenth (1/10) portion in the undivided one-hectare, all in Quezon City. Apparently, the stock certificates were purposely placed in the custody of TRISCO Executive Vice President Gloria R. Lagdameo. No evidence showing that the assignment has been recorded in the company's stock and transfer book. Respondent E. Ramos, therefore, has the authority to rescind the contract unilaterally in the exercise of a right granted under Article 1191 of the New Civil Code.

(2) Respondent E. Ramos, having acted in good faith, never denied authorship of the cancellation or erasure. He even placed his signatures to indicate that he was the one who caused the erasures. Hence, in so doing he acted without malice. Generally, the word alteration has inherent in it the idea of deception of making the instrument speak something which the parties did not intend to speak. To be an alteration in violation of the law, it must be one "which causes the instrument to speak a language different in legal effect from that which it originally spoke." In this case, complainant ceased to be the assignee of the certificates of stock, the corrections made by respondent speaks only of the truth.

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[13] *Rollo,* pp. 128-130.

(3) As it appears that the liability of respondent Rogerio Escobal only depends on the criminal liability of Ernesto Ramos, there is no reason for further prosecution.

On January 7, 2000, Assistant City Prosecutor Antonio R. Lim, Jr. filed with the MeTC of Quezon City, Branch 43 a Motion with Leave of Court to Withdraw Information.[14]

Petitioner appealed before the Department of Justice *(DOJ)* and on February 15, 2002, the DOJ sustained the November 23, 1999 Resolution of the Office of the City Prosecutor of Quezon City.[15] Petitioner's Motion for Reconsideration was likewise denied.[16]

On March 14, 2003, the MeTC of Quezon City, Branch 43 *dismissed* Criminal Case Nos. 94961-64. The trial court was convinced with the finding of the City Prosecutor, which was sustained by the DOJ, that probable cause for the falsification of commercial documents against the remaining accused, Escobal, did not exist.[17]

The MeTC enumerated the elements of falsification of commercial documents under paragraph 6 of Article 171 of the RPC. Thus:

1. That there be an alteration (change) or intercalation (insertion) on a document;
2. That it was made on a genuine document;
3. That the alteration or intercalation has changed the meaning of the document; and
4. That the change made the document speak something false.

The MeTC ruled that the referred alterations committed by accused E. Ramos in changing the name of the indorsee of the

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[14] *Id.* at 131-132.

[15] *Id.* at 153, 361-364, 365-366.

[16] *Id.* at 365-366.

[17] *Id.* at 224-226.

stock certificates from that of the complainant Antonio Ramos to E.M. RAMOS & SONS, INC., could not be considered as the falsification contemplated by the law as the change did not make the document speak something false. The commercial documents subject of these cases were admittedly altered by the accused Ramos, Sr., purposely to correct the inequity brought about by the failure of petitioner Ramos to comply with what was incumbent upon him under their agreement.

The private prosecutors filed a Motion for Reconsideration.[18]

Private respondent Escobal filed his Comment/Opposition.[19] Private prosecutors, thereafter, filed their Reply.[20]

On August 15, 2003, the MeTC finally resolved to DENY the Motion for Reconsideration of the private prosecutors.[21]

On November 3, 2003, petitioner Ramos *(complainant in the criminal cases)* filed a Petition for *Certiorari*, Prohibition and *Mandamus* with the Regional Trial Court of Quezon City *(RTC)*. The same was docketed as Civil Case No. Q03-51042.[22] Petitioner presented the following grounds:

(a)

THE RESPONDENT JUDGE GRAVELY ABUSED HER DISCRETION WHEN SHE ORDERED THE DISMISSAL OF THE INSTANT CASE FOR LACK OF PROBABLE CAUSE DESPITE HER PREVIOUS DETERMINATION OF THE EXISTENCE THEREOF WHEN SHE ISSUED A WARRANT OF ARREST.

(b)

THE RESPONDENT JUDGE GRAVELY ABUSED HER DISCRETION BY ALLOWING THE UNDUE INTERFERENCE OF

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[18] *Id.* at 155-164.

[19] *Id.* at 165-172.

[20] *Id.* at 173-185.

[21] *Id.* at 186-187.

[22] *Id.* at 188-223.

THE DEPARTMENT OF JUSTICE WITH THE INSTANT CASE AFTER HAVING ALREADY MADE A PERSONAL EXAMINATION OF PROBABLE CAUSE FOR THE ISSUANCE OF A WARRANT OF ARREST

(c)

THE RESPONDENT JUDGE'S BASELESS DISMISSAL OF THE INSTANT CASE GROSSLY VIOLATED THE PROSECUTION'S RIGHT TO DUE PROCESS, IN GRAVE ABUSE OF DISCRETION."[23]

On *January 3, 2005*, the RTC of Quezon City, Branch 215 *dismissed* the petition for lack of merit.[24] The RTC explained that once an Information or complaint was filed in court, the matter of the disposition of the case would be left to the sound discretion of the court. When the trial court in this case reconsidered or reversed its previous finding of probable cause and granted the motion to dismiss of the public prosecutor, it was acting within its prerogative since the matter rested upon its sound discretion. The ruling made by the MeTC in dismissing the cases before it, was not simply derived from its own whims and caprices but after a judicious reassessment of the records of the case. The RTC also cited the case of *Crespo v. Mogul*[25] where it was held that "once a complaint or information is filed in Court any disposition of the case as its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court."

On *June 8, 2005*, the RTC denied the Motion for Reconsideration of the petitioner.[26]

Petitioner then sought relief from the Court of Appeals *via* a Petition for Review under Rule 42 of the Rules of Court. Petitioner assailed the *January 3, 2005 Decision* and the *June 8, 2005 Resolution* of the RTC.

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[23] *Id.* at 202-203.

[24] *Id.* at 420-423.

[25] 235 Phil. 465 (1987).

[26] *Rollo*, p. 502.

In its challenged *July 29, 2005* Resolution,[27] the Court of Appeals *dismissed outright* the petition filed by petitioner. Specifically, the Court of Appeals pointed out that:

"x x x a petition for review under Rule 42 of the Revised Rules on Civil Procedure may be availed of only if the assailed decision of the Regional Trial Court was rendered in the exercise of the latter's appellate jurisdiction, such as when a plaintiff files an action for ejectment or sum of money, *etc*. before the Municipal or Metropolitan Trial Court against a defendant and said court renders judgment thereon. If the losing party appeals the decision of the Municipal or Metropolitan Trial Court to the Regional Trial Court and the latter exercising its appellate court, affirms or reverses the decision, then a petition for review filed by the losing party before this Court under Rule 42 of the revised Rules on Civil Procedure is in order.

However, in the case at bench, it clearly appears that the Regional Trial Court of Quezon City that renders the assailed Decision of January 3, 2005 and Order of June 8, 2005 rendered the same pursuant to its original jurisdiction to assume to hear and resolve petitions for certiorari under Rule 65 of the Revised Rules on Civil Procedure. Because the Regional Trial Court of Quezon City herein had assumed jurisdiction and decided the petition for certiorari filed by herein petitioner pursuant to its original jurisdiction as provided by law, the proper mode for petitioner to assail the subject Decision and Order of the Regional Trial Court of Quezon City is by ordinary appeal under Rule 41 of the revised Rules on Civil Procedure by filing a notice of appeal with the Regional Trial Court of Quezon City within the reglementary period as provided under Sec. 3 of Rule 41 of the revised rules on Civil Procedure and when the appeal is perfected, the Court *a quo* will elevate the entire record of this case to this Court, and thereafter, instead of briefs, the parties will be required to file their respective memorandum pursuant to Section 10 Rule 44 of the revised Rules on Procedure."

In the other challenged *Resolution dated February 14, 2006*,[28] the Court of Appeals denied the Motion for Reconsideration of petitioner.

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[27] *Id.* at 81-84.

[28] *Id.* at 86-88.

Hence, this petition under Rule 45 challenging the above Resolutions of the Court of Appeals anchored on the following grounds:[29]

(A)

THE COURT OF APPEALS ERRED WHEN IT DISMISSED THE PETITION FOR REVIEW FILED UNDER RULE 42 OF THE 1997 REVISED RULES OF CIVIL PROCEDURE DESPITE THE FACT THAT THE SAME IS A PROPER MODE TO QUESTION THE REGIONAL TRIAL COURT'S ORDERS.

(B)

THE COURT OF APPEALS GRAVELY ERRED IN DISMISSING THE PETITION FOR REVIEW FILED UNDER RULE 42 OF THE 1997 RULES OF CIVIL PROCEDURE AS IT DENIED THE PETITIONER OF THE FULL OPPORTUNITY TO ESTABLISH THE MERITS OF HIS CAUSE, RELYING SOLELY ON TECHNICALITY AT THE EXPENSE [OF] THE PETITIONER'S SUBSTANTIVE RIGHTS.

(C)

THE COURT OF APPEALS GRAVELY ERRED IN REFUSING TO RESOLVE THE PETITION FOR REVIEW ON THE MERITS DESPITE THE CLEAR REVERSIBLE ERROR COMMITTED BY THE REGIONAL TRIAL COURT WHEN IT AFFIRMED THE METROPOLITAN TRIAL COURT'S ORDERS DISMISSING CRIMINAL CASE NOS. 94961 TO 94964 WITHOUT TRIAL ON THE MERITS, THEREBY SANCTIONING A DENIAL OF DUE PROCESS OF LAW.

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[29] After the relevant pleadings have been filed, this Court has directed the parties to submit their respective Memoranda *(Rollo*, pp. 929-930*)*. Private respondent Escobal filed his Memorandum *(Rollo*, pp. 1027-1052*)*. The Office of the Solicitor General (OSG), manifested that it is adopting its Comment dated October 10, 2006 as its Memorandum *(Rollo, pp. 1060-1061)*. The heirs of petitioner, likewise, manifested that the petition and related pleadings filed by their deceased father be considered as their Memorandum as per their Motion dated February 12, 2009. The Court granted the motion considering that per Our Resolution dated June 10, 2009, only respondents were required to file Memorandum *(Rollo*, pp. 1065-1066*)*.

(D)

THE COURT OF APPEALS GRAVELY ERRED IN REFUSING TO RESOLVE THE PETITION FOR REVIEW ON THE MERITS NOTWITHSTANDING THE PATENT ERROR COMMITTED BY THE REGIONAL TRIAL COURT WHEN IT AFFIRMED THE METROPOLITAN TRIAL COURT'S ORDERS DISMISSING CRIMINAL CASE NOS. 94961 TO 94964 ON THE SOLE BASIS OF THE RESOLUTION OF THE DEPARTMENT OF JUSTICE, THEREBY SANCTIONING AN ABDICATION OF JUDICIAL DUTY AND JURISDICTION.

(E)

THE COURT OF APPEALS GRAVELY ERRED IN DENYING DUE COURSE TO THE PETITION FOR REVIEW DESPITE THE PALPABLE ERROR COMMITTED BY THE REGIONAL TRIAL COURT IN UPHOLDING THE METROPOLITAN TRIAL COURT'S ORDERS DISMISSING CRIMINAL CASE NOS. 94961 TO 94964 FOR LACK OF PROBABLE CAUSE DESPITE OVERWHELMING EVIDENCE SHOWING ITS EXISTENCE.[30]

The grounds raised by the petitioner boil down to one basic issue — whether or not the Court of Appeals erred in dismissing the petition under Rule 42 filed by herein petitioner before it.

We resolve the issue in the negative.

The Court of Appeals was correct in dismissing the petition outright. Under the Rules, appeals to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review under Rule 42.[31] What was filed by the petitioner before the RTC was a petition for *certiorari* under **Rule 65**.

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[30] *Rollo*, pp. 40-41.

[31] SECTION 1. *How appeal taken; time for filing.*—A party desiring to appeal from a decision of the Regional Trial Court rendered in the exercise of its appellate jurisdiction may file a verified petition for review with the Court of Appeals, paying at the same time to the clerk of said court the corresponding docket and other lawful fees, depositing the amount of ₱500.00 for costs, and furnishing the Regional Trial Court and the adverse party with a copy of the petition. The petition shall be filed and served within fifteen (15) days from notice of the decision sought to be reviewed or of the denial

It has long been settled that *certiorari*, as a special civil action, is an original action invoking the original jurisdiction of a court to annul or modify the proceedings of a tribunal, board or officer exercising judicial or quasi-judicial functions. It is an **original and independent action** that is not part of the trial or the proceedings of the complaint filed before the trial court.[32] The petition for *certiorari*, therefore, before the RTC is a separate and distinct action from the criminal cases resolved by the MeTC.

It is true that litigation is not a game of technicalities and that the rules of procedure should not be strictly followed in the interest of substantial justice. However, it does not mean that the Rules of Court may be ignored at will. It bears emphasizing that procedural rules should not be belittled or dismissed simply because their non-observance may have resulted in prejudice to a party's substantial rights. Like all rules, they are required to be followed except only for the most persuasive of reasons.[33] In this case, there was nary a cogent reason to depart from the general rule.

Indeed, the ground alone that petitioner resorted to an improper remedy, makes the petition dismissible and undeserving of the Court's attention.

Even if the Court glosses over such infirmity, the petition should nonetheless be dismissed for lack of substantive merit.

Once a criminal action has been instituted by the filing of the Information with the court, the latter acquires jurisdiction and has the authority to determine whether to dismiss the case or

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of petitioner's motion for new trial or reconsideration filed in due time after judgment. Upon proper motion and the payment of the full amount of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days only within which to file the petition for review. No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days.

[32] *San Miguel Bukid Homeowners Association, Inc. v. The City of Mandaluyong*, G.R. No. 153653, October 2, 2009, 602 SCRA 30.

[33] *Sea Power Shipping Enterprises, Inc. v. Court of Appeals*, 412 Phil. 603 (2001).

convict or acquit the accused. Where the prosecution is convinced that the evidence is insufficient to establish the guilt of an accused, it cannot be faulted for moving for the withdrawal of the Information. However, in granting or denying the motion to withdraw, the court must judiciously evaluate the evidence in the hands of the prosecution. The court must itself be convinced that there is indeed no satisfactory evidence against the accused and this conclusion can only be reached after an assessment of the evidence in the possession of the prosecution.[34] In this case, the trial court had sufficiently explained the reasons for granting the motion for the withdrawal of the Information. The Court agrees with the dispositions made by the trial court. Corollarily, the RTC did not err in dismissing the petition (under Rule 65) filed by petitioner challenging the ruling of the MeTC.

It bears emphasizing that when the trial court grants a motion of the public prosecutor to withdraw the Information in compliance with the directive of the Secretary of Justice, or to deny the said motion, it does so not out of compliance to or defiance of the directive of the Secretary of Justice, but in sound and faithful exercise of its judicial prerogative. The trial court is the best and sole judge on what to do with the case before it. The rule applies to a motion to withdraw the Information or to dismiss the case even before or after the arraignment of the accused.[35] The prior determination of probable cause by the trial court does not in any way bar a contrary finding upon reassessment of the evidence presented before it.

WHEREFORE, the petition is *DENIED*. The Resolutions dated July 29, 2005 and February 14, 2006 of the Court of Appeals are *AFFIRMED*.

SO ORDERED.

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

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[34] *Fuentes v. The Sandiganbayan*, G.R. No. 139618, July 11, 2006, 494 SCRA 478.

[35] *Crespo v. Mogul, supra* note 25.

[*] Designated additional member in lieu of Justice Antonio Eduardo B. Nachura per Raffle dated June 16, 2010.

SECOND DIVISION

[G.R. No. 175835. July 13, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **GERARDO ROLLAN *y* REY,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY MINOR INCONSISTENCIES OF WITNESSES IF NOT ILL-MOTIVATED.— Appellant Rollan capitalizes on the fact that the testimonies of the prosecution's eyewitnesses, Alfredo and Allan, were somewhat contradictory. x x x But, as the CA pointed out, both testimonies show that the assailants acted in conspiracy with each other as evidenced by their concerted action in surrounding Yrigan and attacking him simultaneously, with some holding and pulling at his hands so he could not use them to defend himself and return the attack, and the others stabbing and slashing at him with weapons. Alfredo and Allan appear to be credible witnesses. The several accused in this case, like the victim, were their neighbors. Thus, it was most unlikely for the two witnesses to have made mistakes in identifying who Yrigan's assailants were. Since the accused here did not adduce evidence that Alfredo and Allan were ill-motivated in testifying against their own neighbors, their testimonies can be believed. It helps that the autopsy report conforms to their narration of what the assailants did to Yrigan. So, if either of them was imprecise in recalling who did what in that brief stunning moment of the attack, such mistake would be understandable. What is important is that they were in full agreement as to the mode of attack adopted and the identities of those who took part in it. Ascertaining which assailants gripped the victim's hands to immobilize him or struck blows that killed him would not affect their liabilities. The liabilities of conspirators are the same whatever their individual parts in the offense were.

2. CRIMINAL LAW; MURDER; DAMAGES; PROPER CIVIL INDEMNITY AT ₱75,000, MORAL DAMAGES AT ₱50,000, EXEMPLARY DAMAGES AT ₱25,000 CONSIDERING THE

PRESENCE OF AN AGGRAVATING CIRCUMSTANCE, AND LOSS OF EARNING CAPACITY BASED ON TESTIMONY THEREOF.— As regards the civil indemnity to which the heirs of the victim are entitled, while this Court would affirm the award of ₱45,000.00 in actual damages, it must modify the awards to make them conform to the latest precedents, *i.e.*, reduce the death indemnity to ₱75,000.00 and make additional awards of ₱50,000.00 in moral damages and ₱25,000.00 in exemplary damages (considering the attendance of at least one aggravating circumstance). The Court will also grant the victim's heirs indemnity for loss of earning based on the testimony of Yrigan's wife that her husband earned ₱250.00 daily as a carpenter at the time of his death, applying the following formula: Net Earning Capacity = 2/3 x (80 less the age of the victim at the time of death) x (Gross Annual Income less the Reasonable and Necessary Living Expenses)

APPEARANCES OF COUNSEL

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

D E C I S I O N

ABAD, *J.*:

This case is about the significance of inconsistencies in the testimonies of two eyewitnesses respecting which of several accused held the victim to immobilize him and which of them inflicted the wounds where conspiracy was shown.

The Facts and the Case

In 1995, the Office of the Public Prosecutor filed an information before the Regional Trial Court (RTC), Branch 255, Las Piñas City in Criminal Case 95-118[1] against accused-appellant Gerardo Rollan and Renato dela Cruz for the murder of Rolando Yrigan.[2]

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[1] Case transferred to Branch 275.

[2] CA *rollo*, p. 11, Information reads: That on or about the 23rd day of November 1995, in the Municipality of Las Piñas, Metro Manila, Philippines

A year after, the prosecution filed an amended information[3] to include four other accused, namely, Dennis Perez, Melo Benabesi, Undo Baylon, and Tomtom Benoza. Trial proceeded only against Rollan, Dela Cruz, and Benabesi since the others remained at large.[4]

The prosecution presented two eyewitnesses, Alfredo Monsanto and his son, Allan. Alfredo testified that he lived at Purok 5, CAA, Las Piñas City. On November 23, 1995, between 9 and 10 p.m., he was walking home from work when he saw from 10 meters away a group of men ganging up (*pinagtutulungan*) on his neighbor, Rolando Yrigan.[5] The attackers were also his neighbors, namely Renato dela Cruz, Tomtom Benoza, Dennis Perez, Melo Benabesi, and appellant Gerardo Rollan. Although there were no street lights, the area was sufficiently illuminated by lights from nearby houses that used generators.[6]

Alfredo further testified that he saw Dela Cruz pulling at Yrigan's right hand while Benoza did the same with Yrigan's other hand[7] such that the latter's arms were outstretched (*nakadipa*). Baylon also helped immobilize Yrigan.[8] At the same

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and within the jurisdiction of this Honorable Court, the above-named accused, armed with a *bolo* and a knife (*beinte nuebe*), conspiring and confederating together with Dennis Perez, Melo Benabesi, *alias* Bobby, *alias* Undo, *alias* Tongtong and one John Doe whose true identities and present whereabouts are still unknown and all of them mutually helping and aiding one another with intent to kill and with treachery and evident premeditation and by taking advantage of their superior strength, did then and there willfully, unlawfully and feloniously attack, assault and stab one Rolando Yrigan, thereby inflicting upon him serious and mortal stab wounds which directly caused his death. Contrary to law.

[3] Records, p. 53.

[4] *Id.* at 19 & 215.

[5] TSN, September 23, 1996, p. 4.

[6] *Id.* at 5; (see also TSN, September 30, 1996, p. 3).

[7] *Id.*

[8] *Id.* at 5.

time, appellant Rollan and the others (Perez, Benabesi, and an unidentified man) took turns in stabbing Yrigan[9] with a long bladed weapon.[10] After Yrigan dropped face flat on the ground,[11] his assailants ran away in different directions.[12]

Allan Monsanto, Alfredo's son, testified that between 9 and 10 p.m. on November 23, 1995, Yrigan came to his house to borrow money. Yrigan left after they talked.[13] Several minutes later, Allan left his house to buy food. As he stepped out, he heard someone moaning and, looking to see who it was, he saw Yrigan, stooped on the ground and with both hands on his bleeding face.[14] Seven men then attacked him with a *beinte nueve* (folding knife) and a *bolo*.[15] Appellant Rollan and Benabesi held Yrigan by his hands[16] while Dela Cruz took turns with the others in stabbing him.[17] Afterwards, his assailants threw Yrigan into a pig pen.[18]

The autopsy report[19] showed that Yrigan sustained abrasions as well as lacerated, incised, and stab wounds. The cause of his death was traumatic head injury and stab wounds.

While Dela Cruz denied his involvement,[20] appellant Rollan claimed an alibi. He said that on the date and time of the incident, he drove a jeepney, plying his usual Sucat-Baclaran route.[21]

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[9] *Id.* at 5-6.

[10] *Id.* at 7.

[11] *Id.* at 8.

[12] *Id.*

[13] TSN, December 2, 1996, p. 4.

[14] *Id.* at 12.

[15] *Id.* at 4.

[16] *Id.* at 6.

[17] *Id.*

[18] *Id.* at 12.

[19] Records, p. 189.

[20] TSN, November 3, 1999, pp. 4, 6.

[21] TSN, April 2, 2003, p. 3.

He brought back the jeepney to the operator's garage at Purok 5, CAA in Las Piñas City, at 11:45 p.m.[22] On November 27, 1995 policemen came to the garage and arrested him.[23]

The defense also presented Teresita Paladin who vouched for the innocence of Benabesi, Dela Cruz, and appellant Rollan. She said that they were asleep in their respective houses[24] when the killing happened right at her door steps. She witnessed from the open door how a certain Bobby hit Yrigan with a piece of wood. Another man, known as Tomtom, stabbed Yrigan several times.[25]

On September 30, 2003 the RTC found appellant Rollan, Benabesi, and Dela Cruz guilty as charged and sentenced them to suffer the penalty of *reclusion perpetua* and to pay Yrigan's heirs ₱100,000.00 in indemnity plus ₱45,000.00 in actual damages. The RTC held that it could not give credence to the denials and alibis they interposed, given that the two eyewitnesses confirmed their part in the commission of the offense. The RTC also held that it could not rely on Paladin's testimony since she belatedly came forward and did not submit herself to a full cross-examination."[26]

On October 13, 2003 Benabesi filed a motion for reconsideration,[27] which the RTC granted by modifying its original decision and acquitting him.[28] The RTC pointed out that, upon further assessment, it found inconsistencies in the testimonies of Allan and Alfredo that made it doubt Benabesi's participation in the killing. Paladin's narration, pointing to two other persons responsible for the crime, was more consistent with Yrigan's

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[22] *Id.* at 4.

[23] *Id.* at 7.

[24] TSN, July 24, 2002, p. 8.

[25] *Id.* at 5, 7.

[26] Records, p. 328.

[27] *Id.* at 330-342.

[28] *Id.* at 348-351.

injuries. Besides, Allan and Alfredo did not positively identify Benabesi in open court.

Appellant Rollan appealed to the Court of Appeals (CA) in CA-G.R. CR 00399 but the latter court affirmed the decision of the RTC in its entirety.[29] The CA also denied the motion for reconsideration that he subsequently filed.[30]

The Issue

The only issue presented in this case is whether or not the CA erred in affirming the RTC's finding that appellant Rollan and the others with him murdered Yrigan.

The Court's Ruling

Appellant Rollan capitalizes on the fact that the testimonies of the prosecution's eyewitnesses, Alfredo and Allan, were somewhat contradictory. Alfredo said that Dela Cruz and Benoza, aided by Baylon, immobilized Yrigan by holding and pulling away his hands from either side so appellant Rollan and the other accused could freely attack him with a long bladed weapon. Allan said, on the other hand, that appellant Rollan and Benabesi were the ones who held Yrigan's hands while the others attacked him with a *bolo* and a knife.

But, as the CA pointed out, both testimonies show that the assailants acted in conspiracy with each other as evidenced by their concerted action in surrounding Yrigan and attacking him simultaneously, with some holding and pulling at his hands so he could not use them to defend himself and return the attack, and the others stabbing and slashing at him with weapons.

Alfredo and Allan appear to be credible witnesses. The several accused in this case, like the victim, were their neighbors. Thus, it was most unlikely for the two witnesses to have made mistakes in identifying who Yrigan's assailants were.

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[29] *Rollo*, pp. 2-14, penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Portia Aliño-Hormachuelos and Mariano C. Del Castillo.

[30] CA *rollo*, pp. 121-122.

Since the accused here did not adduce evidence that Alfredo and Allan were ill-motivated in testifying against their own neighbors, their testimonies can be believed.[31] It helps that the autopsy report conforms to their narration of what the assailants did to Yrigan. So, if either of them was imprecise in recalling who did what in that brief stunning moment of the attack, such mistake would be understandable. What is important is that they were in full agreement as to the mode of attack adopted and the identities of those who took part in it. Ascertaining which assailants gripped the victim's hands to immobilize him or struck blows that killed him would not affect their liabilities. The liabilities of conspirators are the same whatever their individual parts in the offense were.

Appellant Rollan points out that, had Alfredo and Allan really been there, witnessing what was happening at 10-meter range, the likelihood is that the killers would have either attacked or at least intimidated them. But how can this be when the assailants apparently had their anger focused on Yrigan and the witnesses did not show any intention of interfering. Surely, Rollan does not expect the accused to spontaneously murder all neighbors who happened to be around just to cover up for the killing of Yrigan.

Appellant Rollan assails the testimonies of Alfredo and Allan as unlikely to be true considering how they were unable to note each other's presence during the incident. But the two were not similarly placed. Alfredo was walking home from work when he froze on the road to witness the commotion. Allan, on the other hand, came out of his house to buy food when he responded to Yrigan's moaning and saw how the latter was being attacked. The two witnesses did not have to be conscious of each other's presence to be credible in their testimonies.

Finally, appellant Rollan points out that, while Alfredo said that the attackers immediately fled in different directions after

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[31] *People v. Garchitorena*, G.R. No. 175605, August 28, 2009, 597 SCRA 420, 444.

they committed the crime, Allan said that they first threw Yrigan into a pig pen before doing that. But, actually, Allan himself did not mention the matter of throwing Yrigan into the pig pen until later in the course of cross-examination. Allan probably did not regard it as part of the aggression proper and so he omitted mention of it at first. In Alfredo's case, he was not asked about it on cross- examination. Consequently, it cannot be said that one of the two lied about the pig pen part of what happened.

Appellant Rollan claims alibi as his defense and threw in Paladin's testimony to corroborate his. But their stories do not match. Rollan said that he was out driving a passenger jeepney at the time of the incident. Paladin claimed that Rollan was asleep at his home. Paladin had to admit eventually during cross-examination that she could not have known that Rollan was at home because she did not leave her house all day.[32] She merely assumed he was asleep because it was already late.[33]

As regards the civil indemnity to which the heirs of the victim are entitled, while this Court would affirm the award of ₱45,000.00 in actual damages, it must modify the awards to make them conform to the latest precedents, *i.e.*, reduce the death indemnity to ₱75,000.00[34] and make additional awards of ₱50,000.00 in moral damages and ₱25,000.00 in exemplary damages (considering the attendance of at least one aggravating circumstance).[35] The Court will also grant the victim's heirs indemnity for loss of earning based on the testimony of Yrigan's wife that her husband

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[32] TSN, February 13, 2003, p. 15.

[33] *Id.* at 12.

[34] *People v. Bracia*, G.R. No. 174477, October 2, 2009, 602 SCRA 351, 375, citing *People v. De Guzman*, G.R. No. 173477, February 4, 2009, 578 SCRA 54, 68; *People v. Arbalate*, G.R. No. 183457, September 17, 2009, 600 SCRA 239, 255.

[35] *People v. Bracia*, *supra* note 34, at 375-376, citing *People v. Tolentino*, G.R. No. 176385, February 26, 2008, 546 SCRA 671, 701; *People v. Arbalate*, *supra* note 34.

earned ₱250.00 daily as a carpenter at the time of his death,[36] applying the following formula:

> Net Earning Capacity = 2/3 x (80 less the age of the victim at the time of death) x (Gross Annual Income less the Reasonable and Necessary Living Expenses)[37]

Since Yrigan's estimated annual gross income was ₱84,000.00, deducting from it his presumed expenses of 50%, the balance of ₱42,000.00 would presumably be what his family was receiving from him. His life expectancy is assumed to be 2/3 of the age 80, less 36, his age at the time of death.[38] Upon computation[39] his net lost earning would be ₱1,232,000.00.

WHEREFORE, the Court *AFFIRMS* the decision of the Court of Appeals in CA-G.R. CR 00399, which found the accused-appellant Gerardo Rollan guilty as charged, subject to modifications in the award of damages to the heirs of Rolando Yrigan. Such award should now be as follows:

1. Actual damages of ₱45,000.00;
2. Civil indemnity for death of ₱75,000.00;
3. Moral damages of ₱50,000.00;
4. Exemplary damages of ₱25,000.00; and
5. Indemnity for loss of earning in the sum of ₱1,232,000.00.

SO ORDERED.

Carpio, Villarama, Jr.,[*] *Perez,*[**] and *Mendoza, JJ.*, concur.

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[36] TSN, December 16, 1996, p. 3.

[37] *People v. Bracia*, *supra* note 34, at 376; *People v. Nullan*, 365 Phil. 227, 257 (1999).

[38] TSN, December 16, 1996, p. 2.

[39] Yrigan's net earning capacity = [2/3 (80-36)] x [84,000-42,000] = ₱1,232,000.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 858 dated July 1, 2010.

[**] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 863 dated July 5, 2010.

SECOND DIVISION

[G.R. No. 177861. July 13, 2010]

IN RE: PETITION FOR CANCELLATION AND CORRECTION OF ENTRIES IN THE RECORD OF BIRTH, EMMA K. LEE, *petitioner, vs.* **COURT OF APPEALS, RITA K. LEE, LEONCIO K. LEE, LUCIA K. LEE-ONG, JULIAN K. LEE, MARTIN K. LEE, ROSA LEE-VANDERLEK, MELODY LEE-CHIN, HENRY K. LEE, NATIVIDAD LEE-MIGUEL, VICTORIANO K. LEE, and THOMAS K. LEE, represented by RITA K. LEE, as Attorney-in-Fact,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SUBPOENA; QUASHING OF *SUBPOENA DUCES TECUM*; APPLICABLE FOR THE GROUNDS THAT IT WAS UNREASONABLE AND OPPRESSIVE.— The RTC quashed the subpoena *ad testificandum* it issued against Tiu on the ground that it was unreasonable and oppressive, x x x [but these grounds] are proper for subpoena *ad duces tecum* or for the production of documents and things in the possession of the witness, a command that has a tendency to infringe on the right against invasion of privacy. Section 4, Rule 21 of the Rules of Civil Procedure, thus provides: **SECTION 4. Quashing a subpoena. — The court may quash a subpoena *duces tecum* upon motion promptly made and, in any event, at or before the time specified therein if it is unreasonable and oppressive, or the relevancy of the books, documents or things does not appear, or if the person in whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof.**

2. ID.; EVIDENCE; WITNESSES; RIGHTS AND OBLIGATIONS OF A WITNESS; APPLICATION ESPECIALLY TRUE WHERE WITNESS IS OF ADVANCED AGE.— Regarding the physical and emotional punishment that would be inflicted on Tiu if she were compelled at her age and condition to come

to court to testify, petitioner Emma Lee must establish this claim to the satisfaction of the trial court. About five years have passed from the time the Lee-Keh children sought the issuance of a subpoena for Tiu to appear before the trial court. The RTC would have to update itself and determine if Tiu's current physical condition makes her fit to undergo the ordeal of coming to court and being questioned. If she is fit, she must obey the subpoena issued to her. Tiu has no need to worry that the oral examination might subject her to badgering by adverse counsel. The trial court's duty is to protect every witness against oppressive behavior of an examiner and this is especially true where the witness is of advanced age.

3. ID.; ID.; RULES OF ADMISSIBILITY; TESTIMONIAL EVIDENCE; TESTIMONIAL PRIVILEGE; PARENTAL AND FILIAL PRIVILEGE; NOT APPLICABLE BETWEEN STEPDAUGHTER AND STEPMOTHER.— Section 25, Rule 130 of the Rules of Evidence reads: **SECTION 25. Parental and filial privilege.- No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants.** The above is an adaptation from a similar provision in Article 315 of the Civil Code that applies only in criminal cases. But those who revised the Rules of Civil Procedure chose to extend the prohibition to all kinds of actions, whether civil, criminal, or administrative, filed against parents and other direct ascendants or descendants. But here Tiu, who invokes the filial privilege, claims that she is the stepmother of petitioner Emma Lee. The privilege cannot apply to them because the rule applies only to "direct" ascendants and descendants, a family tie connected by a common ancestry. A stepdaughter has no common ancestry by her stepmother. Article 965 thus provides: **Art. 965. The direct line is either descending or ascending. The former unites the head of the family with those who descend from him. The latter binds a person with those from whom he descends.**

APPEARANCES OF COUNSEL

Morales Rojas & Risos-Vidal for petitioner.
Fortun Narvasa & Salazar for private respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the grounds for quashing a subpoena *ad testificandum* and a parent's right not to testify in a case against his children.

The Facts and the Case

Spouses Lee Tek Sheng (Lee) and Keh Shiok Cheng (Keh) entered the Philippines in the 1930s as immigrants from China. They had 11 children, namely, Rita K. Lee, Leoncio K. Lee, Lucia K. Lee-Ong, Julian K. Lee, Martin K. Lee, Rosa Lee-Vanderlek, Melody Lee-Chin, Henry K. Lee, Natividad Lee-Miguel, Victoriano K. Lee, and Thomas K. Lee (collectively, the Lee-Keh children).

In 1948, Lee brought from China a young woman named Tiu Chuan (Tiu), supposedly to serve as housemaid. The respondent Lee-Keh children believe that Tiu left the Lee-Keh household, moved into another property of Lee nearby, and had a relation with him.

Shortly after Keh died in 1989, the Lee-Keh children learned that Tiu's children with Lee (collectively, the Lee's other children) claimed that they, too, were children of Lee and Keh. This prompted the Lee-Keh children to request the National Bureau of Investigation (NBI) to investigate the matter. After conducting such an investigation, the NBI concluded in its report:

[I]t is very obvious that the mother of these 8 children is certainly not KEH SHIOK CHENG, but a much younger woman, most probably TIU CHUAN. Upon further evaluation and analysis by these Agents, LEE TEK SHENG is in a quandary in fixing the age of KEH SHIOK CHENG possibly to conform with his grand design of making his 8 children as their own legitimate children, consequently elevating the status of his second family and secure their future. The doctor lamented that this complaint would not have been necessary had not the father and his second

family kept on insisting that the 8 children are the legitimate children of KEH SHIOK CHENG.[1]

The NBI found, for example, that in the hospital records, the eldest of the Lee's other children, Marcelo Lee (who was recorded as the 12th child of Lee and Keh), was born of a 17-year-old mother, when Keh was already 38 years old at the time. Another of the Lee's other children, Mariano Lee, was born of a 23-year-old mother, when Keh was then already 40 years old, and so forth. In other words, by the hospital records of the Lee's other children, Keh's *declared* age did not coincide with her *actual* age when she supposedly gave birth to such other children, numbering eight.

On the basis of this report, the respondent Lee-Keh children filed two separate petitions, one of them before the Regional Trial Court (RTC) of Caloocan City[2] in Special Proceeding C-1674 for the deletion from the certificate of live birth of the petitioner Emma Lee, one of Lee's other children, the name Keh and replace the same with the name Tiu to indicate her true mother's name.

In April 2005 the Lee-Keh children filed with the RTC an *ex parte* request for the issuance of a subpoena *ad testificandum* to compel Tiu, Emma Lee's presumed mother, to testify in the case. The RTC granted the motion but Tiu moved to quash the subpoena, claiming that it was oppressive and violated Section 25, Rule 130 of the Rules of Court, the rule on parental privilege, she being Emma Lee's stepmother.[3] On August 5, 2005 the RTC quashed the subpoena it issued for being unreasonable and oppressive considering that Tiu was already very old and that the obvious object of the subpoena was to badger her into admitting that she was Emma Lee's mother.

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

[2] Branch 131.

[3] Sec. 25. *Parental and filial privilege*. — No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants.

Because the RTC denied the Lee-Keh children's motion for reconsideration, they filed a special civil action of *certiorari* before the Court of Appeals (CA) in CA-G.R. SP 92555. On December 29, 2006 the CA rendered a decision,[4] setting aside the RTC's August 5, 2005 Order. The CA ruled that only a subpoena *duces tecum*, not a subpoena *ad testificandum*, may be quashed for being oppressive or unreasonable under Section 4, Rule 21 of the Rules of Civil Procedure. The CA also held that Tiu's advanced age alone does not render her incapable of testifying. The party seeking to quash the subpoena for that reason must prove that she would be unable to withstand the rigors of trial, something that petitioner Emma Lee failed to do.

Since the CA denied Emma Lee's motion for reconsideration by resolution of May 8, 2007,[5] she filed the present petition with this Court.

The Question Presented

The only question presented in this case is whether or not the CA erred in ruling that the trial court may compel Tiu to testify in the correction of entry case that respondent Lee-Keh children filed for the correction of the certificate of birth of petitioner Emma Lee to show that she is not Keh's daughter.

The Ruling of the Court

Petitioner Emma Lee claims that the RTC correctly quashed the subpoena *ad testificandum* it issued against Tiu on the ground that it was unreasonable and oppressive, given the likelihood that the latter would be badgered on oral examination concerning the Lee-Keh children's theory that she had illicit relation with Lee and gave birth to the other Lee children.

But, as the CA correctly ruled, the grounds cited—unreasonable and oppressive—are proper for subpoena *ad duces tecum* or

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[4] *Rollo*, pp. 9-23; Opinion of then Presiding Justice Ruben T. Reyes (now a retired Associate Justice of the Court), with the concurrence of Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

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

for the production of documents and things in the possession of the witness, a command that has a tendency to infringe on the right against invasion of privacy. Section 4, Rule 21 of the Rules of Civil Procedure, thus provides:

SECTION 4. Quashing a subpoena. — The court may quash a subpoena *duces tecum* upon motion promptly made and, in any event, at or before the time specified therein if it is unreasonable and oppressive, or the relevancy of the books, documents or things does not appear, or if the person in whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof.

Notably, the Court previously decided in the related case of *Lee v. Court of Appeals*[6] that the Lee-Keh children have the right to file the action for correction of entries in the certificates of birth of Lee's other children, Emma Lee included. The Court recognized that the ultimate object of the suit was to establish the fact that Lee's other children were not children of Keh. Thus:

It is precisely the province of a special proceeding such as the one outlined under Rule 108 of the Revised Rules of Court to establish the status or right of a party, or a particular fact. The petitions filed by private respondents for the correction of entries in the petitioners' records of birth were intended to establish that for physical and/or biological reasons it was impossible for Keh Shiok Cheng to have conceived and given birth to the petitioners as shown in their birth records. Contrary to petitioners' contention that the petitions before the lower courts were actually actions to impugn legitimacy, the prayer therein is not to declare that petitioners are illegitimate children of Keh Shiok Cheng, but to establish that the former are not the latter's children. There is nothing to impugn as there is no blood relation at all between Keh Shiok Cheng and petitioners.[7] (Underscoring supplied)

Taking in mind the ultimate purpose of the Lee-Keh children's action, obviously, they would want Tiu to testify or admit that

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[6] 419 Phil. 392 (2001).

[7] *Id*. at 404-405.

she is the mother of Lee's other children, including petitioner Emma Lee. Keh had died and so could not give testimony that Lee's other children were not hers. The Lee-Keh children have, therefore, a legitimate reason for seeking Tiu's testimony and, normally, the RTC cannot deprive them of their right to compel the attendance of such a material witness.

But petitioner Emma Lee raises two other objections to requiring Tiu to come to court and testify: a) considering her advance age, testifying in court would subject her to harsh physical and emotional stresses; and b) it would violate her parental right not to be compelled to testify against her stepdaughter.

1. Regarding the physical and emotional punishment that would be inflicted on Tiu if she were compelled at her age and condition to come to court to testify, petitioner Emma Lee must establish this claim to the satisfaction of the trial court. About five years have passed from the time the Lee-Keh children sought the issuance of a subpoena for Tiu to appear before the trial court. The RTC would have to update itself and determine if Tiu's current physical condition makes her fit to undergo the ordeal of coming to court and being questioned. If she is fit, she must obey the subpoena issued to her.

Tiu has no need to worry that the oral examination might subject her to badgering by adverse counsel. The trial court's duty is to protect every witness against oppressive behavior of an examiner and this is especially true where the witness is of advanced age.[8]

2. Tiu claimed before the trial court the right not to testify against her stepdaughter, petitioner Emma Lee, invoking Section 25, Rule 130 of the Rules of Evidence, which reads:

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[8] Sec. 3. Rights and obligations of a witness. - A witness must answer questions, although his answer may tend to establish a claim against him. However, it is the right of a witness: x x x (2) Not to be detained longer than the interests of justice require; (3) Not to be examined except only as to matters pertinent to the issue; x x x.

SECTION 25. Parental and filial privilege.- No person may be compelled to testify against his parents, other direct ascendants, children or other direct descendants.

The above is an adaptation from a similar provision in Article 315 of the Civil Code that applies only in criminal cases. But those who revised the Rules of Civil Procedure chose to extend the prohibition to all kinds of actions, whether civil, criminal, or administrative, filed against parents and other direct ascendants or descendants.

But here Tiu, who invokes the filial privilege, claims that she is the stepmother of petitioner Emma Lee. The privilege cannot apply to them because the rule applies only to "direct" ascendants and descendants, a family tie connected by a common ancestry. A stepdaughter has no common ancestry by her stepmother. Article 965 thus provides:

Art. 965. The direct line is either descending or ascending. The former unites the head of the family with those who descend from him. The latter binds a person with those from whom he descends.

Consequently, Tiu can be compelled to testify against petitioner Emma Lee.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the decision and resolution of the Court of Appeals in CA-G.R. SP 92555.

SO ORDERED.

Carpio, Villarama, Jr.,[*] *Perez,*[**] and *Mendoza, JJ.*, concur.

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[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 858 dated July 1, 2010.

[**] Designated as additional member in lieu of Associate Justice Antonio Eduardo B. Nachura, per Special Order No. 863 dated July 5, 2010.

THIRD DIVISION

[G.R. No. 187693. July 13, 2010]

INTERTRANZ CONTAINER LINES, INC. and JOSEFINA F. TUMIBAY, *petitioners, vs.* **MA. TERESA I. BAUTISTA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; APPEALS; APPEAL FROM A DECISION INVOLVING MONETARY AWARD MAY BE PERFECTED ONLY UPON POSTING OF A CASE OR SURETY BOND; EXCEPTIONS.— Jurisprudence tells us that in labor cases, an appeal from a decision involving a monetary award may be perfected only upon the posting of a cash or surety bond. The Court, however, has relaxed this requirement under certain exceptional circumstances in order to resolve controversies on their merits. These circumstances include: (1) fundamental consideration of substantial justice; (2) prevention of miscarriage of justice or of unjust enrichment; and (3) special circumstances of the case combined with its legal merits, and the amount and the issue involved.

2. ID.; ID.; ID.; ID.; MOTION FOR EXTENSION OF TIME TO FILE APPEAL BOND SHOULD HAVE BEEN GRANTED AS GOOD FAITH WAS EXHIBITED, THERE WAS NO SHOWING OF INTENTION TO DELAY RESOLUTION OF THE CASE AND, IN THE INTEREST OF JUSTICE.— The NLRC dismissed the petitioners' appeal for non-perfection/ non-compliance with the appeal bond requirement without passing upon – in fact, completely ignoring – the petitioners' motion for time to post the required bond. The NLRC should have granted the motion for extension since there was no showing that it was intended to delay the resolution of the case. More importantly, the petitioners exhibited good faith and willingness to post the bond within the period they asked for which, in fact, they did on June 1, 2006. x x x We find, under the circumstances, that the NLRC had precipitately dismissed the appeal for non-perfection. As we held in *Phil. Geothermal,*

Inc. v. National Labor Relations Commission, the petitioners' appeal should have been given due course, "in the broader interest of justice and with the desired objective of deciding the case on the merits."

3. ID.; ID.; ID.; REMAND OF THE CASE TO THE NLRC OR THE CA MADE UNNECESSARY AS ISSUES MAY ALREADY BE RESOLVED IN THE INTEREST OF SPEEDY JUSTICE.— The case is more than five (5) years old already and needs to be resolved as expeditiously as possible. On this vital point, the Court's opinion in *Roman Catholic Archbishop of Manila v. Court of Appeals* is relevant – [The] remand of the case x x x is not necessary where the Court is in a position to resolve the dispute based on the records before it. [T]he Court, x x x [will decide] actions on the merits [in order to expedite the settlement of a controversy and if] the ends of justice x x x would not be subserved by the remand of the case. For this same reason, we find that the case should now be resolved without sending it back to the NLRC or to the CA for disposition. We noted earlier that the petitioners filed a memorandum of appeal which Bautista opposed. Thus, the issues have been joined and are ready for adjudication, and should forthwith be resolved in the interest of speedy justice.

4. ID.; TERMINATION OF EMPLOYMENT; JUST CAUSES; FRAUD; PRESENT IN CASE AT BAR.— We find it clear from the records that Bautista committed fraud or willful breach of her employer's trust, a just cause for termination of employment under the law. The evidence – the cash voucher for the truck rental transaction – proves that Bautista processed the truck rental with intent to defraud the company; she asked the company for ₱6,000.00 (as reflected in the voucher) to cover the truck rental when the actual fee was only ₱4,500.00. In her Reply, she admitted that she retained the ₱1,500.00 difference. She claimed that it was a discount that "pertained to her" as she was able to obtain it from the trucking firm. Bautista's allegation that the ₱1,500.00 was a discount is not a valid defense; nowhere in the records does it appear that she was authorized to keep the discount for herself, assuming that it was indeed a discount.

5. ID.; ID.; ABANDONMENT OF WORK; ELEMENTS; PRESENT IN CASE AT BAR.— The elements of abandonment are present in Bautista's case: (1) the failure to report for work without valid or justifiable reason and (2) a clear intention on her

part to sever the employer-employee relationship. While as a rule, the immediate filing of a complaint for illegal dismissal negates abandonment, peculiar circumstances can arise when the immediate filing of an illegal dismissal complaint does not disprove abandonment of work. x x x As we held in the *ARC-Men Food Industries* case, "abandonment not having been disproved, the employer's dismissal on that ground was held valid." We thus find that the labor arbiter committed grave abuse of discretion in ignoring the evidence that Bautista clearly intended to abandon her work.

6. ID.; TERMINATION OF EMPLOYMENT; DISMISSAL; PROCEDURAL DUE PROCESS; VIOLATION THEREOF DOES NOT NULLIFY THE DISMISSAL BUT WARRANTS PAYMENT OF NOMINAL DAMAGES.— The company itself admits that it failed to serve a notice of Bautista's termination of employment on the ground of abandonment; the petitioners thus violated Bautista's right to procedural due process. However, the violation will not nullify the dismissal or render it illegal, as the dismissal was for a valid cause. In *Agabon v. National Labor Relations Commission, et al.,* we held that "the violation of the employee's right to statutory due process by the employer warrants the payment of indemnity in the form of nominal damages, the amount to be addressed to the sound discretion of this Court, taking into account the relevant circumstances." The petitioners are, therefore, liable to Bautista for nominal damages. Given the circumstances of the present case, we deem it appropriate to set the nominal damages award to Bautista at ₱20,000.00.

7. ID.; ID.; ID.; OVERTIME PAY; NOT PROPER IN THE ABSENCE OF FACTUAL AND LEGAL BASIS THEREOF.— We find no basis for the overtime pay award. The records do not support Bautista's incredible claim that she worked everyday until midnight during her entire employment with the petitioners. In the face of the petitioners' defense that overtime pay can be claimed only "if an employee has a pre-approved overtime schedule and daily time record," the labor arbiter should have asked for the production of daily time records and proof that she had been allowed or required to render overtime work in the manner and to the extent she sweepingly claimed. For lack of credible evidence supporting the award, the labor arbiter gravely abused his discretion in the grant he made. A claim for overtime pay, it must be stressed,

cannot be granted in the absence of supporting factual and legal basis.

APPEARANCES OF COUNSEL

Marbibi & Associates Law Office for petitioners.
Samson Alcantara for respondent.

D E C I S I O N

BRION,[*] *J.*:

For resolution is the present Petition for Review on *Certiorari*[1] which assails the Decision[2] and the Resolution[3] of the Court of Appeals (*CA*), rendered on November 26, 2008 and April 29, 2009, respectively, in CA-G.R. SP No. 101611.[4]

The Antecedents

Petitioners Intertranz Container Lines, Inc. and Josefina F. Tumibay (*petitioners*) are engaged in local and international freight forwarding services. On February 14, 2002, the petitioners employed Ma. Teresa I. Bautista as Customs Representative.

On September 10, 2004, Bautista filed a complaint against the petitioners for illegal dismissal, money claims, moral and exemplary damages and attorney's fees. She stated that as the company's customs representative, she attended to the processing of import documents of the company's clients and the delivery

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[*] Designated Acting Chairperson of the Third Division, in view of the leave of absence of Associate Justice Conchita Carpio Morales, per Special Order No. 849 dated June 29, 2010.

[1] *Rollo*, pp. 57-99; filed pursuant to Rule 45 of the RULES OF COURT.

[2] *Id.* at 8-20; penned by Associate Justice Jose L. Sabio, Jr. (now retired), with the concurrence of Associate Justice Jose C. Reyes, Jr. and Associate Justice Myrna Dimaranan Vidal.

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

[4] *Intertranz Container Lines, Inc. and Josefina F. Tumibay v. NLRC and Ma. Teresa I. Bautista*.

of their cargoes. Her daily work schedule was from 8:30 a.m. to 5:30 p.m., but her duties required her to work up to midnight without overtime compensation. Her monthly salary was increased to ₱8,000.00 upon her promotion as account officer with the duty of looking for clients. The company did not give her incentive leave and 13th month pay. On July 15, 2004, the petitioners terminated her employment without a valid reason and prior investigation; by reason of her dismissal, she suffered and continues to suffer extreme mental anguish and serious anxiety. She also claimed that Tumibay shouted at her when she was dismissed, and threatened to shoot her if she did not leave.

In defense, the petitioners alleged that on July 11, 2004, Bautista was caught red-handed overcharging the company for truck rental; she requested a cash advance of ₱6,000.00 to pay for the rental, but she actually paid the trucking service only ₱4,500.00, keeping for herself the balance of ₱1,500.00.[5] On July 12, 2004, Rhandy Villaflores, the company's Marketing Manager, asked Bautista to explain her side regarding the truck rental overcharge but she merely denied the accusation. On July 15, 2004, Villaflores submitted a report on the matter to Tumibay, who informed Bautista of the findings and asked her to explain her side. Bautista denied any wrongdoing and justified her taking a share from the truck rental as her referral fee, by claiming that she was the one coordinating/dealing with the trucking company. Bautista's insolent reply angered Tumibay who then told Bautista to resign; instead of resigning, she filed the complaint. On July 19, 2004, Bautista, representing herself as manager of a competitor company, Ramaga Cargo Express, sent a letter, dated July 18, 2004, to Sandvik Tamrock Phils., Inc., soliciting business, an act of "moon shining."[6] To avoid being formally charged with a fraudulent and dishonest act, Bautista opted to leave the company and stopped reporting for work. Since Bautista, by her acts, intentionally severed her employment with the company, a letter of notice for her to return to work and a

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[5] *Rollo*, pp. 399-400; Petitioners' Position Paper, Annexes "A" and "B".

[6] *Id.* at 407; Petitioners' Position Paper, Annex "I".

show cause letter would have been a futile exercise. Moreover, the petitioners maintained that Bautista's dishonest acts constituted a just and valid cause for her dismissal, pursuant to company rules and regulations.

The petitioners denied liability for Bautista's money claims as they paid her 13th month benefits (except in 2004 when Bautista went on absence without leave) and service incentive pay. Her claim for overtime pay allegedly lacked basis because it was not supported by a pre-approved overtime schedule and a daily time record; as a member of the marketing department, she had no regular working hours. The petitioners likewise argued that Bautista cannot claim damages for mental anguish and anxiety because it was her own fraudulent and dishonest act that caused her dismissal from the company. In addition, Tumibay cannot be held personally liable for corporate acts done in her capacity as managing director of the company.

The Compulsory Arbitration Proceedings

On June 15, 2005, Labor Arbiter Aliman D. Mangandog rendered a decision[7] declaring Bautista's dismissal illegal. He ordered Bautista's reinstatement and directed the petitioners to pay her, jointly and severally, ₱409,262.89 representing backwages and other monetary benefits, ₱500,000.00 as moral damages, ₱300,000.00 as exemplary damages, and ₱120,926.29 as attorney's fees.

On July 11, 2005, the petitioners filed with the National Labor Relations Commission (*NLRC*) a Notice of Appeal, accompanied by a Memorandum of Appeal, an Appeal Bond for ₱531,000.00, and a Motion to Reduce Appeal Bond. On July 14, 2005, Bautista moved for the execution of the reinstatement aspect of the labor arbiter's decision. On August 4, 2005, Bautista filed a Motion for Payroll Reinstatement, which the arbiter granted in an Order dated December 15, 2005,[8] despite the petitioners' opposition.[9]

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[7] *Id.* at 239-244.

[8] *Id.* at 265-267.

[9] *Id.* at 263-264.

The petitioners moved for reconsideration of the labor arbiter's payroll reinstatement order.[10]

On April 18, 2006, the NLRC issued an Order[11] directing the petitioners to replace, within ten (10) days, the appeal bond they posted on July 11, 2005, on the ground that the accreditation of the bondsman – the Summit Guaranty and Insurance Company, Inc. – expired on July 31, 2005 and had not been renewed. On May 8, 2006, the petitioners filed, instead of the required bond, a Motion for Reconsideration with Motion for Suspension/Extension,[12] asking for a period of one month to replace the bond. While the motions were pending, the petitioners submitted, on June 1, 2006, a Manifestation with Motion, attached to which was a copy of the newly secured bond.

In a decision dated January 8, 2007, the NLRC dismissed the petitioners' appeal for non-perfection,[13] as they filed the replacement bond beyond the 10-day period. Ten days later or on January 17, 2007, the NLRC issued a Resolution[14] dismissing the petitioners' motion for reconsideration of the labor arbiter's order of December 15, 2005, granting Bautista's payroll reinstatement. The petitioners filed separate motions for reconsideration of the NLRC decision dismissing the appeal and the resolution denying the motion for reconsideration of the payroll reinstatement order. The NLRC denied both motions in a resolution promulgated on October 22, 2007.[15] The NLRC issued an Entry of Judgment on January 8, 2008,[16] the basis for the Writ of Execution of January 22, 2008.[17]

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[10] *Id.* at 268-272.

[11] *Id.* at 278-280.

[12] *Id.* at 281-283.

[13] *Id.* at 332-335.

[14] *Id.* at 346-352.

[15] *Id.* at 381-382.

[16] *Id.* at 506.

[17] *Id.* at 507-510.

Recourse to the CA

The petitioners sought relief from the CA through a petition for *certiorari*[18] under Rule 65 of the Rules of Court charging the NLRC with grave abuse of discretion in: (1) denying their appeal for non-perfection; (2) ordering Bautista's reinstatement in the payroll pending appeal; and (3) issuing the entry of judgment and the writ of execution without prior notice and service of the motion, and before the lapse of the appeal period.

In the decision of November 26, 2008,[19] the CA denied the petition and affirmed the assailed decision and resolution of the NLRC. It found that the NLRC correctly dismissed the petitioners' appeal for non-perfection. The CA noted that the bond that the petitioners posted on July 11, 2005 was valid only until July 31, 2005, the expiry date of the accreditation of the surety firm that issued the bond. The CA further noted that the petitioners posted a new bond on June 1, 2006, beyond the 10-day period mandated by the NLRC. The appellate court also ruled that Bautista's payroll reinstatement, the entry of judgment, and the issuance of the writ of execution were proper since the decision of the labor arbiter had become final and executory.

The petitioners moved for reconsideration of the CA decision, but the CA denied the motion on April 29, 2009.[20]

The Petition and Related Incidents

The petitioners now seek to reverse the CA decision, contending that the appellate court gravely abused its discretion in affirming the NLRC decision dismissing their appeal for non-perfection. They contend that the CA had been too strict in applying the rules on appeal bond considering that: (1) they perfected their appeal by posting a valid appeal bond on July 11, 2005; (2) when they were required by the NLRC to file a replacement

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[18] *Id.* at 159-234.

[19] *Supra* note 2.

[20] *Supra* note 3.

bond within 10 days from receipt of its April 18, 2006 order on the matter, they moved for reconsideration, as well as a 30-day extension to post the new bond; and (3) within the extension period prayed for, or on June 1, 2006, they filed the replacement bond. They objected to Bautista's payroll reinstatement arguing that she is guilty of dishonesty, a just cause for dismissal.

On July 6, 2009, the Court required respondent Bautista to comment on the petition.[21]

On July 14, 2009, the petitioners moved[22] for a temporary restraining order (TRO)/writ of injunction "to prevent, enjoin, restrain" the NLRC Sheriffs from enforcing the 2nd *Alias* Writ of Execution dated June 3, 2009,[23] and from conducting the auction sale on July 17, 2009 or anytime thereafter over the petitioners' property, real or personal.[24]

In a Resolution dated July 15, 2009, the Court granted the motion,[25] issued the TRO prayed for, and required the petitioners to post a cash or surety bond in an amount equivalent to the NLRC award of ₱1,330,189.18.[26]

On July 24, 2009, the petitioners filed a Manifestation[27] (of compliance), submitting to the Court copies of the surety bond issued by a reputable bonding company of indubitable solvency in the amount equivalent to the NLRC award, with supporting documents.[28]

On September 14, 2009, Bautista filed her Comment,[29] praying that the petition be dismissed for lack of merit, as it failed to

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[21] *Rollo*, p. 681.

[22] *Id.* at 682-695.

[23] *Id.* at 702-706.

[24] *Id.* at 707-708.

[25] *Id.* at 709-710.

[26] *Id.* at 712-714.

[27] *Id.* at 733.

[28] *Id.* at 738-746.

[29] *Id.* at 753-756.

establish any reversible error in the assailed NLRC and CA rulings.

The Court's Ruling

a. The Appeal Bond Issue

Jurisprudence tells us that in labor cases, an appeal from a decision involving a monetary award may be perfected only upon the posting of a cash or surety bond.[30] The Court, however, has relaxed this requirement under certain exceptional circumstances in order to resolve controversies on their merits. These circumstances include: (1) fundamental consideration of substantial justice; (2) prevention of miscarriage of justice or of unjust enrichment; and (3) special circumstances of the case combined with its legal merits, and the amount and the issue involved.[31]

Following jurisprudential standards, we find that a relaxation of the rules on the appeal bond requirement in this case is in order. It is clear from the records that the petitioners never intended to evade the posting of an appeal bond. They exerted earnest efforts to abide by the law and the rules on appeal with a notice of appeal, appeal memorandum, and an appeal bond for ₱531,000.00. They also moved to reduce the appeal bond. The petitioners might or might not have been aware that the accreditation of the bonding company expired on July 31, 2005 but when the bond was posted on July 11, 2005, the bonding company's accreditation and the bond it issued were still valid. Although the petitioners failed to file a replacement bond within 10 days from receipt of the NLRC order requiring them to do so, again, it cannot be said that they intended to ignore the order. With the plea that the 10-day period was too short, they filed a motion for reconsideration with motion for suspension/ extension of time to file the replacement bond. They asked for 30 days to file a new bond and posted the replacement bond within the requested extended period.

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[30] *Borja Estate v. Spouses R. Ballad*, 498 Phil. 694 (2005).

[31] *Rosewood Processing, Inc. v. NLRC*, 352 Phil. 1013 (1998).

The NLRC dismissed the petitioners' appeal for non-perfection/non-compliance with the appeal bond requirement without passing upon – in fact, completely ignoring – the petitioners' motion for time to post the required bond. The NLRC should have granted the motion for extension since there was no showing that it was intended to delay the resolution of the case. More importantly, the petitioners exhibited good faith and willingness to post the bond within the period they asked for which, in fact, they did on June 1, 2006.[32]

It is unfortunate that the NLRC chose to apply the strict letter of the law and the rules on the appeal bond requirement rather than look at the reasons behind the petitioners' plea for a relaxation of the requirement, with an eye on the interest of substantial justice and the merits of the case. The NLRC should have noted that Bautista had been charged by the petitioners of very serious offenses involving acts of dishonesty and engaging in competition with her employer. The awards made also appeared unusually high and out of line: ₱500,000.00 in moral damages, and ₱300,000.00 as exemplary damages, or double the monetary benefits in Bautista's favor – awards that even this Court does not mete out in labor cases.

We find, under the circumstances, that the NLRC had precipitately dismissed the appeal for non-perfection. As we held in *Phil. Geothermal, Inc. v. National Labor Relations Commission*,[33] the petitioners' appeal should have been given due course, "in the broader interest of justice and with the desired objective of deciding the case on the merits."

b. Disposition of the Merits of the Dismissal

We now determine, given our ruling on the bond issue, at what level the dismissal issue should be resolved considering the length of time that the case has been pending. The case

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[32] *Nicol v. Footjoy Industrial Corp.*, G.R. No. 159372, July 27, 2007, 528 SCRA 300.

[33] G.R. No. 106370, September 8, 1994, 236 SCRA 371.

commenced on September 10, 2004, when Bautista filed the complaint for illegal dismissal. The case is more than five (5) years old already and needs to be resolved as expeditiously as possible. On this vital point, the Court's opinion in *Roman Catholic Archbishop of Manila v. Court of Appeals*[34] is relevant –

> [The] remand of the case x x x is not necessary where the Court is in a position to resolve the dispute based on the records before it. [T]he Court, x x x [will decide] actions on the merits [in order to expedite the settlement of a controversy and if] the ends of justice x x x would not be subserved by the remand of the case.

For this same reason, we find that the case should now be resolved without sending it back to the NLRC or to the CA for disposition. We noted earlier that the petitioners filed a memorandum of appeal[35] which Bautista opposed.[36] Thus, the issues have been joined and are ready for adjudication, and should forthwith be resolved in the interest of speedy justice.[37]

c. The Merits of the Dismissal Issue

c.1. The Case for the Petitioners

The petitioners appealed[38] the labor arbiter's decision on the main ground that the labor arbiter committed grave abuse of discretion in making conclusions of fact and law without credible evidence to support such conclusions which, if not corrected, would cause them grave and irreparable damage and injury. More specifically, the petitioners assailed the labor arbiter's finding that: "[Petitioners] failed to adduce convincing evidence to buttress their claim that complainant opted to leave her employment and thereafter failed to return to the company. x x x

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[34] G.R. No. 77425, June 19, 1991, 198 SCRA 300.

[35] *Rollo*, pp. 246-267.

[36] *Id.* at 470-471.

[37] *Metro Eye Security, Inc. v. Julie Salsona*, G.R. No. 167637, September 28, 2007, 534 SCRA 375.

[38] *Supra* note 36.

Her filing of a complaint for illegal dismissal soon after the incident of July 15, 2004 debunks [petitioners'] assertion that she abandoned her work. x x x [Petitioners'] imputation to complainant of the commission of certain acts constituting dishonesty is irrelevant considering that the cause of her separation x x x is abandonment and not for other cause."[39]

The petitioners bewailed the labor arbiter's failure to consider the evidence that Bautista defrauded the company by overcharging the truck rental for her personal gain. They argued that Bautista admitted that she took the ₱1,500.00 overcharge from the truck rental and, in ignoring this clear indication of Bautista's misconduct, the labor official gravely abused his discretion. They insisted that Bautista left her employment due to the dishonest act imputed against her; instead of resigning and to pre-empt her employer from dismissing her on grounds of dishonesty and abandonment, she allegedly filed the illegal dismissal complaint. There was no notice served on her as it was Bautista, not the petitioners, who severed her employment. They also pointed out that three days after being confronted with the charge of dishonesty, she was already soliciting business for a competitor establishment from a client of the company.

On Bautista's money claims, the petitioners contended that the labor arbiter likewise erred when he ignored the payrolls/time sheets they submitted and found them liable for overtime compensation and 13th month pay based only on Bautista's disclaimer. Further, the petitioners assailed the labor arbiter's ruling making Tumibay personally liable for Bautista's dismissal based on Bautista's bare allegation that Tumibay acted in bad faith. They maintained that as managing director, Tumibay was acting within the bounds of her duty and in the exercise of management prerogative when, in the course of the confrontation with Bautista, she asked for Bautista's resignation. Since it was Bautista who left or abandoned her employment, the petitioners argued, she is not entitled to backwages, damages, and attorney's fees.

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[39] *Id.* at 252, par. 3.

Finally, the petitioners claimed that the consequences of the labor arbiter's erroneous decision cannot be overestimated; reinstating an employee who has greatly abused her position in the company, by grossly flouting its rules and regulations, may cause a breakdown of discipline and demoralization among the company personnel. Bautista's continuance in the service is patently inimical to the company's interest.

The petitioners filed a Supplemental Memorandum on Appeal dated August 27, 2005.[40] In support of their position that Bautista abandoned her job, the petitioners pointed out that Bautista did not only work as Manager of Ramaga Cargo Express, the business competitor of the company;[41] she also organized an entity engaged in the same business as the petitioners' under the name of Pure Goal Cargo Express which was registered with the Department of Trade and Industry on July 23, 2004.[42] This confirms, the petitioners argued, that Bautista committed fraud, used company time, resources, and funds, and pirated its valued clients, preparatory to the setting up of her own business which competes with that of the company.

On the procedural due process question, the petitioners maintained that it was grave error for the labor arbiter to rule that the twin-notice requirement was not complied with as the company asked Bautista to explain her side, but she refused to give an explanation and that she pre-empted the second notice by filing a complaint for illegal dismissal.

c.2. The Opposition to the Appeal

On August 16, 2005, Bautista opposed the appeal,[43] contending that the petitioners cannot change their allegation that Bautista was dismissed for abandonment; otherwise, they would be adopting a new theory on appeal. Her filing of the complaint for illegal

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[40] *Rollo*, pp. 472-480.

[41] *Supra* note 6.

[42] *Supra* note 38, Annex "A".

[43] *Supra* note 36.

dismissal negates the allegation of abandonment. Had Bautista abandoned her job, the petitioners should have served her with a termination notice on the ground of abandonment, as required by the rules implementing the Labor Code. She took exception to the petitioners' contention that the labor arbiter committed grave abuse of discretion, and asserted that the assailed decision was supported by substantial evidence. She concluded that the petitioners failed to discharge the burden of showing that her dismissal was for a just cause.

d. Our Ruling on the Dismissal Issue

d.1. The Legality of the Dismissal

The core issue of this case is whether Bautista abandoned her employment or whether she was illegally dismissed. The petitioners submit that Bautista no longer reported for work after she was ordered to explain the anomalous truck-rental service she arranged and to liquidate company funds in her possession; she filed the complaint to pre-empt further investigation on her dishonest and fraudulent acts, and, ultimately, her dismissal. Bautista, however, claims that she was unceremoniously dismissed on July 15, 2004, by petitioner Tumibay, prompting her to file the complaint for illegal dismissal.

We find it clear from the records that Bautista committed fraud or willful breach of her employer's trust, a just cause for termination of employment under the law.[44] The evidence – the cash voucher for the truck rental transaction[45] – proves that Bautista processed the truck rental with intent to defraud the company; she asked the company for ₱6,000.00 (as reflected in the voucher) to cover the truck rental when the actual fee was only ₱4,500.00. In her Reply, she admitted that she retained the ₱1,500.00 difference. She claimed that it was a discount that "pertained to her" as she was able to obtain it from the trucking firm.[46] Bautista's allegation that the ₱1,500.00 was a

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[44] LABOR CODE, Article 282(c).

[45] *Supra* note 5.

[46] NLRC Records, Vol. I, p. 69; Bautista's Reply, par. 3.

discount is not a valid defense; nowhere in the records does it appear that she was authorized to keep the discount for herself, assuming that it was indeed a discount.

As we stressed earlier, Bautista's continued employment with the petitioners has become untenable. She provided sufficient cause for her dismissal; her involvement in the anomalous truck rental transaction defrauded the company, and her dishonest act resulted in the breach of her employeers' trust. In *Arlyn D. Bago v. National Labor Relations Commission*, we held that an employee may be dismissed on the ground of fraud or betrayal of trust.[47] Due to the gravity of her transgressions against the company, Bautista opted to voluntarily severe her employment with it.

Judging from Bautista's contemporaneous acts during her alleged termination on July 15, 2004, we find that she must have realized the gravity of her involvement in the truck rental transaction so that, as the company claimed, she no longer reported for work. Petitioners submitted in evidence the sworn statement dated January 18, 2005 of Virgie Mira, Customer Service Representative of Sandvik Tamrock Phils., Inc.,[48] stating that Bautista admitted that she was leaving the company because of her involvement in the truck rental overcharge:

> [1.] On June 2004, Ma. Teresa I. Bautista ("Bautista") went to our office to ask for representation fees for the Bureau of Customs of ₱5,000.00;
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> [2.] On 12 or 13 July 2004, when Bautista was processing the release of our cargoes and deliveries from customs, through Intertranz Container Lines, Inc. ("Company"), she told me that she is leaving the Company because they are upset with her for making up the price of a truck rental;
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> [3.] She also told me that "*wala naman masama doon sa ginawa ko. Natural lang yun. Ako naman nakipag-usap doon sa trucking*";

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[47] G.R. No. 170001, April 4, 2007, 520 SCRA 644.

[48] NLRC Records, Vol. I, p. 79, Company's Reply, Annex "A".

> [4.] On or about the same day, Bautista was also trying to offer her personal services for customs clearance;
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> [5.] On or about 18 July 2004, Bautista went to our office at Km. 20 West Service Road, South Super Hi-Way, Muntinlupa City;
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> [6.] She gave me a formal proposal letter dated 18 July 2004 offering her services to my company, Sandvik, as broker to release our imported cargoes and deliver it to our warehouse under a new company, Ramaga Cargo Express, and not her employer, Intertranz, signed by her as manager[.]

Mira's sworn statement also refers to Bautista's solicitation of business similar to that of her employer, in her capacity as manager of Ramaga Cargo Express, a competitor of the company, contained in her letter of July 18, 2004,[49] only two days after her confrontation with Tumibay.

Bautista denied Mira's statements claiming that they are all deliberate falsehoods and therefore worthless.[50] She pointed out that she signed the letter dated July 18, 2004, no longer as an employee of the petitioners but of Ramaga Cargo Express where she worked from July 17, 2004 to July 31, 2004. She also insisted that she never asked Mira for representation fees for the Bureau of Customs; it was Enrico L. Diaz, the operations manager of Ramaga Cargo Express, who made the solicitation. Nevertheless, **we find Mira's statements to be credible** since Bautista never denied that she wrote the July 18, 2004 letter, wherein she tried to solicit business from one of the company clients in behalf of a competing company or that she had been involved in the truck rental transaction. Bautista merely tried to deflect the possible negative implications of her intention to leave the company by saying she had a family to support and therefore, she had to find employment elsewhere.[51]

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[49] *Supra* note 6.

[50] NLRC Records, Vol. I, p. 113; Bautista's Rejoinder, par. 5.

[51] NLRC Records, Vol. I, p. 70; Bautista Reply to Company's Position Paper, p. 3, par. 9.

Eight days after her confrontation with Tumibay or on July 23, 2004, Bautista also registered, with the Department of Trade and Industry, *Pure Goal Cargo Express*, a sole proprietorship of which she was listed as owner and which is engaged in providing transport services and equipment and cargo handling,[52] similar to the services offered by the company.

In summary, Bautista's actuations within a time span of little over a week again confirmed Mira's statement that Bautista confided to her that she was leaving her employment with the company because of the truck rental transaction. They also validated the company's submission that after her confrontation with Tumibay, Bautista did not return for work because she was busy servicing the company's competitor (Ramaga Cargo Express) and attending to her own business (Pure Goal Cargo Express), in competition with her former employer, herein petitioners.

The elements of abandonment are present in Bautista's case: (1) the failure to report for work without valid or justifiable reason and (2) a clear intention on her part to sever the employer-employee relationship.[53] While as a rule, the immediate filing of a complaint for illegal dismissal negates abandonment,[54] peculiar circumstances can arise when the immediate filing of an illegal dismissal complaint does not disprove abandonment of work.[55]

In the first place, Bautista did not immediately file the complaint. She instituted it only on September 10, 2004, almost two (2) months after the confrontation with Tumibay on July 15, 2004. Bautista claimed that because of her abrupt dismissal, "she was subjected to public humiliation and she suffered and continues to suffer from extreme anxiety and mental

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[52] *Supra* note 42.

[53] *Labor, et al. v. NLRC and Gold City Commercial Complex, Inc., et al.*, G.R. No. 110388, September 14, 1995, 248 SCRA 183.

[54] *Ibid.*

[55] *ARC-Men Food Industries Corp. v. NLRC, et al.*, 338 Phil. 870 (1997).

anguish."[56] Yet, her delay in filing the complaint weakens the plausibility of her claims that she had been publicly humiliated and made to suffer emotionally. The filing of the illegal dismissal complaint appears to be an afterthought and a ploy Bautista used as leverage to prevent her employer from taking further action on her case. As we held in the *ARC-Men Food Industries* case, "abandonment not having been disproved, the employer's dismissal on that ground was held valid."[57] We thus find that the labor arbiter committed grave abuse of discretion in ignoring the evidence that Bautista clearly intended to abandon her work.

Nevertheless, the company itself admits[58] that it failed to serve a notice of Bautista's termination of employment on the ground of abandonment;[59] the petitioners thus violated Bautista's right to procedural due process. However, the violation will not nullify the dismissal or render it illegal, as the dismissal was for a valid cause. In *Agabon v. National Labor Relations Commission, et al.*,[60] we held that "the violation of the employee's right to statutory due process by the employer warrants the payment of indemnity in the form of nominal damages, the amount to be addressed to the sound discretion of this Court, taking into account the relevant circumstances." The petitioners are, therefore, liable to Bautista for nominal damages. Given the circumstances of the present case, we deem it appropriate to set the nominal damages award to Bautista at ₱20,000.00.

Finally, with a valid cause for Bautista's separation from the service, no factual and legal basis exists for the awards of damages and attorney's fees.

d.2. <u>Bautista's Money Claims</u>

The labor arbiter awarded Bautista overtime pay for every workday of her employment with the petitioners in the unusually

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[56] NLRC Records, Volume I, p. 70; Bautista's Reply, p. 3, par. 8.

[57] *Supra* note 54.

[58] NLRC Records, Vol. I, p. 37; Company's Position Paper, p. 9, par. 38.

[59] *Supra* note 5, at 242, par. 1.

[60] 485 Phil. 248 (2004).

large amount of ₱304,380.67.[61] The labor arbiter declared "[C]omplainant's regular work is from 8:30 am to 5:30 pm but according to her she rendered overtime work up to midnight everyday after regular work time."[62]

We find no basis for the overtime pay award. The records do not support Bautista's incredible claim that she worked everyday until midnight during her entire employment with the petitioners. In the face of the petitioners' defense that overtime pay can be claimed only "if an employee has a pre-approved overtime schedule and daily time record,"[63] the labor arbiter should have asked for the production of daily time records and proof that she had been allowed or required to render overtime work in the manner and to the extent she sweepingly claimed. For lack of credible evidence supporting the award, the labor arbiter gravely abused his discretion in the grant he made. A claim for overtime pay, it must be stressed, cannot be granted in the absence of supporting factual and legal basis.[64]

On Bautista's claim for 13th month pay, we are inclined to sustain the labor arbiter's finding on the matter in light of the contradictory evidence that the petitioners presented on the matter. They first presented two check vouchers – voucher 5636 purporting to show that Bautista received her 13th month pay for 2002[65] and voucher 5637 showing that Bautista received her 13th month pay for 2003.[66] Bautista averred that her signatures in these vouchers were forged. She also claimed that those vouchers were spurious as it was highly improbable for her to sign two vouchers with two consecutive serial numbers in an interval of about twelve months.[67] Reacting to Bautista's pointed

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[61] *Rollo*, p. 245, Computation of Complainant's Monetary Award.

[62] *Id.* at 239, Labor Arbiter's Decision, p. 1, par. 3.

[63] NLRC Records, Vol. I, p. 74; Company's Reply, p. 3, par. 7.

[64] *Global v. Atienza*, 227 Phil. 64 (1986).

[65] *Rollo*, p. 97; Company's Reply, Annex "D".

[66] *Id.* at 98, Annex "E".

[67] *Id.* at 113; Bautista's Rejoinder, p. 2, par. 8.

challenge to the vouchers, the petitioners then presented a second set of documents to prove payment of Bautista's 13th month pay for 2002 and 2003 in cash,[68] which again elicited Bautista's objection for being spurious.[69] These contradictory evidence can only point to the petitioners' failure to establish their payment of Bautista's 13th month benefits. Bautista is therefore entitled to 13th month pay for the years 2002 and 2003, and for proportionate entitlement for the period January 1, 2004 to July 15, 2004.

Regarding Bautista's claim for service incentive leave pay, the petitioners presented evidence only for the years 2003 and 2004,[70]when Bautista enjoyed leave benefits. For this reason, we affirm the labor arbiter's award to Bautista of the monetized equivalent of her service incentive leaves for 2002.

Based on our earlier findings that Bautista abandoned her work and was guilty of dishonest acts against the company, it is evident that petitioner Tumibay had not caused Bautista's dismissal nor had she acted in bad faith. Thus, she cannot be held liable for Bautista's claims.

All told, and as qualified above, we find merit in the appeal.

WHEREFORE, premises considered, the decision dated June 15, 2005 of Labor Arbiter Aliman D. Mangandog is hereby *MODIFIED*. Accordingly, we *DISMISS* the complaint for illegal dismissal in light of the proven valid cause for dismissal. However, petitioner Intertranz Container Lines, Inc. is directed to pay respondent Ma. Teresa I. Bautista 13th month pay for 2002 and 2003 and for the period January 1, 2004 to July 15, 2004 and the monetary equivalent of her service incentive leave for 2002, as well as nominal damages in the amount of ₱20,000.00. The NLRC is ordered to recompute Bautista's total monetary award in accordance with this Decision.

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[68] *Id.* at 128-129; Company's Sur-Rejoinder, Annexes "A" & "B".

[69] *Id.* at 134, Bautista's Final Comment, p. 1, par. 3.

[70] *Id.* at 100-102 & 106-108, Company's Reply, Annexes "G", "H", "I", "M", "N", and "Q".

SO ORDERED.

Carpio,[**] *Abad,*[***] *Villarama, Jr.,* and *Mendoza,*[****] *JJ.,* concur.

FIRST DIVISION

[G.R. No. 188569. July 13, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROBERTO GARBIDA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROSECUTION OF RAPE CASES; GUIDING PRINCIPLES IN RESOLVING RAPE CASES.— In *People v. Dalisay*, the Court held: Three principles guide the courts in resolving rape cases: (1) an accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the

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[**] Designated additional Member of the Third Division, in view of the leave of absence of Associate Justice Lucas P. Bersamin, per Special Order No. 859 dated July 1, 2010.

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

[****] Designated additional Member of the Third Division, in view of the leave of absence of Associate Justice Conchita Carpio Morales, per Special Order No. 850 dated June 29, 2010

weakness of the evidence for the defense. Keeping these principles in mind, the guilt of accused-appellant has been sufficiently established.

2. ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONIES OF VICTIMS OF TENDER AGE ARE CREDIBLE, MORE SO, IF THEY ARE WITHOUT ANY MOTIVE TO FALSELY TESTIFY AGAINST THEIR OFFENDER.— The testimony of private complainant AAA was not refuted and was found to be credible by the RTC, and was further corroborated by the testimony of her mother, who actually witnessed the crimes committed by accused-appellant against AAA. We hew to the ruling in *People v. Lopez*: Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witness while testifying, it was fully competent and in the best position to assess whether the witness was telling the truth. This Court has also ruled that testimonies of victims of tender age are credible, more so if they are without any motive to falsely testify against their offender. Their revelations that they were raped, coupled with their willingness to undergo public trial where they could be compelled to describe the details of the assault on their dignity by their own father, cannot be easily dismissed as concoctions. It would be the height of moral and psychological depravity if they were to fabricate sordid tales of sexual defloration – which could put him behind bars for the rest of his life – if they were not true.

3. ID.; ID.; ID.; IT IS DIFFICULT TO BELIEVE THAT AN 11-YEAR OLD CHILD CONSENTED TO HAVING SEX WITH HER STEPFATHER TO SPITE OR AS REVENGE ON HER MOTHER.— In fact, accused-appellant does not deny having had sexual intercourse with AAA. He merely repeats his claim that it was consensual between him and his stepdaughter, and that AAA had sex with him because her mother was having sexual relations with other men. AAA testified that she was afraid of her father, and that she cried after he had his way with her. Already, this belies accused-appellant's claim that she consented to having sex with him, and is far more believable than his version of the events. It is difficult, if not impossible, to believe that an 11-year old child consented to having sex with her stepfather to spite or as revenge on her mother. It is an indication of accused-appellant's depravity that he sees

consensual sex with an 11-year old child, a stepdaughter no less, as an acceptable behavior. The idea of having sex with his stepdaughter, especially since she is a minor, should repel a normal man. Instead, accused-appellant gave in to his lustful desires. But even assuming *arguendo* that the sex was consensual, the consent of AAA is immaterial.

4. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS; SUFFICIENTLY PROVED.— The acts were committed by accused-appellant in April of 1997, before RA 8353, the Anti-Rape Law of 1997, took effect on October 22, 1997 and amended the provisions of the Revised Penal Code on the crime of rape. Thus, Article 335(3) of the Revised Penal Code defining how statutory rape is committed is the applicable law. The very act of sexual intercourse was established, in fact admitted by accused-appellant. The age of AAA was established before the RTC to be 11 years. The acts of accused-appellant fall squarely under Art. 335 of the Revised Penal Code, as the elements of the crime of statutory rape have been sufficiently proved. We held in *People v. Lopez*: It must be remembered that under the law and prevailing jurisprudence, the gravamen of the offense of statutory rape as provided under Article 335 of the Revised Penal Code is the carnal knowledge of a woman below twelve years old. The only elements of statutory rape are: (1) that the offender had carnal knowledge of a woman; and (2) the such woman is under twelve (12) years of age. x x x

5. ID.; ID.; SEXUAL CONGRESS WITH A GIRL UNDER 12 YEARS OLD IS ALWAYS RAPE; VOLUNTARY SUBMISSION OF THE VICTIM WILL NOT RELIEVE THE ACCUSED FROM CRIMINAL LIABILITY.— Further, we held in *People v. Sarcia*: x x x Where the girl is below 12 years old, as in this case, the only subject of inquiry is whether "carnal knowledge" took place. Proof of force, intimidation or consent is unnecessary, since none of these is an element of statutory rape. There is a conclusive presumption of absence of free consent when the rape victim is below the age of twelve. The voluntary submission of AAA, even if the Court were convinced that such is the case, to the sexual desires of accused-appellant will not relieve him of criminal liability. As she was 11 years old at the time, she could not give consent, and if she had indicated in any way to accused-appellant that she consented to having sexual intercourse with him, there is no reason for

him, were he not morally depraved, to take advantage of her consent. Sexual congress with a girl under 12 years old is always rape.

6. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— As to damages to be awarded, they must be modified. Art. 2229 of the Civil Code provides, "Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as deterrent to serious wrongdoings and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. An award of exemplary damages is warranted, considering the circumstances of this case, where someone who was supposed to act as a guardian instead abused his ward, and compounded that wrong by doing it in the presence of the victim's mother. Following current jurisprudence, the amount of PhP 30,000 as exemplary damages is proper.

7. ID.; ID.; PROPER PENALTY.— The acts of accused-appellant are reprehensible to say the least. The preposterous defense he raised not only failed to absolve him of his guilt, but only served to reveal his own sordid character. Thus, the CA was correct in affirming the conviction by the RTC. In applying RA 9346 thus reducing the penalty of death to *reclusion perpetua*, the CA, however, overlooked and failed to indicate that the reduction of the penalty to *reclusion perpetua* is **without eligibility for parole** in accordance with Secs. 2 and 3 of RA 9346.

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.*:

Before this Court on appeal is the Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02563 dated March 19, 2009, which upheld the conviction of accused-appellant Roberto Garbida in Criminal Case Nos. 1230-1236, decided by the Regional Trial Court (RTC) of Irosin, Sorsogon, Branch 55 on July 10, 2006.

The facts of the case are as follows: The victim, hereafter referred to as AAA,[2] is the stepdaughter of accused-appellant Roberto Garbida. AAA's biological father and mother separated after the birth of AAA and another child. In 1990, AAA's mother married Garbida and had children of their own. The family lived together in Sua, Matnog, Sorsogon.

At about 1:00 p.m. on April 1, 1997, while the family was at home, Garbida suddenly pulled AAA into a room and then and there proceeded to undress her. He then had sexual intercourse with AAA, even as AAA's mother witnessed the act. AAA's mother attempted to intervene, but her efforts were for naught. Garbida continued to have sexual relations with his stepdaughter on each of the following nights until April 7, 1997, with AAA's

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[1] Penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Portia Aliño-Hormachuelos and Jose C. Mendoza (now a member of this Court).

[2] The identity of the victim or any information to establish or compromise her identity, as well as those of her immediate family or household members, shall be withheld pursuant to Republic Act No. 7610, "An Act Providing for Stronger Deterrence and Special Protection Against Child Abuse, Exploitation and Discrimination, and for Other Purposes"; Republic Act No. 9262, "An Act Defining Violence Against Women and Their Children, Providing for Protective Measures for Victims, Prescribing Penalties Therefor, and for Other Purposes"; Section 40 of A.M. No. 04-10-11-SC, known as the Rule on Violence Against Women and Their Children," effective November 5, 2004; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

mother attempting to stop her husband, but failing at every turn. On April 8, 1997, AAA's mother took her to the *barangay* center of Sua, where the midwife of the *barangay* gave them shelter. The next day they reported the crime to the police, and Garbida was arrested. The Department of Social Welfare and Development (DSWD) took custody of AAA.

Garbida was charged with rape in seven separate Amended Informations all dated August 28, 1997, for each act of sexual intercourse with his stepdaughter from April 1 to April 7, 1997. The informations, differing only as to the date of commission, read as follows:

> That on or about x x x, inside the dwelling of the victim [AAA], an 11-year old minor, at Sua, Matnog, Sorsogon, and within the jurisdiction of this Honorable Court, the above-named accused, thru force and intimidation, willfully, unlawfully and feloniously, did then and there, had sexual intercourse with the said victim who is his step daughter against her will and consent, to her damage and prejudice.
>
> The offense is aggravated by ignominy, that is, the accused perpetrated the offense in the presence of the victim's mother and against her protestations.
>
> CONTRARY TO LAW.[3]

When arraigned, Garbida pleaded "not guilty."

In his defense, Garbida, while admitting having had sexual intercourse with AAA from April 1 to April 7, 1997, in the presence of AAA's mother, claimed that the acts of sexual intercourse were consensual. As Garbida would allege, AAA wanted to have sex with him because her mother was having sexual relations with other men. He also claimed that she consented to have sex with him as he was sending her to school. He further claimed having sex with her again when she was 13 years old, or two years after the alleged April 1997 rape incidents took place.

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[3] *Rollo*, p. 3.

After trial, the RTC found that the circumstances of minority and relationship, which would have qualified the crime committed, albeit alleged in the informations, had not been proved beyond reasonable doubt. As it were, AAA's birth certificate was not presented. Neither was a marriage certificate adduced to prove a valid marriage between Garbida and AAA's mother. The concurrence of minority and relationship constitute special qualifying circumstances in the prosecution for qualified rape, which, in accordance with the settled rule, must be alleged in the information and proved during trial.[4] And if so alleged and proved, then the special qualifying circumstances of minority and relationship could raise the penalty for rape to death.

The RTC nonetheless found Garbida liable for seven counts of statutory rape as she was sexually molested in 1997, when she was 11 years old. The RTC also ruled that the offense was aggravated by ignominy, perpetrated as it was in the presence and over the protestations of the victim's mother.

By decision of July 10, 2006, the RTC adjudged Garbida guilty beyond reasonable doubt of the crimes charged, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, accused ROBERTO GARBIDA'S GUILT having been established beyond reasonable doubt, he is hereby sentenced to suffer the supreme penalty of DEATH for EACH count of RAPE, and to indemnify the victim AAA in the amounts of PhP 75,000.00 as civil indemnity and another PhP 75,000.00 as moral damages, for EACH count of RAPE, with no subsidiary imprisonment in case of insolvency. With costs *de oficio*.
>
> SO ORDERED.[5]

Garbida then appealed to the CA, reiterating the defenses he presented before the RTC.

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[4] *People v. Barcena*, G.R. No. 168737, February 16, 2006, 482 SCRA 543, 556.

[5] Records, p. 44.

The CA affirmed the conviction of Garbida, but with the modification as to the penalty to be imposed, Republic Act No. (RA) 9346 having meanwhile abolished the death penalty, leaving *reclusion perpetua* as the most severe penalty imposable. The dispositive portion of the CA decision reads as follows:

> WHEREFORE, the challenged Decision dated July 10, 2006 in Criminal Case Nos. 1230-1236 is AFFIRMED with MODIFICATION. In lieu of the death penalty, the accused Roberto Garbida should be sentenced to suffer *reclusion perpetua* for each of the seven counts of rape. The award of civil damages to the victim is maintained.
>
> SO ORDERED.[6]

Now before this Court, Garbida submits the same defense presented before the RTC and the CA, that the acts of sexual intercourse between him and AAA were consensual.

The Court's Ruling

We uphold the conviction of accused-appellant.

In *People v. Dalisay*, the Court held:

> Three principles guide the courts in resolving rape cases: (1) and accusation for rape can be made with facility; it is difficult to prove but more difficult for the accused, though innocent, to disprove; (2) in view of the intrinsic nature of the crime of rape in which only two persons are usually involved, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[7]

Keeping these principles in mind, the guilt of accused-appellant has been sufficiently established. The testimony of private complainant AAA was not refuted and was found to be credible by the RTC, and was further corroborated by the testimony of her mother, who actually witnessed the crimes committed by

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[6] *Rollo*, p. 11.

[7] G.R. No. 188106, November 25, 2009, 605 SCRA 807, 814.

accused-appellant against AAA. We hew to the ruling in *People v. Lopez*:

> Since the trial judge had the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the complaining witness while testifying, it was fully competent and in the best position to assess whether the witness was telling the truth. This Court has also ruled that testimonies of victims of tender age are credible, more so if they are without any motive to falsely testify against their offender. Their revelations that they were raped, coupled with their willingness to undergo public trial where they could be compelled to describe the details of the assault on their dignity by their own father, cannot be easily dismissed as concoctions. It would be the height of moral and psychological depravity if they were to fabricate sordid tales of sexual defloration – which could put him behind bars for the rest of his life – if they were not true.[8]

In fact, accused-appellant does not deny having had sexual intercourse with AAA. He merely repeats his claim that it was consensual between him and his stepdaughter, and that AAA had sex with him because her mother was having sexual relations with other men.

AAA testified that she was afraid of her father, and that she cried after he had his way with her. Already, this belies accused-appellant's claim that she consented to having sex with him, and is far more believable than his version of the events.

It is difficult, if not impossible, to believe that an 11-year old child consented to having sex with her stepfather to spite or as revenge on her mother. It is an indication of accused-appellant's depravity that he sees consensual sex with an 11-year old child, a stepdaughter no less, as an acceptable behavior. The idea of having sex with his stepdaughter, especially since she is a minor, should repel a normal man. Instead, accused-appellant gave in to his lustful desires. But even assuming *arguendo* that the sex was consensual, the consent of AAA is immaterial.

The acts were committed by accused-appellant in April of 1997, before RA 8353, the Anti-Rape Law of 1997, took effect

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[8] G.R. No. 179714, October 2, 2009, 602 SCRA 517, 526-527.

on October 22, 1997 and amended the provisions of the Revised Penal Code on the crime of rape. Thus, Article 335(3) of the Revised Penal Code defining how statutory rape is committed is the applicable law.

The very act of sexual intercourse was established, in fact admitted by accused-appellant. The age of AAA was established before the RTC to be 11 years. The acts of accused-appellant fall squarely under Art. 335 of the Revised Penal Code, as the elements of the crime of statutory rape have been sufficiently proved. We held in *People v. Lopez*:

> It must be remembered that under the law and prevailing jurisprudence, the gravamen of the offense of statutory rape as provided under Article 335 of the Revised Penal Code is the carnal knowledge of a woman below twelve years old. The only elements of statutory rape are: (1) that the offender had carnal knowledge of a woman; and (2) the such woman is under twelve (12) years of age.[9] x x x

Further, we held in *People v. Sarcia*:

> x x x Where the girl is below 12 years old, as in this case, the only subject of inquiry is whether "carnal knowledge" took place. Proof of force, intimidation or consent is unnecessary, since none of these is an element of statutory rape. There is a conclusive presumption of absence of free consent when the rape victim is below the age of twelve.[10]

The voluntary submission of AAA, even if the Court were convinced that such is the case, to the sexual desires of accused-appellant will not relieve him of criminal liability. As she was 11 years old at the time, she could not give consent, and if she had indicated in any way to accused-appellant that she consented to having sexual intercourse with him, there is no reason for him, were he not morally depraved, to take advantage of her consent. Sexual congress with a girl under 12 years old is always rape.[11]

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[9] *Id.* at 527.

[10] G.R. No. 169641, September 10, 2009, 599 SCRA 20, 37-38.

[11] *People v. Perez*, G.R. No. 182924, December 24, 2008, 575 SCRA 653, 681.

As to damages to be awarded, they must be modified. Art. 2229 of the Civil Code provides, "Exemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages." Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as deterrent to serious wrongdoings and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.[12] An award of exemplary damages is warranted, considering the circumstances of this case, where someone who was supposed to act as a guardian instead abused his ward, and compounded that wrong by doing it in the presence of the victim's mother. Following current jurisprudence,[13] the amount of PhP 30,000 as exemplary damages is proper.

The acts of accused-appellant are reprehensible to say the least. The preposterous defense he raised not only failed to absolve him of his guilt, but only served to reveal his own sordid character. Thus, the CA was correct in affirming the conviction by the RTC. In applying RA 9346 thus reducing the penalty of death to *reclusion perpetua*, the CA, however, overlooked and failed to indicate that the reduction of the penalty to *reclusion perpetua* is **without eligibility for parole** in accordance with Secs. 2[14] and 3[15] of RA 9346.

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[12] *People v. Catubig*, G.R. 137842, August 23, 2001, 363 SCRA 621, 634.

[13] *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.

[14] Sec. 2. In lieu of the death penalty, the following shall be imposed:

(a) **the penalty of *reclusion perpetua,* when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code**; or

(b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

[15] Sec. 3. **Person convicted of offenses punished with *reclusion perpetua,* or whose sentences will be reduced to *reclusion perpetua***, by reason of this Act, **shall not be eligible for parole** under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended. (Emphasis supplied.)

WHEREFORE, the Decision of the CA in CA-G.R. CR-H.C. No. 02563 is hereby *AFFIRMED* with the *MODIFICATION* that the proper penalty is *reclusion perpetua* without eligibility for parole, and accused-appellant is ordered to pay AAA the amount of PhP 30,000 as exemplary damages, in addition to the civil liability and damages thus imposed by the trial court.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 188600. July 13, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARCOS QUIROS *y* SEMBRANO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PROSECUTION OF RAPE CASES; GUIDING PRINCIPLES IN THE REVIEW OF RAPE CASES.— By the distinctive nature of rape cases, conviction usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Accordingly, the Court has consistently adhered to the following guiding principles in the review of similar cases, to wit: (1) an accusation for rape can be made with facility; while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3)

the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense. After going over the evidentiary record, the Court finds no reason to disturb the decisions of the courts below.

2. ID.; ID.; CREDIBILITY OF WITNESSES; TESTIMONIES OF CHILD-VICTIMS ARE ALMOST ALWAYS GIVEN FULL WEIGHT AND CREDIT; RATIONALE.— The Court does not subscribe to the argument of the accused that just because EMA had come down from the tree, she had no more reason to be afraid and to follow what he said. It must be remembered that EMA was just 9 years old and was obviously innocent, unwary and too trusting as she meekly obeyed the instructions of the accused. The simplicity of her story should not detract from the veracity of her complaint. She has proved to be a credible witness, and her testimony, worthy of judicial acceptance. Testimonies of child-victims are almost always given full weight and credit, since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has been committed. Youth and immaturity are generally badges of truth and sincerity. x x x Considering the age of the complainant, the Court finds it improbable for a girl of her age to fabricate a charge so traumatic to herself and her family had she not been truly subjected to the painful experience of sexual abuse. Under rigid cross-examination, she was steadfast in relating her ordeal and nightmarish experience at the hands of the accused.

3. ID.; ID.; ID.; NO ILL-MOTIVE COULD BE IMPUTED AGAINST THE VICTIM AND HER PARENTS TO MANUFACTURE A RAPE ACCUSATION AGAINST THE ACCUSED-APPELLANT.— Besides, the testimony of EMA was corroborated by her mother YYY who told the court that when EMA came home, she was naked from the waist down, with blood oozing from her genitals. Shocked at her daughter's appearance, she asked EMA what happened. EMA told her that the accused had raped her. No ill-motive could be imputed against the victim and her parents to manufacture such an accusation, considering that the accused, by his own admission, had maintained cordial relationship with the family of the victim.

4. CRIMINAL LAW; STATUTORY RAPE; GRAVAMEN OF THE OFFENSE; FORCE, INTIMIDATION OR PHYSICAL

EVIDENCE OF INJURY IS IMMATERIAL.— From the narration [of EMA], sexual intercourse was clearly proven. Moreover, the prosecution more than sufficiently established that the victim was only 9 years old at the time of the rape incident, as evidenced by her Certificate of Live Birth. Undeniably, the case is one of statutory rape, the gravamen of which is the carnal knowledge of a woman below 12 years old. Sexual congress with a girl under 12 years is always rape. Thus, force, intimidation or physical evidence of injury is immaterial.

5. ID.; ID.; WHEN THE TESTIMONY OF THE WITNESS CORRESPONDS WITH MEDICAL FINDINGS, THERE IS SUFFICIENT BASIS TO CONCLUDE THAT THE ESSENTIAL REQUISITES OF CARNAL KNOWLEDGE HAVE BEEN ESTABLISHED.— The victim's testimony that accused inserted his organ into her vagina was further strengthened by the testimony of Dr. Gwendolyn Luna, who examined her one and a half (1 ½) hours after the incident and the Medical Report she prepared after the examination. Dr. Luna informed the court that EMA informed her that a certain "Macoy" inserted his penis into her vagina. Her report stated that the injuries sustained by the victim in her vagina were indicative of sexual abuse. When the testimony of the witness corresponds with medical findings, there is sufficient basis to conclude that the essential requisites of carnal knowledge have been established.

6. ID.; ID.; LUST IS NO RESPECTER OF TIME AND PLACE.— The fact that Mylene Quiros, daughter of the accused was inside the house cannot negate the fact that the accused did rape EMA. "Sadly, the presence of family members in the same room has not discouraged rapists from preying on children, giving this Court to observe before that lust is no respecter of time and place. Rape has been shown to have been committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping." In other words, the rapist and the victim need not have to be alone for rape to be consummated.

7. REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND ALIBI; WORTHLESS AGAINST THE POSITIVE IDENTIFICATION MADE BY THE WITNESSES,

ESPECIALLY BY THE RAPE VICTIM.— The contention of the accused that he was in the house of his *kumadre*, Rebecca Paraiso, at the time of the alleged rape deserves scant consideration. Time and time again, this Court has ruled that denial and alibi are the weakest of all defenses, because they are easy to concoct and fabricate. Furthermore, said defenses cannot prevail over the positive and unequivocal identification of the accused by the victim, EMA. Denial and alibi are practically worthless against the positive identification made by the prosecution witnesses, especially by the rape victim.

8. ID.; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, ITS CALIBRATION OF THE TESTIMONIES OF THE WITNESSES, AND ITS CONCLUSIONS ANCHORED ON ITS FINDINGS ARE ACCORDED HIGH RESPECT, IF NOT CONCLUSIVE EFFECT; EXCEPTION.— At any rate, the cardinal rule has always been that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded by the appellate court high 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 which, if considered, will change the outcome of the case. The Court of Appeals has observed this rule and so will this Court.

9. CRIMINAL LAW; STATUTORY RAPE; PROPER PENALTY.— The Court, thus, sustains the conviction of the accused for the crime of statutory rape under Article 266-A, paragraph 1(d) of the Revised Penal Code (RPC) and the imposition of the penalty of *reclusion perpetua* in accordance with Article 266-B of the RPC. The penalty for statutory rape is *reclusion perpetua*, which being a single indivisible penalty, is imposable regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

10. ID.; ID.; CIVIL LIABILITY OF ACCUSED-APPELLANT.— In line with prevailing jurisprudence, the victim, in a case for simple statutory rape, is entitled to ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages. In addition to the damages awarded, the Court also imposes on all the amounts of damages an interest at the legal rate of 6% from this date until fully paid.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the June 18, 2008 Decision[1] of the Court of Appeals (CA), in CA-G.R. CR H.C. No. 02682, affirming with modification the Decision[2] of the Regional Trial Court of Dagupan City, Branch 43, which found the accused, Marcos Quiros *y* Sembrano, guilty beyond reasonable doubt of having committed statutory rape[3] against the 9-year-old EMA.[4]

The accusatory portion of the Information[5] dated August 26, 2006 reads:

> That on or about the 24th day of August, 2006, in the City of Dagupan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, MARCOS QUIROS *y* SEMBRANO, with lewd design, did then and there willfully, unlawfully and criminally have carnal knowledge upon one EMA, who is under 12 years of age, to the damage and prejudice of the latter.
>
> Contrary to Article 266-A, par. 1(d) of R.A. 8353.

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[1] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Rodrigo V. Cosico and Myrna Dimaranan Vidal concurring; *Rollo*, pp. 2-14.

[2] CA *rollo*, pp. 53-64.

[3] Docketed as Criminal Case No. 2006-0509-D.

[4] The Court shall use fictitious initials in lieu of the real names and circumstances of the victim and the latter's immediate family members other than accused-appellant. See *People v. Gloria*, G.R. No. 168476, September 27, 2006, 503 SCRA 742; citing Sec. 29 of Republic Act (R.A.) No. 7610, Sec. 44 of R.A. No. 9262, and Sec. 40 of the Rule on Violence Against Women and Their Children; and *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[5] CA *rollo*, p. 7.

Upon arraignment, the accused pleaded not guilty to the charge. The parties stipulated on the respective identities of EMA and the accused, as well as EMA's minority.

During the trial, the prosecution presented, as witnesses, EMA herself; YYY,[6] the mother of EMA; Dr. Mary Gwendolyn M. Luna, the physician who medically examined EMA; and PO2 Jailine De Guzman Aquino, the police officer who received and investigated the complaint of EMA.

The thrust of the evidence of the prosecution, as summarized in the Appellee's Brief,[7] is as follows:

> The victim EMA and the accused-appellant Marcos Quiros *y* Sembrano knew each other well as they are both residents of xxx, xxx,[8] Dagupan City, and are in fact immediate neighbors. At the time of the complained incident, EMA was [nine (9)] years old. (Exh. B)
>
> On August 24, 2006, at around 3 o'clock in the afternoon, EMA was on top of the guava tree inside the residential compound of the accused. From below she heard the accused calling and instructing her to go down from the guava tree, uttering the words "*Halika dito, mag-iyotan tayo*" which means "Come here, let's have sex."
>
> Without realizing the significance of what the accused uttered and afraid that the appellant might cause her to fall from the guava tree, EMA acceded to the accused's instructions.
>
> Quickly, the accused brought EMA to his house and into his son's room. While EMA was lying on the bed, the accused removed the latter's short and panty and inserted his erect penis into EMA's vagina. EMA felt great pain; thus she pushed back the accused who, thereafter, discontinued the sexual assault. Noticing blood in her vagina and on the accused's penis, EMA ran home and reported the incident to her mother.
>
> On the same afternoon of August 24, 2006, the victim submitted her person to Dr. Mary Gwendolyn M. Luna of the Region I Medical

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[6] Name withheld to protect the identity of the child-victim.

[7] Statement of Facts, CA *rollo,* pp. 77-78.

[8] The place of residence of the child-victim is withheld to protect her privacy.

Center, Dagupan City, who conducted a medical examination on her. Dr. Luna, thereafter, issued a medical legal certificate (Exhibit A) finding fresh abrasions at 7 o'clock hymenal area, fresh bleeding, deep hymenal laceration, edge bluish at 3, 4 o'clock, deep laceration at 6-7 o'clock and superficial laceration at 5 o'clock, *suggestive of sexual abuse.* All in all, EMA sustained four (4) deep lacerations and one (1) superficial laceration on her vagina.

That same afternoon, EMA, accompanied by her parents proceeded to Dagupan City Police Station to report the sexual assault (Exh. C), where she and her mother executed sworn statements on the incident (Exhibits D and E).

Those who testified for the defense were the accused, Marcos Quiros *y* Sembrano; his daughter, Mylene F. Quiros; and Rebecca Fernandez. The defense of the accused, as summarized in his Appellant's Brief,[9] is as follows:

On August 24, 2006, Mylene F. Quiros was alone in their house watching television. As she was watching, her father (accused), who was apparently drunk arrived. The latter sat down for a while and then instructed her to go upstairs because she was sleepy.

She did not notice if EMA entered their house since she was already upstairs. At around 3:00 o'clock p.m., she was awakened by the noise coming from the people outside. She later learned that her aunties were looking for her father for allegedly raping EMA.

On August 24, 2006, at around 3:00 o'clock in the afternoon, Rebecca Fernandez Paraiso, was in her house with the accused. Her house is about half (½) a kilometer away from the house of the accused.

The accused talked with her husband for about (2) hours or until past 3:00 o'clock p.m. When the accused left, he told her that he will be going home. She learned about the case against the accused at around 5:00 o'clock on the same day.

On August 24, 2006, at around 3:00 (sic) o'clock p.m., Marcos Quiros was at the house of his *kumadre,* Rebecca Paraiso, located at Bonuan Boqui[g], Dagupan City. The said place is half (½) a kilometer

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[9] Evidence for the Defense, CA *rollo,* pp. 45-46.

from his house. He arrived at the house of his *kumadre* at around 1:30 o'clock p.m. and stayed there for about two and half (2 ½) hours.

At past 3:00 o'clock p.m., he went back home. He was more or less eight (8) meters from his house when he was arrested by Chief Tanod Cayabyab. The latter informed him that a complaint for rape was filed against him. The witness reacted but was nonetheless placed on board a motorcycle.

He was brought to the *barangay* office, where he was made to wait for the arrival of members of the Bonuan police. Thereafter, he was brought to the police precinct.

In its January 29, 2007 Decision, the trial court convicted the accused of statutory rape. Thus, it disposed:

WHEREFORE, the Court finds the accused guilty beyond reasonable doubt for the felony charged and in conformity with law, he's sentenced to suffer the prison term of ***Reclusion Perpetua*** and to pay the victim the following, to wit:

1. *₱50,000.00 as indemnity fee;*
2. *₱30,000.00 as moral damages;*
3. *₱20,000.00 as exemplary damages;*
4. *And costs.*

The BJMP-Dagupan City is ordered to commit the accused to the National Penitentiary in Muntinlupa, Metro Manila without unnecessary delay.

SO ORDERED.[10]

Aggrieved, the accused appealed to the Court of Appeals presenting this lone assignment of error:

THE TRIAL COURT GRAVELY ERRED IN RENDERING A VERDICT OF CONVICTION DESPITE THE FACT THAT THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT.[11]

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[10] *Id.* at 30.

[11] *Id.* at 41, 46.

On June 18, 2008, the Court of Appeals affirmed with modification the judgment of conviction of the Regional Trial Court. The dispositive portion of the decision of the Court of Appeals reads:

> WHEREFORE, the decision dated January 29, 2007 holding the accused appellant guilty of statutory rape, in Criminal Case No. 2006-0509-D of the RTC, Branch 43, Dagupan City, is **AFFIRMED** with **MODIFICATION** that the accused-appellant is ordered to pay private complainant EMA the increased amount of ₱50,000.00 as moral damages and ₱25,000.00 as exemplary damages, in addition to the ₱50,000.00 awarded by the RTC in favor of EMA as indemnity or compensatory damages.
>
> SO ORDERED.[12]

Hence this appeal.[13]

In advocacy for his exoneration, the accused argues that the testimony of the victim that she went with him during the incident for fear that he might cause her to fall down from the tree is unbelievable. According to the accused, such fear on the part of the victim should have ceased after she had gone down from the tree and she had no more reason to go with him.[14]

By the distinctive nature of rape cases, conviction usually rests solely on the basis of the testimony of the victim, provided that such testimony is credible, natural, convincing, and consistent with human nature and the normal course of things. Accordingly, the Court has consistently adhered to the following guiding principles in the review of similar cases, to wit: (1) an accusation for rape can be made with facility; while the accusation is difficult

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[12] *Rollo,* p. 13.

[13] On September 11, 2008, the Court of Appeals gave due course to the notice of appeal filed by the accused (CA *rollo,* p. 110). The Court required the parties to simultaneously file their respective supplemental briefs (*Rollo,* p. 21), but both manifested that they would no longer file supplemental pleadings (*Rollo,* pp. 30-31 and 33-35).

[14] CA *rollo,* p. 48.

to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that, in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant must be scrutinized with extreme caution; and (3) the evidence for the prosecution must stand or fall on its own merits, and cannot be allowed to draw strength from the weakness of the evidence for the defense.[15]

After going over the evidentiary record, the Court finds no reason to disturb the decisions of the courts below.

The Court does not subscribe to the argument of the accused that just because EMA had come down from the tree, she had no more reason to be afraid and to follow what he said. It must be remembered that EMA was just 9 years old and was obviously innocent, unwary and too trusting as she meekly obeyed the instructions of the accused. The simplicity of her story should not detract from the veracity of her complaint. She has proved to be a credible witness, and her testimony, worthy of judicial acceptance.

Testimonies of child-victims are almost always given full weight and credit, since when a woman, more so if she is a minor, says that she has been raped, she says in effect all that is necessary to show that rape has been committed. Youth and immaturity are generally badges of truth and sincerity.[16] Thus, the Court quotes with approval the disquisition of the appellate court on this score. Thus:

> The fact that EMA freely went with the accused to the house of the latter after she went down from the guava tree should not be taken to mean that her account of the events is incredible. It must be noted that EMA was merely (9) years of age when the rape transpired. By her own admission, EMA did not even understand what accused-appellant said when he instructed her to have sexual

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[15] *People v. Lilio U. Achas*, G.R. No. 185712, August 4, 2009, 595 SCRA 341, 349-350.

[16] *People v. Alfredo Bon*, G.R. No. 166401, October 30, 2006, 506 SCRA 168.

intercourse with him. It is not ludicrous to think that an innocent and unsuspecting nine-year old girl would trust a grown-up neighbor enough to let him take her with him to his own home – especially if the girl lived only two houses away therefrom. Well-settled is the rule that the testimonies of young victims deserve full credence and should not be so easily dismissed as a mere fabrication.[17] (Citation omitted)

Considering the age of the complainant, the Court finds it improbable for a girl of her age to fabricate a charge so traumatic to herself and her family had she not been truly subjected to the painful experience of sexual abuse.[18] Under rigid cross-examination, she was steadfast in relating her ordeal and nightmarish experience at the hands of the accused. For accuracy, the details of her defilement are hereby reproduced as follows:

PROS. SOLOMON:

Q You said awhile ago that when the accused brought you inside the room of his son Indong on August 24, 2006 at 3:00 in the afternoon and he raped you, how did he rape you?
A He undressed me while in the room of his son, sir.

Q What was your position when he undressed you?
A I was lying down, sir.

COURT:

Q What was your attire at that time?
A Red dress, sir.

Q Was it a T-shirt?
A Yes, sir.

Q How about your lower attire?
A Blue short(s), sir.

Q When he brought you inside the room of his son and he undressed you, he removed all his clothings (*sic*)?
A No, sir, only the short(s).

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[17] CA Decision, *Rollo*, pp. 11-12.

[18] *People v. Dalipe,* G.R. No. 187154, April 23, 2010.

Q In other words, your upper attire w(as) intact?
A Yes, sir.

COURT:
Proceed.

PROS. SOLOMON:
Q Aside from wearing your shortpant(s), were you wearing also panty?
A Yes, sir.

Q And he also removed your panty?
A Yes, sir.

Q After he undressed you, what did he do next?
A He inserted his penis into my vagina, sir.

Q And what did you feel when he inserted his penis into your vagina?
A It was painful, sir.

Q And what was your reaction when you felt that it was painful?
A I pushed him, sir.

Q And what did the accused do to you when you pushed him?
A He did not continue anymore, sir.

Q You said that you felt pain in your vagina, what did he do next after you pushed the accused?
A None, sir.

Q What happened (t)o your vagina Madame witness?
A There was blood in my vagina, sir.

Q And upon seeing your vagina bleeding, what did you do next?
A I went home, sir.

COURT:
Q When the accused inserted his penis inside your vagina, describe the accused's penis?
A It was covered with blood, sir.

Q Was it stiff?
A Yes, sir.

COURT:
Proceed.

PROS. SOLOMON:

Q You claimed a while ago that the accused in this case Marcos Quiros's penis was covered with blood, was that after you pushed him?
A Yes, sir.

COURT:
Q When the accused inserted his penis inside your vagina, was he naked?
A No, sir, only his shortpant(s).

Q In other words, he was naked from the waist down?
A Yes, sir.[19]

From the foregoing narration, sexual intercourse was clearly proven. Moreover, the prosecution more than sufficiently established that the victim was only 9 years old at the time of the rape incident, as evidenced by her Certificate of Live Birth.[20] Undeniably, the case is one of statutory rape, the gravamen of which is the carnal knowledge of a woman below 12 years old. Sexual congress with a girl under 12 years is always rape. Thus, force, intimidation or physical evidence of injury is immaterial.[21]

Besides, the testimony of EMA was corroborated by her mother YYY who told the court that when EMA came home, she was naked from the waist down, with blood oozing from her genitals. Shocked at her daughter's appearance, she asked EMA what happened. EMA told her that the accused had raped her.[22] No ill-motive could be imputed against the victim and her parents to manufacture such an accusation, considering that the accused, by his own admission, had maintained cordial relationship with the family of the victim.

The victim's testimony that accused inserted his organ into her vagina was further strengthened by the testimony of Dr.

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[19] TSN, October 18, 2006, pp. 9-13.

[20] Index of Exhibits for the Prosecution, p. 34; CA *rollo*, p. 5.

[21] *People v. Ligotan*, 331 Phil. 98 (1996).

[22] TSN, October 23, 2006, pp. 5-9.

Gwendolyn Luna, who examined her one and a half (1 ½) hours after the incident and the Medical Report[23] she prepared after the examination. Dr. Luna informed the court that EMA informed her that a certain "Macoy" inserted his penis into her vagina. Her report stated that the injuries sustained by the victim in her vagina were indicative of sexual abuse. When the testimony of the witness corresponds with medical findings, there is sufficient basis to conclude that the essential requisites of carnal knowledge have been established.[24]

The fact that Mylene Quiros, daughter of the accused was inside the house cannot negate the fact that the accused did rape EMA. "Sadly, the presence of family members in the same room has not discouraged rapists from preying on children, giving this Court to observe before that lust is no respecter of time and place. Rape has been shown to have been committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping."[25] In other words, the rapist and the victim need not have to be alone for rape to be consummated.

The contention of the accused that he was in the house of his *kumadre*, Rebecca Paraiso, at the time of the alleged rape deserves scant consideration. Time and time again, this Court has ruled that denial and alibi are the weakest of all defenses, because they are easy to concoct and fabricate.[26] Furthermore, said defenses cannot prevail over the positive and unequivocal identification of the accused by the victim, EMA. Denial and alibi are practically worthless against the

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[23] Records, p. 56.

[24] *People v. Anthony Rante y Reyes*, G.R. No. 184809, March 29, 2010, citing *People v. Tuazon*, G.R. No. 168102, August 22, 2008, 563 SCRA 124, 135.

[25] *People v. Pacheco*, G.R. No. 187742, April 10, 2010.

[26] *People v. IIagan*, 455 Phil. 891, 903 (2003).

positive identification made by the prosecution witnesses, especially by the rape victim.[27]

At any rate, the cardinal rule has always been that factual findings of the trial court, its calibration of the testimonies of the witnesses, and its conclusions anchored on its findings are accorded by the appellate court high 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 which, if considered, will change the outcome of the case. The Court of Appeals has observed this rule and so will this Court.

The Court, thus, sustains the conviction of the accused for the crime of statutory rape under Article 266-A, paragraph 1(d)[28] of the Revised Penal Code (RPC)[29] and the imposition of the penalty of *reclusion perpetua* in accordance with Article 266-B of the RPC.[30] The penalty for statutory rape is *reclusion perpetua*, which being a single indivisible penalty, is imposable regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.[31]

In line with prevailing jurisprudence, the victim, in a case for simple statutory rape, is entitled to ₱50,000.00 as civil

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[27] *People v. Isla, Jr.*, 432 Phil. 414, 431 (2002).

[28] Art. 266-A. *Rape; when and how committed*.-Rape is committed.

1). By a man who shall have carnal knowledge of a woman under any of the following circumstances:

x x x x x x x x x

d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

[29] Previously Article 335, par. 3 of the RPC which has been amended by Republic Act No. 8353 (the Anti-Rape Law of 1997).

[30] Art. 266-B. *Penalties*. – Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

[31] *People v. Andaya*, 365 Phil. 654 (1999).

indemnity, ₱50,000.00 as moral damages and ₱30,000.00 as exemplary damages. In addition to the damages awarded, the Court also imposes on all the amounts of damages an interest at the legal rate of 6% from this date until fully paid.[32]

WHEREFORE, the June 18, 2008 Decision of the Court of Appeals, in CA-G.R. CR H.C. No. 02682 is *MODIFIED* to read as follows:

WHEREFORE, finding the accused guilty beyond reasonable doubt for the crime of rape, the Court sentences him to suffer the penalty of *Reclusion Perpetua* and to pay the victim, EMA, the following:

1. ₱50,000.00 as indemnity fee;
2. ₱50,000.00 as moral damages;
3. ₱30,000.00 as exemplary damages; and
4. the costs of the suit.

The accused is further ordered to pay legal interest on the civil liabilities imposed until fully paid.

SO ORDERED.

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

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[32] *People v. Bagos*, G.R. No. 177152, January 6, 2010, citing *People v. Guevarra*, G.R. No. 182192, October 29, 2008, 570 SCRA 288, 313; *People v. Antivola*, 466 Phil. 394 (2004); and *People v. Olaybar*, 459 Phil. 114 (2003).

[*] Designated as additional member in lieu of Justice Diosdado M. Peralta, per Special Order No. 585 dated July 1, 2010.

[**] Designated as additional member in lieu of Justice Antonio Eduardo B. Nachura, per Special Order No. 863 dated July 5, 2010.

SECOND DIVISION

[G.R. No. 188905. July 13, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ROSE NANDI *y* SALI,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TRIAL COURTS ARE IN A BETTER POSITION TO DECIDE ON THE QUESTIONS OF CREDIBILITY OF WITNESSES; EXCEPTIONS; PRESENT.— The general rule is that passing judgment upon the credibility of witnesses is best left to the trial courts since the latter are in a better position to decide the question, having heard and observed the witnesses themselves during the trial. This rule, however, admits of exceptions such as when facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied. In the case at bench, the Court finds that certain facts of substance have been overlooked, which if only addressed and appreciated, would have altered the outcome of the case against the accused. Accordingly, a departure from the general rule is warranted.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; PROSECUTION THEREOF, ELEMENTS; EXISTENCE AND IDENTIFICATION OF THE ILLICIT DRUG MUST BE PROVEN FOR THE CRIME TO EXIST.— It is well-settled that in prosecution of cases of illegal sale of dangerous drugs, the following elements must be duly established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. Proof of the *corpus delicti* in a buy-bust situation requires not only the actual existence of the transacted drugs but also the certainty that the drugs examined and presented in court were the very ones seized. This is a condition *sine qua non* for conviction since drugs are the main subject of the illegal sale constituting the crime and their existence and identification must be proven for the crime to exist." The Court has scrutinized the evidence on record but

found it wanting with respect to the identification of the seized drug itself. Nebulous can only be the description of the evidence on how the contraband was handled before and after the alleged seizure.

3. ID.; ID.; ID.; THE PRESCRIBED PROCEDURE ON THE CUSTODY AND DISPOSITION OF CONFISCATED, SEIZED OR SURRENDERED DANGEROUS DRUGS MUST BE STRICTLY COMPLIED WITH; REASON; INVENTORY REQUIREMENTS NOT COMPLIED WITH.— Section 21 of the Implementing Rules of R.A. No. 9165 prescribes the procedure on the custody and disposition of confiscated, seized, and/or surrendered dangerous drugs, given the severity of the penalties imposed for violations of said law xxx. Strict compliance with the prescribed procedure is necessary because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise. A closer look at the records of the case reveals that the prosecution failed to show that there was compliance with the inventory requirements of R.A. No. 9165. When the poseur-buyer, PO1 Cecil Collado, took the witness stand, he failed to describe with particulars how the seized *shabu* was handled and marked after its confiscation.

4. ID.; ID.; ID.; CHAIN OF CUSTODY RULE; EXPLAINED.— Moreover, the prosecution failed to prove beyond reasonable doubt that the subject substance was the very same object taken from the accused. To erase all doubts as to the identity of the seized drugs, the prosecution should establish its movement from the accused, to the police, to the forensic chemist, and finally to the court. In *Mallillin v. People*, the Court had the occasion to explain the chain of custody rule and what constitutes sufficient compliance with this rule: 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 witnesses' 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.

5. ID.; ID.; ID.; ID.; LINKAGES IN THE CHAIN OF CUSTODY OF THE SEIZED ILLEGAL DRUGS; MUST BE CLEARLY ESTABLISHED.— [T]he following links should be established in the chain of custody of the confiscated item: *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 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. After a closer look, the Court finds that the linkages in the chain of custody of the subject item were not clearly established.

6. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; CANNOT BE APPLIED WHERE THE OFFICIAL ACT IS IRREGULAR ON ITS FACE.— [T]he Court is of the considered view that chain of custody of the illicit drug seized was compromised. Hence, the presumption of regularity in the performance of duties cannot be applied in this case. Given the flagrant procedural lapses the police committed in handling the seized *shabu* and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; **where the official act is irregular on its face, the presumption cannot arise**. In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.

APPEARANCES OF COUNSEL

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

D E C I S I O N

MENDOZA, *J.*:

This is an appeal from the October 23, 2008 Decision[1] of the Court of Appeals (CA), which affirmed *in toto* the August 2, 2007 Decision[2] of the Regional Trial Court (RTC), Branch 103, Quezon City, finding accused Rose Nandi guilty beyond reasonable doubt of having committed the crime of Violation of Section 5, Article II of Republic Act (R.A.) No. 9165, otherwise known as the Comprehensive Drugs Act of 2002, and sentencing her to suffer the penalty of life imprisonment.

Accused Rose Nandi was arrested in a buy-bust operation and was eventually indicted in an Information dated July 10, 2003, the accusatory portion of which reads:

> That on or about the 9th day of July 2003 in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver, transport, or distribute any dangerous drug, did then and there, willfully, and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point zero three (0.03) gram of methylamphetamine hydrochloride, a dangerous drug.
>
> CONTRARY TO LAW.

During the trial, the prosecution presented its evidence which basically hinged on the testimony of the poseur-buyer and documentary exhibits pertaining to the buy-bust operation.

It appears from the prosecution evidence that on July 9, 2003, at around 7:00 o'clock in the evening, Chief of Police Colonel

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[1] CA Decision, *Rollo*, pp. 2-14 (penned by Associate Justice Guevara-Salonga with Associate Justice Magdangal M. De Leon and Associate Justice Ramon R. Garcia, concurring).

[2] RTC Decision, Records, pp. 50-55.

Ratuita of Police Station 3, Talipapa, Quezon City, received an information that someone was selling *shabu* along Tandang Sora Avenue. Col. Ratuita immediately formed a buy-bust operation team composed of SPO4 Brigido Ann, its team leader, and members, PO1 Cecil Collado (PO1 Collado), PO1 Mendi, and PO1 Virgilio Bernardo. PO1 Collado, designated as the poseur-buyer, prepared the Five Hundred Pesos (₱500.00) marked money with his initials "CCC" on the face of the bill. SPO4 Brigido Ann, in the meantime, prepared a pre-operations report and recorded the formation of the buy-bust team in the dispatch book, including the important details of the buy-bust operation.

At around 11:00 o'clock in the evening, the team, together with the informant, proceeded to Tandang Sora Avenue, Quezon City and positioned themselves around Culiat High School where the alleged *shabu* sale was to take place. The informant first talked with the accused and later called and introduced PO1 Collado as the buyer. The accused asked how much PO1 Collado was buying and the latter replied that he wanted Two Hundred Pesos (₱200.00) worth of *shabu*. PO1 Collado handed over the marked money to the accused, and, in return, the latter gave a small transparent plastic sachet. After examining the contents thereof, PO1 Collado scratched his head. As this was the pre-arranged signal, the other team members rushed towards them and apprehended the accused. PO1 Collado told her that she was being arrested for selling drugs, frisked her, recovered from her the marked money, and then informed her of her rights.

The accused was immediately taken to Police Station 3 in Talipapa, Quezon City, where an inquest paper was prepared and the recovered items, handed over to the investigator. The documents and the recovered specimen were then taken to the crime laboratory, where Forensic Chemist Bernardino M. Banac, Jr., conducted a three-step examination consisting of a physical test, a chemical test and the confirmatory test on the sample from the sachet attached to the letter-request. The sample tested positive for *shabu*, and this finding was contained in Chemistry Report No. D-604-03. Forensic Chemist Banac, Jr. also placed the marking "D-604-03/BMB" on the plastic sachet, on the

brown envelope and on the masking tape that sealed the plastic sachet.

The accused, on the other hand, vehemently denied that she sold *shabu* and that she was arrested in a buy-bust operation. She recounted that on July 9, 2003, at about 7:00 o'clock in the evening, she was in the Muslim Compound of Barangay Culiat, Tandang Sora, Quezon City. She simply went there to submit her pictures to her cousin, a certain Kenex Bagundan, for a possible job application abroad. She said that she used to work as a domestic helper in Saudi Arabia and in the United Arab Emirates.

According to her, after leaving the house of her cousin and while waiting for a ride home, a man dragged her to a parked vehicle. Inside the vehicle, there were several police officers who told her not to shout and not to make any noise. Fearing for her life, she did what she was told. She further asserted that they first drove to different places before she was finally taken to the police station. Upon arriving at the station, she was frisked by a police officer and her personal things like cellular phone, pieces of jewelry and money were confiscated.

Furthermore, her requests for a female police officer had been refused and police officers asked her to give the amount of One Hundred Thousand Pesos (₱100,000.00) for her release. Since she was not able to call her relatives, she told them that she did not have any money. She also insisted that it was not PO1 Collado who arrested her as he merely accompanied her during the inquest. She also claimed that it was only during the inquest that she first saw the plastic sachet allegedly seized from her.

On August 2, 2007, the trial court rendered judgment finding the accused guilty as charged and imposed upon the accused the penalty of life imprisonment. The dispositive portion of the RTC decision[3] reads:

ACCORDINGLY, judgment is rendered finding the accused ROSE NANDI *Y* SALI, GUILTY, beyond reasonable doubt of violation of

[3] Records, pp. 50-55.

Section 5 of RA 9165 (for selling *shabu*) as charged and she is hereby sentenced to suffer a jail term of LIFE IMPRISONMENT and to pay a fine of ₱500,000.00.

The *shabu* in this case weighing 0.03 gram is ordered transmitted to PDEA thru DDB for disposal as per RA 9165.

SO ORDERED.

On October 23, 2008, the RTC decision was affirmed *in toto* by the Court of Appeals. In sustaining it, the appellate court stated that the prosecution was able to establish all the elements of the crime of illegal possession of a dangerous drug which are: 1] the offender was in possession of an item or an object identified to be a prohibited or regulated drug; 2] such possession is not authorized by law; and 3] the accused was freely and consciously aware of being in possession of the drug.

The RTC was of the view that the testimony of the prosecution witnesses evinced a more logical and acceptable series or flow of events culminating in the commission of the offense. The accused committed the offense charged as she was caught red-handed selling *shabu*, an illicit drug, in a buy-bust operation. The appellate court believed that the arrest of the accused was lawful and beyond reproach, and the confiscation of the illicit drugs and the marked money from her possession was not tainted with any irregularity.

Aggrieved, the accused questioned the affirmation of her conviction before this Court raising the following arguments:

ISSUE

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE ACCUSED-APPELLANT'S CONVICTION BEYOND REASONABLE DOUBT OF THE CRIME OF VIOLATION OF SECTION 5, ARTICLE II, R.A. NO. 9165.

The accused maintains that the prosecution failed to establish beyond reasonable doubt the essential elements of the offense with which she was charged. Primarily, the Information filed against her stated that the *shabu* had a weight of 0.03 gram.[4]

[4] CA Records, p. 8.

In contrast, Forensic Chemist Bernardino M. Banac, Jr., reported that it weighed 0.23 gram.

Secondly, although the ₱500.00 peso bill used as buy-bust money was photocopied and marked, it was done long after the supposed operation. There is, therefore, no certainty that it was the same bill used during the operation.

Thirdly, the apprehending team failed to comply with Section 21 of the Implementing Rules of Republic Act (R.A.) No. 9165 when it did not immediately conduct a physical inventory of the seized items and did not photograph the same in her presence or in the presence of her representative or counsel, a representative from media and the Department of Justice (DOJ), or an elected public official. Such failure casts doubt on the identity of the article seized as there was no assurance that it was the very same one submitted to the forensic chemist and found to be positive for *shabu*. Moreover, PO1 Collado himself admitted that he was not present when the subject item was transferred to the crime laboratory. Hence, a break in the chain of custody of the seized object seems apparent.

In addition, there were numerous inconsistencies in the testimony of PO1 Collado, the poseur-buyer.

THE COURT'S RULING

The general rule is that passing judgment upon the credibility of witnesses is best left to the trial courts since the latter are in a better position to decide the question, having heard and observed the witnesses themselves during the trial. This rule, however, admits of exceptions such as when facts of weight and substance with direct and material bearing on the final outcome of the case have been overlooked, misapprehended or misapplied.[5]

In the case at bench, the Court finds that certain facts of substance have been overlooked, which if only addressed and appreciated, would have altered the outcome of the case against the accused. Accordingly, a departure from the general rule is warranted.

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[5] *People v. Zaida Kamad*, G.R. No. 174198, January 19, 2010.

It is well-settled that in prosecution of cases of illegal sale of dangerous drugs, the following elements must be duly established: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. Proof of the *corpus delicti* in a buy-bust situation requires not only the actual existence of the transacted drugs but also the certainty that the drugs examined and presented in court were the very ones seized. This is a condition *sine qua non* for conviction since drugs are the main subject of the illegal sale constituting the crime and their existence and identification must be proven for the crime to exist."[6]

The Court has scrutinized the evidence on record but found it wanting with respect to the identification of the seized drug itself. Nebulous can only be the description of the evidence on how the contraband was handled before and after the alleged seizure.

Section 21 of the Implementing Rules of R.A. No. 9165 prescribes the procedure on the custody and disposition of confiscated, seized, and/or surrendered dangerous drugs, given the severity of the penalties imposed for violations of said law, *viz*.:

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 so confiscated, seized and/or surrendered, for disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative

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[6] *Id.*

from 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 copy thereof. Provided, that the physical inventory and the photograph shall be conducted at the place where the search warrant is served; or at least the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending team/officer, shall not render void and invalid such seizures of and custody over said items. x x x

Strict compliance with the prescribed procedure is necessary because of the illegal drug's unique characteristic rendering it indistinct, not readily identifiable, and easily open to tampering, alteration or substitution either by accident or otherwise.[7]

A closer look at the records of the case reveals that the prosecution failed to show that there was compliance with the inventory requirements of R.A. No. 9165. When the poseur-buyer, PO1 Cecil Collado, took the witness stand, he failed to describe with particulars how the seized *shabu* was handled and marked after its confiscation. He merely stated the following on direct examination, to wit:

Q: After you arrested the accused Rose Nandi, what happened next?
A: We brought her to our station.

Q: How about the item, where was it when you proceeded to the station?
A: I gave it to the investigator.

Q: Before you gave that, what did you do to that item?
A: I put my marking CCC.[8]

On cross-examination, PO1 Collado simply replied:

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[7] *People v. Robles*, G.R. No. 177220, April 24, 2009, 586 SCRA 647.

[8] TSN, November 4, 2003, p. 18.

Q: You testified that the item you confiscated from the accused was turned over to the investigator, did you happen to know what is that item?
A: I gave it to the investigator and the document the specimen were given to the crime lab.[9]

Moreover, the prosecution failed to prove beyond reasonable doubt that the subject substance was the very same object taken from the accused. To erase all doubts as to the identity of the seized drugs, the prosecution should establish its movement from the accused, to the police, to the forensic chemist, and finally to the court.[10] In *Mallillin v. People*,[11] the Court had the occasion to explain the chain of custody rule and what constitutes sufficient compliance with this rule:

> 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 witnesses' 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. [Emphasis supplied]

Thus, the following links should be established in the chain of custody of the confiscated item: *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

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[9] *Id.* at 20.

[10] *People v. Almorfe*, G.R. No. 181831, March 29, 2010.

[11] G.R. No. 172953, April 30, 2008, 553 SCRA 619, 633.

officer; *third*, the turnover by the investigating officer of the illegal 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.[12]

After a closer look, the Court finds that the linkages in the chain of custody of the subject item were not clearly established. As can be gleaned from his forequoted testimony, PO1 Collado failed to provide informative details on how the subject *shabu* was handled immediately after the seizure. He just claimed that the item was handed to him by the accused in the course of the transaction and, thereafter, he handed it to the investigator.

There is no evidence either on how the item was stored, preserved, labeled, and recorded. PO1 Collado could not even provide the court with the name of the investigator. He admitted that he was not present when it was delivered to the crime laboratory.[13] It was Forensic Chemist Bernardino M. Banac, Jr. who identified the person who delivered the specimen to the crime laboratory. He disclosed that he received the specimen from one PO1 Cuadra, who was not even a member of the buy-bust team. Per their record, PO1 Cuadra delivered the letter-request with the attached seized item to the CPD Crime Laboratory Office where a certain PO2 Semacio recorded it and turned it over to the Chemistry Section.[14]

In view of the foregoing, the Court is of the considered view that chain of custody of the illicit drug seized was compromised. Hence, the presumption of regularity in the performance of duties cannot be applied in this case.

Given the flagrant procedural lapses the police committed in handling the seized *shabu* and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. A presumption of regularity in the performance of official duty is made in the context of an

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[12] *People v. Zaida Kamad*, *supra* note 4.

[13] TSN, November 4, 2003, pp. 66-68.

[14] TSN, October 20, 2003, pp. 25-26.

existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; **where the official act is irregular on its face, the presumption cannot arise**. In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.[15] [Emphasis supplied]

With the chain of custody in serious question, the Court cannot gloss over the argument of the accused regarding the weight of the seized drug. The standard procedure is that after the confiscation of the dangerous substance, it is brought to the crime laboratory for a series of tests. The result thereof becomes one of the bases of the charge to be filed.

The documentary evidence on record, specifically Chemistry Report No. D-604-03[16] as attested by Forensic Chemist Bernardino M. Banac, Jr., shows that the substance brought to their office for examination was tested to be *methylamphetamine hydrochloride* and weighed **0.23** gram.[17] The corresponding Information, however, alleges that the substance only weighed **0.03** gram. When PO1 Collado was confronted with this discrepancy, he merely deduced this as an error committed at the forensic laboratory.[18] Considering the grave doubt already cast upon the linkages in the chain of custody, this explanation is simply unacceptable. Besides, he was not competent to testify on the discrepancy. He neither formulated the Information nor prepared the Chemistry Report.

Going over the records, the Court notes that the accused has consistently raised this argument from the onset of the case, but the trial court and the Court of Appeals failed to address it. It is rather unfortunate that the issue was simply disregarded.

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[15] *People v. Zaida Kamad, supra* note 4.

[16] TSN, October 20, 2003, p. 20.

[17] Records, Exhibit "D", p. 6.

[18] TSN, November 4, 2003, p. 70.

It could be that the accused had indeed transacted with the police in a deal involving illegal drugs. But in view of the frailty of the prosecution evidence and the severity of the imposed penalty, the Court resolves the doubt in favor of the accused. The prosecution simply failed to establish all the elements of the crime with moral certainty.

WHEREFORE, the October 23, 2008 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02938, is hereby *REVERSED* and *SET ASIDE* and another judgment entered *ACQUITTING* the accused.

The accused is hereby ordered immediately *RELEASED* from detention, unless she is being confined for any other lawful cause.

SO ORDERED.

Carpio (Chairpeson), Abad, Villarama, Jr.,[*] and *Perez,*[**] *JJ.*, concur.

THIRD DIVISION

[G.R. No. 174096. July 20, 2010]

SPOUSES DIVINIA C. PUBLICO AND JOSE T. PUBLICO,[*] *petitioners, vs.* **TERESA BAUTISTA,** *respondent.*

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[*] Designated as additional member in lieu of Justice Diosdado M. Peralta, per Special Order No. 858 dated July 1, 2010.

[**] Designated as additional member in lieu of Justice Antonio Eduardo B. Nachura, per Special Order No. 863 dated July 5, 2010.

[*] Petitioner Jose T. Publico died during the pendency of the case and was substituted by his heirs Judy C. Publico and Jose Publico, Jr.

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; EXTINGUISHMENT OF OBLIGATIONS; PAYMENT OR PERFORMANCE; NOT ESTABLISHED.— The *Pagpapatunay* was not a new obligation which could have extinguished the *Kasulatan* since the condition of payment that was set out in the *Pagpapatunay* was never fulfilled. The trial court found that no competent evidence was introduced, except the bare assertion of Divinia, to prove petitioners' payment of the obligation or that they complied with the conditions set out in the *Pagpapatunay*. As did the appellate court, the Court sustains the trial court's finding.

2. ID.; ID.; ID.; ID.; RECOVERY OF THE PAYMENT ADVANCED BY A THIRD PERSON ON BEHALF OF THE DEBTOR ALLOWED EVEN ABSENT DEBTOR'S KNOWLEDGE THEREOF; RECOVERY IS ONLY IN SO FAR AS THE PAYMENT IS BENEFICIAL TO THE DEBTOR.— Petitioners' invocation of Article 1236 of the Civil Code does not help them. They cannot deny their indebtedness to respondent on the basis of said Article since the payment advanced by respondent on petitioners' behalf redounded to their benefit and Divinia never objected to it when she came to learn of it. It is thus immaterial that Divinia was unaware of respondent's action for the law ultimately allows recovery to the extent that the debtors-petitioners were benefited.

3. ID.; ID.; ID.; NOVATION; ABSENT AN EXPRESS CONTRACTUAL STIPULATION AUTHORIZING THE SAME, THE SUBROGATION OF THE THIRD PERSON TO THE RIGHTS OF THE CREDITOR WHEN PAYMENT HAS BEEN MADE BY SUCH THIRD PERSON, IS NOT ALLOWED.— Respecting the third issue, petitioners' contention of valid subrogation under Article 1294 of the Civil Code is misplaced. The appellate court aptly ruled that x x x there is no subrogation to speak of in this case, precisely because the law itself proscribes the subrogation of the third person to the rights of the creditor when payment had been made by such third person, in the absence of an express contractual stipulation authorizing the same. The right to recover from the debtor is based on the mere fact of payment and on considerations of justice, but it gives to the third person who paid only a simple action for reimbursement,

without the securities, guaranties and other rights recognized in the creditor, which are extinguished by the payment. Consequently, Hiyas Bank has no interest in the suit between [petitioners] and [respondent]. x x x It bears pointing out that petitioners invoked their theory of subrogation only to question why Hiyas Bank was not impleaded as an indispensable party. The trial court correctly ruled that Hiyas Bank was not an indispensable party to the case.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; FORECLOSURE OF REAL ESTATE MORTGAGE; EQUITY OF REDEMPTION MUST BE EXERCISED WITHIN THE PERIOD PROVIDED, AND EVEN THEREAFTER, PROVIDED THEY DO SO BEFORE THE FORECLOSURE SALE IS CONFIRMED BY THE TRIAL COURT.— Clutching at straws, petitioners claim that they were deprived of the equity of redemption when the trial court failed to state the period within which they could redeem. The Court of Appeals, however, did specify a period of "ninety (90) days from finality of judgment" to pay the adjudged amount. This is in consonance with the period mentioned by Section 2, Rule 68 of the 1997 Rules of Civil Procedure. While the trial court did not use the phrase "entry of judgment" as the reckoning point for the redemption period, the Rules provide that the date of finality of the judgment shall be deemed to be the date of its entry. Petitioners can thus exercise their equity of redemption within the period provided, and even thereafter, provided they do so before the foreclosure sale is confirmed by the trial court.

5. ID.; DAMAGES; ATTORNEY'S FEES; AWARD THEREOF, PROPER.— On the final issue of award of attorney's fees, while indeed the trial court failed to discuss the legal basis thereof, the Court holds that petitioners' failure to satisfy their just obligations has compelled respondent to litigate and incur expenses to protect her interest. Surely, it is only just and equitable to award attorney's fees in respondent's favor for litigating and incurring expenses since 1999 when she filed her complaint.

APPEARANCES OF COUNSEL

Orlando Lambino for petitioners.

Principe Villano Villacorta Clemente & Associates Law Firm for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioners, spouses Divinia Publico (Divinia) and Jose Publico (Jose) obtained on April 12, 1996 a ₱200,000 loan from Teresa Bautista (respondent) which was secured by a real estate mortgage (REM) over a real property covered by Transfer Certificate of Title (TCT) No. T-244828.

The REM, "*Kasulatan ng Pagkakautang na may Panagot*[1]" (*Kasulatan*), provides, *inter alia*, that the loan would bear interest and penalties to would be paid within one-and-a-half years, failing which the mortgaged property would be sold pursuant to Act 3135.[2] Petitioners surrendered the owners' copy of TCT No. T-244828 to respondent.

In September 1996, petitioners borrowed from respondent the owners' copy of the title in order to re-mortgage the property covered thereby to secure another loan the proceeds of which would be used to pay respondent. Divinia executed a *Pagpapatunay*[3] reading:

x x x x x x x x x

Na, ang aking pagkakautang ay aking babayaran kung ang titulong ito ay mainsanla ko sa banko at kami ay nagkasundo din na sa ₱200,00.00 thousand [sic] na aking pagkakautang ay magbibigay muna ako ng ₱100,000.00 [sic]. At mag-iiwan ako ng rehistro ng aking sasakyan sa Taxi na may numero na MVMR 40693326 MVMT 36169691 para naman sa natitirang balanse na ₱100,000.00 thousand [sic] bilang prenda.

x x x x x x x x x[4]

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[1] Records, pp. 8-9.

[2] Entitled "An Act To Regulate the Sale of Property under Special Powers Inserted in or Annexed to Real-Estate Mortgages" as amended by Act 4118.

[3] Records, p. 10.

[4] *Ibid.*

Petitioners thereupon obtained a ₱200,000 loan from Hiyas Savings and Loan Bank, Inc. (Hiyas Bank).[5] They, however, failed to settle their obligation to respondent. Respondent, fearing that Hiyas Bank might foreclose the mortgage, offered Hiyas Bank to pay petitioners' loan. The bank agreed to the proposal, with the condition that respondent also pay the other obligations of petitioners that were secured by REMs on two other properties covered by TCT Nos. T-265662 (M) and T-265663.

In the presence of petitioner Jose, respondent settled petitioners' obligations to the bank amounting to ₱697,714.58. The receipts of payment were in the name of Jose, however, albeit it contained annotations on the dorsal portions thereof that respondent advanced the payment of petitioners' obligations. Both Jose and respondent affixed their signatures on the annotations.[6]

Despite demands, petitioners failed to pay their obligations totaling ₱897,714.58, hence, respondent filed on February 1, 1999 a Complaint[7] for foreclosure of mortgage, sum of money and damages before the Regional Trial Court (RTC) of Bulacan.

In their Answer with Counterclaim,[8] petitioners alleged that they had paid their obligations.

By Decision[9] of May 16, 2002, Branch 19 of the Bulacan RTC, noting that petitioners did not present evidence in support of their bare assertions,[10] rendered judgment against petitioners, disposing as follows:

WHEREFORE, judgment is hereby rendered in favor of [respondent] and against [petitioners] as follows:

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[5] *Id.* at 76 (dorsal side).

[6] *Id.* at 12-13. Exhibits "D-1, D-2, D-3, E-1, E-2 and E-3".

[7] *Id.* at 2-7.

[8] *Id.* at 29-32.

[9] *Id.* at 244-248. Penned by Presiding Judge Renato C. Francisco.

[10] *Id.* at 246.

1. [On] the first cause of action

   a) Ordering [petitioners] to pay [respondent] the principal sum of ₱200,000.00 plus interest at the rate of 6% per year and penalty at the rate of 6% per year both to commence on October 26, 1998.

   b) In default thereof, the mortgaged property under TCT No. T-244828 shall be ordered foreclosed by the Court.

2. On the second cause of action

   a) Ordering [petitioners] to pay [respondent] the total amount of P697, [714.58] plus interest at the rate of 6% per year to commence on October 26, 1998.

3. On the third cause of action

   a) Ordering [petitioners] to pay [respondent] the sum of ₱20,000.00 as and by way of attorney's fees.

   b) Ordering [petitioners] to pay costs of suit.

4. [Respondent] is directed to return TCT Nos. T-265662(M) and T-265663 to [petitioners]-spouses.

All other damages prayed for by the [respondent] and the counterclaim of [petitioners] are dismissed for lack of merit.

SO ORDERED.

On respondent's Motion,[11] the trial court *amended* its decision to indicate the rate of interest at 12% per annum on petitioners' unpaid loans.[12]

The Court of Appeals to which petitioners appealed, affirmed the trial court's decision, by Decision[13] of November 29, 2005 in this wise:

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[11] *Id.* at 249-251.

[12] *Id.* at 261.

[13] CA *rollo*, pp. 79-91. Penned by Associate Justice Magdangal M. de Leon with the concurrences of Associate Justices Portia Aliño-Hormachuelos and Mariano C. del Castillo (now a member of the Court).

x x x x x x x x x

A perusal of the "Pagpapatunay" executed by the appellant Divinia reveals, all to plainly, that novation has not taken place, and that the loan obligation of appellants contained in the "Kasulatan ng Pagkakautang na may Panagot" subsists despite the latter agreement. Appellants' contention that the change effected in the latter covenant – the former secured obligation having been converted to an unsecured obligation – operates as a change in the principal conditions of the obligation is unavailing. It must be stressed that the real estate mortgage constituted by appellants is a security for their loan obligation with appellee, but is not, and will never be, the principal obligation itself.

x x x x x x x x x

x x x What had been created by the new agreement is, at best, a conditional obligation, which could not have extinguished the previous pure obligation.

x x x x x x x x x

By its terms, the "Pagpapatunay" is a conditional promise of payment, which, although made in consideration of the principal indebtedness, could not be deemed to have substituted the main obligation unless and until the condition is fulfilled. Only the payment as promised therein could have given rise to the new obligation referred to under the same.

After evaluating the testimonies of the parties and their witnesses, the trial court found that such payment had not been made x x x.

x x x x x x x x x

As to whether or not appellants are liable to appellee for the amount advanced by the latter for settlement of the former's mortgage indebtedness with Hiyas Bank, We answer in the affirmative.

Based on the official receipts issued by the Hiyas Bank, payment was accepted not from appellee but from appellant Jose, who is himself a principal debtor with respect to appellants' mortgage indebtedness to the said bank. The acknowledgement made by appellant Jose annotated on the dorsal portion of the official receipts issued by Hiyas Bank is an express recognition that the money paid by him to the bank was advanced to him by the appellee. Thus, there is no doubt

that, as between appellants and appellee, another contract of loan was created through the transaction, and that, appellants are obligated to the repayment of such loan, upon demand.

Appellants contend that appellee could not compel them to reimburse the amount paid to Hiyas Bank, since such payment is one made by a third person without the knowledge of the debtor and triggers into operation Article 1236 of the Civil Code, the second paragraph of which reads:

> Whoever pays for the debt of another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

Even granting that the payment was one made by a third person, although the evidence tend[s] to prove that it was not, we find at least three circumstances which militate against appellants' contention: *first*, such payment was expressly allowed by appellant Jose, who was himself a principal debtor; *second*, such payment is beneficial to the appellants since it served to release their properties form encumbrance; and *third*, when appellant Divinia learned about the payment made by her husband and appellee, she did nothing to express her objection thereto, or her repudiation thereof, within a reasonable time. The debtor who knows that another has paid his obligation for him and who does not object thereto or repudiate it at any time, must pay the amount advanced by the third person.

x x x[14] (emphasis and underscoring supplied)

Petitioners' motion for reconsideration was denied.[15] On petitioners' contention that they were deprived of the equity of redemption because the trial court did not fix a period within which to pay the judgment debt,[16] the appellate court clarified that:

x x x paragraph 1 (a) of the dispositive portion of the *Decision* appealed from, as modified by the *Order* dated October 18, 2002,

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[14] *Id.* at 86-90.

[15] *Id.* at 114-118.

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

ordering appellants to pay the plaintiff the principal sum of ₱200,000.00 plus interest at the rate of 12% per year and penalty at the rate of 6% per year to commence on October 16, 1998, **should include the phrase "within ninety (90) days from finality of judgment" declared in the body thereof**.[17] (emphasis and underscoring supplied)

Hence, the present petition[18] raising the following issues:

A. WHETHER…[RESPONDENT] COULD STILL FILE AN ACTION FOR JUDICIAL FORECLOSURE ON THE BASIS OF THE "KASULATAN NG PAGPAPAUTANG NA MAY PANAGOT" DESPITE THE…SUBSEQUENT EXECUTION OF THE "PAGPAPATUNAY" AND THE DELIVERY OF THE OWNERS' COPY OF TCT [NO.] 244828 TO [DIVINIA];

B. ASSUMING THAT [RESPONDENT] COULD FILE [SAID ACTION]…, WHETHER…PETITIONERS WERE DEPRIVED OF THE EQUITY OF REDEMPTION;

C. WHETHER…THERE WAS A VALID SUBROGATION UNDER ARTICLE 1294 [OF THE] CIVIL CODE;

D. WHETHER…THE AWARD OF ATTORNEY'S FEES [WAS PROPER].[19]

Petitioners assert that the mortgage had been cancelled and discharged not only by the *Pagpapatunay* but also by respondent's act of paying their debt with Hiyas Bank to thus make respondent the subrogee of the bank. To petitioners, the remedy of respondent is to sue for collection of sum of money, and not the foreclosure of mortgage.[20]

Respondent counters that the *Pagpapatunay* did not take the place of the *Kasulatan* since she merely allowed petitioners to remortgage the property; that petitioners failed to present

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[17] *Id.* at 117.

[18] *Rollo*, pp. 12-30.

[19] *Id.* at 20.

[20] *Id.* at 23.

any evidence to show payment of their outstanding loan obligations; and that she was compelled to litigate to protect her interest to thus justify the award of attorney's fees.[21]

The petition fails.

The *Pagpapatunay* was not a new obligation which could have extinguished the *Kasulatan* since the condition of payment that was set out in the *Pagpapatunay* was never fulfilled. The trial court found that no competent evidence was introduced, except the bare assertion of Divinia, to prove petitioners' payment of the obligation or that they complied with the conditions set out in the *Pagpapatunay*. As did the appellate court, the Court sustains the trial court's finding.

Petitioners' invocation of Article 1236 of the Civil Code does not help them. They cannot deny their indebtedness to respondent on the basis of said Article[22] since the payment advanced by respondent on petitioners' behalf redounded to their benefit and Divinia never objected to it when she came to learn of it. It is thus immaterial that Divinia was unaware of respondent's action for the law ultimately allows recovery to the extent that the debtors-petitioners were benefited.

Clutching at straws, petitioners claim that they were deprived of the equity of redemption when the trial court failed to state the period within which they could redeem. The Court of Appeals, however, did specify a period of "ninety (90) days from finality of judgment" to pay the adjudged amount. This is in consonance with the period mentioned by Section 2, Rule 68 of the 1997 Rules of Civil Procedure.[23] While the trial court did not use the phrase "entry of judgment" as the reckoning point for the

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[21] *Id.* at 62-70.

[22] Article 1236 reads: Whoever pays for the debt of another may demand from the debtor what he has paid, except that if he paid without the knowledge or against the will of the debtor, he can recover only insofar as the payment has been beneficial to the debtor.

[23] Sec. 2 of Rule 68 of the Rules of Civil Procedures reads: "If upon the trial in such action the court shall find the facts set forth in the complaint to

redemption period, the Rules provide that the date of finality of the judgment shall be deemed to be the date of its entry.[24]

Petitioners can thus exercise their equity of redemption within the period provided, and even thereafter, provided they do so before the foreclosure sale is confirmed by the trial court.[25]

Respecting the third issue, petitioners' contention of valid subrogation under Article 1294 of the Civil Code is misplaced. The appellate court aptly ruled that

> x x x there is no subrogation to speak of in this case, precisely because the law itself proscribes the subrogation of the third person to the rights of the creditor when payment had been made by such third person, in the absence of an express contractual stipulation authorizing the same. The right to recover from the debtor is based on the mere fact of payment and on considerations of justice, but it gives to the third person who paid only a simple action for reimbursement, without the securities, guaranties and other rights recognized in the creditor, which are extinguished by the payment. Consequently, Hiyas Bank has no interest in the suit between [petitioners] and [respondent]. x x x[26] (citations omitted; emphasis and underscoring supplied)

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be true, it shall ascertain the amount due to the plaintiff upon the mortgage debt or obligation, including interest and other charges as approved by the court, and costs, and shall render judgment for the sum so found due and order that the same be paid to the court or to the judgment obligee **within a period of not less than ninety (90) days nor more than one hundred twenty (120) days from the entry of the judgment, and that in default of such payment the property shall be sold at public auction to satisfy the judgment**." (emphasis and underscoring supplied)

[24] Sec. 2 of Rule 36 of the Rules of Civil Procedure reads: "If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final order shall forthwith be entered by the clerk in the book of entries of judgments. **The date of finality of the judgment or final order shall be deemed to be the date of its entry**. The record shall contain the dispositive part of the judgment or final order and shall be signed by the clerk, with a certificate that such judgment or final order has become final and executory." (emphasis and underscoring supplied)

[25] *Rosales v. Suba*, G.R. No. 137792, August 12, 2003, 408 SCRA 664, 671.

[26] CA *rollo*, pp. 89-90.

It bears pointing out that petitioners invoked their theory of subrogation only to question why Hiyas Bank was not impleaded as an indispensable party. The trial court correctly ruled that Hiyas Bank was not an indispensable party to the case.

On the final issue of award of attorney's fees, while indeed the trial court failed to discuss the legal basis thereof, the Court holds that petitioners' failure to satisfy their just obligations has compelled respondent to litigate and incur expenses to protect her interest.[27] Surely, it is only just and equitable to award attorney's fees in respondent's favor for litigating and incurring expenses since 1999 when she filed her complaint.

WHEREFORE, the petition is *DENIED*.

Costs against petitioners.

SO ORDERED.

Brion, Bersamin, Abad,[**] and *Villarama, Jr., JJ.*, concur.

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[27] Article 2208 of the Civil Code reads: In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) x x x;
(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;
(3) x x x;
(4) x x x;
(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;
(6) x x x;
(7) x x x;
(8) x x x;
(9) x x x;
(10) x x x;
(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

x x x x x x x x x.

[**] Additional member per Special Order No. 843 dated May 17, 2010.

FIRST DIVISION

[G.R. No. 180660. July 20, 2010]

MARIBAGO BLUEWATER BEACH RESORT, INC., *petitioner, vs.* **NITO DUAL,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW: ONLY QUESTIONS OF LAW MUST BE RAISED THEREIN; EXCEPTION; PRESENT.— As a rule, a petition for review under Rule 45 of the Rules of Court must raise only questions of law. However, the rule has exceptions such as when the findings of the Labor Arbiter, NLRC and Court of Appeals vary, as in this case. After a full review of the case, we are constrained to reverse the Court of Appeals.

2. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; SERVICES OF AN EMPLOYEE CANNOT BE TERMINATED EXCEPT FOR A JUST OR AUTHORIZED CAUSE; DUE PROCESS MUST BE OBSERVED.— The law requires that an employer shall not terminate the services of an employee except for a just or authorized cause. Otherwise, an employee unjustly dismissed from work is entitled to reinstatement and full backwages. The law also requires the employer to observe due process in termination cases. In *Agabon v. National Labor Relations Commission*, we ruled that violation of the employee's statutory right to due process makes the employer liable to pay indemnity in the form of nominal damages. The law further requires that the burden of proving the cause for termination rests with the employer. In this case, we are in agreement that petitioner's evidence proved that respondent is guilty of dishonesty and of stealing money entrusted to him as cashier.

3. ID.; ID.; JUST CAUSE; THEFT COMMITTED BY AN EMPLOYEE, A VALID GROUND FOR DISMISSAL.— Respondent's acts constitute serious misconduct which is a just cause for termination under the law. Theft committed by an employee is a valid reason for his dismissal by the employer. Although as a rule this Court leans over backwards to help

workers and employees continue with their employment or to mitigate the penalties imposed on them, acts of dishonesty in the handling of company property, petitioner's income in this case, are a different matter.

4. ID.; ID.; THE PROTECTION OF THE RIGHTS OF THE LABORERS AUTHORIZES NEITHER OPPRESSION NOR SELF-DESTRUCTION OF THE EMPLOYER; THE MANAGEMENT'S RIGHTS ARE ALSO ENTITLED TO RESPECT AND ENFORCEMENT IN THE INTEREST OF SIMPLE FAIR PLAY.— Withal, the law, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer. While the Constitution is committed to the policy of social justice and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. The management also has its own rights, as such, are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for those with less privileges in life, the Supreme Court has inclined more often than not toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.

APPEARANCES OF COUNSEL

Mercado Cordero Bael Acuna & Sepuleda for petitioner.
Armando M. Alforque for respondent.

D E C I S I O N

PEREZ, *J.*:

Before this Court is the petition for review on *certiorari* under Rule 45 of the Rules of Court assailing the Decision[1] dated 7 March 2007 and Resolution[2] dated 30 July 2007 of the

[1] Penned by Associate Justice Pampio A. Abarintos with Associate Justices Priscilla Baltazar-Padilla and Stephen C. Cruz, concurring. *Rollo*, pp. 29-37.

[2] *Id.* at 39-40.

Court of Appeals in CA-G.R. SP No. 02062. The Decision ordered petitioner Maribago Bluewater Beach Resort, Inc. (Maribago for brevity) to pay respondent Nito Dual (Dual for brevity) full backwages and separation pay for his illegal dismissal. It is a reversal of the National Labor Relations Commission (NLRC for brevity) decision vacating the decision of the Labor Arbiter.

The undisputed facts of the case are as follows:

Petitioner Maribago is a corporation operating a resort hotel and restaurant in Barangay Maribago, Lapu-Lapu City. On 18 October 1995,[3] it hired respondent Dual as waiter and promoted him later as outlet cashier of its Poolbar/Allegro Restaurant.[4]

On 9 January 2005, around 6:30 p.m., a group of Japanese guests and their companions dined at Allegro.[5] Captain waiter Alvin Hiyas (Hiyas for brevity) took their dinner orders comprising of six (6) sets of lamb and six (6) sets of fish. As per company procedure, Hiyas forwarded one copy of the order slip to the kitchen and another copy to respondent.[6] Pursuant to the order slip, fourteen (14) sets of dinner were prepared by the chef. Hiyas and waiter Genaro Mission, Jr. (Mission for brevity) served twelve (12) set dinners to the guests, and another two (2) sets to their guides[7] free of charge (total of 14 sets of dinner).

After dinner, at around 9:00 p.m., the guests asked for their bill. Since Hiyas was attending to other guests, he gave a signal to Mission to give the bill. Mission asked respondent Dual for the sales transaction receipt and presented this to the guests. The guests paid the amount indicated on the receipt and thereafter left in a hurry.[8]

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[3] *Id.* at 101.

[4] *Id.* at 69, 101.

[5] *Id.* at 69-70.

[6] *Id.* at 139,144.

[7] *Id.*

[8] *Id.* at 91.

The receipt printed at 10:40 p.m. shows that only ₱3,036.00 was remitted by cashier Dual corresponding to six (6) sets of dinner. The receipt reads:

x x x	x x x		x x x
NITO 01/09/2005	22:40	x x x	
1	3 SET LAMB	1,560.00	
1	3 SET FISH	1,200.00	
10%	Service Charge	276.00	
NET TOTAL		3,036.00	
CASH/CHEQUE TENDER		3,036.00	
CHANGE		0.00	
x x x	x x x		x x x[9]

In view of the discrepancy between the order slip and the receipt issued, petitioner Maribago, through its Human Resource Development (HRD) manager, issued memoranda, all dated 12 January 2005, requiring respondent Dual, Alvin Hiyas, Ernesto Avenido and Basilio Alcoseba to explain why they should not be penalized for violating House Rule 4.1 (dishonesty in any nature).[10]

On 14 January 2005, the concerned employees were requested to attend a clarificatory hearing to be conducted on 15 January 2005. The hearing was attended by respondent Dual, Human Resource Manager Ignacio Hermias, Jr., Chief Security Officer Roland Cubillan, Captain Waiter Hiyas, Chef Arman, Bartender Avenido, Room Service Waiter Alcoseba, Butcher Ryan Alegrado, John Marollana, and union officials. This was followed by another clarificatory hearing conducted on 16 January 2005. It was in the 16 January 2005 hearing that waiter Mission gave his testimony.

During the clarificatory hearing, butcher Alegrado testified that waiter Alcoseba went to the butchery looking for the order

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[9] *Id.* at 126.

[10] *Id.* at 82-85.

slip for table no. 113. At around 9:45 p.m., waiter Alcoseba caused the alteration of the order slip to reflect that six (6) orders were cancelled. Alegrado allegedly asked Alcoseba if the cook was already aware of the cancellation, to which the latter answered *"oo, kahibaw na"* (yes, he is already aware).

In his written explanation, Alcoseba stated that he was not privy to the cancellation of orders since he was busy attending to his room service duty. He claims that he saw the cancelled food orders at the waiter's station but insists that he did not have any part in the alteration of the order slip. During the clarificatory hearing, however, he admitted that he altered the order slip by cancelling six (6) set dinners.

After the investigation, respondent Dual was found guilty of dishonesty for his fabricated statements and for asking one of the waiters (Mission) to corroborate his allegations. He was terminated per memorandum dated 22 January 2005. Alcoseba was also terminated for dishonesty based on his admission that he altered the order slip.[11]

CASE FOR RESPONDENT

Respondent Dual confirms that the orders were for six (6) sets of lamb dinner and six (6) sets of fish dinner. He, however, alleges that four (4) sets were cancelled and two (2) sets were given to the guides for free. He was able to confirm the cancellation with Alcoseba and Hiyas. Hence, he received the payment for the six (6) sets only.[12]

He avers that when he noticed the alteration in the order slip, he verified this with Mission. The latter allegedly told him that the order slip was handed by Alcoseba. Respondent further avers that he went to see Alcoseba who, in turn, told him that some orders were cancelled because some of the companions of the Japanese guests did not take their dinner. Upon verification from chief waiter Hiyas, he was allegedly told that the sets of

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[11] *Id.* at 92-93.

[12] *Id.* at 86.

dinner were indeed cancelled and placed in the utensil station. According to respondent, he checked the utensil station and found the dinner sets there. Satisfied, he issued the transaction receipt corresponding to the order slip.

Respondent argues that when Mission received the printed receipt in the amount of ₱3,036.00 for six (6) sets of dinner, the latter did not complain that the entry was incorrect, particularly, the amount reflected in the computer printed receipt.

He alleges that Mission presented the receipt to the guests and came back with the payment in the amount of ₱3,100.00. Dual admits that he accepted the payment and gave Mission a change of ₱64.00. He claims that he thereafter issued the corresponding official receipt.

CASE FOR THE PETITIONER

Petitioner Maribago submits that the transaction receipt handed to Mission by respondent Dual amounted to ₱10,100.00 (more or less). The guests allegedly gave Mission ₱10,500.00 with the instruction to return only ₱200.00. The rest can be kept by the waiter as tip.

Mission then handed Dual the ₱10,500.00 and relayed the guests' instruction. Dual handed Mission the ₱200.00 which the latter gave to the guests.

It was discovered later that only ₱3,036.00 was entered by Dual in the cash register. The rest of the payment was missing. The original transaction receipt for ₱10,100.00 was likewise missing and in its place, only a transaction receipt for ₱3.036.00 was registered. Upon verification, it was also found out that the order slip was tampered by Alcoseba to make it appear that only six (6) set dinners were ordered.

According to petitioner, on 14 January 2005, Dual and Alcoseba tried to convince Mission to say that he altered the order slip from twelve (12) sets of dinner to six (6) sets.[13] Mission did

[13] *Id.* at 96.

not report for work and did not attend the 15 January 2005 clarificatory hearing since he could not "in conscience" tell a lie.[14] At past 11:00 p.m. of 15 January 2005, Dual met Mission and tried again to convince him to say that only six (6) sets of dinner were ordered.[15] Mission reported on 16 January 2005 and attended the hearing that day. Dual was not present.[16]

RULING OF THE LABOR ARBITER/NLRC/CA

On 3 February 2005, Dual filed a complaint[17] for unfair labor practice, illegal dismissal, non-payment of 13th month and separation pay, and damages before the NLRC, Regional Arbitration Branch No. VII, Cebu City.

The Labor Arbiter found that respondent's termination was without valid cause and ruled that respondent is entitled to separation pay, to wit:

> WHEREFORE, **VIEWED FROM THE FOREGOING**, judgment is hereby rendered declaring the absence of valid cause in the termination of complainant from the service. Complainant is thus, entitled to reinstatement but without backwages considering that respondents are in good faith. However, since reinstatement is no longer feasible, respondents **MARIBAGO BLUE WATER BEACH RESORT/ARCADIO ALEGRADO** are hereby ordered to pay jointly and severally, complainant **NITO DUAL** the total amount of **THIRTY-FIVE THOUSAND PESOS (₱35,000.00)**, Philippine currency, representing Separation Pay, within ten (10) days from receipt hereof, through the Cashier of this Arbitration Branch.
>
> Other claims are **DISMISSED** for lack of merit.[18]

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[14] *Id.* at 99.

[15] *Id.* at 96, 99.

[16] *Id.* at 97, 99.

[17] *Id.* at 65. Named as respondents in the complaint were the petitioner and Arcadio Alegrado. In the Court of Appeals, however, the private respondent impleaded is only the petitioner herein (*Id.* at 29).

[18] *Id.* at 63.

The NLRC set aside the Labor Arbiter's decision and dismissed the complaint, to wit:

> WHEREFORE, premises considered, the decision of the Labor Arbiter dated 03 August 2005 is **VACATED** and **SET ASIDE** and the complainant's complaint is **DISMISSED** for lack of merit.[19]

The NLRC also denied respondent's motion for reconsideration.[20]

It ruled that complainant's act of depriving respondent of its lawful revenue is tantamount to fraud against the company which warrants dismissal from the service.[21] Falsification of commercial documents as a means to malverse company funds constitutes fraud against the company.[22]

The Court of Appeals reversed the decision and resolution of the NLRC. Finding no sufficient valid cause to justify respondent's dismissal, the Court of Appeals ordered petitioner to pay respondent full backwages and separation pay, as follows:

> WHEREFORE, the instant petition is **GRANTED**. The Decision, dated March 31, 2006, and Resolution, dated June 28, 2006, of the NLRC, in NLRC Case No. V-000590-2005 are **REVERSED**. A new judgment is hereby rendered, directing private respondent [herein petitioner Maribago Bluewater Beach Resort, Inc.] to pay petitioner [herein respondent Nito Dual] full backwages from the time he was illegally dismissed, up to the finality of this decision and a separation pay of one month salary for every year of service.[23]

The Court of Appeals denied petitioner's motion for reconsideration.

OUR RULING

The petition before this Court prays for the resolution of a sole issue:

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[19] *Id.* at 52.

[20] *Id.* at 55.

[21] *Philippine Airlines, Inc. v. NLRC, G.R. No. 126805, 16 March 2000.*

[22] *Pepsi Cola Bottling Company of the Philippines v. Guanson, G.R. No. 81162, 19 April 1989, 172 SCRA 571.*

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

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A GRAVE AND REVERSIBLE ERROR IN REVERSING THE NATIONAL LABOR RELATIONS COMMISSION AND DIRECTING PETITIONER TO PAY RESPONDENT FULL BACKWAGES FROM THE TIME HE WAS ILLEGALLY DISMISSED, UP TO THE FINALITY OF [ITS] DECISION AND SEPARATION PAY OF ONE MONTH SALARY FOR EVERY YEAR OF SERVICE.[24]

In essence, the issue is whether the Court of Appeals erred in ruling that respondent was illegally dismissed.

Petitioner places the crux of the controversy on the proven tampering of the transaction receipt which happened in respondent's workstation. Thus, petitioner seeks a review of the findings of the Court of Appeals for being speculative[25] and prays that its decision and resolution be reversed.[26] Petitioner submits that while this Court is not a trier of facts and its jurisdiction under Rule 45 of the Rules of Court is confined to a review of questions of law, the contradictory findings of the NLRC and Court of Appeals provide sufficient justification for the review of the facts.[27]

Respondent, on the other hand, reiterates his story that the order slip was already altered when Mission gave it to him; that he was able to confirm the cancellation of some orders from Alcoseba and Hiyas; that the receipt he printed was based on the order slip for six (6) sets of dinner; that Mission gave him ₱3,100.00 as payment and he returned ₱64.00 as change.[28] Respondent also contends that a review of the findings of fact of the Court of Appeals is not proper in a petition for review on *certiorari*. The findings of the Court of Appeals were supported by the evidence on record and consistent with the findings of

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[24] *Id.* at 211.

[25] *Id.* at 216-217.

[26] *Id.* at 218.

[27] *Id.* at 212-213.

[28] *Id.* at 190-191.

the Labor Arbiter. Hence, the decision of the Court of Appeals is conclusive and must be accorded finality.[29]

As a rule, a petition for review under Rule 45[30] of the Rules of Court must raise only questions of law. However, the rule has exceptions such as when the findings of the Labor Arbiter, NLRC and Court of Appeals vary,[31] as in this case.

After a full review of the case, we are constrained to reverse the Court of Appeals.

The law requires that an employer shall not terminate the services of an employee except for a just or authorized cause. Otherwise, an employee unjustly dismissed from work is entitled to reinstatement and full backwages.[32] The law also requires the employer to observe due process in termination cases.[33]

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[29] *Id.* at 202.

[30] RULE 45

APPEAL TO THE SUPREME COURT

SECTION 1. *Filing of petition with Supreme Court* -- A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth. (see also A.M. No. 07-7-12-SC, took effect on 27 December 2007.)

[31] *Suldao v. Cimech System Construction, Inc.*, G.R. No. 171392, 30 October 2006, 506 SCRA 256, 260.

[32] LABOR CODE, ART. 279.

[33] LABOR CODE, ART. 277(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. Any decision taken by the employer shall be without prejudice to the right of the worker to contest the validity or legality of his dismissal

In *Agabon v. National Labor Relations Commission*,[34] we ruled that violation of the employee's statutory right to due process makes the employer liable to pay indemnity in the form of nominal damages. The law further requires that the burden of proving the cause for termination rests with the employer.[35]

In this case, we are in agreement that petitioner's evidence proved that respondent is guilty of dishonesty and of stealing money entrusted to him as cashier. Instead of reporting ₱10,100.00 as payment by the guests for their dinner, respondent cashier only reported ₱3,036.00 as shown by the receipt which he admitted to have issued. The receipt which bears his name "NITO" was printed at "22:40" (10:40 p.m.) or 1 hour and 40 minutes after the guests had left at 9:00 p.m. Two other receipts were issued for the same amount at "22:39:55" and "22:40:01". Moreover, respondent's claim that he received ₱3,100.00 only and gave Mission ₱64.00 as change is not shown by the receipt that he issued. The issued receipt does not show that change was given. In addition, the amount indicated in the receipt does not coincide with Dual's contention that only four (4) dishes were cancelled and two (2) dishes were given free of charge. If such were the case, then the amount charged to the guests should have been for eight (8) sets of dinner and not six (6) sets. As established during the clarificatory hearing, twelve (12) sets of dinner were served to guests and two (2) dinner sets were given to the tour guides free of charge. It is clearly indicated in the altered order slip that six (6) out of the twelve (12) sets of dinner were cancelled.

The allegation of Dual that six (6) dinner sets were indeed cancelled as evidenced by the dishes he allegedly saw in the utensil station is negated by the testimonies of the kitchen staff

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by filing a complaint with the regional branch of the National Labor Relations Commission. The burden of proving that the termination was for a valid or authorized cause shall rest on the employer. x x x

[34] G.R. No. 158693, 17 November 2004, 442 SCRA 573, 617.

[35] LABOR CODE, ART. 277(b).

(Chef Armand Galica, Butcher Alegrado and Dessert-in-charge John Marollano) that twelve (12) set meals were served and consumed. These testimonies coincide with the claim of waiters Hiyas and Mission that fourteen (14) sets of dinner were served. The serving of food eliminates the argument of cancellation.

The alibi of cancellation has no leg to stand on. The standard operating procedure of Maribago dictates that in cases of cancellation, the order slip has to be countersigned by the attending waiter (which in this case should have been Chief Waiter Hiyas) but such was not so in this case.

The foregoing facts explain why Dual and Alcoseba tried twice to convince Mission to cover up their crime. They even asked Mission to take the fall by asking him to admit that he altered the order slip from twelve (12) sets of dinner to six (6) sets.

In fine, what is damning to the cause of Dual is the receipt which he admittedly issued. The receipt was issued long after the guests had left (9:00 p.m.) and after the alteration of the order slip (9:45 p.m.) was done. Such fact led us to the conclusion that he consented to and participated in the anomaly.

Respondent's acts constitute serious misconduct which is a just cause for termination under the law.[36] Theft committed by an employee is a valid reason for his dismissal by the employer. Although as a rule this Court leans over backwards to help workers and employees continue with their employment or to mitigate the penalties imposed on them, acts of dishonesty in the handling of company property, petitioner's income in this case, are a different matter.[37]

Withal, the law, in protecting the rights of the laborers, authorizes neither oppression nor self-destruction of the employer. While the Constitution is committed to the policy of social justice

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[36] LABOR CODE, ART. 282(a).

[37] *Firestone Tire and Rubber Co. of the Phils. v. Lariosa*, 232 Phil. 201, 206 (1987).

and the protection of the working class, it should not be supposed that every labor dispute will be automatically decided in favor of labor. The management also has its own rights, as such, are entitled to respect and enforcement in the interest of simple fair play. Out of its concern for those with less privileges in life, the Supreme Court has inclined more often than not toward the worker and upheld his cause in his conflicts with the employer. Such favoritism, however, has not blinded the Court to the rule that justice is in every case for the deserving, to be dispensed in the light of the established facts and applicable law and doctrine.[38]

Regarding the due process requirement, petitioner had complied with it as clearly shown by the facts.

WHEREFORE, the petition is *GRANTED*. The assailed Decision and Resolution dated 7 March 2007 and 30 July 2007, respectively, of the Court of Appeals in CA-G.R. SP No. 02062 are *REVERSED* and *SET ASIDE*. The complaint of respondent Nito Dual is *DISMISSED*.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J. (Chairperson), Brion,[*] *Del Castillo,*[**] and *Abad,*[***] *JJ.,* concur.

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[38] *Mercury Drug Corporation v. National Labor Relations Commission,* G.R. No. 75662, 15 September 1989, 177 SCRA 580, 587.

[*] Designated as an additional member in lieu of Associate Justice Teresita J. Leonardo-De Castro per Special Order No. 856 dated 1 July 2010.

[**] Designated as Acting Working Chairperson in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 853 dated 1 July 2010.

[***] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special Order No. 869 dated 5 July 2010.

THIRD DIVISION

[G.R. No. 181735. July 20, 2010]

LAND REGISTRATION AUTHORITY, represented by HON. BENEDICTO ULEP, in his capacity as Administrator, HON. EDILBERTO R. FELICIANO, Deputy Administrator and Chairman, BAC-PGSM, HON. OFELIA ABUEG-STA. MARIA, Vice-Chairman, BAC-PGM, ELISA OCAMPO, EDELMIRA N. SALAZAR, ATTY. JOSEFINA MONTANER, ROSETTE MABUNAY, CHERRY HERNANDEZ, NOEL SABARIZA, as Members, BAC-PGSM, *petitioner, vs.* **LANTING SECURITY AND WATCHMAN AGENCY, represented by ATTY. THOMAS L. LANTING,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE GOVERNMENT PROCUREMENT ACT (R.A. NO. 9184); ANNULMENT OF AWARD; PROTESTS ON DECISION OF THE BIDS AND AWARDS COMMITTEE (BAC), REQUIREMENTS; NON-COMPLIANCE WITH THE PROTEST PROCESS, EFFECT THEREOF.— Section 55 of R.A. No. 9184 sets three requirements that must be met by a party desiring to protest the decision of the Bids and Awards Committee (BAC). These are: (1) the protest must be in writing, in the form of a verified position paper; (2) the protest must be submitted to the head of the procuring entity; and (3) the payment of a non-refundable protest fee. Respondent's letter of November 19, 2004 to the BAC-PGSM Chairman cannot be considered as the protest required under Section 55 of R.A. No. 9184 as it was not verified and the protest fee was not paid. Respondent thus failed to avail of the correct protest procedure prescribed under Section 55 of R.A. No. 9184 before it filed its petition for annulment of the award before the RTC. Section 58 of the said law explicitly requires that cases filed in violation of the protest process of Section 55 *"shall be dismissed for lack of jurisdiction."*

2. ID.; ID.; ID.; ID; COURT ACTIONS MAY BE RESORTED TO ONLY AFTER COMPLETION OF THE PROTEST PROCEDURE PRESCRIBED BY LAW; WAIVER OF PROTEST FEE, NOT SUFFICIENT.— Even if the Court were to credit the appellate court's pronouncement that the LRA had waived payment of the protest fee, the trial court still could not have validly acquired jurisdiction over respondent's petition for annulment for failure to heed the requirement under Section 58 that court actions may be resorted to only after the protest contemplated in Section 55 shall have been completed. The trial court not having acquired jurisdiction over respondent's complaint, discussion of the issue on respondent's claim for unpaid compensation against LRA is rendered unnecessary. Suffice it to state that respondent can pursue such claim before the proper forum, within the proper period.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Romeo N. Bartolome for respondent.

D E C I S I O N

CARPIO MORALES, *J.*:

Petitioner Land Registration Authority (LRA) entered into a six-month security service contract with Lanting Security and Watchman Agency (respondent) from July 1, 2002 to December 31, 2002.

After several extensions of the contract or in the second quarter of 2004, LRA issued an invitation to bid for the award of a new security service contract. Respondent and 15 other prospective bidders, including Quiambao Risk Management Specialist (Quiambao), submitted their respective letters of intent to bid. Of the 16 bidders, six qualified including respondent and Quiambao.

Via letter of November 19, 2004,[1] respondent requested Edilberto R. Feliciano, LRA Chairman of the Bids and Awards

[1] Records, Vol. I, p. 37.

Committee-Procurement of Goods, Services and Materials (BAC-PGSM), for it to be declared as the winning bidder.

Before any award could be made, respondent, alleging that BAC-PGSM committed bidding irregularities, lodged a complaint before the Philippine Association of Detective and Protective Agency Operator, Inc. (PADPAO)[2] which thereupon requested LRA to hold in abeyance the awarding of the contract for security service to any of the bidders pending investigation of respondent's complaint.[3]

By letter of November 24, 2004,[4] LRA informed respondent that its contract was extended on a "day to day" basis. By a subsequent letter of December 6, 2004,[5] it advised respondent to pull out its security personnel from the LRA premises to give way to "the lowest calculated responsive bidder" which would take over on December 16, 2004.

On December 16, 2004, respondent, through its representative Atty. Thomas Lanting, filed a Petition for Annulment of Public Bidding and Award with Prayer for the Issuance of a Temporary Restraining Order (TRO) and/or Writ of Preliminary Prohibitive Injunction[6] before the Regional Trial Court (RTC) of Quezon City. The petition of respondent was docketed as Civil Case No. Q-04-54385.

In its Answer with Counterclaim[7] to respondent's petition for annulment, LRA raised lack of jurisdiction as a special and affirmative defense on the ground that respondent failed to comply with the protest mechanism provided under Article XVII of Republic Act (R.A.) No. 9184 or the Government Procurement Act.

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[2] *Id.* at 38-39.

[3] *Id.* at 58.

[4] *Id.* at 59.

[5] *Id.* at 60.

[6] *Id.* at 1-11.

[7] *Id.* at 203-210.

Pending trial of the case, the trial court, acting on respondent's motion of May 20, 2005,[8] issued Order of June 28, 2005[9] directing LRA to pay compensation to respondent's security guards for actual services rendered from December 16, 2004 onwards. It held that in consonance with the principle of *quantum meruit* as well as with the principle against unjust enrichment, LRA must pay the compensation of respondent's security guards who actually rendered services from December 16, 2004 and every month thereafter until further order, based on their latest contract of services.

LRA assailed via *certiorari* before the Court of Appeals the trial court's June 28, 2005 Order.[10]

In the meantime, the trial court, on respondent's motion, dismissed its complaint by Order of August 24, 2006.[11]

The appellate court, by Decision of September 19, 2007,[12] denied LRA's petition for *certiorari*, and held that, among other things, the trial court's order directing LRA to pay the salaries of respondent's security guards based on their latest contract, "for the sake of justice and equity, and in consonance with the salutary principle of non-enrichment at another's expense."[13]

The LRA filed a Motion for Reconsideration[14] of the appellate court's decision, maintaning that the trial court did not have jurisdiction over the case because of respondent's failure to comply

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[8] *Id.* at 278-281.

[9] *Id.* at 284-286.

[10] CA *rollo,* pp. 10-35.

[11] Records, Vol. II, p. 385.

[12] CA *rollo,* pp. 153-167. Penned by Justice Marina L. Buzon, with the concurrence of Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo.

[13] *Id.* at 165.

[14] CA *rollo,* pp. 168-176.

with the protest mechanism provided for in R.A. No. 9184 as it did not pay the protest fee as required by Section 55.[15]

The appellate court, by Resolution of February 15, 2008,[16] denied LRA's motion in this wise:

> It should be noted that Lanting wrote a letter dated November 19, 2004 to LRA stating that the bid submitted by Quiambao failed to comply with the prescribed PADPAO rate and should be disqualified and that since it submitted the lowest bid, the contract should be awarded to it. It appears that although no protest fee was paid by Lanting, LRA entertained the protest, informed the former that the contract was awarded to the lowest calculated responsive bidder and advised it to pull out its security personnel as it would no longer be allowed access to the premises. Thus, the fact that LRA entertained the protest of Lanting without requiring the latter to pay the protest fee only showed that it waived said requirement of the filing of the protest fee, the amount of which was never mentioned by LRA in any of its pleadings.[17] (underscoring supplied)

Hence, the present Petition for Review on *Certiorari*,[18] petitioner maintaining:

1. that the trial court did not have jurisdiction over respondent's Petition for Annulment; and
2. that the appellate court gravely abused its discretion when it issued the assailed orders on the basis of *quantum meruit.*

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[15] **Section 55.** *Protests on Decisions of the BAC.*— Decisions of the BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying a non-refundable protest fee. The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR.

[16] CA *rollo*, pp. 185-187. Penned by Justice Marina L. Buzon, with the concurrence of Justices Rosmari D. Carandang and Mariflor P. Punzalan Castillo.

[17] *Id.* at 186.

[18] *Rollo*, pp. 7-50.

The petition is meritorious.

Section 55 of R.A. No. 9184 provides:

Protests on Decisions of the BAC. – Decisions of the BAC in all stages of procurement may be protested to the head of the procuring entity and shall be in writing. Decisions of the BAC may be protested by filing a verified position paper and paying a non-refundable protest fee. The amount of the protest fee and the periods during which the protests may be filed and resolved shall be specified in the IRR,

while Section 58 thereof provides:

Resort to Regular Courts: Certiorari. – Court action may be resorted to only after the protests contemplated in this Article shall have been completed. Cases that are filed in violation of the process specified in this Article shall be dismissed for lack of jurisdiction. The Regional Trial Court shall have jurisdiction over final decisions of the procuring entity. Court action shall be governed by Rule 65 of the 1997 Rules of Civil Procedure.

This provision is without prejudice to any law conferring on the Supreme Court the sole jurisdiction to issue temporary restraining orders or injunctions relating to Infrastructure projects of the government.

Section 55 of R.A. No. 9184 sets three requirements that must be met by a party desiring to protest the decision of the Bids and Awards Committee (BAC). These are: (1) the protest must be in writing, in the form of a verified position paper; (2) the protest must be submitted to the head of the procuring entity; and (3) the payment of a non-refundable protest fee.[19]

Respondent's letter of November 19, 2004[20] to the BAC-PGSM Chairman cannot be considered as the protest required under Section 55 of R.A. No. 9184 as it was not verified and the protest fee was not paid.

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[19] *Department of Budget and Management Procurement Service v. Kolonwel Trading*, G.R. No. 175608, June 8, 2007, 524 SCRA 591 (601-602).

[20] *Supra* note 1.

Respondent thus failed to avail of the correct protest procedure prescribed under Section 55 of R.A. No. 9184 before it filed its petition for annulment of the award before the RTC. Section 58 of the said law explicitly requires that cases filed in violation of the protest process of Section 55 *"shall be dismissed for lack of jurisdiction."*

Thus, in *Department of Budget and Management Procurement Service v. Kolonwel Trading,*[21] this Court declared null and void the trial court's order annulling Inter-Agency Bids on Awards Committee's (IABAC's) resolution disqualifying Kolonwel from the bidding for the supply and delivery of textbooks and teacher's manuals to the Department of Education due to its non-compliance with Section 55 of R.A. No. 9184.

Respondent's letters of May 18, 2006 and June 28, 2006 in which it requested reconsideration of its disqualification cannot plausibly be given the status of a protest in the context of the aforequoted provisions of R.A. No. 9184. For one, neither of the letter-request was addressed to the head of the procuring entity, in this case the DepEd Secretary or the head of the DBM Procurement Service, as required by law. For another, the same letters were unverified. And not to be overlooked of course is the fact that the third protest-completing requirement, *i.e.*, payment of protest fee, was not complied with.

Given the above prospective, it cannot really be said that the respondent availed itself of the protest procedure prescribed under Section 55 of R.A. No. 9184 before going to the RTC of Manila *via* a petition for *certiorari.* Stated a bit differently, respondent sought judicial intervention even before duly completing the protest process. Hence, its filing of *SP Civil Case No. 06-116010* was precipitate. Or, as the law itself would put it, cases that are filed in violation of the protest process "shall be dismissed for lack of jurisdiction."

Considering that the respondent's petition in RTC Manila was actually filed in violation of the protest process set forth in Section 55 of R.A. No. 9184, that court could not have lawfully acquired

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[21] *Vide Department of Budget and Management Procurement Service v. Kolonwel Trading*, G.R. No. 175608, June 8, 2007, 524 SCRA 591.

jurisdiction over the subject matter of this case. In fact, Section 58, *supra*, of R.A. No. 9184 emphatically states that cases filed in violation of the protest process therein provided *"shall be dismissed for lack of jurisdiction."*[22] (italics in the original; underscoring supplied)

Even if the Court were to credit the appellate court's pronouncement that the LRA had waived payment of the protest fee, the trial court still could not have validly acquired jurisdiction over respondent's petition for annulment for failure to heed the requirement under Section 58 that court actions may be resorted to only after the protest contemplated in Section 55 shall have been completed.

The trial court not having acquired jurisdiction over respondent's complaint, discussion of the issue on respondent's claim for unpaid compensation against LRA is rendered unnecessary. Suffice it to state that respondent can pursue such claim before the proper forum, within the proper period.

WHEREFORE, the petition is *GRANTED*. The Court of Appeals Decision of September 19, 2007 and Resolution of February 15, 2008 are *REVERSED* and *SET ASIDE*. The RTC's order of June 28, 2005 and Resolution of August 22, 2005 are declared *NULL* and *VOID* for lack of jurisdiction.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.*, concur.

FIRST DIVISION

[G.R. No. 182398. July 20, 2010]

BENNY Y. HUNG,[*] *petitioner, vs.* **BPI CARD FINANCE CORP.,** *respondent.*

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[22] *Id.* at 601-602.

[*] Additional member per Special Order No. 843 dated May 17, 2010.

[*] Also referred to as Benny Y. Hung and Benny W. Hung in the records.

SYLLABUS

1. REMEDIAL LAW; PLEADINGS AND PRACTICE; AMENDMENT OF PLEADINGS; FORMAL AMENDMENTS; FORMAL CORRECTION ON THE NAME OF THE DEFENDANT CAN BE MADE AT ANY STAGE OF THE ACTION, EVEN IF THE CASE IS ALREADY BEFORE THE SUPREME COURT; CORRECTION CAN BE MADE BY THE COURT *MOTU PROPRIO*.— Indeed, we can validly make the formal correction on the name of the defendant from B & R Sportswear Distributor, Inc. to B & R Footwear Distributors, Inc. Such correction only confirms the voluntary correction already made by B & R Footwear Distributors, Inc. which answered the complaint and claimed that it is the defendant. Section 4, Rule 10 of the Rules of Court also allows a summary correction of this formal defect. Such correction can be made even if the case is already before us as it can be made at any stage of the action. Respondent's belated prayer for correction is also sufficient since a court can even make the correction *motu proprio*. More importantly, no prejudice is caused to B & R Footwear Distributors, Inc. considering its participation in the trial. Hence, petitioner has basis for saying that respondent should have tried to execute the judgment against B & R Footwear Distributors, Inc.

2. ID.; ID.; ID.; ID.; COMPLETE CORRECTION ON THE NAME OF DEFENDANT IN CASE AT BAR, PROPER; PETITIONER WAS DECLARED THE PROPER DEFENDANT AND PERSONALLY LIABLE TO THE RESPONDENT.— But we cannot agree with petitioner that B & R Footwear Distributors, Inc. or Guess? Footwear is the only "real contracting party." The facts show that B & R Sportswear Enterprises is also a contracting party. Petitioner conveniently ignores this fact although he himself signed the second agreement indicating that Guess? Footwear is also referred to as B & R Sportswear Enterprises. Petitioner also tries to soften the significance of his directive to the bank, under the letterhead of B & R Footwear Distributor's, Inc., to transfer the funds belonging to his sole proprietorship B & R Sportswear Enterprises as partial payment to the overpayments made by respondent to Guess? Footwear. He now claims the partial payment as his payment to respondent "in the course

of their mutual transactions." Clearly, petitioner has represented in his dealings with respondent that Guess? Footwear or B & R Footwear Distributors, Inc. is also B & R Sportswear Enterprises. For this reason, the more complete correction on the name of defendant should be from B & R Sportswear Distributor, Inc. to B & R Footwear Distributors, Inc. and Benny Hung. Petitioner is the proper defendant because his sole proprietorship B & R Sportswear Enterprises has no juridical personality apart from him. Again, the correction only confirms the voluntary correction already made by B & R Footwear Distributors, Inc. or Guess? Footwear which is also B & R Sportswear Enterprises. Correction of this formal defect is also allowed by Section 4, Rule 10 of the Rules of Court. Relatedly, petitioner cannot complain of non-service of summons upon his person. Suffice it to say that B & R Footwear Distributors, Inc. or Guess? Footwear which is also B & R Sportswear Enterprises had answered the summons and the complaint and participated in the trial. Accordingly, we find petitioner liable to respondent and we affirm, with the foregoing clarification, the finding of the RTC that he signed the second merchant agreement in his personal capacity.

3. COMMERCIAL LAW; CORPORATION LAW; CORPORATIONS; DOCTRINE OF PIERCING THE VEIL; WHETHER THE SEPARATE PERSONALITY OF A CORPORATION SHOULD BE PIERCED HINGES ON FACTS PLEADED AND PROVED.— The correction on the name of the defendant has rendered moot any further discussion on the doctrine of piercing the veil of corporate fiction. In any event, we have said that whether the separate personality of a corporation should be pierced hinges on facts pleaded and proved. In seeking to pierce the corporate veil of B & R Footwear Distributors, Inc., respondent complained of "deceit, bad faith and illegal scheme/maneuver." As stated earlier, respondent has abandoned such accusation. And respondent's proof – the SEC certification that B & R Sportswear Distributor, Inc. is not an existing corporation – would surely attest to no other fact but the inexistence of a corporation named B & R Sportswear Distributor, Inc. as such name only surfaced because of its own error. Hence, we cannot agree with the Court of Appeals that petitioner has represented a non-existing

corporation and induced the respondent and the RTC to believe in his representation.

4. CIVIL LAW; DAMAGES; INTEREST; LEGAL INTEREST RATE OF 6% PER ANNUM IMPOSED FOR OBLIGATION NOT ARISING FROM A LOAN OR FORBEARANCE OF MONEY.— With regard to the imposable rate of legal interest, we find application of the rule laid down by this Court in *Eastern Shipping Lines, Inc. vs. Court of Appeals* xxx. Since this case before us involves an obligation not arising from a loan or forbearance of money, the applicable interest rate is 6% per annum. The legal interest rate of 6% shall be computed from 4 October 1999, the date the letter of demand was presumably received by the defendant. And in accordance with the aforesaid decision, the rate of 12% per annum shall be charged on the total amount outstanding, from the time the judgment becomes final and executory until its satisfaction.

APPEARANCES OF COUNSEL

Paul Bernard T. Irao for petitioner.
Ng and Associates for respondent.

D E C I S I O N

PEREZ, *J.*:

For our resolution is the instant petition for review by *certiorari* assailing the Decision[1] dated 31 August 2007 and Resolution[2] dated 14 April 2008 of the Court of Appeals in CA-G.R. CV No. 84641. The Court of Appeals' Decision affirmed the Order[3] dated 30 November 2004 of the Regional Trial Court (RTC) of

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa, with Acting Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Edgardo F. Sundiam, concurring. *Rollo*, pp. 29-41.

[2] Penned by Associate Justice Monina Arevalo-Zenarosa, with Presiding Justice Conrado M. Vasquez, Jr. and Associate Justice Edgardo F. Sundiam, concurring. *Id.* at 43-45.

[3] *Id.* at 33.

Makati City in Civil Case No. 99-2040, entitled *BPI Card Finance Corporation v. B & R Sportswear Distributor, Inc.*, finding petitioner Benny Hung liable to respondent BPI Card Finance Corporation (BPI for brevity) for the satisfaction of the RTC's 24 June 2002 Decision[4] against B & R Sportswear Distributor, Inc. The pertinent portion of the Decision states:

x x x x x x x x x

The delivery by the plaintiff to the defendant of ₱3,480,427.43 pursuant to the Merchant Agreements was sufficiently proven by the checks, Exhibits B to V-5. Plaintiff's evidence that the amount due to the defendant was ₱139,484.38 only was not controverted by the defendant, hence the preponderance of evidence is in favor of the plaintiff. The lack of controversy on the amount due to the defendant when considered with the contents of the letter of the defendant, Exhibit TT when it returned to plaintiff ₱963,604.03 "as partial settlement of overpayments made by BPI Card Corporation to B & R Sportswear, pending final reconciliation of exact amount of overpayment" amply support the finding of the Court that plaintiff indeed has a right to be paid by the defendant of the amount of ₱2,516,826.68.

Plaintiff claims interest of 12%. The obligation of the defendant to return did not arose out of a loan or forbearance of money, hence, applying *Eastern Shipping Lines Inc. vs. Court of Appeals*, 234 SCRA 78 (1994) the rate due is only 6% computed from October 4, 1999 the date the letter of demand was presumably received by the defendant.

The foregoing effectively dispose of the defenses raised by the defendant and furnish the reason of the Court for not giving due course to them.

WHEREFORE, judgment is rendered directing defendant to pay plaintiff ₱2,516,826.68 with interest at the rate of 6% from October 4, 1999 until full payment.

The antecedent facts of the case are as follows:

Guess? Footwear and BPI Express Card Corporation entered into two merchant agreements,[5] dated 25 August 1994 and 16

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[4] Penned by Judge Sixto Marella, Jr., *Id.* at 92-94.

[5] *Id.* at 201-202.

November 1994, whereby Guess? Footwear agreed to honor validly issued BPI Express Credit Cards presented by cardholders in the purchase of its goods and services. In the first agreement, petitioner Benny Hung signed as owner and manager of Guess? Footwear. He signed the second agreement as president of Guess? Footwear which he also referred to as B & R Sportswear Enterprises.

From May 1997 to January 1999, respondent BPI mistakenly credited, through three hundred fifty-two (352) checks, Three Million Four Hundred Eighty Thousand Four Hundred Twenty-Seven Pesos and 23/100 (₱3,480,427.23) to the account of Guess? Footwear. When informed of the overpayments,[6] petitioner Benny Hung transferred Nine Hundred Sixty-Three Thousand Six Hundred Four Pesos and 03/100 (₱963,604.03) from the bank account of B & R Sportswear Enterprises to BPI's account as partial payment.[7] The letter dated 31 May 1999 was worded as follows:

> Dear Sir/Madame
>
> This is to authorize BPI Ortigas Branch to transfer the amount of ₱963,604.03 from the account of B & R Sportswear Enterprises to the account of BPI Card Corporation.
>
> **The aforementioned amount shall represent partial settlement of overpayments** made by BPI Card Corporation to B & R Sportswear, pending final reconciliation of exact amount of overpayment. *(Emphasis supplied.)*
>
> Thank you for your usual kind cooperation.
>
> Very truly yours,
>
> (Sgd.)
> Benny Hung

In a letter dated 27 September 1999, BPI demanded the balance payment amounting to Two Million Five Hundred Sixteen

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[6] *Id.* at 30-31 and 93.

[7] *Id.* at 31.

Thousand Eight Hundred Twenty-Six Pesos and 68/100 (₱2,516,826.68), but Guess? Footwear failed to pay.

BPI filed a collection suit before the RTC of Makati City naming as defendant B & R Sportswear Distributor, Inc.[8] Although the case was against B & R Sportswear Distributor, Inc., it was B & R Footwear Distributors, Inc., that filed an answer, appeared and participated in the trial.[9]

On 24 June 2002, the RTC rendered a decision ordering defendant B & R Sportswear Distributor, Inc., to pay the plaintiff (BPI) ₱2,516,826.68 with 6% interest from 4 October 1999. The RTC ruled that the overpayment of ₱3,480,427.43 was proven by checks credited to the account of Guess? Footwear and the ₱963,604.03 partial payment proved that defendant ought to pay ₱2,516,826.68[10] more. During the execution of judgment, it was discovered that B & R Sportswear Distributor, Inc., is a non-existing entity. Thus, the trial court failed to execute the judgment.

Consequently, respondent filed a Motion[11] to pierce the corporate veil of B & R Footwear Distributors, Inc. to hold its stockholders and officers, including petitioner Benny Hung, personally liable. In its 30 November 2004 Order, the RTC ruled that petitioner is liable for the satisfaction of the judgment, since he signed the merchant agreements in his personal capacity.[12]

The Court of Appeals affirmed the order and dismissed petitioner's appeal. It ruled that since B & R Sportswear Distributor, Inc. is not a corporation, it therefore has no personality separate from petitioner Benny Hung who induced the respondent BPI and the RTC to believe that it is a corporation.[13]

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[8] *Id.* at 92.

[9] *Id.* at 31-32.

[10] Based on the figures stated, the amount payable should be ₱2,516,823.40, or ₱3.28 lower. *Id.* at 94.

[11] *Id.* at 79-83.

[12] *Id.* at 33.

[13] *Id.* at 38-39.

After his motion for reconsideration was denied, petitioner filed the instant petition anchored on the following grounds:

I.

PIERCING THE VEIL OF CORPORATE FICTION CANNOT JUSTIFY EXECUTION AGAINST [HIM].

II.

FOR LACK OF SERVICE OF SUMMONS AND A COPY OF THE COMPLAINT UPON [HIM], THE ASSAILED DECISION OF THE COURT OF APPEALS, AS WELL AS, ITS RESOLUTION DENYING [HIS] MOTION FOR RECONSIDERATION SHOULD BE DECLARED NULL AND VOID FOR LACK OF JURISDICTION.[14]

In essence, the basic issue is whether petitioner can be held liable for the satisfaction of the RTC's Decision against B & R Sportswear Distributor, Inc.? As we answer this question, we shall pass upon the grounds raised by petitioner.

Petitioner claims that he never represented B & R Sportswear Distributor, Inc., the non-existent corporation sued by respondent; that it would be unfair to treat his single proprietorship B & R Sportswear Enterprises as B & R Sportswear Distributor, Inc.; that the confusing similarity in the names should not be taken against him because he established his single proprietorship long before respondent sued; that he did not defraud respondent; that he even paid respondent "in the course of their mutual transactions;" and that without fraud, he cannot be held liable for the obligations of B & R Footwear Distributors, Inc. or B & R Sportswear Distributor, Inc. by piercing the veil of corporate fiction.

Petitioner also states that the "real corporation" B & R Footwear Distributors, Inc. or Guess? Footwear acknowledged itself as the "real defendant." It answered the complaint and participated in the trial. According to petitioner, respondent should have executed the judgment against it as the "real contracting party" in the merchant agreements. Execution against him was wrong

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[14] *Id.* at 17.

since he was not served with summons nor was he a party to the case. Thus, the lower courts did not acquire jurisdiction over him, and their decisions are null and void for lack of due process.

Respondent counters that petitioner's initial silence on the non-existence of B & R Sportswear Distributor, Inc. was intended to mislead. Still, the evidence showed that petitioner treats B & R Footwear Distributors, Inc. and his single proprietorship B & R Sportswear Enterprises as one and the same entity. Petitioner ordered the partial payment using the letterhead of B & R Footwear Distributor, Inc. and yet the fund transferred belongs to his single proprietorship B & R Sportswear Enterprises. This fact, according to respondent, justifies piercing the corporate veil of B & R Footwear Distributor, Inc. to hold petitioner personally liable.

Citing Sections 4 and 5, Rule 10 of the Rules of Court, respondent also prays that the name of the inexistent defendant B & R Sportswear Distributor, Inc. be amended and changed to Benny Hung and/or B & R Footwear Distributors, Inc.

Moreover, respondent avers that petitioner cannot claim that he was not served with summons because it was served at his address and the building standing thereon is registered in his name per the tax declaration.

At the outset, we note the cause of respondent's predicament in failing to execute the 2002 judgment in its favor: its own failure to state the correct name of the defendant it sued and seek a correction earlier. Instead of suing Guess? Footwear and B & R Sportswear Enterprises, the contracting parties in the merchant agreements, BPI named B & R Sportswear Distributor, Inc. as defendant. BPI likewise failed to sue petitioner Benny Hung who signed the agreements as owner/manager and president of Guess? Footwear and B & R Sportswear Enterprises. Moreover, when B & R Footwear Distributors, Inc. appeared as defendant, no corresponding correction was sought. Unfortunately, BPI has buried its omission by silence and lamented instead petitioner's alleged initial silence on the non-existence

of B & R Sportswear Distributor, Inc. Respondent even accused the "defendant" in its motion to pierce the corporate veil of B & R Footwear Distributors, Inc. of having "employed deceit, bad faith and illegal scheme/maneuver,"[15] an accusation no longer pursued before us.

Our impression that respondent BPI should have named petitioner as a defendant finds validation from (1) petitioner's own admission that B & R Sportswear Enterprises is his sole proprietorship and (2) respondent's belated prayer that defendant's name be changed to Benny Hung and/or B & R Footwear Distributors, Inc. on the ground that such relief is allowed under Sections 4[16] and 5,[17] Rule 10 of the Rules of Court.

Indeed, we can validly make the formal correction on the name of the defendant from B & R Sportswear Distributor, Inc. to B & R Footwear Distributors, Inc. Such correction only confirms the voluntary correction already made by B & R Footwear Distributors, Inc. which answered the complaint and claimed that it is the defendant. Section 4, Rule 10 of the Rules of Court also allows a summary correction of this formal defect. Such correction can be made even if the case is already before

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[15] *Id.* at 80.

[16] SEC. 4. *Formal amendments*. – A defect in the designation of the parties and other clearly clerical or typographical errors may be summarily corrected by the court at any stage of the action, at its initiative or on motion, provided no prejudice is caused thereby to the adverse party.

[17] SEC. 5. *Amendments to conform to or authorize presentation of evidence*. – When issues not raised by the pleadings are tried with the express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to amend does not affect the result of the trial of these issues. If evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended and shall do so with liberality if the presentation of the merits of the action and the ends of substantial justice will be subserved thereby. The court may grant a continuance to enable the amendment to be made.

us as it can be made at any stage of the action.[18] Respondent's belated prayer for correction is also sufficient since a court can even make the correction *motu proprio*. More importantly, no prejudice is caused to B & R Footwear Distributors, Inc. considering its participation in the trial. Hence, petitioner has basis for saying that respondent should have tried to execute the judgment against B & R Footwear Distributors, Inc.

But we cannot agree with petitioner that B & R Footwear Distributors, Inc. or Guess? Footwear is the only "real contracting party." The facts show that B & R Sportswear Enterprises is also a contracting party. Petitioner conveniently ignores this fact although he himself signed the second agreement indicating that Guess? Footwear is also referred to as B & R Sportswear Enterprises. Petitioner also tries to soften the significance of his directive to the bank, under the letterhead of B & R Footwear Distributor's, Inc., to transfer the funds belonging to his sole proprietorship B & R Sportswear Enterprises as partial payment to the overpayments made by respondent to Guess? Footwear. He now claims the partial payment as his payment to respondent "in the course of their mutual transactions."

Clearly, petitioner has represented in his dealings with respondent that Guess? Footwear or B & R Footwear Distributors, Inc. is also B & R Sportswear Enterprises. For this reason, the more complete correction on the name of defendant should be from B & R Sportswear Distributor, Inc. to B & R Footwear Distributors, Inc. and Benny Hung. Petitioner is the proper defendant because his sole proprietorship B & R Sportswear Enterprises has no juridical personality apart from him.[19] Again, the correction only confirms the voluntary correction already made by B & R Footwear Distributors, Inc. or Guess? Footwear which is also B & R Sportswear Enterprises. Correction of this formal defect is also allowed by Section 4, Rule 10 of the Rules of Court.

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[18] See also *Yao Ka Sin Trading v. Court of Appeals*, G.R. No. 53820, 15 June 1992, 209 SCRA 763, 780.

[19] *Id.* at 780.

Relatedly, petitioner cannot complain of non-service of summons upon his person. Suffice it to say that B & R Footwear Distributors, Inc. or Guess? Footwear which is also B & R Sportswear Enterprises had answered the summons and the complaint and participated in the trial.

Accordingly, we find petitioner liable to respondent and we affirm, with the foregoing clarification, the finding of the RTC that he signed the second merchant agreement in his personal capacity.

The correction on the name of the defendant has rendered moot any further discussion on the doctrine of piercing the veil of corporate fiction. In any event, we have said that whether the separate personality of a corporation should be pierced hinges on facts pleaded and proved.[20] In seeking to pierce the corporate veil of B & R Footwear Distributors, Inc., respondent complained of "deceit, bad faith and illegal scheme/maneuver." As stated earlier, respondent has abandoned such accusation. And respondent's proof – the SEC certification that B & R Sportswear Distributor, Inc. is not an existing corporation – would surely attest to no other fact but the inexistence of a corporation named B & R Sportswear Distributor, Inc. as such name only surfaced because of its own error. Hence, we cannot agree with the Court of Appeals that petitioner has represented a non-existing corporation and induced the respondent and the RTC to believe in his representation.

On petitioner's alleged intention to mislead for his initial silence on the non-existence of the named defendant, we find more notable respondent's own silence on the error it committed. Contrary to the allegation, the "real" defendant has even corrected respondent's error. While the evidence showed that petitioner has treated B & R Footwear Distributors, Inc. or Guess? Footwear as B & R Sportswear Enterprises, respondent did not rely on this ground in filing the motion to pierce the corporate veil of

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[20] See *General Credit Corporation v. Alsons Development and Investment Corporation*, G.R. No. 154975, 29 January 2007, 413 SCRA 225, 238.

B & R Footwear Distributors, Inc. Respondent's main contention therein was petitioner's alleged act to represent a non-existent corporation amounting to deceit, bad faith and illegal scheme/ maneuver.

With regard to the imposable rate of legal interest, we find application of the rule laid down by this Court in *Eastern Shipping Lines, Inc. vs. Court of Appeals*,[21] to wit:

> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded 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.

Since this case before us involves an obligation not arising from a loan or forbearance of money, the applicable interest rate is 6% per annum. The legal interest rate of 6% shall be computed from 4 October 1999, the date the letter of demand was presumably received by the defendant.[22] And in accordance with the aforesaid decision, the rate of 12% per annum shall be charged on the total amount outstanding, from the time the judgment becomes final and executory until its satisfaction.

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[21] G.R. No. 97412, 12 July 1994, 234 SCRA 78, 96-97.

[22] *Supra* note 4.

WHEREFORE, we *DENY* the petition for lack of merit, and *ORDER* B & R Footwear Distributors, Inc. and petitioner Benny Hung *TO PAY* respondent BPI Card Finance Corporation: (a) ₱2,516,823.40, representing the overpayments, with interest at the rate of 6% per annum from 4 October 1999 until finality of judgment; and (b) additional interest of 12% per annum from finality of judgment until full payment.

No pronouncement as to costs.

SO ORDERED.

Corona, C.J. (Chairperson), Brion,[*] *del Castillo,*[**] and *Abad,*[***] *JJ.,* concur.

THIRD DIVISION

[G.R. No. 185920. July 20, 2010]

JUANITA TRINIDAD RAMOS, ALMA RAMOS WORAK, MANUEL T. RAMOS, JOSEFINA R. ROTHMAN, SONIA R. POST, ELVIRA P. MUNAR, and OFELIA R. LIM, *petitioners, vs.* **DANILO PANGILINAN, RODOLFO SUMANG, LUCRECIO BAUTISTA and ROLANDO ANTENOR,** *respondents.*

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[*] Designated as an additional member in lieu of Associate Justice Teresita J. Leonardo-De Castro per Special Order No. 856 dated 1 July 2010.

[**] Designated as Acting Working Chairperson in lieu of Associate Justice Presbitero J. Velasco, Jr., per Special Order No. 853 dated 1 July 2010.

[***] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Special Order No. 869 dated 5 July 2010.

SYLLABUS

1. CIVIL LAW; FAMILY HOME; CANNOT BE SEIZED BY CREDITORS EXCEPT IN CERTAIN SPECIAL CASES.— Indeed, the general rule is that the family home is a real right which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated, which confers upon a particular family the right to enjoy such properties, which must remain with the person constituting it and his heirs. It cannot be seized by creditors except in certain special cases.

2. ID.; ID.; LEVY ON EXECUTION OVER FAMILY HOME, RULES.— *Kelley, Jr. v. Planters Products, Inc.* lays down the rules relative to the levy on execution over the family home, *viz*: No doubt, a family home is generally exempt from execution provided it was duly constituted as such. **There must be proof that the alleged family home was constituted jointly by the husband and wife or by an unmarried head of a family. It must be the house where they and their family actually reside and the lot on which it is situated**. **The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent,** or on the property of the unmarried head of the family. **The actual value of the family home shall not exceed, at the time of its constitution, the amount of ₱300,000 in urban areas and ₱200,000 in rural areas**. **Under the Family Code, there is no need to constitute the family home judicially or extrajudicially. All family homes constructed after the effectivity of the Family Code (August 3, 1988) are constituted as such by operation of law**. All existing family residences as of August 3, 1988 are considered family homes and are **prospectively** entitled to the benefits accorded to a family home under the Family Code. **The exemption is effective from the time of the constitution of the family home as such and lasts as long as any of its beneficiaries actually resides therein.** Moreover, the debts for which the family home is made answerable must have been incurred after August 3, 1988. **Otherwise (that is, if it was incurred prior to August 3, 1988), the alleged family home must be shown to have been constituted either judicially or extrajudicially pursuant to the Civil Code**.

3. ID.; ID.; EXEMPTION OF FAMILY HOME FROM EXECUTION; APPLICABLE RULES DEPEND ON WHEN THE FAMILY HOME WAS CONSTITUTED; CLAIM FOR EXEMPTION MUST BE SET UP AND PROVED.— For the family home to be exempt from execution, distinction must be made as to what law applies based on **when** it was constituted and what requirements must be complied with by the judgment debtor or his successors claiming such privilege. Hence, two sets of rules are applicable. If the family home was constructed *before* the effectivity of the Family Code or before August 3, 1988, **then it must have been constituted either judicially or extra-judicially as provided under Articles 225, 229-231 and 233 of the Civil Code**. Judicial constitution of the family home requires the filing of a verified petition before the courts and the registration of the court's order with the Registry of Deeds of the area where the property is located. Meanwhile, extrajudicial constitution is governed by Articles 240 to 242 of the Civil Code and involves the execution of a public instrument which must also be registered with the Registry of Property. Failure to comply with either one of these two modes of constitution will bar a judgment debtor from availing of the privilege. On the other hand, for family homes constructed *after* the effectivity of the Family Code on August 3, 1988, there is **no need to constitute extrajudicially or judicially**, and the exemption is effective from the time it was constituted and lasts as long as any of its beneficiaries under Art. 154 actually resides therein. Moreover, the family home should belong to the absolute community or conjugal partnership, or if exclusively by one spouse, its constitution must have been with consent of the other, and its value must not exceed certain amounts depending upon the area where it is located. Further, the debts incurred for which the exemption does not apply as provided under Art. 155 for which the family home is made answerable must have been incurred after August 3, 1988. And in both cases, whether under the Civil Code or the Family Code, it is not sufficient that the person claiming exemption merely alleges that such property is a family home. This claim for exemption must be set up and proved.

4. ID.; ID.; THE LAW'S PROTECTIVE MANTLE CANNOT BE AVAILED OF WHERE THE PARTIES FAILED TO PROVE THAT THE PROPERTY WAS JUDICIALLY OR

EXTRAJUDICIALLY CONSTITUTED AS THEIR FAMILY HOME.— In the present case, since petitioners claim that the family home was constituted *prior* to August 3, 1988, or as early as 1944, they must comply with the procedure mandated by the Civil Code. There being absolutely no proof that the Pandacan property was judicially or extrajudicially constituted as the Ramos' family home, the law's protective mantle cannot be availed of by petitioners.

APPEARANCES OF COUNSEL

Apolinario N. Lomabao, Jr. for petitioners.
Josue Ocampo Astive, Jr. for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

Respondents filed in 2003 a complaint[1] for illegal dismissal against E.M. Ramos Electric, Inc., a company owned by Ernesto M. Ramos (Ramos), the patriarch of herein petitioners. By Decision[2] of April 15, 2005, the Labor Arbiter ruled in favor of respondents and ordered Ramos and the company to pay the aggregate amount of **₱1,661,490.30** representing their backwages, separation pay, 13th month pay & service incentive leave pay.

The Decision having become final and executory and no settlement having been forged by the parties, the Labor Arbiter issued on September 8, 2005 a writ of execution[3] which the Deputy Sheriff of the National Labor Relations Commission (NLRC) implemented by levying a property in Ramos' name covered by TCT No. 38978, situated in Pandacan, Manila (Pandacan property).

Alleging that the Pandacan property was the family home, hence, exempt from execution to satisfy the judgment award,

[1] NLRC records, Vol. I, p. 2.

[2] *Id.* at 78-86. Penned by Labor Arbiter Joel S. Lustria.

[3] *Id.* at 96-96-98.

Ramos and the company moved to quash the writ of execution.[4] Respondents, however, averred that the Pandacan property is not the Ramos family home, as it has another in Antipolo, and the Pandacan property in fact served as the company's business address as borne by the company's letterhead. Respondents added that, assuming that the Pandacan property was indeed the family home, only the value equivalent to ₱300,000 was exempt from execution.

By Order[5] of August 2, 2006, the Labor Arbiter denied the motion to quash, hence, Ramos and the company appealed to the NLRC which affirmed the Labor Arbiter's Order.

Ramos and the company appealed to the Court of Appeals during the pendency of which Ramos died and was substituted by herein petitioners. Petitioners also filed before the NLRC, as third-party claimants, a Manifestation questioning the Notice to Vacate issued by the Sheriff, alleging that assuming that the Pandacan property may be levied upon, the family home straddled two (2) lots, including the lot covered by TCT No. 38978, hence, they cannot be asked to vacate the house. The Labor Arbiter was later to deny, by Decision of May 7, 2009, the third-party claim, holding that Ramos' death and petitioners' substitution as his compulsory heirs would not nullify the sale at auction of the Pandacan property. And the NLRC[6] would later affirm the Labor Arbiter's ruling, noting that petitioners failed to exercise their right to redeem the Pandacan property within the one 1 year period or until January 16, 2009. The NLRC brushed aside petitioners' contention that they should have been given a fresh period of 1 year from the time of Ramos' death on July 29, 2008 or until July 30, 2009 to redeem the property, holding that to do so would give petitioners, as mere heirs, a better right than the Ramos'.

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

[5] *Id.* at 138-141.

[6] NLRC records, pp. 278-286. Penned by Presiding Commissioner Alex A. Lopez and concurred in by Commissioners Gregorio O. Bilog, III and Pablo C. Espiritu, Jr.

As to petitioners' claim that the property was covered by the regime of conjugal partnership of gains and as such only Ramos' share can be levied upon, the NLRC ruled that petitioners failed to substantiate such claim and that the phrase in the TCT indicating the registered owner as "Ernesto Ramos, married to Juanita Trinidad, Filipinos," did not mean that both owned the property, the phrase having merely described Ramos' civil status.

Before the appellate court, petitioners alleged that the NLRC erred in ruling that the market value of the property was ₱2,177,000 as assessed by the City Assessor of Manila and appearing in the documents submitted before the Labor Arbiter, claiming that at the time the Pandacan property was constituted as the family home in 1944, its value was way below ₱300,000; and that Art. 153 of the Family Code was applicable, hence, they no longer had to resort to judicial or extrajudicial constitution.

In the assailed Decision[7] of September 24, 2008, the appellate court, in denying petitioners' appeal, held that the Pandacan property was not exempted from execution, for while "Article 153[8] of the Family Code provides that the family home is deemed constituted on a house and lot from the time it is occupied as a family residence, [it] did not mean that the article has a retroactive effect such that all existing family residences are deemed to have been constituted as family homes at the time of their occupation prior to the effectivity of the Family Code."

The appellate court went on to hold that what was applicable law were Articles 224 to 251 of the Civil Code, hence, there was still a need to either judicially or extrajudicially constitute

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[7] *Rollo*, pp. 7-19. Penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Regalado E. Maambong and Sixto C. Marella, Jr.

[8] **Art. 153.** The family home is deemed constituted on a house and lot from the time it is occupied as a family residence. From the time of its constitution and so long as any of its beneficiaries actually resides therein, the family home continues to be such and is exempt from execution, forced sale or attachment except as hereinafter provided and to the extent of the value allowed by law.

the Pandacan property as petitioners' family home before it can be exempted; and as petitioners failed to comply therewith, there was no error in denying the motion to quash the writ of execution.

The only question raised in the present petition for review on *certiorari* is the propriety of the Court of Appeals Decision holding that the levy upon the Pandacan property was valid.

The petition is devoid of merit.

Indeed, the general rule is that the family home is a real right which is gratuitous, inalienable and free from attachment, constituted over the dwelling place and the land on which it is situated, which confers upon a particular family the right to enjoy such properties, which must remain with the person constituting it and his heirs. It cannot be seized by creditors except in certain special cases.[9]

Kelley, Jr. v. Planters Products, Inc.[10] lays down the rules relative to the levy on execution over the family home, *viz*:

> No doubt, a family home is generally exempt from execution provided it was duly constituted as such. **There must be proof that the alleged family home was constituted jointly by the husband and wife or by an unmarried head of a family. It must be the house where they and their family actually reside and the lot on which it is situated**. **The family home must be part of the properties of the absolute community or the conjugal partnership, or of the exclusive properties of either spouse with the latter's consent,** or on the property of the unmarried head of the family. **The actual value of the family home shall not exceed, at the time of its constitution, the amount of ₱300,000 in urban areas and ₱200,000 in rural areas**.
>
> **Under the Family Code, there is no need to constitute the family home judicially or extrajudicially. All family homes constructed after the effectivity of the Family Code (August 3,**

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[9] *Josef v. Santos*, G.R. No. 165060, November 27, 2008, 572 SCRA 57, 63.

[10] G.R. No. 172263, July 9, 2008, 557 SCRA 499, 501-502.

1988) are constituted as such by operation of law. All existing family residences as of August 3, 1988 are considered family homes and are **prospectively** entitled to the benefits accorded to a family home under the Family Code.

The exemption is effective from the time of the constitution of the family home as such and lasts as long as any of its beneficiaries actually resides therein. Moreover, the debts for which the family home is made answerable must have been incurred after August 3, 1988. **Otherwise (that is, if it was incurred prior to August 3, 1988), the alleged family home must be shown to have been constituted either judicially or extrajudicially pursuant to the Civil Code**. (emphasis supplied)

For the family home to be exempt from execution, distinction must be made as to what law applies based on **when** it was constituted and what requirements must be complied with by the judgment debtor or his successors claiming such privilege. Hence, two sets of rules are applicable.

If the family home was constructed *before* the effectivity of the Family Code or before August 3, 1988, **then it must have been constituted either judicially or extra-judicially as provided under Articles 225, 229-231 and 233 of the Civil Code**.[11] Judicial constitution of the family home requires the

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[11] **Art. 225.** The family home may be constituted by a verified petition to the Court of First Instance by the owner of the property, and by approval thereof by the court.

Art. 229. The petition shall contain the following particulars:

(1) Description of the property;

(2) An estimate of its actual value;

(3) A statement that the petitioner is actually residing in the premises;

(4) The encumbrances thereon;

(5) The names and addresses of all the creditors of the petitioner and of all mortgagees and other persons who have an interest in the property;

(6) The names of the other beneficiaries specified in Article 226.

Art. 230. Creditors, mortgagees and all other persons who have an interest in the estate shall be notified of the petition, and given an opportunity to present their objections thereto. The petition shall, moreover, be published once a week for three consecutive weeks in a newspaper of general circulation.

filing of a verified petition before the courts and the registration of the court's order with the Registry of Deeds of the area where the property is located. Meanwhile, extrajudicial constitution is governed by Articles 240 to 242[12] of the Civil Code and involves the execution of a public instrument which must also be registered with the Registry of Property. Failure to comply with either one of these two modes of constitution will bar a judgment debtor from availing of the privilege.

On the other hand, for family homes constructed *after* the effectivity of the Family Code on August 3, 1988, there is **no need to constitute extrajudicially or judicially**, and the exemption is effective from the time it was constituted and lasts as long as any of its beneficiaries under Art. 154[13] actually

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Art. 231. If the court finds that the actual value of the proposed family home does not exceed twenty thousand pesos, or thirty thousand pesos in chartered cities, and that no third person is prejudiced, the petition shall be approved. Should any creditor whose claim is unsecured, oppose the establishment of the family home, the court shall grant the petition if the debtor gives sufficient security for the debt.

Art. 233. The order of the court approving the establishment of the family home shall be recorded in the Registry of Property.

[12] **Art. 240.** The family home may be extrajudicially constituted by recording in the Registry of Property a public instrument wherein a person declares that he thereby establishes a family home out of a dwelling place with the land on which it is situated.

Art. 241. The declaration setting up the family home shall be under oath and shall contain:

(1) A statement that the claimant is the owner of, and is actually residing in the premises;

(2) A description of the property;

(3) An estimate of its actual value; and

(4) The names of the claimant's spouse and the other beneficiaries mentioned in Article 226.

Art. 242. The recording in the Registry of Property of the declaration referred to in the two preceding articles is the operative act which creates the family home.

[13] **Art. 154.** The beneficiaries of a family home are:

(1) The husband and wife, or an unmarried person who is the head of a family; and (2) Their parents, ascendants, descendants, brothers and sisters,

resides therein. Moreover, the family home should belong to the absolute community or conjugal partnership, or if exclusively by one spouse, its constitution must have been with consent of the other, and its value must not exceed certain amounts depending upon the area where it is located. Further, the debts incurred for which the exemption does not apply as provided under Art. 155[14] for which the family home is made answerable must have been incurred after August 3, 1988.

And in both cases, whether under the Civil Code or the Family Code, it is not sufficient that the person claiming exemption merely alleges that such property is a family home. This claim for exemption must be set up and proved.[15]

In the present case, since petitioners claim that the family home was constituted *prior* to August 3, 1988, or as early as 1944, they must comply with the procedure mandated by the Civil Code. There being absolutely no proof that the Pandacan property was judicially or extrajudicially constituted as the Ramos' family home, the law's protective mantle cannot be availed of by petitioners. Parenthetically, the records show that the sheriff exhausted all means to execute the judgment but failed because Ramos' bank accounts[16] were already closed while other properties

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whether the relationship be legitimate or illegitimate, who are living in the family home and who depend upon the head of the family for legal support.

[14] **Art. 155.** The family home shall be exempt from execution, forced sale or attachment except:

(1) For nonpayment of taxes;

(2) For debts incurred prior to the constitution of the family home;

(3) For debts secured by mortgages on the premises before or after such constitution; and

(4) For debts due to laborers, mechanics, architects, builders, materialmen and others who have rendered service or furnished material for the construction of the building.

[15] *Honrado v. Court of Appeals*, G.R. No. 166333, 25 November 2005, 476 SCRA, 280, 288.

[16] See certification from Prudential Bank Assistant Manager Victorino B. Lazaro, Jr., dated October 3, 2005, NLRC records, Vol. I, p. 105.

in his or the company's name had already been transferred,[17] and the only property left was the Pandacan property.

WHEREFORE, the petition is *DENIED*.

SO ORDERED.

Brion, Bersamin, Abad,[*] and *Villarama, Jr., JJ.,* concur.

FIRST DIVISION

[A.M. No. MTJ-09-1728. July 21, 2010]
(Formerly OCA I.P.I. No. 04-1623-MTJ)

ATTY. JOSE A. BERNAS, *complainant, vs.* **JUDGE JULIA A. REYES, METROPOLITAN TRIAL COURT, BRANCH 69, PASIG CITY,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; FAILURE TO COMPLY WITH THE COURT'S DIRECTIVE TO FILE A COMMENT TO THE COMPLAINT AGAINST HER CONSTITUTES A BLATANT DISPLAY OF DISOBEDIENCE TO THE LAWFUL DIRECTIVES OF THE COURT.— At the outset, it bears stressing that respondent Judge was required to comment on the instant complaint through the 1st Indorsement dated October 13, 2004. However, respondent Judge merely filed a Manifestation and Motion dated November 12, 2004, wherein she requested for a copy of the entire records of the case. Respondent Judge neither made any further attempts nor exerted

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[17] See Deed of Donation of Antipolo lot executed by Ernesto Ramos in favor of Philippine Rehabilitation Foundation, *id.* at 196-198.

[*] Additional member per Special Order No. 843 dated May 17, 2010.

any effort to present her defense. She did not even identify the pertinent documents which she claimed she needed in order to "intelligently comment" on the charges against her. Clearly, her alleged need for verification of the records was but a flimsy excuse since all the pertinent documents were already attached to the complaint which the OCA furnished her. Moreover, respondent Judge knew fully well how and where to secure copies of the rest of the records she needed relative to the case that she decided as these were available upon request with the RTC, Pasig City. We quote with approval the following disquisition of the OCA regarding this matter: x x x. The respondent judge's failure to comply with the Court's directive to file her comment to the complaint against her constitutes a blatant display of her disobedience to the lawful directives of the Court. A resolution of the Supreme Court requiring comment on an administrative complaint against officials and employees of the judiciary should not be construed as a mere request from the Court. Nor should it be complied with partially, inadequately or selectively. Respondents in administrative complaints should comment on all accusations or allegations against them because it is their duty to preserve the integrity of the judiciary.

2. REMEDIAL LAW; COURTS; GRANT OF RELIEF; COURTS OF EQUITY ARE NOT PRECLUDED FROM GRANTING RELIEFS WHICH ARE JUST AND EQUITABLE UNDER THE CIRCUMSTANCES, AS LONG AS THEY ARE BASED ON EVIDENCE AND WITHIN THEIR JURISDICTION TO GRANT.— For another, the issue on the award of excessive damages is, under the Rules of Court, a ground for a motion for reconsideration and as such complainant and his client's remedy is judicial in nature. In any event, the assailed grant of relief purportedly not prayed for by a party may be allowed for, indeed, courts of equity are not precluded from granting reliefs which are just and equitable under the circumstances, as long as they are based on evidence and within their jurisdiction to grant.

3. JUDICIAL ETHICS; JUDGES; DUTY; MUST NOT ONLY RENDER JUST, CORRECT AND IMPARTIAL DECISIONS, BUT MUST DO SO IN A MANNER FREE FROM ANY SUSPICION AS TO THEIR FAIRNESS, IMPARTIALITY AND INTEGRITY.— Established is the norm that judges should

not only be impartial but should also appear impartial. Judges must not only render just, correct and impartial decisions, but must do so in a manner free from any suspicion as to their fairness, impartiality and integrity. Thus, in the case of *Wingarts v. Mejia,* this Court ruled: A judge should be the embodiment of competence, integrity and independence and should administer justice impartially and without delay. He should be faithful to the law and maintain professional competence, dispose of the court's business promptly and decide cases within the required periods. This reminder applies even more to lower court judges like herein respondent because they are judicial front-liners who have direct contact with litigants. A review of past decisions shows a wide range of penalty for cases of similar nature. These include reprimand, fine, suspension, and even dismissal. In assessing the proper penalty against respondent Judge, her deliberate omission to heed the Court's directive to answer or to comment on the complaints against her may likewise be factored in.

4. ID.; ID.; CONDUCT OF; ALL MEMBERS OF THE BENCH ARE ENJOINED TO BEHAVE AT ALL TIMES AS TO PROMOTE PUBLIC CONFIDENCE IN THE INTEGRITY AND IMPARTIALITY OF THE JUDICIARY.— As a matter of public policy, not every error or mistake of a judge in the performance of his official duties renders him liable. In the absence of fraud, dishonesty or corruption, the acts of a judge in his official capacity do not always constitute misconduct although said acts may be erroneous. It is true that a judge may not be disciplined for error of judgment absent proof that such error was made with a conscious and deliberate intent to cause an injustice. This does not mean, however, that a judge need not observe propriety, discreetness and due care in the performance of his official functions. Indeed, all members of the Bench are enjoined to behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

5. ID.; ID.; DISREGARD OF THE COURT'S DIRECTIVE WARRANTS DISCIPLINARY SANCTION; PENALTY; RESPONDENT JUDGE FOUND GUILTY OF MANIFEST BIAS, PARTIALITY AND GRAVE ABUSE OF AUTHORITY; PROPER PENALTY.— Judge Julia Reyes's disregard of the directive of this Court as embodied in its

Resolution of June 14, 2005, warrants disciplinary sanction. Her conduct in the premises constitutes less serious charges under Section 9, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC on September 11, 2001, for which a judge may be suspended from office without salary and other benefits for not less than one (1) nor more than three (3) months, or fined in the amount of more than Ten Thousand Pesos (₱10,000.00) but not exceeding Twenty Thousand Pesos (₱20,000.00), depending upon the circumstances in each case. Moreover, the OCA correctly found respondent Judge guilty of manifest bias, partiality, as well as grave abuse of authority, and recommended that respondent Judge be dismissed from the service with forfeiture of all benefits, except accrued leave credits. However, during the pendency of this case, respondent Judge was meted the penalty of dismissal from the service with forfeiture of all retirement benefits except accrued leave credits, if any, and with prejudice to re-employment in any branch of the government including government-owned or -controlled corporations, in the Court's *per curiam* Decision dated September 18, 2009 on the consolidated administrative cases, A.M. Nos. MTJ-06-1623, MTJ-06-1624, MTJ-06-1625, MTJ-06-1627, MTJ-06-1638, and P-09-2693. Unfortunately for respondent Judge, this does not render the instant case moot. Respondent Judge must not be allowed to evade administrative liability by her previous dismissal from the service. Thus, in view of respondent Judge's previous separation from the service, this Court finds it proper to impose in the present case a fine of Forty Thousand Pesos (₱40,000.00) to be deducted from her accrued leave credits.

APPEARANCES OF COUNSEL

Bernas Law Offices for complainant.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

In a verified complaint[1] dated September 29, 2004 filed with the Office of the Court Administrator (OCA), complainant

[1] *Rollo*, pp. 1-34.

Jose A. Bernas charged respondent Judge Julia A. Reyes of the Metropolitan Trial Court (MeTC), Branch 69, Pasig City, with gross ignorance of the law and manifest partiality in connection with an eviction suit before the *sala* of respondent Judge.

As gathered from the complaint and the subsequent documents filed, the antecedent facts of the case, originally docketed as OCA I.P.I. No. 04-1623-MTJ, are as follows:

Complainant was the counsel for Oakridge Properties, Inc. (Oakridge) in an eviction suit[2] filed by the latter against Atty. Joseph M. Alejandro, a tenant in one of its condominium units, who had refused to pay rentals and common expenses since August 15, 2001. For his part, Atty. Alejandro explained that his failure to pay rentals was justified since the air-conditioning unit which Oakridge provided in the leased premises was allegedly defective.

On June 1, 2004, and during the pendency of the eviction suit, Oakridge padlocked the leased premises, alleging that it was authorized to do so by the terms and conditions of the Contract of Lease.[3] Atty. Alejandro then filed a Petition for Writ of Preliminary Injunction with prayer for a Temporary Restraining Order (TRO) to have the unit reopened. This was heard on June 11, 2004. At the hearing, respondent Judge granted the TRO and ordered Oakridge to reopen the leased premises and to padlock it only if the proper bond was not posted on or before June 18, 2004. She also set the pre-trial or preliminary conference hearing on June 22, 2004.

On June 18, 2004, respondent Judge issued a TRO,[4] one of the bases for the instant complaint, which reads:

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[2] *Oakridge Properties, Inc. v. Joseph Anthony Alejandro*, Civil Case No. 9209.

[3] Section 4 of the Contract of Lease dated August 29, 2000, cited in the complaint filed by Jose A. Bernas; *rollo*, p. 2.

[4] *Rollo,* p. 41.

Defendant [Atty. Alejandro] having complied with the Order dated June 11, 2004, by filing in Court the necessary injunctive bond in the amount of Php 2,594,556.00, the same is hereby approved.

Accordingly, let a Temporary Restraining Order (TRO) be issued in defendant's [Atty. Alejandro's] favor, ordering plaintiff [Oakridge] to remove the padlock in the premises located at Unit 2402 Discovery Centre, No. 25 ADB Avenue, Ortigas Center, Pasig City and ordering plaintiff [Oakridge] to discontinue the intended inventory of properties found inside the aforesaid premises pending the resolution of this case.

And again on August 16, 2004, respondent Judge issued another Order,[5] which in part reads:

In this regard, Plaintiff Oakridge Properties, Inc., through its Sales and Marketing Manager, Deborah Singson, who signed the instant complaint and its counsel Atty. Jose A. Bernas are hereby ordered to explain in writing within 48 hours from receipt of this Order why they should not both be cited in contempt for failure to comply with the lawful Order of this Court dated June 11, 2004 directing the plaintiff to remove the padlock of the leased premises not later than 5:00 o'clock of the same day. The Temporary Restraining Order (TRO) issued by the court on June 18, 2004 was an ultimatum on plaintiff to remove the padlock within a period of twenty (20) days from date of said Order. Certainly, the lapse of said 20-day period did not, in any way, change the order of this court dated June 11, 2004 for plaintiff not to padlock the subject premises.

Less than 48 hours thereafter, and without waiting for the explanations from Oakridge, respondent Judge rendered a Decision[6] dated August 17, 2004, which effectively disposed of the matter covered by the show cause order, as well as the merits of the case itself, notwithstanding the fact that there was still a pre-scheduled hearing on September 21, 2004 and several motions pending action from respondent Judge.

Hence, the instant complaint alleging that respondent Judge displayed gross ignorance of the law and manifest partiality.

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[5] *Id.* at 43.

[6] *Id.* at 59-69.

Complainant alleged that respondent Judge committed a flagrant violation of the rules when she unduly extended the 20-day lifetime of a TRO. Likewise, complainant maintained that respondent Judge erroneously granted a relief which was not prayed for and even awarded damages which were way beyond the jurisdiction of a first-level court. Complainant thereafter requested that an investigation be conducted and that appropriate penalties be imposed on respondent Judge.

On November 3, 2004, the OCA, through then Court Administrator Presbitero J. Velasco, Jr. (now a member of this Court), referred to respondent Judge the complaint for her comment thereon.[7]

In her Manifestation and Motion[8] dated November 12, 2004, respondent Judge claimed that since the subject case had already been appealed by complainant and Oakridge and that the entire records thereof had already been elevated to the Regional Trial Court (RTC), the complainant should be directed to furnish her a complete set of the records of the case to enable her to comment intelligently on the instant complaint.

At the same time, respondent Judge asserted that it was actually complainant himself who asked for the early resolution of the case and that while he sought relief from the court, he simultaneously effected the relief himself in disregard of the authority of the court.

Complainant then filed an Entry of Appearance and Opposition to Manifestation and Motion dated November 22, 2004,[9] arguing that he cannot be required to furnish respondent Judge with copies of the entire records of the case since A.M. No. 01-8-10-SC[10] does not require him to do so, and that respondent Judge was already furnished by the OCA with the complaint together with

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[7] 1st Indorsement dated October 13, 2004; *rollo*, p. 97.

[8] *Id.* at 98.

[9] *Id.* at 99-103.

[10] Dated September 11, 2001 and effective on October 1, 2001.

the necessary documents and attachments thereto, through the 1st Indorsement of the OCA.

On January 24, 2005, the OCA received a telegram[11] dated January 21, 2005 from a certain Atty. Carlos Z. Ambrosio, who requested, as counsel for respondent Judge, for the suspension of the proceedings in all the administrative cases filed against respondent Judge. Atty. Ambrosio further manifested therein that a formal motion on the matter will follow as soon as possible.

On June 14, 2005, we issued a Resolution[12] in A.M. No. 04-12-335-MeTC, which reads:

> (a) DENY for lack of merit the motion dated 26 January 2005 filed by Atty. Carlos Z. Ambrosio seeking the suspension of the proceedings in all the administrative cases against respondent Judge Julia A. Reyes; and
>
> (b) ORDER respondent Judge Julia A. Reyes to FILE her answer to, or comment on, all the administrative complaints filed against her, within a NON-EXTENDIBLE period of fifteen (15) days from notice hereof. Failure to submit the required answer or comment shall be deemed as waiver on her part to submit the same; and thereafter, all the administrative cases shall be evaluated and acted upon based on the evidence available on record.

No comment was filed by respondent Judge despite having been repeatedly required to file one. Thus, the OCA deemed her failure to comply with the directive as a waiver of her right to present evidence.

In its report and recommendation[13] dated April 6, 2006, the OCA, through then Senior Deputy Court Administrator and Officer-in-Charge Zenaida N. Elepaño and then Assistant Court Administrator Antonio H. Dujua, found respondent Judge guilty of manifest bias, partiality, and grave abuse of authority and

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[11] *Rollo*, p. 104.

[12] Cited in the OCA Report and Recommendation dated April 6, 2006; *id.* at 108.

[13] *Id.* at 105-113.

recommended that she be dismissed from the service with forfeiture of all benefits, except accrued leave credits, if any, and with prejudice to reemployment in the Government or any subdivision, agency or instrumentality thereof, including government-owned and -controlled corporations and government financial institutions.

We concur with the OCA's findings, but with some modification on the penalty imposed.

At the outset, it bears stressing that respondent Judge was required to comment on the instant complaint through the 1st Indorsement dated October 13, 2004. However, respondent Judge merely filed a Manifestation and Motion dated November 12, 2004, wherein she requested for a copy of the entire records of the case. Respondent Judge neither made any further attempts nor exerted any effort to present her defense. She did not even identify the pertinent documents which she claimed she needed in order to "intelligently comment" on the charges against her. Clearly, her alleged need for verification of the records was but a flimsy excuse since all the pertinent documents were already attached to the complaint which the OCA furnished her. Moreover, respondent Judge knew fully well how and where to secure copies of the rest of the records she needed relative to the case that she decided as these were available upon request with the RTC, Pasig City.

We quote with approval the following disquisition of the OCA regarding this matter:

> The Court's Resolution dated June 14, 2005 gave the respondent judge a non-extendible period of fifteen days from notice within which to file her answer/comment, with the warning that failure to comply shall be deemed waiver to submit comment and that the case shall thereafter be evaluated based on the evidence available on record. Her failure to comply with the said Resolution has thus resulted in her waiver to present further evidence but has also exposed her indifference to and lack of respect for the Court.
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> The respondent judge's failure to comply with the Court's directive to file her comment to the complaint against her constitutes a blatant display of her disobedience to the lawful directives of the Court. A

resolution of the Supreme Court requiring comment on an administrative complaint against officials and employees of the judiciary should not be construed as a mere request from the Court. Nor should it be complied with partially, inadequately or selectively. Respondents in administrative complaints should comment on all accusations or allegations against them because it is their duty to preserve the integrity of the judiciary.

In the instant case, the respondent judge's continued failure to comply with the directive of the Court underscores her lack of respect for and defiance of authority. Respectful obedience to the dictates of the law and justice is expected of every judge. Willfully omitting to comply with the Court's directive already exposes the respondent judge to administrative sanction.[14]

With regard to the charge of gross ignorance of the law, we agree with the findings of the OCA that the bases for this charge involve contentious issues which could properly be resolved through an appropriate appeal or other judicial remedies and not through the instant administrative action.

For one, a careful perusal of the documents submitted reveals that the assailed TRO was issued only on June 18, 2004 and not in open court on June 11, 2004 as complainant contends.[15] Respondent Judge, in open court, stated that the TRO was to be issued "upon posting of the bond on June 18, with the condition that the plaintiff will padlock the premises on or before June 19 if the proper bond is not posted on or before June 18."[16] Consequently, the same suggests that the TRO was subject to the posting of a bond which was apparently paid by Atty. Alejandro within the deadline given in open court and was likewise approved by respondent Judge only after the payment was made.

For another, the issue on the award of excessive damages is, under the Rules of Court, a ground for a motion for reconsideration[17] and as such complainant and his client's remedy

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[14] *Id.* at 108-109.

[15] *Id.* at 41.

[16] TSN, June 11, 2004, p. 44; *id.* at 37.

[17] Section 1, last paragraph, Rule 37, 1997 Rules of Civil Procedure, as amended.

is judicial in nature. In any event, the assailed grant of relief purportedly not prayed for by a party may be allowed for, indeed, courts of equity are not precluded from granting reliefs which are just and equitable under the circumstances, as long as they are based on evidence and within their jurisdiction to grant.

The OCA summarized the charge of manifest partiality as follows:

a) cancellation of the hearings on June 22, 2004 and September 21, 2004;

b) refusal to calendar for hearing on June 4, 2004 [Oakridge's] manifestation and motion;

c) delay in resolving the case since it was submitted for resolution in November 2002;

d) disregard of the evidence favorable to [Oakridge];

e) rendering the August 17, 2004 Decision which disposed of the merits of the case despite the pendency of unresolved incidents; and

f) undue haste in the issuance of the successive Orders dated August 16 and 17, 2004.[18]

On this score, we again agree with the OCA when it held that:

a. The June 22, 2004 scheduled hearing, as the complainant himself asserted, was cancelled because the court was then conducting an inventory, indeed a valid ground for postponement, unless such excuse had been fabricated. Upon the other hand, the cancellation of the September 21, 2004 scheduled hearing was an inevitable consequence of the Decision dated August 17, 2004, which necessarily passed upon the defendant's "Motion to Cancel Hearing on September 21, 2004 and to Deem Case Submitted for Resolution" dated July 9, 2004;

b. The alleged refusal to calendar for hearing the plaintiff's [Oakridge's] manifestation is not substantiated. The

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

complainant failed to adduce proof to establish the incident of refusal, much less the respondent's responsibility therefor;

c. The delay in resolving the case is partly explained in the August 17, 2004 Decision (p. 5 thereof) which states that supplemental position papers were submitted by both parties and other incidents transpired, giving the impression that the complainant himself was party to the delay. At any rate, why the respondent allowed these incidents indicate leniency but not partiality to the prejudice of one party;

d. The supposed disregard of evidence is a judicial issue which should be properly threshed out through the appropriate judicial remedy, such as the pending appeal of the instant case;

e. and f. The same observation in the preceding paragraph applies to the alleged pending incidents rendered moot and academic by the August 17, 2004 Decision. Necessarily, these motions and pleadings were integrally considered in the assailed Decision since the issues therein are intertwined with the premises of the case. However, the haste which accompanied the issuance of the August 17, 2004 Decision is suspect. Even before the complainant could explain the "show cause order" contained in the August 16, 2004 Order, the respondent judge issued the August 17, 2004 Decision which, in one portion, already labeled the complainant's questioned act as a "truly devious" violation of the June 11, 2004 Order. This precipitate judgment, taken together with the respondent's observed leniency and procedural delays, evinces bias and partiality as well as abuse of authority.[19]

After a close scrutiny of all the foregoing circumstances, the Court cannot conclude that respondent Judge was guilty of such misapplication of elementary court rules and procedure as to constitute gross ignorance of the law. However, the same circumstances, taken together and measured against the high ethical standards set for members of the Judiciary, are clear indicators of manifest bias and partiality as well as grave abuse

[19] *Rollo,* pp. 110-111.

of authority on the part of respondent Judge. Indubitably, the unseemly haste with which respondent Judge issued the August 17, 2004 Decision without waiting for complainant's explanation to her August 16, 2004 show-cause order plainly prejudiced complainant and favored the other party.

Established is the norm that judges should not only be impartial but should also appear impartial. Judges must not only render just, correct and impartial decisions, but must do so in a manner free from any suspicion as to their fairness, impartiality and integrity.[20]

Thus, in the case of *Wingarts v. Mejia*,[21] this Court ruled:

> A judge should be the embodiment of competence, integrity and independence and should administer justice impartially and without delay. He should be faithful to the law and maintain professional competence, dispose of the court's business promptly and decide cases within the required periods.

This reminder applies even more to lower court judges like herein respondent because they are judicial front-liners who have direct contact with litigants.[22] A review of past decisions[23] shows a wide range of penalty for cases of similar nature. These include reprimand, fine, suspension, and even dismissal. In assessing the proper penalty against respondent Judge, her deliberate omission to heed the Court's directive to answer or to comment on the complaints against her may likewise be factored in.

As a matter of public policy, not every error or mistake of a judge in the performance of his official duties renders him liable. In the absence of fraud, dishonesty or corruption, the acts of a judge in his official capacity do not always constitute misconduct

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[20] *Rallos v. Gako, Jr.*, 385 Phil. 4, 20 (2000); cited in *Dacera, Jr. v. Dizon, Jr.*, 391 Phil. 835, 844 (2000).

[21] 312 Phil. 518, 527 (1995).

[22] *Supra* note 17.

[23] *Meris v. Ofilada*, 355 Phil. 353 (1998); *Benjamin, Sr. v. Alaba*, 330 Phil. 130 (1996); *Sandoval v. Manalo*, 329 Phil. 416 (1996); *Santos v. De Gracia*, 531 Phil. 204 (1982).

although said acts may be erroneous. It is true that a judge may not be disciplined for error of judgment absent proof that such error was made with a conscious and deliberate intent to cause an injustice. This does not mean, however, that a judge need not observe propriety, discreetness and due care in the performance of his official functions. Indeed, all members of the Bench are enjoined to behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

We now delve on the matter of penalties. Judge Julia Reyes's disregard of the directive of this Court as embodied in its Resolution of June 14, 2005, warrants disciplinary sanction. Her conduct in the premises constitutes less serious charges under Section 9, Rule 140 of the Rules of Court, as amended by A.M. No. 01-8-10-SC on September 11, 2001, for which a judge may be suspended from office without salary and other benefits for not less than one (1) nor more than three (3) months, or fined in the amount of more than Ten Thousand Pesos (₱10,000.00) but not exceeding Twenty Thousand Pesos (₱20,000.00), depending upon the circumstances in each case. Moreover, the OCA correctly found respondent Judge guilty of manifest bias, partiality, as well as grave abuse of authority, and recommended that respondent Judge be dismissed from the service with forfeiture of all benefits, except accrued leave credits.

However, during the pendency of this case, respondent Judge was meted the penalty of dismissal from the service with forfeiture of all retirement benefits except accrued leave credits, if any, and with prejudice to re-employment in any branch of the government including government-owned or -controlled corporations, in the Court's *per curiam* Decision dated September 18, 2009 on the consolidated administrative cases, A.M. Nos. MTJ-06-1623, MTJ-06-1624, MTJ-06-1625, MTJ-06-1627, MTJ-06-1638, and P-09-2693.[24] Unfortunately for respondent Judge, this does not render the instant case moot.[25]

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[24] 600 SCRA 345.

[25] *Office of the Court Administrator v. Cunting*, A.M. No. P-04-1917, December 10, 2007, 539 SCRA 494, 512; *Sibulo v. San Jose*, A.M. No. P-05-2088, November 11, 2005, 474 SCRA 464, 471.

Respondent Judge must not be allowed to evade administrative liability by her previous dismissal from the service.

Thus, in view of respondent Judge's previous separation from the service, this Court finds it proper to impose in the present case a fine of Forty Thousand Pesos (₱40,000.00) to be deducted from her accrued leave credits.[26]

WHEREFORE, respondent Judge Julia A. Reyes of the Metropolitan Trial Court (MeTC) of Pasig City, Branch 69, is found guilty of manifest bias, partiality and grave abuse of authority and ordered to pay a fine in the amount of Forty Thousand Pesos (₱40,000.00) to be deducted from her accrued leave credits, if sufficient; if not, then she should pay the said amount directly to this Court.

SO ORDERED.

Corona, C.J. (Chairperson), Nachura,[*] *del Castillo,* and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 153837. July 21, 2010]

ENGR. JOB Y. BESANA, HON. RONALDO B. ZAMORA, in his capacity as Executive Secretary, and HON. CONRADO M. ESTRELLA III, in his capacity as Administrator of the National Electrification Administration, *petitioners, vs.* **RODSON F. MAYOR,** *respondent.* **AKLAN ELECTRIC COOPERATIVE, INC.,** *intervenor.*

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[26] *Cañada v. Suerte*, A.M. No. RTJ-04-1875, November 9, 2005, 474 SCRA 379, 389-390.

[*] Per Raffle dated June 28, 2010.

SYLLABUS

1. REMEDIAL LAW; APPEALS; ANY ISSUE RAISED FOR THE FIRST TIME ON APPEAL IS BARRED BY ESTOPPEL; ISSUE ON THE PARTY'S LEGAL INTEREST IN THE ADMINISTRATIVE PROCEEDINGS CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— [T]he Court of Appeals was correct in refusing to take cognizance of the belatedly-raised issue of whether or not Mayor had legal interest to challenge before the appellate court the order of the OP for the reinstatement of Besana as General Manager of AKELCO. It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, **administrative agency or quasi-judicial body**, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule. Any issue raised for the first time on appeal is barred by *estoppel*. It must be stressed that it was Mayor who filed the administrative complaint against Besana. Since the inception of the administrative proceedings against Besana, Mayor had been participating therein without his legal interest being questioned, not even by Besana when the latter appealed his dismissal before the OP. Indeed, Besana challenged Mayor's legal interest as a party in the administrative proceedings only before the appellate court. Given Besana's failure to raise as an issue Mayor's purported lack of legal interest during the proceedings before the NEA and the OP, the appellate court was then barred from taking cognizance of the same for the first time on appeal.

2. ID.; ID.; RIGHT TO APPEAL; THE COMPLAINANT WHO SOUGHT THE DISMISSAL OF THE EMPLOYEE HAS A LEGAL INTEREST TO APPEAL BEFORE THE APPELLATE COURT ANY RULING REINSTATING THE SAME.— It bears to point out that petitioners admitted that Mayor, being the original complainant, had legal interest in the issue of Besana's dismissal, but posits that Mayor had no such interest in the issue of Besana's reinstatement. Such an argument is specious. The propriety of Besana's reinstatement depends on the legality of his dismissal. Both issues arose

from and involved exactly the same factual background and legal arguments. The proceedings before the appellate court are but a continuation of the proceedings before the NEA and the OP. Petitioners conceded that Mayor had legal interest to seek Besana's dismissal in the administrative proceedings before the NEA and the OP, necessarily then, Mayor still had interest to appeal before the appellate court any ruling that reinstates Besana and renders Mayor's administrative charges against him for naught.

3. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT AGENCY; NATIONAL ELECTRIFICATION ADMINISTRATION; DISCIPLINARY AUTHORITY THEREOF, ELUCIDATED.— [C]ontrary to the contention of AKELCO, it has been correctly noted in the respective decisions of the OGCC, the Labor Arbiter, and the NLRC that the NEA has the disciplinary authority to suspend, remove, and/or replace any or all of the members of the board of directors, officers or employees of electric cooperatives as provided by Presidential Decree No. 269, amended by Presidential Decree No. 1645, otherwise known as the charter of the NEA. In *Zambales II Electric Cooperative, Inc. (ZAMECO II) Board of Directors v. Castillejos Consumers Association, Inc. (CASCONA)*, this Court elucidated the power of the NEA to supervise electric cooperatives and to take preventive and/or disciplinary measures against an electric cooperative's board of directors, officers or employees, as follows: P.D. No. 269, as amended by P.D. No. 1645, vested NEA with the authority to supervise and control electric cooperatives. In the exercise of its authority, it has the power to conduct investigations and other similar actions in all matters affecting electric cooperatives. The failure of electric cooperatives to comply with NEA orders, rules and regulations and/or decisions authorizes the latter to take preventive and/or disciplinary measures, including suspension and/or removal and replacement of any or all of the members of the Board of Directors, officers or employees of the electric cooperative concerned.

4. CIVIL LAW; ESTOPPEL; PARTY WILL BE HELD IN ESTOPPEL WHERE THE ISSUES AND ARGUMENTS IT PRESENTED BEFORE THE SUPREME COURT ARE NOT ONLY NEW, BUT IN TOTAL CONTRADICTIONS TO THE

ONES IT PREVIOUSLY ESPOUSED IN THE PROCEEDINGS BELOW.— There is also more reason to hold AKELCO in estoppel. The records of this case reveal that AKELCO supported the administrative charges against Besana and actively participated in the proceedings conducted before the Office of the Government Corporate Counsel (OGCC), the Labor Arbiter, and the NLRC, respecting the propriety and/or legality of Besana's dismissal. In fact, after the NEA adopted the findings of the OGCC holding petitioner Besana guilty of the administrative charges and dismissing him from the service, AKELCO promptly appointed another general manager as his replacement, and that, after the Labor Arbiter decided in favor of Besana his illegal dismissal case against AKELCO and NEA, AKELCO appealed to the NLRC seeking for the reversal of the Labor Arbiter's ruling. AKELCO even advocated before the NLRC the concurring views of the OGCC and the Labor Arbiter that the NEA possesses disciplinary authority over any or all members of the board of directors, officers, and employees of electric cooperatives. Evidently, AKELCO made a complete turnabout before this Court, with nary an explanation, something which this Court cannot allow without violating the fundamental principles of fairness and due process. The issues and arguments presented by AKELCO before this Court are not only new, but in total contradiction to the ones it previously espoused in the proceedings below.

5. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; DOCTRINE THEREOF, EXPLAINED; APPLIED TO CASE AT BAR.— [T]his Court finds no reversible error in the pronouncement of the Court of Appeals that the legality of Besana's dismissal as General Manager of AKELCO already attained finality and, thus, the same constituted *res judicata*. *Res judicata* or bar by prior judgment is a doctrine which holds that a matter that has been adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause. The doctrine of *res judicata* is founded on a public policy against re-opening that which has previously been decided, so as to put the litigation to an end. Matters settled by a court's final judgment should not be litigated upon or invoked again. Relitigation of issues already settled merely burdens the courts and the taxpayers, creates uneasiness and

confusion, and wastes valuable time and energy that could be devoted to worthier cases. In the present case, Besana's dismissal originally stemmed from NEA Board Resolution No. 41 which he did not appeal, whether to the OP or the Court of Appeals, hence, rendering said Board Resolution final. NEA Board Resolution No. 41 was already even executed with the appointment of a new General Manager.

APPEARANCES OF COUNSEL

Yusingco Law Offices for petitioners.
Ma. Lourdes C.Q.M. Arbas for respondent.
Rex J.M.A. Fernandez for intervenor.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court filed by petitioner Job Y. Besana (Besana), now deceased and substituted by his heirs in this petition, assailing the Decision[1] dated December 21, 2001 and Resolution[2] dated June 4, 2002 of the Court of Appeals in CA-G.R. SP No. 59732. The Court of Appeals declared null and void the Resolution[3] dated March 30, 2000 and Order[4] dated July 8, 2000 in O.P. Case No. 98-J-8574 of the Office of the President (OP), which set aside the resolutions of the National Electrification Administration (NEA) Board of Administrators (Board) insofar as they relate to Besana's dismissal as General Manager of intervenor Aklan Electric Cooperative, Inc. (AKELCO).

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[1] Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Candido V. Rivera and Juan Q. Enriquez, Jr., concurring. *Rollo*, pp. 56-64.

[2] *Rollo*, pp. 73-74.

[3] *Id.* at 23-27.

[4] *Id.* at 28-30.

Upon notice of this case, AKELCO filed a Petition for Intervention[5] on September 30, 2002, joining the petition in challenging the judgment of the Court of Appeals in CA-G.R. SP No. 59732 on the ground that respondent Rodson F. Mayor (Mayor) had no personality to file said Court of Appeals case and praying that the Court declare valid the March 30, 2000 Resolution and Order dated July 6, 2000 of Executive Secretary Ronaldo B. Zamora. Besana filed his Comment on the Petition for Intervention on December 26, 2002, concurring with the grounds adduced in the Petition for Intervention of AKELCO. Subsequently, AKELCO filed its Comment[6] on the Petition for Review on January 20, 2003, to which Besana filed his Reply[7] to the said Comment on February 3, 2004.

Mayor filed his Comment[8] on the Petition for Review on April 12, 2004, and petitioners filed their Reply[9] thereto on July 23, 2004.

In compliance with the Resolution[10] dated September 22, 2004 of this Court, the parties submitted their respective Memoranda as follows: Besana on November 19, 2004,[11] Mayor on November 30, 2004,[12] and AKELCO on December 15, 2004.[13]

The antecedent facts of this case, as culled from the records and narrated in part by the Court of Appeals, are as follows:

The case has its genesis on July 10, 1991, when an Administrative Complaint docketed as RRM-1-91 was filed by herein [respondent]

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[5] *Id.* at 76-81.

[6] *Id.* at 88-93.

[7] *Id.* at 108-110.

[8] *Id.* at 121-127.

[9] *Id.* at 129-133.

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

[11] *Id.* at 136-154.

[12] *Id.* at 155-165.

[13] *Id.* at 166-176.

Rodson F. Mayor against [herein petitioner] Job Y. Besana, then General Manager of [herein intervenor AKELCO] for grave misconduct, serious irregularity, dishonesty, grave abuse of authority, serious neglect in the performance of official duty, and gross mismanagement before the [NEA]. After investigation made by State Corporate Attorney Jesus F. D. Clariza of the Office of the Government Corporate Counsel and approved by NEA Administrator Rodrigo Cabrera, [petitioner] Besana was ordered dismissed as AKELCO General Manager through a Decision dated June 1, 1992, the dispositive portion of which reads as follows:

> "Wherefore, for all the foregoing circumstances, we find [petitioner Besana] guilty for (sic) grave misconduct, serious irregularities, dishonesty, abuse of authority, serious neglect in the performance of his official duties, incompetence and gross mismanagement and thus hereby sentencing him the penalty of dismissal as AKELCO General Manager subject to forfeiture of leave credits and retirement benefits as well as disqualification for reemployment in any electric cooperatives."

Such dismissal was approved and confirmed by the NEA Board of Administrators per its **Resolution No. 41,** June 25, 1992, which states in part:

> RESOLVED THEREFORE, to approve, as it is hereby approved, the removal/dismissal of Job Y. Besana as AKELCO General Manager, effective immediately;
>
> RESOLVED FURTHER, to authorize the sending of an Engineering Team to conduct the material audit and close out all completed projects of AKELCO to determine where the ₱38 Million worth of materials were rechanneled;
>
> RESOLVED FURTHERMORE, to authorize Management (sic) mete out to the former REC manager the maximum penalty within the Board's power to impose and to file the necessary case against him for misuse of government property before the appropriate court of law;
>
> RESOLVED FINALLY, to enjoin the Legal Department, with the assistance of the OGCC, to prosecute the case vigilantly.

According to [respondent Mayor], [petitioner] Besana was notified of the said Board Resolution No. 41 dismissing him from the service as early as July 1992, when the Board appointed another General

Manager to take his place – but he did not appeal. Hence, the same became final, executory and unassailable. With the finality of such resolution, the Board of Directors of AKELCO appointed Atty. Leovigildo Mationg as the new General Manager, which appointment was confirmed by the NEA Board of Administrators sometime in 1992.

On June 3, 1993, [petitioner] Besana questioned his dismissal before the Arbitration Committee of the National Labor Relations Commission (NLRC). He got a favorable ruling from Labor Arbiter Danilo C. Acosta, who in his decision dated September 15, 1993, directed Besana's reinstatement and payment to him of backwages as well as of moral damages, exemplary damages and attorney's fees.

On appeal by AKELCO to the NLRC, however, the latter reversed and set aside the decision of the Labor Arbiter, through its Decision dated April 18, 1994, and dismissed [petitioner] Besana's complaint for lack of merit.

Not satisfied with the decision of the NLRC, [petitioner] Besana questioned the same before the Supreme Court through a petition for *certiorari* which was, however, dismissed by the High Court on August 8, 1994 for [petitioner] Besana's failure to comply with the requirements of the Rules of Court.

In another twist, the NEA Board of Administrators passed on March 5, 1994, **Resolution No. 12** which authorized the review of the administrative case against [petitioner] Besana, and created a team to undertake such review, composed of the following:

Chairman	-	Solicitor Rodolfo G. Urbiztondo Office of the Solicitor General
Members	-	Mrs. Benita Montilla Coop Audit Department Mr. Resty de la Cruz Coop Operations Department Mr. Nelso Milo Engineering Department

After investigation, the Urbiztondo Committee submitted its report, finding that the charge about the unaccounted ₱38 Million had no leg to stand on; however, [petitioner] Besana was guilty of the other charges against him and that his dismissal for such charges is duly supported by the evidence on record.

In the light of such findings, the NEA Board of Administrators passed **Resolution No. 56** on September 30, 1994, stating in part:

> "WHEREAS, after a careful perusal of the findings contained in the Committee Report, the Board finds that it has been sufficiently established that the dismissal of Mr. Besana was legal and based on valid grounds, except for four of the thirteen original charges which were found to be baseless and not supported by evidence, namely: the ₱38 Million unaccounted materials, AIWA contracts, Boracay Island Electrification Project and Energization of HARESCO Farm;
>
> "WHEREAS, there is no compelling reason to disturb its previous decision reflected in Board Resolution No. 41 dated June 25, 1992 dismissing Mr. Job Y. Besana as AKELCO General Manager;
>
> "RESOLVED THEREFORE, TO AFFIRM, as it hereby affirms, the decision of the NEA Board of Administrators as reflected in Board Resolution No. 41 dated June 25, 1992, with the modification not to pursue the previous directive to Management to file court cases against Mr. Besana for the unaccounted ₱38 Million worth of materials since this was found by the Committee to be without basis."

On July 16, 1997, [petitioner] Besana, claiming that he received a copy of NEA Board Resolution No. 56 only on July 3, 1997, sent a letter to the NEA Board of Administrators which he asked to be treated as his Motion for Reconsideration of such resolution. The Board denied the same through **Board Resolution No. 35** dated April 16, 1998.

On October 12, 1998, [petitioner] Besana formally filed his appeal before the Office of the President which, as above stated, issued its assailed Resolution dated March 30, 2000, setting aside Resolutions Nos. 41, 56 and 35 of the NEA Board of Administrators insofar as they related to [petitioner] Besana's dismissal, and declaring the same to be without effect. [Respondent Mayor's] Motion for Reconsideration of such resolution was denied through the assailed Order of July 8, 2000.[14]

In a Petition for *Certiorari* before the Court of Appeals, docketed as CA-G.R. SP No. 59732, Mayor assailed the

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

Resolution dated March 30, 2000 and Order dated July 8, 2000 issued by the OP in O.P. Case No. 98-J-8574, alleging that the said office acted without jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction and praying for the issuance of a temporary restraining order (TRO) and writ of preliminary injunction against the implementation of the said OP issuances.

The Court of Appeals first issued a TRO on August 29, 2000, then a writ of preliminary injunction[15] on November 27, 2000, enjoining the OP from implementing the assailed issuances in O.P. Case No. 98-J-8574. Besana filed a Motion for Reconsideration of the issuance by the appellate court of the injunctive writ, arguing that the NEA and AKELCO were the real parties-in-interest, not Mayor, who was just a member of AKELCO. The Court of Appeals, in its Resolution[16] dated June 28, 2001, denied Besana's Motion for Reconsideration because:

> The said Motion is premised on the alleged fact that the [herein respondent Mayor] is not the real party in interest in this case. It appears, however, that he has been prosecuting the basic case before the lower bodies with the acquiescence of all the other parties, and such matter is being raised for the first time before this Court. Settled is the rule that points of law, theories, issues, and arguments not raised below cannot be considered by a reviewing court because this would be offensive to the basic rules of fair play, justice and due process x x x.

In the meantime, Besana died on June 11, 2001. The Court of Appeals was notified of Besana's death on June 21, 2001. Mrs. Florence Besana-Cesar (Besana-Cesar), Besana's daughter,

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[15] The Court of Appeals granted respondent Mayor's prayer for the issuance of a writ of preliminary injunction in a Resolution dated October 27, 2000. Upon respondent Mayor's posting of the required bond in the amount of ₱144,000 on November 13, 2000, the appellate court issued the writ on November 27, 2000. (CA *rollo*, pp. 415 and 429.)

[16] CA *rollo*, p. 445.

sought to substitute her father in the case. In a Resolution dated July 16, 2001, the Court of Appeals directed the parties to comment on the propriety of continuing this case as the principal relief sought was purely personal to Besana such that the action had been extinguished upon his death.

On December 21, 2001, the Court of Appeals promulgated its Decision in CA-G.R. SP No. 59732. In said Decision, the Court of Appeals noted that none of the parties filed a comment on Besana-Cesar's substitution for Besana, as directed in the Resolution dated July 16, 2001. Nonetheless, the appellate court resolved to give due course to Mayor's Petition for *Certiorari* and decide the case on the merits, so as also to settle the question on whether Besana's heirs could claim his back salaries and other monetary benefits. The appellate court then appointed Besana-Cesar as Besana's "legal representative."

The Court of Appeals proceeded to rule that Besana's dismissal as General Manager of AKELCO by the NEA Board had already attained finality sometime after July 1992 since Besana failed to appeal his dismissal. In addition, the appellate court held that the OP lacked jurisdiction to review the decision of the NEA Board, which was then vested upon this Court by virtue of Section 59 of Presidential Decree No. 269, the NEA Charter.[17]

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[17] Section 59. *Court Review.* – The Supreme Court is hereby given jurisdiction to review any order, ruling, or decision of the NEA and to modify or set aside such order, ruling, or decision when it clearly appears that there was no evidence before the NEA to support reasonably such order, ruling, or decision, or that the same is contrary to law, or that it was without the jurisdiction of the NEA. The evidence presented to the NEA, together with the record of the proceedings before the NEA, shall be certified by the NEA to the Supreme Court. Any order, ruling, or decision of the NEA may likewise be reviewed by the Supreme Court upon a writ of *certiorari* in proper cases. The procedure for review, except as herein provided, shall be prescribed by rules of the Supreme Court. Any order, ruling, or decision of the NEA may be reviewed on the application of any person or public service entity aggrieved thereby and who was a party in the subject proceeding, by *certiorari* in appropriate cases or by a petition for review, which shall be filed within thirty (30) days from the notification of the NEA order, decision, or ruling or reconsideration. Said petition shall be placed on file in the office of the Clerk of the Supreme Court who shall furnish copies thereof to the NEA and other interested parties.

Presently, jurisdiction over appeals from the decisions of the NEA is lodged with the Court of Appeals, pursuant to Section 1, Rule 43 of the Rules of Court.

The Court of Appeals decreed:

> WHEREFORE, the petition is GRANTED, and the assailed Resolution dated March 30, 2000 and Order dated July 8, 2000 are declared NULL and VOID for having been issued without jurisdiction. The Resolutions Nos. 41, 56 and 35 issued by the National Electrification Administration dismissing Job Y. Besana as General Manager of AKELCO are AFFIRMED.[18]

Besana's Motion for Reconsideration of the foregoing judgment was denied by the appellate court in its Resolution dated March 30, 2000.

Hence, the instant Petition wherein petitioners make the following assignment of errors:

> [1] When the Appellate Court ruled that Rodson F. Mayor had the standing to bring an action assailing the decisions of Executive Secretary Zamora directing the NEA to reinstate Engr. Job Y. Besana as General Manager of AKELCO.
>
> [2] When the Appellate Court ruled that Executive Secretary Zamora's decisions were rendered in a wanton, arbitrary, whimsical, and despotic manner that they should be set aside through the writ of *certiorari*.
>
> [3] When the appellate court ruled that the Office of President does not have the authority to review rulings of the NEA because PD 269, the organic law of the NEA, explicitly states that it is this Honorable Supreme Court which has the power and authority to conduct a review of NEA's rulings, and such power of review is now lodged with the Court of Appeals.[19]

Petitioners assert that Mayor lacked material interest to challenge before the Court of Appeals the OP ruling which favored his

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[18] *Rollo,* p. 63.

[19] *Id.* at 15.

reinstatement as General Manager of AKELCO. Petitioners claim that it is either the NEA or AKELCO which stands to be benefited or injured by such ruling of the OP. Hence, Mayor cannot be considered a real party-in-interest. Petitioners further argue that Mayor has a "mere interest in the question of whether or not Besana should be reinstated, having once filed a complaint against him (Besana) for allegedly mismanaging AKELCO and, since he does not have a material interest in the decree to reinstate Besana, Mayor is not a proper party to question the same."

Petitioners also insist that what Besana assailed before the OP were NEA Board Resolutions Nos. 12, 56, and 35, and not NEA Board Resolution No. 41. He received NEA Board Resolution No. 35 dated April 16, 1998, on July 8, 1998, and filed with the NEA his Notice of Appeal five days later, on July 13, 1998. Petitioners claim that Besana thereafter duly filed his appeal before the OP, and with his timely appeal, NEA Board Resolutions Nos. 12, 56, and 35 had not yet attained finality. Even assuming Besana failed to file his appeal on time, petitioners maintain that the OP committed no reversible error and grave abuse of discretion when it took cognizance of said appeal and resolved the case on the merits in the interest of substantial justice.

Petitioners additionally aver that the OP has jurisdiction to review NEA Board Resolutions Nos. 12, 56, and 35. Mayor and the Court of Appeals erroneously relied on Section 59 of the NEA Charter and Section 1, Rule 43 of the Rules of Court to support their position that any order, ruling, or decision of the NEA is subject to judicial review. These provisions only pertain to matters related to "electric franchises" and not to the administrative functions of the NEA. Petitioners reason out that Besana appealed the three NEA Board Resolutions to the OP in accordance with Section 13 of the NEA Charter which provides that "the NEA shall be under the supervision of the Office of the President of the Philippines" and that "all orders, rules and regulations promulgated, and all appointments made by the NEA x x x shall be subject to the approval of the Office of the President of the Philippines."

AKELCO agrees with petitioners and further claims that the dismissal of Besana by the NEA Board was a usurpation of the power of the Board of Directors of AKELCO.

Mayor, on the other hand, contends that the Court of Appeals was correct in ruling that all the parties have already acquiesced to his legal interest in prosecuting the charges against Besana as he had done so from the inception of the case and, thus, Besana was rightly barred from belatedly assailing the same.

Mayor also maintains that Besana's dismissal as General Manager of intervenor AKELCO in 1992 already attained finality. He points out that Besana failed to file a timely appeal of NEA Board Resolution No. 41 dated June 25, 1992. Besana, instead, filed an illegal dismissal case against AKELCO. The illegal dismissal case, however, likewise attained finality when this Court denied Besana's appeal of the dismissal of his case by the National Labor Relations Commission (NLRC).

The Petition must fail.

First, the Court of Appeals was correct in refusing to take cognizance of the belatedly-raised issue of whether or not Mayor had legal interest to challenge before the appellate court the order of the OP for the reinstatement of Besana as General Manager of AKELCO.

It is well-settled that no question will be entertained on appeal unless it has been raised in the proceedings below. Points of law, theories, issues and arguments not brought to the attention of the lower court, **administrative agency or quasi-judicial body**, need not be considered by a reviewing court, as they cannot be raised for the first time at that late stage. Basic considerations of fairness and due process impel this rule.[20] Any issue raised for the first time on appeal is barred by *estoppel*.[21]

It must be stressed that it was Mayor who filed the administrative complaint against Besana. Since the inception of the administrative

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[20] *Jacot v. Dal*, G.R. No. 179848, November 27, 2008, 572 SCRA 295, 311.

[21] *Villaranda v. Villaranda*, 467 Phil. 1089, 1098 (2004).

proceedings against Besana, Mayor had been participating therein without his legal interest being questioned, not even by Besana when the latter appealed his dismissal before the OP. Indeed, Besana challenged Mayor's legal interest as a party in the administrative proceedings only before the appellate court. Given Besana's failure to raise as an issue Mayor's purported lack of legal interest during the proceedings before the NEA and the OP, the appellate court was then barred from taking cognizance of the same for the first time on appeal.

It bears to point out that petitioners admitted that Mayor, being the original complainant, had legal interest in the issue of Besana's dismissal, but posits that Mayor had no such interest in the issue of Besana's reinstatement. Such an argument is specious. The propriety of Besana's reinstatement depends on the legality of his dismissal. Both issues arose from and involved exactly the same factual background and legal arguments. The proceedings before the appellate court are but a continuation of the proceedings before the NEA and the OP. Petitioners conceded that Mayor had legal interest to seek Besana's dismissal in the administrative proceedings before the NEA and the OP, necessarily then, Mayor still had interest to appeal before the appellate court any ruling that reinstates Besana and renders Mayor's administrative charges against him for naught.

Second, the issue of usurpation by the NEA of AKELCO's prerogative to dismiss Besana as its General Manager was raised for the first time before this Court by AKELCO. It was not raised in the proceedings before the NEA, the OP, and the Court of Appeals. As has been settled in the preceding paragraphs, an issue raised for the first time on appeal is barred by estoppel.

There is also more reason to hold AKELCO in estoppel. The records[22] of this case reveal that AKELCO supported the administrative charges against Besana and actively participated in the proceedings conducted before the Office of the Government Corporate Counsel (OGCC), the Labor Arbiter, and the NLRC,

[22] CA *rollo*, pp. 229-272.

respecting the propriety and/or legality of Besana's dismissal. In fact, after the NEA adopted the findings of the OGCC holding petitioner Besana guilty of the administrative charges and dismissing him from the service, AKELCO promptly appointed another general manager as his replacement, and that, after the Labor Arbiter decided in favor of Besana his illegal dismissal case against AKELCO and NEA, AKELCO appealed to the NLRC seeking for the reversal of the Labor Arbiter's ruling. AKELCO even advocated before the NLRC the concurring views of the OGCC and the Labor Arbiter that the NEA possesses disciplinary authority over any or all members of the board of directors, officers, and employees of electric cooperatives. Evidently, AKELCO made a complete turnabout before this Court, with nary an explanation, something which this Court cannot allow without violating the fundamental principles of fairness and due process. The issues and arguments presented by AKELCO before this Court are not only new, but in total contradiction to the ones it previously espoused in the proceedings below.

In any event, contrary to the contention of AKELCO, it has been correctly noted in the respective decisions of the OGCC, the Labor Arbiter, and the NLRC that the NEA has the disciplinary authority to suspend, remove, and/or replace any or all of the members of the board of directors, officers or employees of electric cooperatives as provided by Presidential Decree No. 269, amended by Presidential Decree No. 1645, otherwise known as the charter of the NEA.

In *Zambales II Electric Cooperative, Inc. (ZAMECO II) Board of Directors v. Castillejos Consumers Association, Inc. (CASCONA)*,[23] this Court elucidated the power of the NEA to supervise electric cooperatives and to take preventive and/or disciplinary measures against an electric cooperative's board of directors, officers or employees, as follows:

P.D. No. 269, as amended by P.D. No. 1645, vested NEA with the authority to supervise and control electric cooperatives. In the

[23] G.R. Nos. 176935-36, March 13, 2009, 581 SCRA 320, 329.

exercise of its authority, it has the power to conduct investigations and other similar actions in all matters affecting electric cooperatives. The failure of electric cooperatives to comply with NEA orders, rules and regulations and/or decisions authorizes the latter to take preventive and/or disciplinary measures, including suspension and/or removal and replacement of any or all of the members of the Board of Directors, officers or employees of the electric cooperative concerned.

In *Silva v. Mationg*,[24] the approval by the NEA of the dismissal of the general manager of AKELCO who replaced Besana was upheld by this Court on this basis:

> The NEA, as a public corporation, acts through its Board of Administrators, composed of a Chairman and four members, one of whom is the Administrator as *ex-officio* member. The NEA exercises supervision and control over electric cooperatives organized and operating under the mandate of PD 269, as amended. The extent of government control over electric cooperatives covered by PD 269, as amended, is largely a function of the NEA as a primary source of funds of these electric cooperatives.
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> In exercising its power of supervision and control over electric cooperatives, the NEA, through its Board of Administrators, can issue orders, rules and regulations, and *motu proprio* or upon petition of third parties, can conduct investigations in all matters affecting electric cooperatives pursuant to Section 10 of PD 269, as amended. Further, the NEA-BOA may avail of the remedial measures enumerated in Section 10 of PD 269, as amended, in case of non-compliance by the electric cooperative concerned with NEA orders, rules and regulations, and decisions, or with any of the terms of the Loan Agreement. One of these remedial measures, Section 10(e) of PD 269, as amended, provides for the suspension or removal of members of the Board of Directors, officers or employees of the defiant electric cooperative as the NEA-BOA may deem fit and necessary, thus:
>
> **Sec. 10.** ***Enforcement Powers and Remedies.*** **— In the exercise of its power of supervision and control over electric cooperatives and other borrower, supervised or**

[24] G.R. No. 160174, August 28, 2006, 499 SCRA 724, 737-739.

controlled entities, the NEA is empowered to issue orders, rules and regulations and *motu proprio* or upon petition of third parties, to conduct investigations, referenda and other similar actions in all matters affecting said electric cooperatives and other borrower, or supervised or controlled entities.

If the electric cooperative concerned or other similar entity fails after due notice to comply with NEA orders, rules and regulations and/or decisions, or with any of the terms of the Loan Agreement, the NEA Board of Administrators may avail of any or all of the following remedies:

x x x x x x x x x

(e) Take preventive and/or disciplinary measures including suspension and/or removal and replacement of any or all of the members of the Board of Directors, officers or employees of the Cooperative, other borrower institutions or supervised or controlled entities as the NEA Board of Administrators may deem fit and necessary and to take any other remedial measures as the law or the Loan Agreement may provide.

Finally, this Court finds no reversible error in the pronouncement of the Court of Appeals that the legality of Besana's dismissal as General Manager of AKELCO already attained finality and, thus, the same constituted *res judicata*.

Res judicata or bar by prior judgment is a doctrine which holds that a matter that has been adjudicated by a court of competent jurisdiction must be deemed to have been finally and conclusively settled if it arises in any subsequent litigation between the same parties and for the same cause. The doctrine of *res judicata* is founded on a public policy against re-opening that which has previously been decided, so as to put the litigation to an end.[25] Matters settled by a court's final judgment should not be litigated upon or invoked again. Relitigation of issues

[25] *National Investment and Development Corporation v. Bautista*, G.R. No. 150388, March 13, 2009, 581 SCRA 92, 104.

already settled merely burdens the courts and the taxpayers, creates uneasiness and confusion, and wastes valuable time and energy that could be devoted to worthier cases.[26]

In the present case, Besana's dismissal originally stemmed from NEA Board Resolution No. 41 which he did not appeal, whether to the OP or the Court of Appeals, hence, rendering said Board Resolution final. NEA Board Resolution No. 41 was already even executed with the appointment of a new General Manager.

Even overlooking the finality of NEA Board Resolution No. 41, the legality of Besana's dismissal was settled with finality in another proceeding instituted by Besana himself. Besana, instead of directly appealing NEA Board Resolution No. 41, filed an illegal dismissal case before the NLRC. To recall, the Labor Arbiter initially found that Besana was illegally dismissed. However, when AKELCO appealed to the NLRC, the latter reversed the Labor Arbiter and held that there was no illegal dismissal. Besana's appeal to this Court of said NLRC ruling, docketed as G.R. No. 115591, entitled *Besana v. National Labor Relations Commission*, was dismissed on technicality in a Resolution[27] dated August 8, 1994. As a result, the NLRC ruling – that Besana's dismissal was legal – already attained finality.

It is true that Besana instituted his illegal dismissal case before the NLRC following the issuance by the NEA of its Board Resolution No. 41, and that what Besana appealed to the OP was NEA's Board Resolution Nos. 12, 56 and 35. However, upon closer review, the aforesaid NEA Board Resolutions all involve the dismissal of Besana as General Manager of AKELCO after being found guilty of the administrative charges lodged against him by Mayor. The reinvestigation conducted by the NEA of exactly the same charges against Besana (and all other proceedings arising from said reinvestigation, including those before the OP, the Court of Appeals, and now, before this

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[26] *Co v. People*, G.R. No. 160265, July 13, 2009, 592 SCRA 381, 393.

[27] CA *rollo*, pp. 90-91.

Court), subject matter of NEA Board Resolution Nos. 12, 56, and 35, could not have served any other purpose except to overturn the NLRC ruling that Besana was not illegally dismissed. Incidentally, even after its reinvestigation, the NEA still found Besana guilty of several of the administrative charges against him warranting his dismissal as General Manager of AKELCO.

WHEREFORE, in view of the foregoing, the instant Petition is hereby *DENIED*. Costs against the petitioners.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., del Castillo, and *Perez, JJ.,* concur.

FIRST DIVISION

[G.R. No. 174097. July 21, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **SONNY PADUA *y* REYES,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; TRIAL; NON-PRESENTATION OF THE FORENSIC CHEMIST AND THE INVESTIGATOR IN THE DRUG-PUSHING CASES IS NOT FATAL; THE PROSECUTION HAS THE DISCRETION AS TO HOW TO PRESENT ITS CASE AND IT HAS THE RIGHT TO CHOOSE WHOM IT WISHES TO PRESENT AS WITNESSES.— The fact that the persons who had possession or custody of the subject drugs, such as Forensic Chemist Rivera-Dagasdas and the alleged investigator, were not presented as witnesses to corroborate SPO2 Aguilar's testimony is of no moment. The non-presentation as witnesses of other persons such as the investigator and the forensic

chemist, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.

2. ID.; ID.; ID.; TESTIMONY OF AN INFORMANT IN DRUG-PUSHING CASES IS NOT ESSENTIAL FOR CONVICTION AND MAY BE DISPENSED WITH IF THE POSEUR-BUYER TESTIFIED ON THE SAME.— Anent the failure of the prosecution to present the testimony of the informant, it is well-settled that the testimony of an informant in drug-pushing cases is not essential for conviction and may be dispensed if the poseur-buyer testified on the same. Informants are almost always never presented in court because of the need to preserve their invaluable service to the police.

3. ID.; ID.; ID.; AS LONG AS THE CHAIN OF CUSTODY OF THE SEIZED DRUG WAS CLEARLY ESTABLISHED AND THE DRUG SEIZED WAS PROPERLY IDENTIFIED, IT IS NOT INDISPENSABLE THAT EACH AND EVERY PERSON WHO CAME INTO POSSESSION OF THE DRUGS SHOULD TAKE THE WITNESS STAND.— Further, not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirement. As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.

4. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED.— What determines if there was, indeed, a sale of dangerous drugs in a buy-bust operation is proof of the concurrence of all the elements of the offense, to wit: (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, which the prosecution has satisfactorily established. The prosecution satisfactorily proved the illegal sale of dangerous drugs and presented in court the evidence of *corpus delicti*. In the instant case, all the elements

of the crime have been sufficiently established by the prosecution.

5. ID.; ID.; ILLEGAL POSSESSION OF PROHIBITED OR REGULATED DRUGS; ELEMENTS; PRESENT.— [F]or an accused to be convicted of illegal possession of prohibited or regulated drugs, the following elements must concur: (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 possesses the said drug. With respect to the charge of illegal possession of dangerous drugs under Section 11, Article II of Republic Act No. 9165, all of these elements were present and duly proven in Criminal Case No. 11596-D.

6. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES; ABSENT ILL-MOTIVE TO TESTIFY AGAINST THE ACCUSED, THE POLICE ENFORCERS ARE PRESUMED TO HAVE PERFORMED THEIR DUTIES REGULARLY.— PO2 Aguilar straightforwardly narrated the circumstances leading to the consummation of the sale of illegal drugs, the possession of four plastic sachets of *shabu* and the arrest of accused-appellant. Credence was properly accorded to the testimony of prosecution witness PO2 Aguilar who is a law enforcer. The testimony of the police officers carried with it the presumption of regularity in the performance of official functions. Law enforcers are presumed to have performed their duties regularly in the absence of evidence to the contrary. When police officers have no motive for testifying falsely against the accused, courts are inclined to uphold the presumption of regularity in the performance of their duties and no evidence whatsoever was presented that would suggest any improper motive on the part of the police enforcers. This Court accords great respect to and treats with finality the findings of the trial court on the matter of credibility of witnesses, absent any palpable error or arbitrariness in its findings.

7. ID.; ID.; BURDEN OF PROOF; PROOF THAT THE ACCUSED WAS POSITIVE FOR ULTRAVIOLET FLUORESCENT POWDER IS IMMATERIAL WHERE THE PROSECUTION DISCHARGED ITS ONUS OF PROVING THE ACCUSATION.— Accused-appellant also contends that the

prosecution failed to prove that he received the money as payment for the sale of illegal drugs, by its failure to prove that he was positive for ultraviolet fluorescent powder. The accused-appellant fails to persuade us. Since the prosecution has discharged its onus of proving the accusation, as in fact it presented the prohibited drug and identified accused-appellant as the offender, it is immaterial that prosecution present report that accused-appellant was indeed positive for ultraviolet fluorescent powder.

8. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002; ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS; A PRIOR SURVEILLANCE IS NOT A PREREQUISITE FOR THE VALIDITY OF AN ENTRAPMENT OR A BUY-BUST OPERATION; COURT WILL NOT PASS UPON THE WISDOM OF THE ENTRAPMENT OPERATION PROVIDED THE RIGHTS OF THE ACCUSED HAVE NOT BEEN VIOLATED IN THE PROCESS.— A prior surveillance is not a prerequisite for the validity of an entrapment or buy-bust operation, the conduct of which has no rigid or textbook method. Flexibility is a trait of good police work. However the police carry out its entrapment operations, for as long as the rights of the accused have not been violated in the process, the courts will not pass on the wisdom thereof. The police officers may decide that time is of the essence and dispense with the need for prior surveillance.

9. ID.; ID.; ID.; IMPOSABLE PENALTIES.— Under Section 5, Article II of Republic Act No. 9165, the unauthorized sale of *shabu*, regardless of its quantity and purity, 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). Pursuant, however, to the enactment of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine shall be imposed. Thus, the RTC and the Court of Appeals were correct in imposing the penalty of life imprisonment and fine of ₱500,000.00 on appellant in Criminal Case No. 11595-D. Section 11(3), Article II of Republic Act No. 9165 provides that illegal possession of less than five grams of *shabu* is penalized with imprisonment of twelve (12) years and one day to twenty (20) years, plus a fine

ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00). Accused-appellant was charged with and found to be guilty of illegal possession of 0.70 gram of *shabu* in Criminal Case No. 11596-D. Hence, the RTC and the Court of Appeals aptly sentenced appellant to imprisonment of 12 years and one day, as minimum, to 20 years, as maximum, and fined him ₱300,000.00, since said penalties are within the range of penalties prescribed by the aforequoted provision.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For review is the Decision[1] dated May 25, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00553 which affirmed the Decision[2] dated October 5, 2004 of the Regional Trial Court (RTC), Branch 157, Pasig City, in Criminal Case Nos. 11595-96-D, finding accused-appellant Sonny Padua *y* Reyes guilty of illegal sale and possession of *methamphetamine hydrochloride*, popularly known as *shabu*, under Sections 5 and 11, Article II of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The facts gathered from the records are as follows:

Two separate informations dated August 19, 2002 were filed before the RTC against appellant for illegal sale and possession

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[1] Penned by Associate Justice Amelita G. Tolentino with Associate Justices Fernanda Lampas-Peralta and Vicente S.E. Veloso, concurring; *rollo*, pp. 2-15.

[2] Penned by Judge Esperanza Fabon-Victorino; CA *rollo*, pp. 13-19.

of *shabu* under Sections 5[3] and 11,[4] Article II of Republic Act No. 9165. The accusatory portion of the informations read:

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[3] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* – The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

[4] 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 x x x x x x

(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*";

x x x x x x x x x

Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

(3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), ***if the quantities of dangerous drugs are less than five (5) grams*** of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, ***methamphetamine hydrochloride or "shabu,"*** or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Criminal Case No. 11595-D

The undersigned Assistant Provincial Prosecutor accuses SONNY PADUA *y* REYES of the crime of violation of Section 5, Article II of Republic Act 9165, committed as follows:

That, on or about the 18th day of August 2002, in the Municipality of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law did, then and there willfully, unlawfully and knowingly sell, deliver and give away to another one (1) heat sealed transparent plastic sachet containing 0.20 gram of white crystalline substance, which substance was found positive to the test for "*shabu*", which is a dangerous drug, in consideration of the amount of ₱200.00 in violation of the above-cited law.[5]

Criminal Case No. 11596-D

The undersigned Assistant Provincial Prosecutor accuses SONNY PADUA *y* REYES of the crime of violation of Section 11, 2nd Par., No. 3, Article II of Republic Act 9165, committed as follows:

That, on or about the 18th day of August 2002 in the Municipality of Taguig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without being authorized by law did, then and there willfully, unlawfully and knowingly have in his possession, custody and control four (4) heat sealed transparent plastic sachets, each sachet containing 0.20 gram, 0.10 gram, 0.20 gram and 0.20 gram, respectively, or in the aggregate total weight of 0.70 gram, of white crystalline substance, which substance were found positive to the test for "*shabu*," which is a dangerous drug, in violation of the above-cited law.[6]

Subsequently, these cases were consolidated. When arraigned on September 18, 2002, appellant, assisted by counsel *de oficio*, pleaded "Not guilty" to each of the charges.[7]

During the pre-trial conference, the public prosecutor marked their evidence but the defense did not mark any evidence. The

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[5] CA *rollo*, p. 6.

[6] *Id.* at 8.

[7] Certificate of Arraignment, records, p. 15.

prosecution decided to present four witnesses, namely: Senior Police Officer (SPO) 2 Nilo Banzuela, Police Officer (PO) 3 Felix Mayuga, PO3 Cirilo Zamora and PO2 Roberto Jovenir. The parties dispensed with the testimony of Forensic Chemist Maria Ana Rivera-Dagasdas on the stipulation that she received the request for laboratory examination and the specimen allegedly confiscated from the accused on August 18, 2002 and upon her examination, the specimen proved positive for methamphetamine hydrochloride as appearing in Chemistry Report No. D-1237-02. The defense agreed to present three witnesses, the accused, Alicia Padua and Christopher Griego.[8]

Trial on the merits thereafter followed.

Evidence for the prosecution adduced before the RTC consisted of the sole testimony of witness PO2 Dante Aguilar of the District Drug Enforcement Unit (DDEU), Southern Police District (SPD), Taguig City. He established that in the morning of August 18, 2002, when he arrived at their office at the Police Station of SPD, District Drug Enforcement Group in Taguig City, his team leader, Police Inspector (P/Insp.) Rodolfo Anicoche, upon the tip of an informant, ordered him and the rest of his teammates, namely, SPO2 Banzuela, PO3 Cirilo Zamora, PO3 Felix Mayuga, PO2 Roberto Jovenir and PO1 Michael Esparagoza to conduct a buy-bust operation against accused-appellant, who was allegedly selling illegal drugs in Taguig City.[9] Per instructions, PO2 Aguilar was tasked to pose as the poseur-buyer. Following the briefing, his team leader handed him ₱200.00 marked money.[10]

On the same day, at around 10:30 a.m., the group proceeded to the residence of accused-appellant at No. 216 Mozo St., Purok 2, Napindan, Taguig City. PO2 Aguilar, SPO2 Banzuela, the asset, and P/Insp. Anicoche parked their car about 50 to 75 meters away from the residence of accused-appellant, conducted

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[8] Records, p. 25.

[9] TSN, January 30, 2003, p. 4.

[10] The two one-hundred-peso bills were marked with initials MF. (Records, pp. 9 and 99.)

a surveillance, and observed that there were persons coming in and out of Padua's house talking to the latter. They then went back to the other police officers and told them the place where accused-appellant was. Thereafter, PO2 Aguilar and the asset proceeded to the house of accused-appellant. The asset called Sonny, and when the latter went out of his house, the asset introduced PO2 Aguilar to him as a delivery truck driver who had just arrived from a provincial trip and in dire need of *shabu* for his personal consumption. Aguilar handed the ₱200.00 marked money to the accused-appellant, who folded and placed it on his left pocket. Accused-appellant then took something from his right pocket and handed an aluminum sachet to PO2 Aguilar. Subsequently, PO2 Aguilar removed his cap, the pre-arranged signal to the rest of the buy-bust team that he had already bought the *shabu*. When PO1 Esparagoza arrived, PO2 Aguilar frisked and arrested the accused-appellant. He recovered the buy-bust money in the left pocket and four sachets in the right pocket of the accused-appellant. He informed accused-appellant of his right to remain silent, and of the fact that he would be charged with violation of Republic Act No. 9165. They brought him to the police station. Later, PO2 Aguilar turned over the seized drugs to the investigator, who thereafter brought the evidence to the SPD Crime Laboratory Office, Fort Bonifacio, Taguig City.

For failure of PO3 Cirilo Zamora to appear on the April 3, 2003 hearing,[11] PO1 Michael Esparagoza to appear on the July 24, 2003 hearing,[12] and PO2 Robert Jovenir to appear at the November 12, 2003 hearing,[13] despite notices, their testimonies were deemed waived.

The prosecution also adduced documentary and object evidence to buttress the testimony of its witness, to wit: (1) joint affidavit of the arresting officers signed by SPO2 Nilo Banzuela, PO3

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[11] Records, p. 49.

[12] *Id.* at 58.

[13] *Id.* at 80.

Cirilo Zamora, PO2 Dante Aguilar, PO3 Felix Mayuga, PO2 Roberto Jovenir and PO1 Michael Esparagoza;[14] (2) request for laboratory examination dated August 18, 2002;[15] (3) Physical Science Report No. D-1237-02 dated August 18, 2002, signed by Forensic Chemist Maria Ana Rivera-Dagasdas;[16] (4) one heat-sealed transparent plastic sachet containing 0.20 gram of *shabu*; (5) four heat-sealed transparent plastic sachets each containing 0.20 gram, 0.10 gram, 0.20 gram and 0.20 gram respectively, of *shabu*; and (6) photocopy of two one-hundred-peso bills with serial numbers FW840532 and YR684136.[17]

The defense, on the other hand, had an entirely different version of what transpired that morning. It presented two witnesses: accused-appellant Sonny Padua and Miranda Estanislao. The testimony of Alice Padua, the wife of the accused was dispensed with, on the stipulation that if presented she will just corroborate the testimony of the accused.

Accused-appellant testified that there was no buy-bust operation on August 18, 2002. On direct examination, accused-appellant asserted that at around 8:00 to 9:00 o'clock in the morning of August 18, 2002, he was awakened by the operatives who went to his house located at No. 216, Mozo Street, Purok 2, Barangay Napindan, Taguig City. When he opened his eyes, a gun was poked at him. He was handcuffed by the police officers and was brought to DDEU at Fort Bonifacio, where he was detained. While inside the vehicle on their way to Fort Bonifacio, accused-appellant alleged that the police officers asked him to give them money in the amount of ₱120,000.00 otherwise a case will be filed against him.

The following day, accused-appellant was allegedly brought to the Capitol Compound for inquest and was thereafter brought

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[14] *Id.* at 5-6.

[15] *Id.* at 8.

[16] *Id.* at 7.

[17] *Id.* at 9.

to the Taguig Municipal Jail. He was not aware of any violation he committed. It was only during the inquest proceedings in court that accused-appellant learned of the charges filed against him.

The defense also offered the testimony of Miranda Estanislao, cousin of the wife of accused-appellant. Per her statement, on August 18, 2002 in front of the house of her mother and beside the house of accused-appellant located at No. 216 Mozo St., Purok 2, Napindan, Taguig City, five men arrived. The three entered the gate of the premises of accused-appellant, one was left outside of the gate while the other approached her and asked her of the address of the place. Ten minutes after they entered the house of accused-appellant, they came out together with accused-appellant who was then handcuffed and half-naked.[18]

After trial, the court *a quo* found accused-appellant guilty as charged. The dispositive portion of the trial court's decision reads:

> WHEREFORE, the court finds accused SONNY PADUA *Y* REYES GUILTY beyond reasonable doubt of violation of Section 5, Article II of Republic Act 9165, and hereby sentences him to suffer life imprisonment and to pay a fine of ₱500,000.00.
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> The Court also finds accused GUILTY beyond reasonable doubt of violation of Section 11, Article II of the same law and sentences him to suffer a prison term ranging from TWELVE (12) YEARS and ONE (1) DAY, AS MINIMUM, to TWENTY (20) YEARS, as maximum, and to pay a fine of ₱300.000.00
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> The confiscated evidence are forfeited in favor of the Government and the Branch Clerk of Court is directed to cause their immediate transmittal to the Philippine Drug Enforcement Agency (PDEA) for immediate disposal in accordance with law.[19]

On May 25, 2006, the Court of Appeals affirmed the findings and conclusion of the RTC. The appellate court ruled that the

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[18] TSN, August 19, 2004, pp. 3-4.

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

buy-bust operation conducted by the police officers was proper and there was no irregularity in the conduct of the same. Accused-appellant was caught *in flagrante delicto*, thus, his arrest was lawful and the sachets of *shabu* confiscated from him were admissible in evidence, being the fruits of the crime. The Court of Appeals also ruled that there was no evidence of any improper motive on the part of prosecution witness PO2 Aguilar, who was a member of the team who conducted the buy-bust operation.

The records of this case were thereby forwarded by the Court of Appeals to this Court pursuant to its Resolution dated July 20, 2006, giving due course to accused-appellant's Notice of Appeal.

In our Resolution[20] dated October 16, 2006, the parties were notified that they may file their respective supplemental briefs, if they so desired, within 30 days from notice. People[21] opted not to file a supplemental brief on the ground that it had exhaustively argued all the relevant issues in its brief, and the filing of a supplemental brief would only entail a repetition of the arguments already discussed therein. Accused-appellant submitted his supplemental brief on December 20, 2006.

In his Supplemental Brief,[22] accused-appellant assigned the following errors:

I.

THE GUILT OF THE ACCUSED-APPELLANT WAS NOT PROVEN BEYOND REASONABLE DOUBT FOR FAILURE OF THE PROSECUTION TO ESTABLISH THE CHAIN OF CUSTODY OF THE SPECIMEN.

II.

THE APPELLATE COURT, WITH DUE RESPECT, GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE

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[20] *Rollo*, p. 18.

[21] *Id.* at 39-40.

[22] *Id.* at 29-38.

FAILURE OF THE PROSECUTION TO PRESENT THE ALLEGED INFORMANT.

Accused-appellant asserts that the police officers failed to account for the chain of custody of the seized items alleged to be *shabu*. He questions the non-presentation as witness of the alleged investigator, the officer on duty who received the specimen together with the request for laboratory examination from PO2 Aguilar. He maintains that the specimen, which PO2 Aguilar turned over to Forensic Chemist Rivera-Dagasdas, may no longer be the same specimen taken from him by PO2 Aguilar.

Contrary to accused-appellant's claim, there is no broken chain in the custody of the seized items, found to be *shabu*, from the time PO2 Aguilar got the *shabu*, to the time it was turned over to the investigating officer, and up to the time it was brought to the forensic chemist at the PNP Crime Laboratory for laboratory examination.

The procedure for the custody and disposition of confiscated, seized and/or surrendered dangerous drugs, among others, is provided under paragraph 1, Section 21, Article II of Republic Act No. 9165, as follows:

> (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.

Section 21(a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, stipulates:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her

> representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof: x x x Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items.

Under the same proviso, *non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.*

Clearly, the purpose of the procedure outlined in the implementing rules is centered on the *preservation* of the *integrity* and *evidentiary value* of the seized items. The testimony of PO2 Aguilar outlines the chain of custody of the confiscated items, *i.e.*, sachets of *shabu*:

Q What else did you do when you arrested Sonny Padua?

A I frisked him.

Q When you say frisk him, who is that?

A Sonny Padua.

Q What else did you do when you arrested Sonny Padua?

A After I arrested him I recovered from him the buy-bust money in his left pocket and the 4 sachets of *shabu* in his right pocket.

Q What else did you do?

A And I apprised him of his violation of 9165.

Q If this person is shown to you, will you be able to recognize him?

A Yes, sir.

Q Is he here in this court-room today?

A Yes, sir.

Q Will you please stand up and point to him?

A Witness is pointing to a man wearing a yello (sic) t-shirt who when asked he replied he is Sonny Padua.

Q I am showing to you a brown envelope inside the same brown envelope is a plastic sachet of *shabu*, will you please go over the same and tell us if this is the plastic sachet which you bought from the accused and also you confiscated from him other plastic sachets?

A This is the *shabu* I bought [f]rom accused with marking DA-1-180802.

Q What about the remaining 4?

A These are the 4 sachets I recovered in his right pocket.

PROS. TOLENTINO:

Mark as exh. D-2 to D-5.

Q When you were reading the rights and informing the charges of accused and confiscating from him the *shabu* including the money, where was your immediate superior officer?

A Beside me.

Q What was he doing at the time?

A He is assisting me.

PROS. TOLENTINO:

We are adapting the same marking during the pre-trial the brown envelope exh. D, the marking identified by the police officer, the witness in this case and after arresting and reading and informing the accused of his violation under the law, where did you bring him?

A We brought him to our office.

Q By the way, why are you sure when you identified all the *shabu* the same plastic sachet that you bought from the accused, why do you say they are the same?

A Because I put marking.

Q Where?

A At the area.

Q And the other *shabu* that were confiscated from him, why do you say these were the plastic sachets of *shabu* confiscated from the accused?

A The same because I put markings at the area.

Q When you say area?

A The place where I arrested the accused.

Q And bringing him to the police station, what happened Mr. witness?

A Upon arrival at the station I turned him to our investigator.

Q What about the specimen you confiscated from him?

A I turned them over to our investigator for examination.[23]

The fact that the persons who had possession or custody of the subject drugs, such as Forensic Chemist Rivera-Dagasdas and the alleged investigator, were not presented as witnesses to corroborate SPO2 Aguilar's testimony is of no moment. The non-presentation as witnesses of other persons such as the investigator and the forensic chemist, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.[24]

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[23] TSN, January 30, 2003, pp. 9-11; records, pp. 120-122.

[24] *People v. Zeng Hua Dian*, G.R. No. 145348, June 14, 2004, 432 SCRA 25-32.

As may be noted, the prosecution dispensed with the testimony of Forensic Chemist Rivera-Dagasdas because the defense had already agreed during the pre-trial in the substance of her testimony to be given during trial, to wit:

> To expedite the proceeding, the parties dispensed with the testimony of Forensic Chemist Maria Ana Rivera-Dagasdas, who appeared today, on stipulation that she received the Request for Laboratory Examination dated August 18, 2002 and the specimen allegedly confiscated from the accused, that upon her examination the specimen proved positive for methamphetamine hydrochloride, a dangerous drug, as appearing in the Chemistry Report No. D-1237-02.[25]

Anent the failure of the prosecution to present the testimony of the informant, it is well-settled that the testimony of an informant in drug-pushing cases is not essential for conviction and may be dispensed if the poseur-buyer testified on the same.[26] Informants are almost always never presented in court because of the need to preserve their invaluable service to the police.[27]

Further, not all people who came into contact with the seized drugs are required to testify in court. There is nothing in Republic Act No. 9165 or in any rule implementing the same that imposes such requirement. As long as the chain of custody of the seized drug was clearly established not to have been broken and that the prosecution did not fail to identify properly the drugs seized, it is not indispensable that each and every person who came into possession of the drugs should take the witness stand.[28] In *People v. Zeng Hua Dian*,[29] we ruled:

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[25] Records, p. 25.

[26] *People v. Naquita*, G.R. No. 180511, July 28, 2008, 560 SCRA 430, 445; *People v. Santiago*, G.R. No. 175326, November 28, 2007, 539 SCRA 198, 223.

[27] *People v. Domingcil*, 464 Phil. 342, 358 (2004).

[28] *People v. Hernandez*, G.R. No. 184804, June 18, 2009, 589 SCRA 625, 645-646.

[29] *Supra* note 24 at 32.

After a thorough review of the records of this case, we find that the chain of custody of the seized substance was not broken and that the prosecution did not fail to identify properly the drugs seized in this case. The non-presentation as witnesses of other persons such as SPO1 Grafia, the evidence custodian, and PO3 Alamia, the officer on duty, is not a crucial point against the prosecution. The matter of presentation of witnesses by the prosecution is not for the court to decide. The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses.

What determines if there was, indeed, a sale of dangerous drugs in a buy-bust operation is proof of the concurrence of all the elements of the offense, to wit: (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, which the prosecution has satisfactorily established. The prosecution satisfactorily proved the illegal sale of dangerous drugs and presented in court the evidence of *corpus delicti*.[30]

In the instant case, all the elements of the crime have been sufficiently established by the prosecution. The witness for the prosecution was able to prove that the buy-bust operation indeed took place, and the *shabu* subject of the sale was brought to and duly identified in court. The poseur-buyer (PO2 Aguilar) positively identified accused-appellant as the one who had sold to him one heat-sealed, transparent plastic sachet containing twenty decigrams (0.20 gram) of *shabu*. After accused-appellant received the marked money and handed to PO2 Aguilar one plastic sachet of *shabu*, the latter called his team mates and right away frisked the accused-appellant. From the body search, PO2 Aguilar recovered from the possession of accused-appellant, specifically from the latter's right pocket, another four sachets of *shabu*.

On the other hand, for an accused to be convicted of illegal possession of prohibited or regulated drugs, the following elements must concur: (1) the accused is in possession of an item or

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[30] *People v. Padasin*, 445 Phil. 448, 462 (2003).

object which is identified to be a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possesses the said drug.[31]

With respect to the charge of illegal possession of dangerous drugs under Section 11, Article II of Republic Act No. 9165, all of these elements were present and duly proven in Criminal Case No. 11596-D. These are: (1) accused-appellant was found to be in possession of .70 gram of *shabu*, a dangerous drug; (2) the identity of accused-appellant as the person found in possession of the dangerous drug was established; and (3) accused-appellant, the person found to be in possession, was not authorized to possess the dangerous drug. The prosecution has established that the arresting officers were able to retrieve four more plastic sachets of *shabu* in accused-appellant's possession when he was directed to empty his pockets upon being arrested *in flagrante delicto* in the buy-bust operation.

PO2 Aguilar straightforwardly narrated the circumstances leading to the consummation of the sale of illegal drugs, the possession of four plastic sachets of *shabu* and the arrest of accused-appellant. Credence was properly accorded to the testimony of prosecution witness PO2 Aguilar who is a law enforcer. The testimony of the police officers carried with it the presumption of regularity in the performance of official functions. Law enforcers are presumed to have performed their duties regularly in the absence of evidence to the contrary. When police officers have no motive for testifying falsely against the accused, courts are inclined to uphold the presumption of regularity in the performance of their duties[32] and no evidence whatsoever was presented that would suggest any improper motive on the part of the police enforcers. This Court accords great respect to and treats with finality the findings of the trial court on the matter of credibility of witnesses, absent any palpable error or arbitrariness in its findings.

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[31] *People v. Lagata*, 452 Phil. 846, 853 (2003).

[32] *People v. Khor*, 366 Phil. 762, 793 (1999).

Accused-appellant also contends that the prosecution failed to prove that he received the money as payment for the sale of illegal drugs, by its failure to prove that he was positive for ultraviolet fluorescent powder. The accused-appellant fails to persuade us. Since the prosecution has discharged its onus of proving the accusation, as in fact it presented the prohibited drug and identified accused-appellant as the offender, it is immaterial that prosecution present report that accused-appellant was indeed positive for ultraviolet fluorescent powder.

In a last-ditch but futile attempt to evade culpability, the accused-appellant tried to argue on his behalf that no surveillance was conducted before the buy-bust operation.

A prior surveillance is not a prerequisite for the validity of an entrapment or buy-bust operation, the conduct of which has no rigid or textbook method. Flexibility is a trait of good police work. However the police carry out its entrapment operations, for as long as the rights of the accused have not been violated in the process, the courts will not pass on the wisdom thereof.[33] The police officers may decide that time is of the essence and dispense with the need for prior surveillance.[34]

Since accused-appellant's violation of Sections 5 and 11, Article II of Republic Act No. 9165 were duly established by the prosecution's evidence, we shall now ascertain the penalties imposable on him.

Under Section 5, Article II of Republic Act No. 9165, the unauthorized sale of *shabu*, regardless of its quantity and purity, 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).

Pursuant, however, to the enactment of Republic Act No. 9346, entitled "An Act Prohibiting the Imposition of Death Penalty in the Philippines," only life imprisonment and fine

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[33] *People v. Cadley*, 469 Phil. 515, 525 (2004).

[34] *People v. Lacbanes*, 336 Phil. 933, 941 (1997).

shall be imposed. Thus, the RTC and the Court of Appeals were correct in imposing the penalty of life imprisonment and fine of ₱500,000.00 on appellant in Criminal Case No. 11595-D.

Section 11(3), Article II of Republic Act No. 9165 provides that illegal possession of less than five grams of *shabu* is penalized with imprisonment of twelve (12) years and one day to twenty (20) years, plus a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00).

Accused-appellant was charged with and found to be guilty of illegal possession of 0.70 gram of *shabu* in Criminal Case No. 11596-D. Hence, the RTC and the Court of Appeals aptly sentenced appellant to imprisonment of 12 years and one day, as minimum, to 20 years, as maximum, and fined him ₱300,000.00, since said penalties are within the range of penalties prescribed by the aforequoted provision.

WHEREFORE, the Decision dated May 25, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00553 is hereby *AFFIRMED in toto*.

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., del Castillo, and *Perez, JJ.*, concur.

EN BANC

[G.R. No. 173634. July 22, 2010]

PHILIPPINE AMUSEMENT AND GAMING CORPORATION (PAGCOR), represented by ATTY. CARLOS R. BAUTISTA, JR., *petitioner, vs.* **RUFINO G. AUMENTADO, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; COURT OF APPEALS; CAN ENTERTAIN APPEALS FROM AWARDS, JUDGMENTS, FINAL ORDERS OR RESOLUTIONS OF THE CIVIL SERVICE COMMISSION.— [P]AGCOR is correct that the jurisdiction of the Court of Appeals over petitions for review under Rule 43 is not limited to judgments and final orders of the CSC. Section 1, Rule 43 of the Rules provides: SECTION 1. Scope. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and **from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission**, x x x. It is clear from the Rules that the Court of Appeals can entertain appeals from awards, judgments, final orders or resolutions of the CSC.

2. ID.; JUDGMENTS; EXECUTION ORDER; NOT APPEALABLE; EXCEPTIONS; REMEDY AVAILABLE TO THE AGGRIEVED PARTY.— The general rule is that an order of execution is not appealable; otherwise, a case would never end. There are, however, exceptions to this rule, namely: 1. The writ of execution varies the judgment; 2. There has been a change in the situation of the parties making execution inequitable or unjust; 3. Execution is sought to be enforced against property exempt from execution; 4. It appears that the controversy has been submitted to the judgment of the court; 5. The terms of the judgment are not clear enough and there remains room for interpretation thereof; or 6. It appears that the writ of execution has been improvidently issued, or that it is defective in substance, or issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ issued without authority. In these exceptional circumstances, considerations of justice and equity dictate that there be some remedy available to the aggrieved party. The remedy may either be by appeal or by a special civil action of *certiorari*, prohibition, or *mandamus*.

3. ID.; APPEALS; ISSUES; ISSUE ON VALIDITY OF THE QUITCLAIM IS A QUESTION OF FACT WHICH SHOULD BE DECIDED BY THE COURT OF APPEALS; REMAND OF THE CASE, WARRANTED.— [T]he CSC, without

mentioning the quitclaim, issued CSC Resolution No. 02-0773 and ordered respondent's reinstatement. The CSC only took notice of the quitclaim in CSC Resolution No. 03-0082 and declared it void. PAGCOR insists that the quitclaim is valid. The Court of Appeals subsequently denied PAGCOR's appeal without ruling on the validity of the quitclaim. The issue on the validity of the quitclaim is a question of fact which should have been properly decided by the Court of Appeals. As we are not a trier of facts, we remand the case to the Court of Appeals for a thorough examination of the evidence and a judicious disposal of the case.

APPEARANCES OF COUNSEL

Bautista Consolacion Gloria Apigo Salvosa Sevilla Noblejas Siosana Sagsagat for petitioner.
Amado Auditor Caballero for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 28 April 2006 Decision[2] and 19 July 2006 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 83624. In its 28 April 2006 Decision, the Court of Appeals denied the petition for review filed by petitioner Philippine Amusement and Gaming Corporation (PAGCOR) of Civil Service Commission (CSC) Resolution No. 03-0082.[4] In its 19 July 2006 Resolution, the Court of Appeals denied PAGCOR's motion for reconsideration.

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

[2] *Rollo*, pp. 158-166. Penned by Associate Justice Jose C. Reyes, Jr., with Associate Justices Eliezer R. De Los Santos and Arturo G. Tayag, concurring.

[3] *Id.* at 174.

[4] *Id.* at 69-76. Penned by J. Waldemar V. Valmores, with Chairman Karina Constantino-David and Commissioner Jose F. Erestain, Jr., concurring.

The Facts

Respondent Rufino G. Aumentado, Jr. (respondent) was employed by PAGCOR as a table supervisor. Subsequently, PAGCOR dismissed respondent from the service. Feeling aggrieved, respondent filed a complaint for illegal dismissal.

In CSC Resolution No. 98-1996 dated 27 July 1998, the CSC ruled that respondent was illegally terminated from the service and ordered respondent's reinstatement and the payment of his backwages. PAGCOR filed a motion for reconsideration. On 5 October 1998, the CSC denied PAGCOR's motion.

PAGCOR appealed to the Court of Appeals. The Court of Appeals affirmed the CSC's decision.

PAGCOR appealed to this Court. In our 20 November 2000 Resolution in G.R. No. 144500, we denied PAGCOR's appeal for failure to take the appeal within the reglementary period of 15 days.[5] On 29 January 2001, our 20 November 2000 Resolution became final and executory.[6]

In his 15 March 2001 letter addressed to the CSC, the Chairman and Chief Executive Officer and the Board of Directors of PAGCOR, respondent requested for his immediate reinstatement and the payment of his backwages.[7] Respondent also filed a motion for execution before the CSC. In CSC Resolution No. 02-0773 dated 30 May 2002,[8] the CSC granted respondent's motion. The dispositive portion of CSC Resolution No. 02-0773 provides:

WHEREFORE, the Philippine Amusement and Gaming Corporation (PAGCOR), through its responsible officials, is hereby **ORDERED**, for the last time, to effect **FORTHWITH** the reinstatement of Rufino

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[5] *Id.* at 219.

[6] *Id.* at 220.

[7] *Id.* at 221-222.

[8] *Id.* at 52-53. Penned by J. Waldemar V. Valmores, with Chairman Karina Constantino-David and Commissioner Jose F. Erestain, Jr., concurring.

G. Aumentado, Jr. according to the tenor of CSC Resolution No. 98-1996 dated July 27, 1998. It is likewise **ORDERED** that it directly furnish the Commission with its compliance report as soon as possible. Be forewarned that failure to do so shall constrain the Commission to take punitive actions, within the bounds of law, against the accountable officials of PAGCOR. Finally, it is understood that the Commission shall no longer entertain any more representation from PAGCOR insofar as it concerns the instant case.

Civil Service Commission – National Capital Region (CSC-NCR) is hereby ordered to closely monitor the implementation of this Resolution and for its Regional Director to submit her report within fifteen (15) days from receipt hereof.[9]

However, on 4 April 2001, PAGCOR and respondent entered into an amicable settlement and, for monetary consideration, respondent executed a quitclaim which reads:

FOR THE SOLE CONSIDERATION OF THE SUM OF EIGHT HUNDRED FORTY THREE THOUSAND THREE HUNDRED EIGHTY AND 40/100 (₱843,840.41) [sic] receipt of which is hereby acknowledged, I, RUFINO G. AUMENTADO, JR. of 56-A Rizal Avenue Extension, Basak, Mambaling, Cebu City, do hereby waive, quit, renounce, release and forever discharge the Philippine Amusement and Gaming Corporation (PAGCOR), with address at 1330 PAGCOR House, Roxas Blvd., Ermita, Manila, and its employees, from any and all actions, claims, demands and rights of action whatsoever, including my right to reinstatement, arising out of my previous employment thereon, or in connection with CSC Resolution No. 981996 of July 27, 1998 of which I am fully compensated.

This release may be pleaded as a bar to any criminal, civil or administrative suit or proceeding which may be taken or have been taken in connection with the aforementioned employment and other circumstances pertaining thereto.

It is further agreed that PAGCOR is hereby released from all claims, demands and rights of action from the undersigned.[10]

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[9] *Id.* at 53.

[10] *Id.* at 43.

On 1 July 2002, PAGCOR filed with the CSC a "Manifestation of Quitclaim with Prayer to Declare Complainant in Contempt."[11] PAGCOR sought the reconsideration of CSC Resolution No. 02-0773 on the basis of the quitclaim executed by respondent.

In CSC Resolution No. 03-0082 dated 20 January 2003, the CSC denied PAGCOR's motion. The dispositive portion of CSC Resolution No. 03-0082 provides:

> WHEREFORE, the motion of the Philippine Amusement and Gaming Corporation to set aside CSC Resolution No. 02-0773, dated June 26, 2002, is hereby **DENIED**. There being no more legal impediment, Rufino G. Aumentado, Jr. should now be reinstated forthwith to his former position, or, if the same be legally untenable, to any equivalent position. The payment made to him in consonance with the quitclaim shall be deemed to be an advance of his back salaries, the amount of which should be reckoned from the time of his illegal dismissal up to the date of his actual reinstatement, but not to exceed five (5) years.[12]

PAGCOR filed a motion for reconsideration. In CSC Resolution No. 04-0395 dated 5 April 2004 Resolution,[13] the CSC denied PAGCOR's motion.

PAGCOR appealed to the Court of Appeals.

The Ruling of the Court of Appeals

In its 28 April 2006 Decision, the Court of Appeals denied PAGCOR's appeal. The Court of Appeals ruled that the appeal was not proper because Rule 43 of the Rules of Court (the Rules) applies only to appeals from judgments or final orders of an administrative body. According to the Court of Appeals, PAGCOR's appeal was not one from a judgment or final order of the CSC but was directed against a resolution ordering

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[11] *Id.* at 54-59.

[12] *Id.* at 76.

[13] *Id.* at 82-89. Penned by by J. Waldemar V. Valmores, with Chairman Karina Constantino-David and Commissioner Cesar D. Buenaflor, concurring.

respondent's reinstatement in accordance with a decision which had already become final and executory. The Court of Appeals added that an order of execution is not appealable.

PAGCOR filed a motion for reconsideration. In its 19 July 2006 Resolution, the Court of Appeals denied PAGCOR's motion.

Hence, this petition.

The Issues

PAGCOR raises the following issues:

I.

Whether or not the Court of Appeals erred in ruling that its jurisdiction under Rule 43 of the Rules of Court is limited only to JUDGMENTS and FINAL ORDERS of the Civil Service Commission?

II.

Whether or not the Court of Appeals erred in ruling that CSC Resolution No. 02-0773 dated May 30, 2002, CSC Resolution No. 03-0082 dated January 20, 2003, [and] CSC Resolution No. 04-0395 dated April 5, 2004, are merely orders for execution thus not susceptible to appeal?[14]

In the event that we rule on the affirmative and in the interest of substantial justice, PAGCOR prays that we rule on the validity of the quitclaim and on the CSC's jurisdiction to pass upon its validity.

The Ruling of the Court

The petition is meritorious.

First, PAGCOR is correct that the jurisdiction of the Court of Appeals over petitions for review under Rule 43 is not limited to judgments and final orders of the CSC. Section 1, Rule 43 of the Rules provides:

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[14] *Id.* at 238.

SECTION 1. Scope. — This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and **from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission**, x x x. (Emphasis supplied)

It is clear from the Rules that the Court of Appeals can entertain appeals from awards, judgments, final orders or resolutions of the CSC.

Second, when the Court of Appeals declared that CSC Resolution Nos. 02-0773, 03-0082, and 04-0395 were not subject to appeal, the Court of Appeals applied Section 1, Rule 41 of the Rules which provides:

SECTION 1. Subject of Appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

a) An order denying a motion for new trial or reconsideration;

b) An order denying a petition for relief or any similar motion seeking relief from judgment;

c) An interlocutory order;

d) An order disallowing or dismissing an appeal;

e) An order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake, duress, or any other ground vitiating consent;

f) An order of execution;

g) A judgment or final order for or against one or more of several parties or in separate claims, counterclaims, cross-claims and third-party complaints, while the main case is pending, unless the court allows an appeal therefrom; and

h) An order dismissing an action without prejudice.

In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65. (Emphasis supplied)

The general rule is that an order of execution is not appealable; otherwise, a case would never end.[15] There are, however, exceptions to this rule, namely:

1. The writ of execution varies the judgment;

2. There has been a change in the situation of the parties making execution inequitable or unjust;

3. Execution is sought to be enforced against property exempt from execution;

4. It appears that the controversy has been submitted to the judgment of the court;

5. The terms of the judgment are not clear enough and there remains room for interpretation thereof; or

6. It appears that the writ of execution has been improvidently issued, or that it is defective in substance, or issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ issued without authority.[16]

In these exceptional circumstances, considerations of justice and equity dictate that there be some remedy available to the aggrieved party. The remedy may either be by appeal or by a special civil action of *certiorari*, prohibition, or *mandamus*.[17]

PAGCOR argues that the quitclaim changed the situation of the parties making the execution of CSC Resolution No. 98-1996 unjust. PAGCOR contends that it refused to reinstate respondent because he already executed the quitclaim and waived his right to reinstatement.

PAGCOR and respondent executed the quitclaim after the entry of judgment. The execution of a quitclaim after a decision

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[15] *Buñag v. Court of Appeals*, 363 Phil. 216 (1999); *Reburiano v. Court of Appeals*, 361 Phil. 294 (1999); *Imperial Insurance v. De Los Angeles*, 197 Phil. 23 (1982); *Corpus v. Alikpala*, 130 Phil. 88 (1968).

[16] *Philippine Economic Zone Authority v. Borreta*, G.R. No. 142669, 15 March 2006, 484 SCRA 664, 670 citing *Reburiano v. Court of Appeals*, *supra*.

[17] *Reburiano v. Court of Appeals*, *supra* note 15.

has become final and executory is a supervening event which could affect the execution of the decision. The quitclaim between PAGCOR and respondent brought about a change in their situation because the validity of the quitclaim would determine whether respondent is entitled to reinstatement. The validity of the quitclaim will also determine if the execution of CSC Resolution No. 98-1996 will be inequitable or unjust.

In this case, the CSC, without mentioning the quitclaim, issued CSC Resolution No. 02-0773 and ordered respondent's reinstatement. The CSC only took notice of the quitclaim in CSC Resolution No. 03-0082 and declared it void. PAGCOR insists that the quitclaim is valid.[18] The Court of Appeals subsequently denied PAGCOR's appeal without ruling on the validity of the quitclaim.

The issue on the validity of the quitclaim is a question of fact which should have been properly decided by the Court of Appeals. As we are not a trier of facts, we remand the case to the Court of Appeals for a thorough examination of the evidence and a judicious disposal of the case.

WHEREFORE, we *GRANT* the Petition. We *SET ASIDE* the 28 April 2006 Decision and 19 July 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 83624. Petitioner Philippine Amusement and Gaming Corporation's appeal is *REINSTATED* and the instant case is *REMANDED* to the Court of Appeals for further proceedings, particularly on the validity of the quitclaim.

SO ORDERED.

Corona, C.J., 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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[18] Also attached to the *rollo* is a Decision of the Office of the Ombudsman dated 26 February 2002 dismissing the administrative complaint filed by respondent against Atty. Carlos R. Bautista, Jr. for conduct prejudicial to the best interest of the service. The 26 February 2002 Decision also declared that respondent validly waived his right to reinstatement. (*Rollo*, pp. 44-51. The Decision was penned by Graft Investigation Officer I Vivian H. Magsino and approved by Ombudsman Aniano A. Desierto.)

EN BANC

[G.R. No. 185215. July 22, 2010]

VIRGINIA D. BAUTISTA, *petitioner, vs.* **CIVIL SERVICE COMMISSION and DEVELOPMENT BANK OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE OFFICERS AND EMPLOYEES; DEMOTION PURSUANT TO REORGANIZATION; REORGANIZATION, WHEN CONSIDERED VALID; OBSERVANCE OF THE RULES ON BONA FIDE ABOLITION OF PUBLIC OFFICE IS ESSENTIAL BEFORE A DEMOTION MAYBE EFFECTED PURSUANT TO A REORGANIZATION.— In this jurisdiction, a reorganization is valid provided that it is done in good faith. As a general rule, the test of good faith lies in whether the purpose of the reorganization is for economy or to make the bureaucracy more efficient. Removal from office as a result of reorganization must, thus, pass the test of good faith. A demotion in office, *i.e.*, the movement from one position to another involving the issuance of an appointment with diminution in duties, responsibilities, status or rank which may or may not involve a reduction in salary, is tantamount to removal, if no cause is shown for it. Consequently, before a demotion may be effected pursuant to a reorganization, the observance of the rules on *bona fide* abolition of public office is essential.

2. ID.; ID.; ID.; ID.; NO DEMOTION WHERE THE EMPLOYEE WAS APPOINTED TO A POSITION COMPARABLE TO THE ONE SHE PREVIOUSLY OCCUPIED; APPOINTMENT RESULTING IN AN INCREASE IN RANK AND SALARY NEGATES CLAIM OF DEMOTION.— It will also be recalled that the DBM had earlier denied petitioner's request that her position as Account Officer with SG-20 be matched to Account Officer with SG-25 under the GFIs Index of Occupational Services because the Account Officer position in DBP is not commensurate with the position of Account Officer with SG-25 under the said index. While there was a change in title from "Account

Officer" to "Bank Executive Officer," petitioner's duties and responsibilities before and after the reorganization remained practically the same. Thus, her new appointment merely stated as reason therefor: "Change in Item Number due to Reorganization." What is more, said appointment resulted to an increase of her salary grade from 20 to 24 translating to an increase of her annual salary from ₱102,000.00 to ₱131,250.00. Under these circumstances, there is no room for us to rule that a demotion took place because petitioner even benefited from an increase in rank and salary.

3. ID.; ID.; ID.; ID.; REORGANIZATION OF THE RESPONDENT BANK NOT TAINTED WITH BAD FAITH; CASE OF *DEPARTMENT OF TRADE AND INDUSTRY V. CHAIRMAN AND COMMISSIONERS OF CIVIL SERVICE COMMISSION* (G.R. NO. 967391, OCTOBER 13, 1993), NOT APPLICABLE.— [P]etitioner's reliance on the case of *Department of Trade and Industry v. Chairman and Commissioners of Civil Service Commission* is misplaced. In said case, we affirmed the ruling of the CSC which found that the reorganization of the Department of Trade and Industry (DTI) was done in bad faith. We noted that when the position of therein respondent Espejo was abolished, there was a corresponding increase in the new staffing pattern of the DTI after the reorganization. Further, the incumbents were replaced by those less qualified in terms of educational qualification, performance and merit. Within this context, there was a clear intent to ease out the incumbents in order to favor less qualified individuals in the guise of a reorganization plan. In contrast, herein petitioner has failed to prove that DBP acted in bad faith when it appointed her as BEO II. None of the circumstances under Section 2 of RA 6656 which would be *indicia* of bad faith in the process of reorganization is present here. Quite the contrary, the reorganization worked in petitioner's favor as her salary grade was increased from 20 to 24.

4. REMEDIAL LAW; APPEALS; ISSUES; POINTS OF LAW, THEORIES, ISSUES AND ARGUMENTS NOT ADEQUATELY BROUGHT TO THE ATTENTION OF THE LOWER TRIBUNAL CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL; APPLIED.— In a last ditch effort to save her case, petitioner posits for the first time on appeal that the supervisory function of BEO II is less than her former position.

However, as correctly observed by the DBP and CSC, petitioner never assailed the reduction in the scope of her duties and responsibilities arising from her appointment as BEO II in the proceedings below. Instead, she limited her claim of demotion on the alleged decrease of her salary grade from 25 to 24 which, as stated earlier, has no legal and factual bases to stand on. Well-settled is the rule that points of law, theories, issues and arguments not adequately brought to the attention of the lower tribunal will not be ordinarily considered by a reviewing court as they cannot be raised for the first time on appeal. Besides, even if we were to relax this rule, petitioner proffered no evidence to establish the extent of the alleged reduction of her duties and responsibilities other than her self-serving allegations. Interestingly, petitioner even admitted before the CA that she continued to exercise supervisory functions over bank personnel after she was appointed as BEO II. She further claimed that in 1993 she was assigned to head a unit where she exercised supervisory functions over more than 20 bank personnel. Thus, we uphold the findings of the CA that petitioner's duties and responsibilities after the reorganization remained substantially the same.

5. ID.; EVIDENCE; FINDINGS OF AN ADMINISTRATIVE BODY, WHEN SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE ACCORDED NOT ONLY RESPECT BUT ALSO FINALITY; APPLIED.— [W]e agree with the findings of the CA that there was no demotion because petitioner was appointed to a position comparable to her former position. In fact, her new position entailed an increase in her salary grade from 20 to 24. There is, thus, no evidence to suggest that DBP acted in bad faith. Given that these findings are supported by substantial evidence, we adhere to the settled principle that the findings of an administrative body, when supported by substantial evidence, are accorded not only respect but also finality by this Court.

APPEARANCES OF COUNSEL

Quintin G. Bautista for petitioner.
The Solicitor General for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

There is demotion when an employee is appointed to a position resulting to a diminution in duties, responsibilities, status or rank which may or may not involve a reduction in salary.[1] Where an employee is appointed to a position with the same duties and responsibilities but a rank and salary higher than those enjoyed in his previous position, there is no demotion and the appointment is valid. While this principle and its corollary are plain, it is through the use of misleading premises that a semblance of demotion was attempted to be passed off in this case. Thus, we take this opportunity to again remind litigants to use only fair and honest means to plead their cause in order not to waste the precious time and resources of our courts.

This Petition for Review on *Certiorari* assails the October 31, 2008 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 98934 which affirmed the Resolution No. 070765[3] dated April 16, 2007 of the Civil Service Commission (CSC). The CSC dismissed petitioner's complaint based on the finding that the latter was not demoted upon her appointment as Bank Executive Officer II (BEO II) in the Development Bank of the Philippines (DBP).

Factual Antecedents

Petitioner began her career in DBP on June 1, 1978 when she was appointed as Chief of Division. On December 1, 1982, she was promoted to the position of Technical Assistant. On December 3, 1986, then President Corazon C. Aquino issued

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[1] OMNIBUS CIVIL SERVICE RULES AND REGULATIONS, Rule VII (Other Personnel Actions), Section 11.

[2] *Rollo*, pp. 18-33; penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo P. Cruz and Fernanda Lampas Peralta.

[3] *Id.* at 41-46; penned by Commissioner Cesar D. Buenaflor and concurred in by Chairwoman Karina Constantino-David and Commissioner Mary Ann Z. Fernandez-Mendoza.

Executive Order No. 81[4] which authorized, among others, the reorganization of DBP pursuant to Sections 32[5] and 33[6] thereof. As part of DBP's reorganization, petitioner was temporarily appointed in January 1987 as Account Officer with an annual salary of ₱62,640.00 which is equivalent to the 14th step of Salary Grade (SG)-20. In November 1988, this appointment was made permanent subject to the result of the ongoing reorganization of DBP and the approval of the CSC.[7]

Republic Act No. 6758 (RA 6758), or "The Compensation and Classification Act of 1989," took effect on July 1, 1989. To implement the aforesaid law, the Department of Budget and Management (DBM) promulgated the Government Financial Institutions' (GFIs) Index of Occupational Services which mandated GFIs, like the DBP, to adopt a uniform set of position titles in their plantilla. On October 2, 1989, the DBM issued

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[4] THE 1986 REVISED CHARTER OF THE DEVELOPMENT BANK OF THE PHILIPPINES.

[5] *Sec. 32. Authority to Reorganize*. — In view of the new scope of operations of the Bank, a reorganization of the Bank and a reduction in force are hereby authorized to achieve simplicity and economy in operations, including adopting a new staffing pattern to suit the reduced operations envisioned. The formulation of the program of reorganization shall be completed within six months after the approval of this Charter, and the full implementation of the reorganization program within thirty months thereafter.

[6] *Sec. 33. Implementing Details; Organization and Staffing of the Bank.* — Upon the effectivity of this Charter, the Board of Directors of the Bank shall be constituted and its Chairman appointed. The Chairman is hereby authorized, subject to the approval of the Board of Directors as appropriate, to issue such orders, rules and regulations as may be necessary to implement the provisions of this Charter including those relative to the financial aspects, if any, and to the reorganization of the Bank as hereinabove authorized which will involve the determination and adoption of (1) the new internal structure of the Bank as reorganized down to the divisional section or lowest organizational levels, including such appropriate units as may be needed to handle caretaking activities such as the disposition of certain assets and the collection of certain accounts; (2) a new staffing pattern including appropriate salary rates, and (3) the initial operating budget.

[7] CA *rollo*, pp. 159-160.

Corporate Compensation Circular No. 10 (DBM-CCC No. 10) which authorized the GFIs to match their current set of position titles to those prescribed by the GFIs Index of Occupational Services. As a consequence, on February 15, 1991, petitioner was appointed on a permanent status as BEO II with an annual salary of ₱131,250.00 or the 8th step of SG-24 which was made to retroact to July 1, 1989 (the date of effectivity of RA 6758). Prior to her appointment thereto, petitioner occupied the position of Account Officer with SG-20 (24th step) with an annual salary of ₱102,000.00.[8]

Proceedings before the Development Bank of the Philippines

In a letter[9] dated March 23, 1993, petitioner protested her appointment as BEO II before the Head of the Personnel Administration Department of the DBP because it allegedly amounted to a demotion. According to petitioner, prior to the reorganization of DBP, she occupied the position of Account Officer which, under the GFIs Index of Occupational Services, was assigned a salary grade of 25 while that of BEO II has a salary grade of 24. She thus opined that her appointment to the position of BEO II constituted a demotion due to the attendant diminution of benefits and emoluments arising from said appointment.

On February 8, 1994, petitioner reiterated her protest in a letter[10] addressed to the Vice-Chairman of DBP.

Proceedings before the Department of Budget and Management

Petitioner's complaint was referred to the DBM, which found the same to be lacking in merit. It held that the position of Account Officer in DBP is "not in the rank of Assistant Department Manager II. Therefore, to allocate [the] subject positions to Account Officer, SG-25 [under the GFIs Index of Occupational

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[8] *Rollo,* p. 52; Annex "A" (petitioner's Service Record).

[9] *Id.* at 34-36.

[10] *Id.* at 37-39.

Services] will be highly illogical and totally out of context of the accepted organizational set-up for GOCCs[11]/GFIs."[12]

Proceedings before the Civil Service Commission

Undaunted, petitioner appealed to the CSC through several letters dated September 26 1996,[13] October 24, 1997,[14] and February 23, 1998[15] but the latter failed to act on the same. On October 8, 2001, while applying for early retirement, she again wrote a letter-complaint to the CSC. This time the CSC required DBP to comment.

In its comment,[16] DBP asserted that when the bank started to reorganize in 1987, petitioner was appointed to the position of Account Officer with SG-20 on a temporary status. Pursuant to DBM-CCC No. 10 implementing RA 6758, the position of Account Officer with SG-20 was matched with BEO II with SG-24 (8th step). Contrary to petitioner's claim, there was, thus, no demotion because her salary grade was even increased from 20 to 24.

On April 16, 2007, the CSC rendered a decision dismissing petitioner's complaint for lack of merit. The CSC ruled that the appointment of petitioner to the position of BEO II was done pursuant to a valid reorganization. Moreover, petitioner only raised her claim to the contested position on September 26, 1996 or more than seven years from the time of her appointment. She is, thus, deemed to have slept on her rights under the equitable doctrine of *laches*.

Proceedings before the Court of Appeals

Petitioner thereafter appealed to the CA. On the issue of *laches*, the CA disagreed with the CSC. It found that petitioner

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[11] GOVERNMENT OWNED AND CONTROLLED CORPORATIONS.

[12] *Rollo*, p. 51.

[13] *Id.* at 49-51.

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

[15] *Id.* at 56-58.

[16] CA *rollo*, p. 147.

timely protested her alleged demotion through several letter-complaints and appeals; first with the DBP a month after her appointment as BEO II, and, later on, through several letter-appeals with the CSC. Thus, petitioner did not sleep on her rights. If at all, the delay was attributable to the CSC's inaction on her protests which spanned several years.

On the issue of demotion, the CA upheld the findings of the CSC that the appointment of petitioner to BEO II did not constitute a demotion because this was done in good faith and pursuant to a valid reorganization. It ruled that the DBP undertook the matching of positions in order to conform to the GFIs Index of Occupational Services based on the employee's nature of function, hierarchy of jobs, and existing salary range. Petitioner's duties and responsibilities as Account Officer with SG-20 and as BEO II with SG-24 are practically the same as shown by her BC-CSC Form 1 (Position Description Form). Rather than lowering her rank and salary, petitioner's appointment as BEO II had, in fact, resulted to an increase thereof from SG-20 to SG-24, thus, negating petitioner's claim of demotion.

Issues

Before this Court, petitioner attributes the following errors to the CA:

1. The CA erred in holding that petitioner's appointment from Account Officer to BEO II did not result in a demotion in rank and salary, and
2. The CA erred in holding that DBP's reorganization was valid and done in good faith.[17]

Petitioner's Arguments

Petitioner argues that her appointment as BEO II with SG-24 constitutes a demotion because prior to the reorganization of DBP, she was an incumbent Account Officer with SG-25. The position of Account Officer with SG-25 was not abolished

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

after the reorganization. Thus, there was a decrease in her rank and salary from SG-25 to SG-24. Citing *Department of Trade and Industry v. Chairman and Commissioners of Civil Service Commission*,[18] petitioner claims that she should have been appointed to a position comparable to her former position. She decries that the assailed reorganization did not promote economy and efficiency but led to the demoralization of the employees who were not appointed to their old position.

Respondents' Arguments

DBP counters that the appointment of petitioner to BEO II was done in good faith and pursuant to a valid reorganization. It claims that petitioner failed to prove that she held the position of Account Officer with SG-25 under the GFIs Index of Occupational Services prior to the reorganization of the bank. Rather, the evidence duly established that petitioner occupied the position of Account Officer with SG-20. The position of Account Officer with SG-20 is not the same as Account Officer with SG-25 under the GFIs Index of Occupational Services. When RA 6758 was passed by Congress, the DBM approved the GFIs Index of Occupational Services which mandated the GFIs, including DBP, to adopt the position titles therein. As a result, DBP fixed the positions of its employees to appropriate positions to conform to the GFIs Index of Occupational Services based on the nature of their functions, hierarchy of jobs, and existing salary range. Thus, the position of Account Officer with SG-20 was matched to the position of BEO II with SG-24. Petitioner's duties and responsibilities as Account Officer and as BEO II remained essentially the same. Taken together, there can be no demotion because petitioner's salary grade was even increased from 20 to 24.

The CSC, represented by the Solicitor General, is fully in accord with the afore-stated position of the DBP. It emphasizes that petitioner failed to prove that there was a reduction in her duties, responsibilities, status or rank as a result of her appointment to the position of BEO II.

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[18] G.R. No. 96739, October 13, 1993, 227 SCRA 198.

Our Ruling

We affirm the findings of the CA and DENY the petition. There was no demotion when petitioner was appointed as BEO II.

In this jurisdiction, a reorganization is valid provided that it is done in good faith. As a general rule, the test of good faith lies in whether the purpose of the reorganization is for economy or to make the bureaucracy more efficient.[19] Removal from office as a result of reorganization must, thus, pass the test of good faith.[20] A demotion in office, *i.e.*, the movement from one position to another involving the issuance of an appointment with diminution in duties, responsibilities, status or rank which may or may not involve a reduction in salary,[21] is tantamount to removal, if no cause is shown for it.[22] Consequently, before a demotion may be effected pursuant to a reorganization, the observance of the rules on *bona fide* abolition of public office is essential.[23]

There was no demotion because petitioner was appointed to a position comparable to the one she previously occupied. There was even an increase in her rank and salary.

Petitioner claims that she was illegally demoted when she was appointed from Account Officer with SG-25 to BEO II with SG-24 after the reorganization of DBP in 1989.

Petitioner's contention is untenable and misleading.

The records show that prior to her appointment as BEO II, petitioner occupied the position of Account Officer with SG-20

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[19] *Dario v. Mison*, 257 Phil. 84, 130 (1989).

[20] *Id.*

[21] *Supra* note 1.

[22] *Gayatao v. Civil Service Commission*, G.R. No. 93064, June 22, 1992, 210 SCRA 183, 192.

[23] *Id.*

and not Account Officer with SG-25. This is stated in petitioner's own evidence consisting of her service record[24] as well as the admissions in her letter-complaints before the DBP and CSC. Curiously, in her arguments before the CA and this Court, petitioner modified her position by claiming that she was an Account Officer with SG-25 prior to her appointment to the position of BEO II with SG-24. We must, therefore, express our disapproval over the manner by which petitioner pleaded her cause which, to our mind, is nothing but an attempt to mislead this Court.

As correctly found by the CA, petitioner failed to prove that the position of Account Officer with SG-20 in the plantilla of DBP prior to its reorganization and the position of Account Officer with SG-25 under the GFIs Index of Occupational Services are the same. Upon the passage of RA 6758, the DBM promulgated the GFIs Index of Occupational Services which mandated the adoption of a uniform system of position titles in GFIs, including DBP. The DBM then issued DBM-CCC No. 10 which authorized DBP to match its current set of position titles to those prescribed under the GFIs Index of Occupational Services based on the nature of duties and responsibilities, qualification requirements for the position, hierarchy of jobs, and existing salary range. Consequently, petitioner's position of Account Officer with SG-20 was matched to the position of BEO II with SG-24 because she exercised supervisory functions over certain bank personnel.

It will also be recalled that the DBM had earlier denied petitioner's request that her position as Account Officer with SG-20 be matched to Account Officer with SG-25 under the GFIs Index of Occupational Services because the Account Officer position in DBP is not commensurate with the position of Account Officer with SG-25 under the said index.[25] While there was a change in title from "Account Officer" to "Bank Executive

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[24] *Supra* note 8.

[25] *Supra* note 12.

Officer," petitioner's duties and responsibilities before and after the reorganization remained practically the same. Thus, her new appointment merely stated as reason therefor: "Change in Item Number due to Reorganization."[26] What is more, said appointment resulted to an increase of her salary grade from 20 to 24 translating to an increase of her annual salary from ₱102,000.00 to ₱131,250.00. Under these circumstances, there is no room for us to rule that a demotion took place because petitioner even benefited from an increase in rank and salary.

Petitioner did not assail the alleged reduction in the scope of her duties and responsibilities.

In a last ditch effort to save her case, petitioner posits for the first time on appeal that the supervisory function of BEO II is less than her former position. However, as correctly observed by the DBP and CSC, petitioner never assailed the reduction in the scope of her duties and responsibilities arising from her appointment as BEO II in the proceedings below. Instead, she limited her claim of demotion on the alleged decrease of her salary grade from 25 to 24 which, as stated earlier, has no legal and factual bases to stand on. Well-settled is the rule that points of law, theories, issues and arguments not adequately brought to the attention of the lower tribunal will not be ordinarily considered by a reviewing court as they cannot be raised for the first time on appeal.[27] Besides, even if we were to relax this rule, petitioner proffered no evidence to establish the extent of the alleged reduction of her duties and responsibilities other than her self-serving allegations. Interestingly, petitioner even admitted before the CA that she continued to exercise supervisory functions over bank personnel after she was appointed as BEO II.[28] She further claimed that in 1993 she was assigned to

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[26] CA *rollo*, p. 161.

[27] *Natalia v. Court of Appeals*, G.R. No. 116216, June 20, 1997, 274 SCRA 527, 538-539.

[28] CA *rollo*, pp. 173-174.

head a unit where she exercised supervisory functions over more than 20 bank personnel.[29] Thus, we uphold the findings of the CA that petitioner's duties and responsibilities after the reorganization remained substantially the same.

The reorganization of the DBP was made in good faith.

Finally, petitioner's reliance on the case of *Department of Trade and Industry v. Chairman and Commissioners of Civil Service Commission*[30] is misplaced. In said case, we affirmed the ruling of the CSC which found that the reorganization of the Department of Trade and Industry (DTI) was done in bad faith. We noted that when the position of therein respondent Espejo was abolished, there was a corresponding increase in the new staffing pattern of the DTI after the reorganization. Further, the incumbents were replaced by those less qualified in terms of educational qualification, performance and merit. Within this context, there was a clear intent to ease out the incumbents in order to favor less qualified individuals in the guise of a reorganization plan. In contrast, herein petitioner has failed to prove that DBP acted in bad faith when it appointed her as BEO II. None of the circumstances under Section 2[31] of

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[29] *Id.*

[30] *Supra* note 18.

[31] *Sec. 2.* No officer or employee in the career service shall be removed except for a valid cause and after due notice and hearing. A valid cause for removal exists when, pursuant to a *bona fide* reorganization, a position has been abolished or rendered redundant or there is a need to merge, divide, or consolidate positions in order to meet the exigencies of the service, or other lawful causes allowed by the Civil Service Law. The existence of any or some of the following circumstances may be considered as evidence of bad faith in the removals made as a result of reorganization, giving rise to a claim for reinstatement or reappointment by an aggrieved party:

(a) Where there is a significant increase in the number of positions in the new staffing pattern of the department or agency concerned;
(b) Where an office is abolished and other performing substantially the same functions is created;
(c) Where incumbents are replaced by those less qualified in terms of status of appointment, performance and merit;

RA 6656[32] which would be *indicia* of bad faith in the process of reorganization is present here. Quite the contrary, the reorganization worked in petitioner's favor as her salary grade was increased from 20 to 24.

All in all, we agree with the findings of the CA that there was no demotion because petitioner was appointed to a position comparable to her former position. In fact, her new position entailed an increase in her salary grade from 20 to 24. There is, thus, no evidence to suggest that DBP acted in bad faith. Given that these findings are supported by substantial evidence, we adhere to the settled principle that the findings of an administrative body, when supported by substantial evidence, are accorded not only respect but also finality by this Court.[33]

WHEREFORE, the petition is *DENIED*. The October 31, 2008 Decision of the Court of Appeals in CA-G.R. SP No. 98934, affirming Resolution No. 070765 of the Civil Service Commission which found that petitioner's appointment as Bank Executive Officer II in the Development Bank of the Philippines did not result to her demotion, is *AFFIRMED*.

Costs against petitioner.

SO ORDERED.

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

Peralta, J., no part.

(d) Where there is a reclassification of offices in the department or agency concerned and the reclassified offices perform substantially the same function as the original offices;
(e) Where the removal violates the order of separation provided in Section 3 hereof.

[32] "An Act to Protect the Security of Tenure of Civil Service Officers and Employees in the Implementation of Government Reorganization." Effective: June 10, 1988.

[33] *Tiatco v. Civil Service Commission,* G.R. No. 100294, December 21, 1992, 216 SCRA 749, 754.

SECOND DIVISION

[G.R. No. 171525. July 23, 2010]

ST. CATHERINE REALTY CORPORATION and LAND KING REALTY DEVELOPMENT CORPORATION, *petitioners, vs.* **FERDINAND Y. PINEDA and DOLORES S. LACUATA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; FORUM SHOPPING; EXPLAINED; REQUISITES.— Forum shopping is the institution of two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs. It is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes. It degrades the administration of justice and adds to the already congested court dockets. Its requisites are: (1) identity of parties, or at least such parties who represent the same interests in both actions; (2) identity of the rights asserted and the relief prayed for, the relief being founded on the same facts; and (3) identity of the two preceding particulars such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other.

2. ID.; ID.; ID.; PRESENT.— We agree with the Court of Appeals that there was no identity of parties between this case for annulment of title and damages, which originated from Civil Case No. 12194, and the DARAB cases filed by Lizares against the emancipation tenants. The Court of Appeals noted that Lizares already sold portions of the estate to respondents three years before he filed the DARAB cases. Respondents were not even parties in the DARAB cases. However, we agree with petitioners that there was forum shopping when Civil Case No. 12194 was filed. Contrary to the findings of the Court of Appeals, Civil Case No. 10265 was not discussed in the complaint in Civil Case No. 12194. x x x. The complaint merely enumerated the transfer of titles. **Respondents failed to**

apprise the RTC Branch 44 about the status of Civil Case No. 10265 at the time of the filing of the complaint in Civil Case No. 12194, particularly the pendency of G.R. No. 143492 before this Court.

3. ID.; ID.; ID.; *LITIS PENDENCIA* DOES NOT REQUIRE A LITERAL IDENTITY OF PARTIES; IDENTITY OF INTERESTS REPRESENTED IS SUFFICIENT.— As to the presence of intervenors, *litis pendencia* does not require a literal identity of parties. It is sufficient that there is identity of interests represented. The main parties in Civil Case No. 10265 and Civil Case No. 12194 are substantially the same despite the presence of intervenors in Civil Case No. 10265.

4. ID.; ID.; ID.; IDENTITY OF RIGHTS ASSERTED AND RELIEF PRAYED FOR; PRESENT.— On the identity of rights asserted and relief prayed for, respondents were claiming the lots they purchased from Lizares in both cases except that in Civil Case No. 12194, they were claiming from petitioners as Lizares' successors-in-interest. It follows that the judgment rendered in one case will invariably affect, and would constitute *res judicata,* in the other case.

APPEARANCES OF COUNSEL

Reyes Irisari-Reyes for petitioners.
Lawrence P. Villanueva for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review[1] assailing the 29 December 2005 Decision[2] and 14 February 2006 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 82909.

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

[2] *Rollo*, pp. 416-427. Penned by Associate Justice Mario L. Guariña III with Associate Justices Roberto A. Barrios and Santiago Javier Ranada, concurring.

[3] *Id.* at 447.

The Antecedent Facts

On 5 March 1991, Ferdinand Y. Pineda (Pineda) bought a parcel of land from George Lizares (Lizares) which was part of a 19.42 hectare property known as Lot No. 2012 registered under Transfer Certificate of Title (TCT) No. 3533. On even date, Dolores S. Lacuata (Lacuata) bought from Lizares 1.83 hectares of land known as Lot No. 2013 registered under TCT No. 3531. At the time of the sale, the properties were still under the name of Encarnacion Lizares (Encarnacion) from whom Lizares acquired them, prompting Pineda and Lacuata (respondents) to record adverse claims on the titles.

On 26 July 1994, respondents filed an action for specific performance against Lizares and his wife Francesca Musni before the Regional Trial Court of San Fernando, Pampanga, Branch 45 (RTC Branch 45). The case was docketed as Civil Case No. 10265. Respondents prayed for the surrender and cancellation of TCT Nos. 3531 and 3533 and for the issuance of new copies to allow the registration of the sale in favor of Lacuata on TCT No. 3531 and the segregation of the parcel of land bought by Pineda from TCT No. 3533. Respondents were joined in their complaint by their counsel, Atty. Ernesto Pineda (Atty. Pineda), who also bought from Lizares a portion of a five-hectare land covered by TCT No. 3522. Atty. Pineda filed a notice of *lis pendens* over the lots covered by TCT Nos. 3522, 3531 and 3533, as well as other lots over which he claimed attorney's lien.

It appears that the lots covered by TCT Nos. 3531 and 3533 were placed under the land reform program and were parceled out to agricultural tenants through emancipation patents issued in 1993. In February 1994, prior to the filing of Civil Case No. 10265, Lizares filed an action before the Provincial Agrarian Reform Adjudicator (PARAD) for the annulment of the inclusion of his lands under Presidential Decree No. 27.[4] In April 1995,

[4] Decreeing the Emancipation of Tenants From the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanisms Therefor. Dated 21 October 1972.

Lizares filed three more complaints for the cancellation of the emancipation patents issued in favor of the agricultural tenants. PARAD dismissed the complaints. In 1997, the Department of Agrarian Reform Adjudication Board (DARAB) affirmed the PARAD's decision.

The recipients of the emancipation patents, which at that time had become the registered owners of the land subject of the complaint, filed a Motion for Leave to Intervene as Party Defendants, with Motion to Dismiss and Cancellation of *Lis Pendens*, in Civil Case No. 10265. In an Order[5] dated 5 May 1997, the RTC Branch 45 dismissed Civil Case No. 10265 without prejudice. The RTC Branch 45 ruled that the prayer for the cancellation of the TCTs in the name of Encarnacion was rendered moot but the plaintiffs could file a criminal action or an action for damages against Lizares. The RTC Branch 45 opined that when the lots were brought under the Land Reform Program, they could no longer be sold and the sale to respondents was null and void. Respondents, as well as Atty. Pineda, appealed from the decision in Civil Case No. 10265 before the Court of Appeals. The case was docketed as CA-G.R. CV No. 56769. In a Resolution dated 8 March 2000,[6] the Court of Appeals dismissed the appeal. In a Resolution dated 17 May 2000,[7] the Court of Appeals denied the motion for reconsideration for late filing. A petition for review, docketed as G.R. No. 143492, was filed before this Court. This Court denied the petition on 21 August 2000[8] for failure of petitioners to give an explanation on why service of copies of the petition on respondents was not done personally. This Court denied the motion for reconsideration on 25 June 2001.[9]

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[5] *Rollo*, pp. 149-151. Penned by Judge Adelaida Ala-Medina.

[6] *Id.* at 152. Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Cancio C. Garcia and Andres B. Reyes, Jr., concurring.

[7] *Id.* at 155.

[8] *Id.* at 156.

[9] *Id.* at 157.

Meanwhile, Lizares filed a petition for review from the DARAB's decision before the Court of Appeals. The case was docketed as CA-G.R. SP No. 47502. On 29 November 2000,[10] the Court of Appeals dismissed the petition and affirmed the DARAB's decision. On 26 June 2001,[11] the Court of Appeals denied the motion for reconsideration. Lizares, representing the estate of Encarnacion, file a petition for review[12] before this Court, docketed as G.R. No. 148777. The case was still pending upon the filing of CA-G.R. SP No. 82909.

The case before us originated from Civil Case No. 12194 filed on 8 January 2001 by respondents before the Regional Trial Court of San Fernando, Pampanga, Branch 44 (RTC Branch 44) against St. Catherine Realty Corporation (SCRC) and Land King Realty Development Corporation (LKRDC), the Registrar of Deeds of San Fernando, Pampanga, and Tomas Dizon for annulment of titles and damages. At the time of filing of Civil Case No. 12194, G.R. No. 143492 (originating from Civil Case No. 10265) was still pending before this Court and CA-G.R. SP No. 47502 was still pending before the Court of Appeals. Respondents alleged that the properties they purchased from Lizares were subdivided and transferred to subsequent buyers,[13] the latest buyers being SCRC and LKRDC (petitioners) who were buyers in bad faith. Respondents alleged that the Registar of Deeds failed to carry over their adverse claims annotated on TCT Nos. 3533 and 3531 in the subsequent titles. Petitioners

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[10] *Id.* at 99-126. Penned by Associate Justice Angelina Sandoval Gutierrez with Associate Justices Martin S. Villarama, Jr. and Perlita J. Tria Tirona, concurring and Associate Justices Salvador J. Valdez. Jr. and Remedios Salazar-Fernando, dissenting.

[11] *Id.* at 129. Penned by Associate Justice Martin S. Villarama, Jr. with Associate Justices Oswaldo D. Agcaoili and Perlita J. Tria Tirona, concurring and Associate Justices Salvador J. Valdez. Jr. and Remedios Salazar-Fernando, dissenting.

[12] *Id.* at 130-147.

[13] The complaint did not state when the lots were sold and subdivided and who caused their subdivision.

filed a motion to dismiss on the ground that respondents submitted a false certification of forum shopping.

The Decision of the Trial Court

In an Order dated 29 August 2001,[14] the RTC Branch 44 granted the motion to dismiss and dismissed the complaint. Respondents filed a motion for reconsideration. In an Order dated 31 July 2002,[15] the RTC Branch 44 set aside its 29 August 2001 Order and directed petitioners to file their answer to the complaint. It was petitioners' turn to move for reconsideration of the trial court's order, with motion for inhibition of Judge Patrocinio R. Corpuz (Judge Corpuz). In an Order dated 23 September 2002, Judge Corpuz inhibited himself from further hearing the case.

The case was re-raffled to the Regional Trial Court of San Fernando, Pampanga, Branch 47 (RTC Branch 47). In an Order dated 20 January 2004,[16] the RTC Branch 47 denied the motion for reconsideration for lack of merit. Petitioners filed a petition for *certiorari* before the Court of Appeals assailing the 31 July 2002 Order of RTC Branch 44 and the 20 January 2004 Order of RTC Branch 47. The case was docketed as CA-G.R. SP No. 82909.

The Decision of the Court of Appeals

In its 29 December 2005 Decision, the Court of Appeals dismissed the petition. The Court of Appeals ruled that while the certification against forum shopping did not mention about any other prior case, the complaint mentioned Civil Case No. 10265. The Court of Appeals ruled that if the purpose of the certification against forum shopping was to put a court on guard against the possibility of forum shopping, the purpose had been accomplished with the advertence to and discussion

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[14] *Rollo*, pp. 163-167. Penned by Judge Patrocinio R. Corpuz.

[15] *Id.* at 204-206.

[16] *Id.* at 246-250. Penned by Judge Edgar Y. Chua.

about Civil Case No. 10265 in the complaint. As regards CA-G.R. SP No. 47502, the Court of Appeals ruled that it was filed by Lizares and there was no showing that respondents were aware of the DARAB cases.

The Court of Appeals ruled that for *litis pendencia* to bar a second action, the following requisites must be present: (1) identity of parties or at least such as representing the same interest in both actions; (2) identity of rights and reliefs; and (3) identity of actions such that the judgment in one will amount to *res judicata* in the other. The Court of Appeals ruled that there was no identity of parties in CA-G.R. SP No. 47502 and in Civil Case No. 12194. The Court of Appeals also ruled that there was also no *litis pendencia* in Civil Case No. 12194 and in Civil Case No. 10265 because the subject matters were different.

Petitioners filed a motion for reconsideration. In its 14 February 2006 Resolution, the Court of Appeals denied the motion.

Hence, the petition before this Court.

The Issue

The issue in this case is whether respondents were guilty of forum shopping.

The Ruling of this Court

The petition has merit.

Forum shopping is the institution of two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs.[17] It is an act of malpractice that is prohibited and condemned because it trifles with the courts and abuses their processes.[18] It degrades the administration of justice and adds to the already congested court dockets.[19] Its requisites are: (1) identity of parties, or at least

[17] *Young v. John Keng Seng*, 446 Phil. 823 (2003).

[18] *Id.*

[19] *Id.*

such parties who represent the same interests in both actions; (2) identity of the rights asserted and the relief prayed for, the relief being founded on the same facts; and (3) identity of the two preceding particulars such that any judgment rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other.[20]

We agree with the Court of Appeals that there was no identity of parties between this case for annulment of title and damages, which originated from Civil Case No. 12194, and the DARAB cases filed by Lizares against the emancipation tenants. The Court of Appeals noted that Lizares already sold portions of the estate to respondents three years before he filed the DARAB cases. Respondents were not even parties in the DARAB cases.

However, we agree with petitioners that there was forum shopping when Civil Case No. 12194 was filed.

Contrary to the findings of the Court of Appeals, Civil Case No. 10265 was not discussed in the complaint in Civil Case No. 12194. The complaint in Civil Case No. 12194 merely stated:

> 2.5 During the pendency of Civil Case No. 10265, the lot covered by TCT No. 3533 was subdivided and transferred to subsequent buyers. In pursuance of the law, the *Lis Pendens* was carried over to the subsequent titles, particularly:
>
> (a) TCT No. 412730-R in the name of Mabel Dionisia C. Dayrit;
> (b) TCT No. 401468-R in the name of Mabel Dionisia C. Dayrit;
> (c) TCT No. 400546-R in the name of Mabel Dionisia C. Dayrit;
> (d) TCT No. 400544-R in the name of Mabel Dionisia C. Dayrit;
> (e) TCT No. 401466-R in the name of Eliseo de la Cruz;
> (f) TCT No. 400543-R in the name of Eliseo de la Cruz;
> (g) TCT No. 412728-R in the name of Manuel S. Guillen;
>
> Xerox copies of said titles evidencing the *Lis Pendens* are hereto attached at Annexes "E", "F", "G", "H", "I", "J" and "K" respectively which are made integral parts hereof.

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[20] *Briones v. Henson-Cruz,* G.R. No. 159130, 22 August 2008, 563 SCRA 69.

2.6 In May 2000 or thereabouts, the aforesaid titles were cancelled and new titles issued in the respective names of the following defendants:

(a) TCT No. 432435-R in the name of St. Catherine Realty Corporation.

(b) TCT No. 432436-R in the name of St. Catherine Realty Corporation.

(c) TCT No. 432437-R in the name of St. Catherine Realty Corporation.

(d) TCT No. 432438-R in the name of St. Catherine Realty Corporation.

(e) TCT No. 432439-R in the name of Land King Realty Development Corporation.

(f) TCT No. 432441-R in the name of Land King Realty Development Corporation.

(g) TCT No. 432444-R in the name of Land King Realty Development Corporation.

Xerox copies of said titles are hereto attached at Annexes "E-1", "F-1", "G-1", "H-1", "I-1", "J-1" and "K-1" respectively which are all made integral parts hereof.[21]

The complaint merely enumerated the transfer of titles. **Respondents failed to apprise the RTC Branch 44 about the status of Civil Case No. 10265 at the time of the filing of the complaint in Civil Case No. 12194, particularly the pendency of G.R. No. 143492 before this Court.**

Further, we do not agree with the Court of Appeals that the subject properties were not re-litigated just because the titles of the intervenors in Civil Case No. 10265 are TCT Nos. 21087, 21089-91 and 21093-93 while the titles affected in Civil Case No. 12194 are TCT Nos. 432435-R to 432439-R, 43241-R and 432444-R. The subject matter of the complaint in Civil Case No. 10265 were the lots covered by TCT Nos. 3531 and 3533.

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[21] *Rollo,* pp. 46-47.

The intervenors were claiming the lots covered by TCT Nos. 3531 and 3533. TCT Nos. 432435-R to 432439-R, 43241-R and 432444-R were titles issued to petitioners but were all derived from TCT Nos. 3531 and 3533. Petitioners were the successors-in-interest of Lizares as the buyers of the lots previously covered by TCT Nos. 3531 and 3533.

As to the presence of intervenors, *litis pendencia* does not require a literal identity of parties.[22] It is sufficient that there is identity of interests represented.[23] The main parties in Civil Case No. 10265 and Civil Case No. 12194 are substantially the same despite the presence of intervenors in Civil Case No. 10265.

On the identity of rights asserted and relief prayed for, respondents were claiming the lots they purchased from Lizares in both cases except that in Civil Case No. 12194, they were claiming from petitioners as Lizares' successors-in-interest. It follows that the judgment rendered in one case will invariably affect, and would constitute *res judicata,* in the other case.

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 29 December 2005 Decision and 14 February 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 82909, the Order dated 20 January 2004 of the Regional Trial Court of San Fernando, Pampanga, Branch 47 and the Order dated 31 July 2002 of the Regional Trial Court of San Fernando, Pampanga, Branch 44. We *REINSTATE* the Order dated 29 August 2001 of the Regional Trial Court of San Fernando, Pampanga, Branch 44 which dismissed the complaint.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

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[22] See *T'boli Agro-Ind'l. Dev't., Inc. v. Atty. Solilapsi*, 442 Phil. 499 (2002) citing *Employees' Compensation Commission v. Court of Appeals*, G.R. No. 115858, 28 January 1996, 257 SCRA 717.

[23] *Id.*

SECOND DIVISION

[G.R. No. 171925. July 23, 2010]

SOLIDBANK CORPORATION, (now Metropolitan Bank and Trust Company), *petitioner, vs.* **PERMANENT HOMES, INCORPORATED,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; LOANS; THE REPEAL OF THE USURY LAW DOES NOT GIVE THE LENDER AN UNBRIDLED LICENSE TO IMPOSED INCREASED INTEREST RATES; IMPOSED RATE MUST BE AGREED UPON BY THE PARTIES AND SHOULD BE IN WRITING.— The Usury Law had been rendered legally ineffective by Resolution No. 224 dated 3 December 1982 of the Monetary Board of the Central Bank, and later by Central Bank Circular No. 905 which took effect on 1 January 1983. These circulars removed the ceiling on interest rates for secured and unsecured loans regardless of maturity. The effect of these circulars is to allow the parties to agree on any interest that may be charged on a loan. The virtual repeal of the Usury Law is within the range of judicial notice which courts are bound to take into account. Although interest rates are no longer subject to a ceiling, the lender still does not have an unbridled license to impose increased interest rates. The lender and the borrower should agree on the imposed rate, and such imposed rate should be in writing.

2. ID.; ID.; ID.; MUTUALITY OF CONTRACTS; IN ORDER THAT OBLIGATIONS ARISING FROM CONTRACTS MAY HAVE THE FORCE OF LAW BETWEEN THE PARTIES, THERE MUST BE A MUTUALITY BETWEEN THE PARTIES BASED ON THEIR ESSENTIAL EQUALITY; STIPULATIONS ON INTEREST RATE REPRICING, DECLARED VALID; REASONS.— The stipulations on interest rate repricing are valid because (1) the parties mutually agreed on said stipulations; (2) repricing takes effect only upon Solidbank's written notice to Permanent of the new interest rate; and (3) Permanent has the option to prepay its loan if

Permanent and Solidbank do not agree on the new interest rate. The phrases "irrevocably authorize," "at any time" and "adjustment of the interest rate shall be effective from the date indicated in the written notice sent to us by the bank, or if no date is indicated, from the time the notice was sent," emphasize that Permanent should receive a written notice from Solidbank as a condition for the adjustment of the interest rates. In order that obligations arising from contracts may have the force of law between the parties, there must be a mutuality between the parties based on their essential equality. A contract containing a condition which makes its fulfillment dependent exclusively upon the uncontrolled will of one of the contracting parties is void. There was no showing that either Solidbank or Permanent coerced each other to enter into the loan agreements. The terms of the Omnibus Line Agreement and the promissory notes were mutually and freely agreed upon by the parties.

3. ID.; ID.; ID.; PETITIONER'S RANGE OF LENDING RATES FOUND CONSISTENT WITH THE PREVAILING RATES IN THE LOCAL OR INTERNATIONAL CAPITAL MARKETS; COMPUTATION OF PROPER INTEREST PAYMENTS MUST BE BASED ON THE DATES OF RECEIPT OF WRITTEN NOTICE.— Moreover, Solidbank's range of lending rates were consistent with "prevailing rates in the local or international capital markets." xxx The repriced interest rates from 12 September to 21 November 1997 conformed to the range of Solidbank's lending rates to other borrowers. The 12 December 1997 to 12 February 1998 repriced interest rates were not unconscionably out of line with the upper range of lending rates to other borrowers. The interest rate repricing happened at the height of the Asian financial crises in late 1997, when banks clamped down on lendings because of higher credit risks across industries, particularly the real estate industry. We also recognize that Solidbank admitted that it did not promptly send Permanent written repriced rates, but rather verbally advised Permanent's officers over the phone at the start of the period. Solidbank did not present any written memorandum to support its allegation that it promptly advised Permanent of the change in interest rates. Solidbank advised Permanent on the repriced interest rate applicable for the 30-day interest period only after the period had begun. x x x We rule that Solidbank's computation

of the interest due from Permanent should be adjusted to take effect only upon Permanent's receipt of the written notice from Solidbank.

APPEARANCES OF COUNSEL

Sedigo and Associates for petitioner.
Alberto II Borbon Reyes for respondent.

D E C I S I O N

CARPIO, *J.*:

G.R. No. 171925 is a petition for review[1] assailing the Decision[2] promulgated on 29 June 2005 by the Court of Appeals (appellate court) as well as the Resolution[3] promulgated on 14 March 2006 in CA-G.R. CV No. 75926. The appellate court granted the petition filed by Permanent Homes, Incorporated (Permanent) and reversed the decision of the Regional Trial Court of Makati City, Branch 58 (trial court) dated 5 July 2002 in Civil Case No. 98-654. The appellate court ordered Solidbank Corporation (Solidbank) and Permanent to enter into an express agreement about the applicable interest rates on Permanent's loan. Solidbank was also ordered to render an accounting of Permanent's payments, not to impose interest on interest upon Permanent's loans, and to release the remaining amount available under Permanent's omnibus credit line.

The Facts

The appellate court narrated the facts as follows:

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

[2] *Rollo*, pp. 43-65. Penned by Associate Justice Danilo B. Pine, with Associate Justices Rodrigo V. Cosico and Arcangelita Romilla-Lontok, concurring.

[3] *Id.* at 67-68. Penned by Associate Justice Rodrigo V. Cosico, with Associate Justices Josefina Guevara-Salonga and Arcangelita Romilla-Lontok, concurring.

The records disclose that PERMANENT HOMES is a real estate development company, and to finance its housing project known as the "Buena Vida Townhomes" located within Merville Subdivision, Parañaque City, it applied and was subsequently granted by SOLIDBANK with an "Omnibus Line" credit facility in the total amount of SIXTY MILLION PESOS. Of the entire loan, FIFTY NINE MILLION as [sic] time loan for a term of up to three hundred sixty (360) days, with interest thereon at prevailing market rates, and subject to monthly repricing. The remaining ONE MILLION was available for domestic bills purchase.

To secure the aforesaid loan, PERMANENT HOMES initially mortgaged three (3) townhouse units within the Buena Vida project in Parañaque. At the time, however, the instant complaint was filed against SOLIDBANK, a total of thirty six (36) townhouse units were mortgaged with said bank.

Of the 60 million available to PERMANENT HOMES, it availed of a total of 41.5 million pesos, covered by three (3) promissory notes, which contain the following provisions, thus:

"x x x x x x x x x

> 5. We/I irrevocably authorize Solidbank to increase or decrease at any time the interest rate agreed in this Note or Loan on the basis of, among others, prevailing rates in the local or international capital markets. For this purpose, We/I authorize Solidbank to debit any deposit or placement account with Solidbank belonging to any one of us. The adjustment of the interest rate shall be effective from the date indicated in the written notice sent to us by the bank, or if no date is indicated, from the time the notice was sent.
>
> 6. Should We/I disagree to the interest rate adjustment, We/I shall prepay all amounts due under this Note or Loan within thirty (30) days from the receipt by anyone of us of the written notice. Otherwise, We/I shall be deemed to have given our consent to the interest rate adjustment."

Contrary, however, to the specific provisions as afore-quoted, there was a standing agreement by the parties that any increase or decrease in interest rates shall be subject to the mutual agreement of the parties.

For the first loan availment of PERMANENT HOMES on March 20, 1997, in the amount of 19.6 MILLION, from the initial interest rate of **14.25%** per annum (p.a.), the same was increased **15%** p.a. effective May 19, 1997; it was again increased to **26% p.a.** effective July 18, 1997. It was thereafter reduced to **20% p.a.** effective August 18, 1997, and then increased to **24% p.a.** effective September 17, 1997. The rate was increased further to **30% p.a.** effective October 17, 1997, then decreased to **27% p.a.** on November 17, 1997, and again increased to **34% p.a.** effective December 17, 1997. The rate then decreased to **30% p.a.** on January 16, 1998.

For the second loan availment in the amount of 18 million, the rate was initially pegged at **15.75% p.a**. on June 24, 1997. A month later, the rate increased to **23.5% p.a.** It thereafter decreased to **20% p.a.** effective August 24, 1997, but again increased to **22.5% p.a.** effective September 24, 1997. For the next month, the rate surged to **30% p.a.,** and decreased to **27% p.a.** for the month of November. The rate again surged to **34% p.a.** for the month of December, and was decreased to **30% p.a.** from January 22, 1998 to February 20, 1998.

For the third loan availment on July 15, 1997, in the amount of 3.9 million, the interest rate was initially pegged at **35% p.a.,** but this was decreased to **21% p.a.** from August 14 until September 11, 1997. The rate increased slightly to **23% p.a.** on September 12, 1997, and surged to **27% p.a.** on October 13, 1997. The rate went down slightly to **27% p.a.** for the month of November, and to **26% p.a.** for the month of December. The rate, however, again surged to **30% p.a.** on January 12, 1998 before settling at **29% p.a.** for the month of February.

It is [Permanent's] stand that SOLIDBANK unilaterally and arbitrarily accelerated the interest rates without any declared basis of such increases, of which PERMANENT HOMES had not agreed to, or at the very least, been informed of. This is contrary to their earlier agreement that any interest rate changes will be subject to mutual agreement of the parties. PERMANENT HOMES further admits that it was not able to protest such arbitrary increases at the time they were imposed by SOLIDBANK, for fear that SOLIDBANK might cut off the credit facility it extended to PERMANENT HOMES. Permanent was then in the midst of the construction of its project in Merville, Parañaque City, and SOLIDBANK knew that it was relying substantially on the credit facility the latter extended to it.

[Permanent] thus filed a case before the trial court seeking the following: (1) the annulment of the increases in interest rates on the loans it obtained from SOLIDBANK, on the ground that it was violative of the principle of mutuality of agreement of the parties, as enunciated in Article 1409 of the New Civil Code, (2) the fixing of the interest rates at the applicable interest rate, and (3) for the trial court to order SOLIDBANK to make an accounting of the payments it made, so as to determine the amount of refund PERMANENT is entitled to, as well as to order SOLIDBANK to release the remaining available balance of the loan it extended to PERMANENT. In addition, [Permanent] prays for the payment of compensatory, moral and exemplary damages.

SOLIDBANK, on the other hand, avers that PERMANENT HOMES has no cause of action against it, in view of the pertinent provisions of the Omnibus Credit Line and the promissory notes agreed to and signed by PERMANENT HOMES. Thus, in accordance with said provisions, SOLIDBANK was authorized to, upon due notice, periodically adjust the interest rates on PERMANENT HOMES' loan availments during the monthly interest repricing dates, depending on the changes in prevailing interest rates in the local and international capital markets. In fact, SOLIDBANK avers that four (4) days before July 15, 1997, the Bangko Sentral ng Pilipinas (BSP) declared that it could no longer support the Philippine currency from external speculative forces, hence, the local currency was allowed to seek its own exchange rate level. As a result of the volatile exchange rate ratio, banks were then hesitant to extend loans, and in some instances that it granted loans, they had to ensure that they will not be at the losing end of the deal, so to speak, by the repricing of the interest rates every month. SOLIDBANK insists that PERMANENT HOMES should not be allowed to renege on its contractual obligations, as it freely and voluntarily bound itself to the provisions of the Omnibus Credit Line and the promissory notes.

PERMANENT HOMES presented as witnesses Jacqueline S. Lim, its Vice President and Chief Financial Officer, Engr. Rey A. Romasanta, its Executive Vice President and Chief Operating Officer, and Martha Julia Flores, its Treasury Officer.

On March 24, 1998, the trial court issued a temporary restraining order (TRO), after a summary hearing, which enjoined SOLIDBANK from implementing and collecting the increases in interest rates and from initiating any action, including the foreclosure of the mortgaged properties.

Ms. Lim's testimony centered on PERMANENT HOMES' allegations that the repricing of the interest rates was done by SOLIDBANK without any written agreement entered into between the parties. In fact, Ms. Lim accounted that SOLIDBANK will merely advise them of the interest rate for the period, after said period had already commenced, and at times very late in the period, by fax messages. When PERMANENT HOMES called SOLIDBANK's attention to the seemingly surging rates it imposed on its loan, SOLIDBANK will merely answer that it was the bank's policy, without offering any basis for such increase. Furthermore, Ms. Lim also mentioned SOLIDBANK's alleged practice of imposing interest on unpaid interest, at the highest rate of 30% p.a.. Ms. Lim also presented a tabulation, which presents the number of days their billing statements were sent late, from the time the interest period started. It is PERMANENT HOMES' stand that since the purpose of the billing statements was to inform them **beforehand** of the applicable interest rate for the period, the late billings will clearly show SOLIDBANK's arbitrary imposition of the repriced interest rates, as well as its indifference to PERMANENT HOMES' plight.

To illustrate, for the first loan availment in the amount of ₱19.6 million, the billing statements which should have notified PERMANENT HOMES of the repriced interest rates were faxed to PERMANENT HOMES between eighteen (18) to thirty-three (33) days late. For the second loan availment in the amount of ₱18 million, the faxed billings were late between six (6) to twenty-one (21) days, and one instance where PERMANENT HOMES received no billing at all. For the third loan availment in the amount of ₱3.9 million, the faxed billings were late between seven (7) to twenty-nine (29) days, and also an instance where PERMANENT HOMES received no billing at all.

This practice, according to Ms. Lim, clearly affected its operations, as the completion of its construction project was unnecessarily delayed, to its prejudice and its buyers. This was the import of the testimony of PERMANENT HOMES' second witness, Engr. Rey A. Romasanta. According to Engr. Rey, the target date of completion was August 1997, but in view of the shortage of funds by reason of SOLIDBANK's refusal for PERMANENT HOMES to make further availments on its omnibus credit line, the project was completed only on February 1998.

PERMANENT HOMES' third and final witness was Martha Julia Flores, its Treasury Officer, who explained that as such, it was her

who received the late billings from SOLIDBANK. She would also call up SOLIDBANK to ask what the repriced interest rate for the coming interest period, to no avail, as SOLIDBANK will merely fax its billings almost always, as abovementioned, late in the period. Ms. Flores admitted that she prepared the tabulation presented before the court, which showed how late SOLIDBANK's billings were sent to PERMANENT HOMES, as well as the computation of interest rates that SOLIDBANK had allegedly overcharged on its loan, *vis-a-vis* the average of the high and the low published lending rates of SOLIDBANK.

SOLIDBANK, to establish its defense, presented its lone witness, Mr. Cesar Lugtu, who testified to the effect that, contrary to PERMANENT HOMES' assertions that it was not promptly informed of the repriced interest rates, SOLIDBANK's officers **verbally advised** PERMANENT HOMES of the repriced rates at the start of the period, and even added that their transaction[s] were based on trust. Aside from these allegations, however, no written memorandum or note was presented by SOLIDBANK to support their assertion that PERMANENT HOMES was timely advised of the repriced interests.[4]

The Trial Court's Ruling

On 5 July 2002, the trial court promulgated its Decision in favor of Solidbank. The trial court ratiocinated and ruled thus:

It becomes crystal clear that there is sufficient proof to show that the instant case was instituted by [Permanent] as an after-thought and as an obvious subterfuge intended to completely lay on the defendant the blame for the debacle of its Buena Vida project. An afterthought because the records of the case show that the complaint was filed in March 16, 1998, already after it was having difficulty making the amortization payments, the last of which being in February 1998. A subterfuge because plaintiff, instead of blaming itself and its own business judgment that went sour, would rather put the blame on [Solidbank], taking advantage of every conceivable gray area of its contract with [Solidbank] to avoid its own liabilities. In fact, this complaint was made the very basis for [Permanent] to altogether stop the payment of its loan from [Solidbank] including the interest payment (*TSN, May 07, 1998, p. 60*).

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[4] *Id.* at 43-49.

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WHEREFORE, finding the complaint not impressed with merit, judgment is hereby rendered dismissing the said complaint. The Counterclaim is likewise dismissed for lack of evidence to support the same.

SO ORDERED.[5]

Permanent filed an appeal before the appellate court.

The Appellate Court's Ruling

The appellate court granted Permanent's appeal, and set aside the trial court's ruling. The appellate court not only recognized the validity of escalation clauses, but also underscored the necessity of a basis for the increase in interest rates and of the principle of mutuality of contracts.

The dispositive portion of the appellate court's decision reads, thus:

THE FOREGOING CONSIDERED, the instant appeal is hereby GRANTED, the assailed decision dated July 5, 2002 is REVERSED and SET ASIDE, and a new one is hereby entered as follows:

(1) Unless the parties herein subsequently enter into an **express** agreement regarding the applicable interest rates on PERMANENT HOMES' loan availments subsequent to the initial thirty-day (30) period, the legal rate of twelve percent (12%) per annum is hereby **FIXED**, to be applied on the outstanding balance of the loan;

(2) SOLIDBANK is ordered to render an accounting of all the payments made by PERMANENT HOMES, and in case there is excess payment by reason of the wrongful imposition of the repriced interest rates, to apply such amount to the interest payment at the legal rate, and thereafter to the outstanding principal amount;

(3) SOLIDBANK is directed not to impose penalties, particularly interest on interest, upon PERMANENT HOMES' loan, there being no evidence that the latter was in default on its payments;

(4) SOLIDBANK is hereby ordered to release the remaining amount available under the omnibus credit line, subject, however, to availability of funds on the part of SOLIDBANK.

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[5] *Id.* at 164, 171.

No pronouncement as to costs.

SO ORDERED.[6]

The appellate court resolved to deny Solidbank's Motion for Reconsideration for lack of merit.[7]

The Issues

Solidbank raised the following issues in their petition:

(A) Whether the Honorable Court of Appeals was correct in ruling that the increases in the interest rates on [Permanent's] loans are void for having been unilaterally imposed without basis.

(B) Whether the Honorable Court of Appeals was correct in ordering the parties to enter into an express agreement regarding the applicable interest rates on Permanent's loan availments subsequent to the initial thirty-day (30) period.

(C) Whether the Honorable Court of Appeals was correct in ruling that [Permanent] is entitled to attorney's fees notwithstanding the absence of bad faith or malice on the part of [Solidbank].[8]

The Court's Ruling

The petition has merit.

The Usury Law had been rendered legally ineffective by Resolution No. 224 dated 3 December 1982 of the Monetary Board of the Central Bank, and later by Central Bank Circular No. 905 which took effect on 1 January 1983. These circulars removed the ceiling on interest rates for secured and unsecured loans regardless of maturity. The effect of these circulars is to allow the parties to agree on any interest that may be charged on a loan. The virtual repeal of the Usury Law is within the

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[6] *Id.* at 63-64.

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

[8] *Id.* at 18.

range of judicial notice which courts are bound to take into account.[9] Although interest rates are no longer subject to a ceiling, the lender still does not have an unbridled license to impose increased interest rates. The lender and the borrower should agree on the imposed rate, and such imposed rate should be in writing.

The three promissory notes between Solidbank and Permanent all contain the following provisions:

> 5. We/I irrevocably authorize Solidbank to increase or decrease at any time the interest rate agreed in this Note or Loan on the basis of, among others, prevailing rates in the local or international capital markets. For this purpose, We/I authorize Solidbank to debit any deposit or placement account with Solidbank belonging to any one of us. The adjustment of the interest rate shall be effective from the date indicated in the written notice sent to us by the bank, or if no date is indicated, from the time the notice was sent.
>
> 6. Should We/I disagree to the interest rate adjustment, We/I shall prepay all amounts due under this Note or Loan within thirty (30) days from the receipt by anyone of us of the written notice. Otherwise, We/I shall be deemed to have given our consent to the interest rate adjustment.

The stipulations on interest rate repricing are valid because (1) the parties mutually agreed on said stipulations; (2) repricing takes effect only upon Solidbank's written notice to Permanent of the new interest rate; and (3) Permanent has the option to prepay its loan if Permanent and Solidbank do not agree on the new interest rate. The phrases "irrevocably authorize," "at any time" and "adjustment of the interest rate shall be effective from the date indicated in the written notice sent to us by the bank, or if no date is indicated, from the time the notice was sent," emphasize that Permanent should receive a written notice from Solidbank as a condition for the adjustment of the interest rates.

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[9] *Philippine National Bank v. Spouses Encina*, G.R. No. 174055, 12 February 2008, 544 SCRA 608.

In order that obligations arising from contracts may have the force of law between the parties, there must be a mutuality between the parties based on their essential equality.[10] A contract containing a condition which makes its fulfillment dependent exclusively upon the uncontrolled will of one of the contracting parties is void.[11] There was no showing that either Solidbank or Permanent coerced each other to enter into the loan agreements. The terms of the Omnibus Line Agreement and the promissory notes were mutually and freely agreed upon by the parties.

Moreover, Solidbank's range of lending rates were consistent with "prevailing rates in the local or international capital markets." Permanent presented a tabulation[12] of the range of Solidbank's lending rates, as reported to Bangko Sentral ng Pilipinas and compared the lending rates with the interest rates charged by Solidbank on Permanent's loans, thus:

	Solidbank's range of lending rates as per BSP records			
	High	Low	Interest rates charged by Solidbank on Permanent's loans	Excess Interest Rate Over the Average of High and Low Rates
Sept. 12, 1997	25.0%	22.0%	23.0%	
Sept. 17, 1997	27.0%	24.0%	24.0%	
Sept. 22, 1997	26.0%	23.0%	22.5%	
Oct. 13, 1997	29.0%	26.0%	28.0%	
Oct. 17, 1997	30.0%	27.0%	30.0%	
Oct. 22, 1997	32.0%	29.0%	30.0%	
Nov. 12, 1997	28.0%	25.0%	27.0%	
Nov. 17, 1997	28.0%	25.0%	27.0%	

[10] *Philippine National Bank v. Court of Appeals*, G.R. No. 88880, 30 April 1991, 196 SCRA 536, 545.

[11] See *Garcia, et al. v. Rita Legarda, Inc.*, 128 Phil. 590 (1967).

[12] Records, Vol. II, p. 95.

Nov. 21, 1997	27.0%	24.0%	27.0%	
Dec. 12, 1997	25.0%	23.0%	26.0%	2.0%
Dec. 17, 1997	25.0%	23.0%	34.0%	10.0%
Dec. 22, 1997	25.0%	23.0%	32.0%	8.0%
Jan. 12, 1998	26.0%	24.0%	30.0%	5.0%
Jan. 16, 1998	28.0%	25.0%	30.0%	3.5%
Jan. 22, 1998	28.0%	25.0%	30.0%	3.5%
Feb. 9, 1998	27.0%	24.0%	30.0%	3.5%
Feb. 11, 1998	27.0%	24.0%	29.0%	4.5%
Feb. 12, 1998	27.0%	24.0%	30.0%	4.5%

The repriced interest rates from 12 September to 21 November 1997 conformed to the range of Solidbank's lending rates to other borrowers. The 12 December 1997 to 12 February 1998 repriced interest rates were not unconscionably out of line with the upper range of lending rates to other borrowers. The interest rate repricing happened at the height of the Asian financial crises in late 1997, when banks clamped down on lendings because of higher credit risks across industries, particularly the real estate industry.

We also recognize that Solidbank admitted that it did not promptly send Permanent written repriced rates, but rather verbally advised Permanent's officers over the phone at the start of the period. Solidbank did not present any written memorandum to support its allegation that it promptly advised Permanent of the change in interest rates.[13] Solidbank advised Permanent on the repriced interest rate applicable for the 30-day interest period only after the period had begun. Permanent presented a tabulation which showed that Solidbank either did not send a billing statement, or sent a billing statement 6 to 33 days late.[14] We reproduce the tabulation below:

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[13] *Id.* at 49.

[14] *Id.* at 59; Records, Vol. II, p. 85.

PN #435 – ₱19.6MM				
Reference No.	Interest Period		Date Billing Statements were faxed to Permanent	Number of days Billing Statement was Late
1	03/20/97	04/18/97	04/17/97	28
2	04/18/97	05/19/97	05/16/97	28
	05/19/97	06/19/97		no statement received
3	06/19/97	07/18/97	07/12/97	23
4	07/18/97	08/18/97	08/05/97	18
5	08/18/97	09/17/97	09/10/97	23
6	09/17/97	10/17/97	10/06/97	19
7	10/17/97	11/17/97	11/11/97	25
8	11/17/97	12/17/97	12/12/97	25
9	12/17/97	01/16/98	01/09/98	23
14	01/16/98	02/20/98	02/18/98	33

PN #969 – ₱18MM				
Reference No.	Interest Period		Date Billing Statements were faxed to Permanent	Number of days Billing Statement was Late
3	06/24/97	07/24/97	07/12/97	18
4	07/24/97	08/22/97	08/05/97	12
5	08/22/97	09/22/97	09/10/97	19
6	09/22/97	10/22/97	10/06/97	14
7	10/22/97	11/21/97	11/11/97	20
8	11/21/97	12/22/97	12/12/97	21
9	12/22/97	01/22/98	01/09/98	18
	01/22/98	02/12/97		no statement received
14	02/12/98	02/20/98	02/18/98	6

PN #1077 – ₱3.9MM				
Reference No.	Interest Period		Date Billing Statements were faxed to Permanent	Number of days Billing Statement was Late
10	07/15/97	08/14/97	08/14/97	30
11	08/14/97	08/26/97	08/26/97	12
5	08/26/97	09/12/97	09/10/97	15
6	09/12/97	10/13/97	10/06/97	24
7	10/13/97	11/12/97	11/11/97	29

12	11/12/97	12/12/97	12/10/97	28
9	12/12/97	01/12/98	01/09/98	28
13	01/12/98	02/09/98	02/09/98	28
	02/09/98	02/11/98		no statement received
14	02/11/98	03/13/98	02/18/98	7

We rule that Solidbank's computation of the interest due from Permanent should be adjusted to take effect only upon Permanent's receipt of the written notice from Solidbank.

WHEREFORE, we *GRANT* the petition in part. We *SET ASIDE* the Decision of the Court of Appeals promulgated on 29 June 2005 as well as the Resolution promulgated on 14 March 2006 in CA-G.R. CV No. 75926 and *AFFIRM* the decision of the Regional Trial Court of Makati City, Branch 58 dated 5 July 2002 in Civil Case No. 98-654 with the *MODIFICATION* that the repricing of the interest rates should take effect only upon Permanent Homes, Incorporated's receipt of the written notice from Solidbank Corporation of the adjustment in interest rate. The records of this case are therefore remanded to the trial court for the computation of the proper interest payments based on the dates of receipt of written notice.

SO ORDERED.

Nachura, Peralta, del Castillo,[*] and *Abad, JJ.,* concur.

[*] Designated additional member per Raffle dated 7 July 2010.

SECOND DIVISION

[G.R. No. 172292. July 23, 2010]

ALIDA MORES, *petitioner, vs.* **SHIRLEY M. YU-GO, MA. VICTORIA M. YU-LIM, and MA. ESTRELLA M. YU,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; LEASE; FULL REIMBURSEMENT OF USEFUL IMPROVEMENTS AND RETENTION OF THE PREMISES UNTIL REIMBURSEMENT IS MADE DOES NOT APPLY WHERE ONE'S ONLY INTEREST IS THAT OF A LESSEE UNDER A RENTAL CONTRACT.— The good faith referred to by Alida Mores was about the building of the improvements on the leased subject property. However, tenants like the spouses Mores cannot be said to be builders in good faith as they have no pretension to be owners of the property. Indeed, full reimbursement of useful improvements and retention of the premises until reimbursement is made applies only to a possessor in good faith, *i.e.*, one who builds on land with the belief that he is the owner thereof. It does not apply where one's only interest is that of a lessee under a rental contract; otherwise, it would always be in the power of the tenant to "improve" his landlord out of his property.

2. ID.; ID.; ID.; LESSEE'S RIGHT OF REMOVAL OF THE USEFUL IMPROVEMENTS ON THE LEASED PROPERTY WHEN THE LESSOR FAILED TO OFFER TO PAY ONE-HALF OF THE VALUE OF THE IMPROVEMENTS, UPHELD; AWARD OF MORAL DAMAGES, UNWARRANTED.— The appellate court is correct in ruling that Article 1678 of the Civil Code should apply in the present case. x x x. It is incorrect, however, for the appellate court to state that the spouses Mores did not give the Yu siblings the option to retain the improvements. There is thus no reason for the appellate court's award of moral damages to the Yu siblings. We agree with the trial court's finding that the spouses Mores "removed only the improvements they introduced without

destroying the principal building, after the [Yu siblings] refused to pay them the reasonable value of the improvements." When the spouses Mores demanded reimbursement, the Yu siblings should have offered to pay the spouses Mores one-half of the value of the improvements. Since the Yu siblings failed to make such offer, the spouses Mores had the right to remove the improvements.

APPEARANCES OF COUNSEL

Romeo N. Gumba for petitioner.
Manuel Rosales for respondents.

D E C I S I O N

CARPIO, *J.*:

G.R. No. 172292 is a petition for review[1] assailing the Decision[2] promulgated on 26 August 2005 by the Court of Appeals (appellate court) as well as the Resolution[3] promulgated on 14 March 2006 in CA-G.R. CV No. 76076. The appellate court partially granted the petition filed by Shirley M. Yu-Go, Ma. Victoria M. Yu-Lim, and Ma. Estrella M. Yu (Yu siblings) and reversed the decision of the Regional Trial Court of Naga City, Branch 27 (trial court), dated 28 June 2002 in Civil Case No. 99-4216. The appellate court ordered spouses Antonio and Alida Mores (spouses Mores) to pay the Yu siblings moral damages in the amount of ₱100,000.

The Facts

Antonio Mores passed away during the pre-trial stage. Hence, Alida Mores remained as the only defendant, per the trial court's order dated 3 May 2000.[4]

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

[2] *Rollo*, pp. 18-28. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Salvador J. Valdez, Jr. and Mariano C. Del Castillo (now an Associate Justice of this Court), concurring.

[3] *Id.* at 36-38. Penned by Associate Justice Magdangal M. De Leon, with Associate Justices Mariano C. Del Castillo and Amelita G. Tolentino, concurring.

[4] CA *rollo*, p. 25.

The appellate court narrated the facts as follows:

On January 21, 1998, plaintiffs-appellants Shirley M. Yu-Go, Ma. Victoria M. Yu-Lim and Ma. Estrella M. Yu ("appellants") filed a *Complaint for Injunction and Damages with Prayer for Issuance of a Temporary Restraining Order and Preliminary Injunction* before the Regional Trial Court in Naga City against defendants-appellees, spouses Antonio and Alida Mores ("appellees"). Appellants alleged that they co-owned a parcel of land located in Sto. Tomas, Magarao, Camarines Sur on which a building of strong materials ("subject property") was built. In March 1983, appellees pleaded to appellants that they be allowed to stay in the subject property in the meantime that they did not own a house yet. Since appellee Antonio Mores used to be an errand boy of appellants' family, they readily agreed without asking for any rental but subject only to the condition that the said stay would last until anyone of appellants would need the subject property. Forthwith, appellees and their children occupied the same as agreed upon.

In November 1997, appellants made known to appellees that they were already in need of the subject property. They explained that appellant Shirley Yu-Go needed the same and, besides, appellees already have their own house in Villa Grande Homes, Naga City. Yet, appellees begged that they be given a 6-month extension to stay thereat or until May 1998. However, even after May 1998, appellees failed to make good their promise and even further asked that they be allowed to stay therein until October 1998, which was again extended until the end of the same year. Thus, sometime in the first week of January 1999, appellants gave their final demand for appellees to vacate the subject property. However, instead of heeding such demand, appellees hired some laborers and started demolishing the improvements on the subject property on January 20, 1999.

Appellants' protest fell on deaf ears because appellees continued their demolition and even took away and appropriated for themselves the materials derived from such unlawful demolition. Consequently, appellants instituted the said action for injunction where they also prayed for the reimbursement of the value of the residential building illegally demolished as well as for the payment of moral damages, attorney's fees, litigation expenses and costs of suit.

On February 5, 1999, appellees filed their *Answer* where they denied the material averments of the complaint. They claimed that

appellee Antonio Mores, who was appellants' uncle, used to be the assistant manager and cashier of appellants' father at their Caltex Service Station until the later's death sometime in 1980. Appellants' Caltex Filling Station had stopped operation and was just rented out to *Herce Trucking Service*. Upon the expiration of such lease contract, appellees were allowed to occupy the subject property as their dwelling places. They were the ones who caused its renovation consisting of a 3-bedroom annex, a covered veranda and a concrete hollow block fence, at their own expense, and with appellants' consent, which renovation was made without altering the form and substance of the subject property. They denied that appellants made a demand for them to vacate the subject property, insisting that it was merely a sort of reminder that sooner or later appellees should yield possession thereof since, after all, they had already bought a second-hand house which was undergoing repair. Appellees argued that what they removed was merely the improvements made on the subject property, which removal had not caused any substantial damage thereto as, in fact, it remained intact. By way of counterclaims, they demanded payment of actual damages, attorney's fees and litigation expenses.[5]

The Trial Court's Ruling

On 28 June 2002, the trial court promulgated its Decision in favor of the spouses Mores. The trial court ratiocinated and ruled thus:

> Defendants, who are possessors in good faith, were able to prove by preponderance of evidence that they removed only the improvements they introduced without destroying the principal building, after the plaintiffs refused to pay them the reasonable value of the improvements. x x x
>
> But defendants failed to prove the allegations in their counterclaims that plaintiffs acted in bad faith and/or through gross and reckless negligence in filing this complaint, and the damages defendants allegedly suffered. Failing in this, plaintiffs must also be presumed to have acted in good faith when they filed this complaint with the honest belief that their rights were violated when defendants removed the useful improvements from the principal building and land of plaintiffs. Applying the same principle, the equipoise rule, defendants' counterclaims must necessarily fail.

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[5] *Rollo*, pp. 19-21.

Both parties having acted in good faith, the court will not disturb the present status, and will leave the parties where it found them. Wounds should not be scratched in order to hasten the healing process, and neither should this Court scratch herein parties rift that torn [sic] them apart from being close relatives before this controversy started. Parties owe to their siblings and to their posterity to reconcile. Anyway, this case was started because parties were very close relatives.

The courts are not only courts of justice but also courts of equity.

WHEREFORE, the complaint and the counterclaims are hereby dismissed. No pronouncement as to cost.

SO ORDERED.[6]

The trial court gave due course to the Yu siblings' Notice of Appeal in an Order dated 22 July 2002.

The Appellate Court's Ruling

The appellate court partially granted the Yu siblings' appeal. The appellate court disagreed with the trial court's conclusion that the spouses Mores were builders in good faith and have the right of accession under Articles 546 and 547 of the Civil Code. Instead, the appellate court believed that the relationship between the Yu siblings and the spouses Mores is one between a lessor and a lessee, making Article 1678 of the Civil Code applicable to the present case. The options given by Article 1678, the right of appropriating the useful improvements after reimbursing 50% of its value or the right of removal of the useful improvements, are given by law to the lessor - the Yu siblings. The spouses Mores, however, failed to give the Yu siblings the opportunity to choose from these two options. The appellate court thus ordered the spouses Mores to pay the Yu siblings moral damages worth ₱100,000.

The appellate court resolved to deny Alida Mores' Motion for Reconsideration for want of merit.[7]

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[6] CA *rollo,* p. 29.

[7] *Rollo,* pp. 36-38.

The Issues

In her petition, Alida Mores stated that the decision of the appellate court awarding the Yu siblings moral damages in the amount of ₱100,000 is rendered with grave abuse of discretion and is not in accord with the decisions of this Court.[8]

The Court's Ruling

The petition has merit.

Alida Mores argues that in case of breach of contract between a lessor and a lessee, moral damages are not awarded to the lessor if the lessee is not shown to have acted in bad faith. She proves her and her husband's alleged good faith by quoting the appellate court's decision which stated that:

> [The Spouses Mores'] good faith is underscored by the fact that no one from appellants had objected or prevented appellees from effecting said improvements which, obviously, were undertaken in quite a span of time. Even if we believe appellant Victoria Yu-Lim's testimony that they would only learn of the introduction of such improvements after each of such improvements had already been built, [the Yu siblings] never made known their objections thereto nor did they pose a warning against future introduction of any improvement. After all, the said improvements were not introduced simultaneously.[9]

The good faith referred to by Alida Mores was about the building of the improvements on the leased subject property. However, tenants like the spouses Mores cannot be said to be builders in good faith as they have no pretension to be owners of the property.[10] Indeed, full reimbursement of useful improvements and retention of the premises until reimbursement is made applies only to a possessor in good faith, *i.e.*, one who builds on land with the belief that he is the owner thereof. It

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[8] *Id.* at 11.

[9] *Id.* at 12-13, quoting page 10 of the appellate court's Decision.

[10] *Quemuel and Solis v. Olaes and Prudente*, 111 Phil. 797 (1961).

does not apply where one's only interest is that of a lessee under a rental contract; otherwise, it would always be in the power of the tenant to "improve" his landlord out of his property.[11]

The appellate court is correct in ruling that Article 1678 of the Civil Code should apply in the present case. Article 1678 reads:

> If the lessee makes, in good faith, useful improvements which are suitable to the use for which the lease is intended, without altering the form or substance of the property leased, the lessor upon the termination of the lease shall pay the lessee one-half of the value of the improvements at that time. Should the lessor refuse to reimburse said amount, the lessee may remove the improvements, even though the principal thing may suffer damage thereby. He shall not, however, cause any more impairment upon the property leased than is necessary.
>
> With regard to the ornamental expenses, the lessee shall not be entitled to any reimbursement, but he may remove the ornamental objects, provided no damage is caused to the principal thing, and the lessor does not choose to retain them by paying their value at the time the lease is extinguished.

It is incorrect, however, for the appellate court to state that the spouses Mores did not give the Yu siblings the option to retain the improvements. The appellate court stated that "nothing in the records reveal that [the Yu siblings] were given the chance to choose from the options of either paying one-half (½) of the value of the improvements at the time they were made on the subject property, or to demand the removal by [the spouses Mores] of such improvements at their expense."[12] The trial court even quoted from the transcript of Alida Mores' direct testimony on 10 October 2001 on the subject:

> Q: Plaintiff Yu-Lim likewise testified that the plaintiffs demanded in 1998 that you vacate the premises because it will be needed by plaintiff Shirley Yu-Co, what can you say to that?
> A: It was in November 1998 that the plaintiff intimated that we will soon vacate the place because by that time we had already bought a second-hand house.

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[11] *Geminiano v. Court of Appeals*, 328 Phil. 682 (1996).

[12] *Rollo*, pp. 27-28.

Q: What happened after that?
A: My husband good-naturedly asked for reimbursement for the improvements we constructed at our expense.
Q: What happened to that demand?
A: The plaintiffs became mad at us and refused to pay.
Q: What happened after that, what did your husband do?
A: My husband removed the roofing, coco lumber, trusses, the electrical installation and the improvements constructed, glass panel and window panel.
Q: By the way, who spent for the introduction of these improvements?
A: My husband and I.[13]

There is thus no reason for the appellate court's award of moral damages to the Yu siblings. We agree with the trial court's finding that the spouses Mores "removed only the improvements they introduced without destroying the principal building, after the [Yu siblings] refused to pay them the reasonable value of the improvements."[14] When the spouses Mores demanded reimbursement, the Yu siblings should have offered to pay the spouses Mores one-half of the value of the improvements. Since the Yu siblings failed to make such offer, the spouses Mores had the right to remove the improvements.

WHEREFORE, we *GRANT* the petition. We *AFFIRM with MODIFICATION* the Decision of the Court of Appeals promulgated on 26 August 2005 as well as the Resolution promulgated on 14 March 2006 in CA-G.R. CV No. 76076. Article 1678 of the Civil Code is applicable to the present case. The award of moral damages worth ₱100,000 to the Yu siblings is deleted.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

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[13] CA *rollo*, p. 28. TSN (Alida Mores), 10 October 2001, pp. 16-17.

[14] *Id.* at 29.

SECOND DIVISION

[G.R. No. 172700. July 23, 2010]

OFFICE OF THE OMBUDSMAN, *petitioner, vs.* **ROLSON RODRIGUEZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; COURTS; SANDIGANBAYAN; JURISDICTION THEREOF; LIMITED TO PUBLIC OFFICIALS OCCUPYING POSITIONS CORRESPONDING TO SALARY GRADE 27 AND HIGHER; NO JURISDICTION OVER PUNONG BARANGAY OCCUPYING POSITION CORRESPONDING TO SALARY GRADE 14; PRIMARY JURISDICTION OF THE OMBUDSMAN TO INVESTIGATE ANY OMISSION OF A PUBLIC OFFICER OR EMPLOYEE APPLIES ONLY TO CASES COGNIZABLE BY THE SANDIGANBAYAN.— The primary jurisdiction of the Ombudsman to investigate any act or omission of a public officer or employee applies only in cases cognizable by the *Sandiganbayan*. In cases cognizable by regular courts, the Ombudsman has concurrent jurisdiction with other investigative agencies of government. Republic Act No. 8249, otherwise known as An Act Further Defining the Jurisdiction of the *Sandiganbayan*, limits the cases that are cognizable by the *Sandiganbayan* to public officials occupying positions corresponding to salary grade 27 and higher. The *Sandiganbayan* has no jurisdiction over private respondent who, as *punong barangay*, is occupying a position corresponding to salary grade 14 under Republic Act No. 6758, otherwise known as the Compensation and Position Classification Act of 1989.

2. POLITICAL LAW; OMBUDSMAN; HAS CONCURRENT JURISDICTION WITH THE SANGGUNIANG BAYAN OVER ADMINISTRATIVE CASES AGAINST ELECTIVE BARANGAY OFFICIALS OCCUPYING POSITIONS BELOW SALARY GRADE 27.— Under Republic Act No. 7160, otherwise known as the Local Government Code, the s*angguniang panlungsod* or *sangguniang bayan* has disciplinary authority over any elective *barangay* official, to wit:

SEC. 61. *Form and Filing of Administrative Complaints*. – A verified complaint against any erring elective official shall be prepared as follows: x x x (c) A complaint against any elective *barangay* official shall be filed before the *sangguniang panlungsod* or *sangguniang bayan* concerned whose decision shall be final and executory. Clearly, the Ombudsman has concurrent jurisdiction with the *sangguniang bayan* over administrative cases against elective *barangay* officials occupying positions below salary grade 27, such as private respondent in this case.

3. REMEDIAL LAW; CIVIL PROCEDURE; ACTIONS; FORUM SHOPPING; RULE AGAINST FORUM SHOPPING APPLIES ONLY TO JUDICIAL PROCEEDINGS, NOT TO ADMINISTRATIVE CASES.— The facts in the present case are analogous to those in *Laxina, Sr. v. Ombudsman*, which likewise involved identical administrative complaints filed in both the Ombudsman and the s*angguniang panlungsod* against a *punong barangay* for grave misconduct. The Court held therein that the rule against forum shopping applied only to judicial cases or proceedings, not to administrative cases. Thus, even if complainants filed in the Ombudsman and the *sangguniang bayan* identical complaints against private respondent, they did not violate the rule against forum shopping because their complaint was in the nature of an administrative case.

4. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; JURISDICTIONAL RULE WHERE CONCURRENT JURISDICTION OF TWO OR MORE DISCIPLINING AUTHORITIES ARE INVOLVED; APPLIED.— In administrative cases involving the concurrent jurisdiction of two or more disciplining authorities, the body in which the complaint is filed first, and which opts to take cognizance of the case, acquires jurisdiction to the exclusion of other tribunals exercising concurrent jurisdiction. In this case, since the complaint was filed first in the Ombudsman, and the Ombudsman opted to assume jurisdiction over the complaint, the Ombudsman's exercise of jurisdiction is to the exclusion of the *sangguniang bayan* exercising concurrent jurisdiction.

5. REMEDIAL LAW; COURTS; JURISDICTION; ONCE ACQUIRED, IS NOT LOST UPON THE INSTANCE OF THE

PARTIES BUT CONTINUES UNTIL THE CASE IS TERMINATED; APPLICATION.— It is a hornbook rule that jurisdiction is a matter of law. Jurisdiction, once acquired, is not lost upon the instance of the parties but continues until the case is terminated. When herein complainants first filed the complaint in the Ombudsman, jurisdiction was already vested on the latter. Jurisdiction could no longer be transferred to the *sangguniang bayan* by virtue of a subsequent complaint filed by the same complainants.

6. POLITICIAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; SANGGUNIANG BAYAN; NO POWER TO REMOVE AN ELECTIVE BARANGAY OFFICIAL; POWERS OF THE OMBUDSMAN ARE NOT MERELY RECOMMENDATORY.— [U]nder Section 60 of the Local Government Code, the *sangguniang bayan* has no power to remove an elective *barangay* official. Apart from the Ombudsman, only a proper court may do so. Unlike the *sangguniang bayan*, the powers of the Ombudsman are not merely recommendatory. The Ombudsman is clothed with authority to directly remove an erring public official other than members of Congress and the Judiciary who may be removed only by impeachment.

APPEARANCES OF COUNSEL

Office of the Legal Affairs (Ombudsman) for petitioner.
Rayfrando P. Diaz for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review[1] of the 8 May 2006 Decision[2] of the Court of Appeals in CA-G.R. SP No. 00528 setting aside

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

[2] *Rollo*, pp. 33-43. Penned by Associate Justice Vicente L. Yap, with Executive Justice Arsenio J. Magpale and Associate Justice Apolinario D. Bruselas, Jr., concurring.

for lack of jurisdiction the 21 September 2004 Decision[3] of the Ombudsman (Visayas) in OMB-V-A-03-0511-H.

The Antecedent Facts

On 26 August 2003, the Ombudsman in Visayas received a complaint[4] for abuse of authority, dishonesty, oppression, misconduct in office, and neglect of duty against Rolson Rodriguez, *punong barangay* in Brgy. Sto. Rosario, Binalbagan, Negros Occidental. On 1 September 2003, the *sangguniang bayan* of Binalbagan, Negros Occidental, through vice-mayor Jose G. Yulo, received a similar complaint[5] against Rodriguez for abuse of authority, dishonesty, oppression, misconduct in office, and neglect of duty.

In its 8 September 2003 notice,[6] the municipal vice-mayor required Rodriguez to submit his answer within 15 days from receipt of the notice. On 23 September 2003, Rodriguez filed a motion to dismiss[7] the case filed in the *sangguniang bayan* on the ground that the allegations in the complaint were without factual basis and did not constitute any violation of law. In a compliance[8] dated 22 October 2003, Rodriguez alleged complainants violated the rule against forum shopping.

Meanwhile, in its 10 September 2003 order,[9] the Ombudsman required Rodriguez to file his answer. Rodriguez filed on 24 October 2003 a motion to dismiss[10] the case filed in the Ombudsman on the grounds of *litis pendentia* and forum shopping. He alleged that the *sangguniang bayan* had already

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[3] *Id.* at 44-50.

[4] Records, pp. 2-60.

[5] CA *rollo*, p. 53.

[6] Records, p. 69.

[7] CA *rollo*, pp. 60-63.

[8] *Id.* at 74-75.

[9] Records, p. 65.

[10] *Id.* at 66-68.

acquired jurisdiction over his person as early as 8 September 2003.

The municipal vice-mayor set the case for hearing on 3 October 2003.[11] Since complainants had no counsel, the hearing was reset to a later date. When the case was called again for hearing, complainants' counsel manifested that complainants would like to withdraw the administrative complaint filed in the *sangguniang bayan*. On 29 October 2003, complainants filed a motion[12] to withdraw the complaint lodged in the *sangguniang bayan* on the ground that they wanted to prioritize the complaint filed in the Ombudsman. Rodriguez filed a comment[13] praying that the complaint be dismissed on the ground of forum shopping, not on the ground complainants stated. In their opposition,[14] complainants admitted they violated the rule against forum shopping and claimed they filed the complaint in the *sangguniang bayan* without the assistance of counsel. In his 4 November 2003 Resolution,[15] the municipal vice-mayor dismissed the case filed in the *sangguniang bayan*.

In its 29 January 2004 order,[16] the Ombudsman directed both parties to file their respective verified position papers. Rodriguez moved for reconsideration of the order citing the pendency of his motion to dismiss.[17] In its 11 March 2004 order,[18] the Ombudsman stated that a motion to dismiss was a prohibited pleading under Section 5 (g) Rule III of Administrative Order No. 17. The Ombudsman reiterated its order for Rodriguez to file his position paper.

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[11] *Id.* at 74.

[12] CA *rollo*, pp. 76-77.

[13] *Id.* at 78-79.

[14] *Id.* at 80-82.

[15] *Id.* at 102-103.

[16] Records, p. 81.

[17] CA *rollo*, pp. 86-87.

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

In his position paper, Rodriguez insisted that the *sangguniang bayan* still continued to exercise jurisdiction over the complaint filed against him. He claimed he had not received any resolution or decision dismissing the complaint filed in the *sangguniang bayan.* In reply,[19] complainants maintained there was no more complaint pending in the *sangguniang bayan* since the latter had granted their motion to withdraw the complaint. In a rejoinder,[20] Rodriguez averred that the *sangguniang bayan* resolution dismissing the case filed against him was not valid because only the vice-mayor signed it.

The Ruling of the Ombudsman

In its 21 September 2004 Decision,[21] the Ombudsman found Rodriguez guilty of dishonesty and oppression. It imposed on Rodriguez the penalty of dismissal from the service with forfeiture of all benefits, disqualification to hold public office, and forfeiture of civil service eligibilities. Rodriguez filed a motion for reconsideration.[22] In its 12 January 2005 Order,[23] the Ombudsman denied the motion for reconsideration. In its 8 March 2005 Order,[24] the Ombudsman directed the mayor of Binalbagan, Negros Occidental to implement the penalty of dismissal against Rodriguez.

Rodriguez filed in the Court of Appeals a petition for review with prayer for the issuance of a temporary restraining order.

The Ruling of the Court of Appeals

In its 8 May 2006 Decision,[25] the Court of Appeals set aside for lack of jurisdiction the Decision of the Ombudsman and

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[19] *Id.* at 99-101.

[20] *Id.* at 106-107.

[21] *Id.* at 26-33.

[22] *Id.* at 34-48.

[23] *Id.* at 122-124.

[24] *Id.* at 144-145.

[25] *Rollo,* pp. 33-43.

directed the *sangguniang bayan* to proceed with the hearing on the administrative case. The appellate court reasoned that the *sangguniang bayan* had acquired primary jurisdiction over the person of Rodriguez to the exclusion of the Ombudsman. The Court of Appeals relied on Section 4, Rule 46 of the Rules of Court, to wit:

> Sec. 4. *Jurisdiction over person of respondent, how acquired*. – The court shall acquire jurisdiction over the person of the respondent by the service on him of its order or resolution indicating its initial action on the petition or by his voluntary submission to such jurisdiction.

The appellate court noted that the *sangguniang bayan* served on Rodriguez a notice, requiring the latter to file an answer, on 8 September 2003 while the Ombudsman did so two days later or on 10 September 2003.

Petitioner Ombudsman contends that upon the filing of a complaint before a body vested with jurisdiction, that body has taken cognizance of the complaint. Petitioner cites Black's Law Dictionary in defining what "to take cognizance" means to wit, "to acknowledge or exercise jurisdiction." Petitioner points out it had taken cognizance of the complaint against Rodriguez before a similar complaint was filed in the *sangguniang bayan* against the same respondent. Petitioner maintains summons or notices do not operate to vest in the disciplining body jurisdiction over the person of the respondent in an administrative case. Petitioner concludes that consistent with the rule on concurrent jurisdiction, the Ombudsman's exercise of jurisdiction should be to the exclusion of the *sangguniang bayan*.

Private respondent Rolson Rodriguez counters that when a competent body has acquired jurisdiction over a complaint and the person of the respondent, other bodies are excluded from exercising jurisdiction over the same complaint. He cites Article 124 of the Implementing Rules and Regulations of Republic Act No. 7160,[26]

[26] Otherwise known as the Local Government Code of 1991.

which provides that an elective official may be removed from office by order of the proper court or the disciplining authority whichever first acquires jurisdiction to the exclusion of the other. Private respondent insists the *sangguniang bayan* first acquired jurisdiction over the complaint and his person. He argues jurisdiction over the person of a respondent in an administrative complaint is acquired by the service of summons or other compulsory processes. Private respondent stresses complainants violated the rule against forum shopping when they filed identical complaints in two disciplining authorities exercising concurrent jurisdiction.

The Issues

The issues submitted for resolution are (1) whether complainants violated the rule against forum shopping when they filed in the Ombudsman and the *sangguniang bayan* identical complaints against Rodriguez; and (2) whether it was the *sangguniang bayan* or the Ombudsman that first acquired jurisdiction.

The Court's Ruling

The petition has merit.

Paragraph 1, Section 13 of Article XI of the Constitution provides:

> Sec. 13. The Ombudsman shall have the following powers, functions, and duties:
>
> (1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office, or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.

Section 15 of Republic Act No. 6770, otherwise known as the Ombudsman Act of 1989, states:

> Sec. 15. *Powers, Functions, and Duties*. – The Ombudsman shall have the following powers, functions, and duties:
>
> (1) Investigate and prosecute on its own or on complaint by any person, any act or omission of any public officer or employee, office or agency, when such act or omission appears to be illegal, unjust,

improper, or inefficient. It has primary jurisdiction over cases cognizable by the *Sandiganbayan* and, in the exercise of this primary jurisdiction, it may take over, at any stage, from any investigatory agency of Government, the investigations of such cases.

The primary jurisdiction of the Ombudsman to investigate any act or omission of a public officer or employee applies only in cases cognizable by the *Sandiganbayan*. In cases cognizable by regular courts, the Ombudsman has concurrent jurisdiction with other investigative agencies of government.[27] Republic Act No. 8249, otherwise known as An Act Further Defining the Jurisdiction of the *Sandiganbayan*, limits the cases that are cognizable by the *Sandiganbayan* to public officials occupying positions corresponding to salary grade 27 and higher. The *Sandiganbayan* has no jurisdiction over private respondent who, as *punong barangay*, is occupying a position corresponding to salary grade 14 under Republic Act No. 6758, otherwise known as the Compensation and Position Classification Act of 1989.[28]

Under Republic Act No. 7160, otherwise known as the Local Government Code, the s*angguniang panlungsod* or *sangguniang bayan* has disciplinary authority over any elective *barangay* official, to wit:

SEC. 61. *Form and Filing of Administrative Complaints*. – A verified complaint against any erring elective official shall be prepared as follows:

x x x x x x x x x

(c) A complaint against any elective *barangay* official shall be filed before the *sangguniang panlungsod* or *sangguniang bayan* concerned whose decision shall be final and executory.

Clearly, the Ombudsman has concurrent jurisdiction with the *sangguniang bayan* over administrative cases against elective

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[27] *Uy v. Sandiganbayan,* 407 Phil. 154 (2001).

[28] As implemented by the Department of Budget and Management. DBM Manual on Position Classification and Compensation Scheme in Local Government Units.

barangay officials occupying positions below salary grade 27, such as private respondent in this case.

The facts in the present case are analogous to those in *Laxina, Sr. v. Ombudsman*,[29] which likewise involved identical administrative complaints filed in both the Ombudsman and the s*angguniang panlungsod* against a *punong barangay* for grave misconduct. The Court held therein that the rule against forum shopping applied only to judicial cases or proceedings, not to administrative cases.[30] Thus, even if complainants filed in the Ombudsman and the *sangguniang bayan* identical complaints against private respondent, they did not violate the rule against forum shopping because their complaint was in the nature of an administrative case.

In administrative cases involving the concurrent jurisdiction of two or more disciplining authorities, the body in which the complaint is filed first, and which opts to take cognizance of the case, acquires jurisdiction to the exclusion of other tribunals exercising concurrent jurisdiction.[31] In this case, since the complaint was filed first in the Ombudsman, and the Ombudsman opted to assume jurisdiction over the complaint, the Ombudsman's exercise of jurisdiction is to the exclusion of the *sangguniang bayan* exercising concurrent jurisdiction.

It is a hornbook rule that jurisdiction is a matter of law. Jurisdiction, once acquired, is not lost upon the instance of the parties but continues until the case is terminated.[32] When herein complainants first filed the complaint in the Ombudsman, jurisdiction was already vested on the latter. Jurisdiction could

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[29] G.R. No. 153155, 30 September 2005, 471 SCRA 542.

[30] *Id.*

[31] *Civil Service Commission v. Alfonso*, G.R. No. 179452, 11 June 2009, 589 SCRA 88; *Enrique v. Court of Appeals*, G.R. No. 79072, 10 January 1994, 229 SCRA 180.

[32] *Office of the Ombudsman v. Estandarte*, G.R. No. 168670, 13 April 2007, 521 SCRA 155.

no longer be transferred to the *sangguniang bayan* by virtue of a subsequent complaint filed by the same complainants.

As a final note, under Section 60 of the Local Government Code, the *sangguniang bayan* has no power to remove an elective *barangay* official. Apart from the Ombudsman, only a proper court may do so.[33] Unlike the *sangguniang bayan*, the powers of the Ombudsman are not merely recommendatory. The Ombudsman is clothed with authority to directly remove[34] an erring public official other than members of Congress and the Judiciary who may be removed only by impeachment.[35]

WHEREFORE, we *GRANT* the petition. We *SET ASIDE* the 8 May 2006 Decision of the Court of Appeals in CA-G.R. SP No. 00528. We *AFFIRM* the 21 September 2004 Decision of the Ombudsman (Visayas) in OMB-V-A-03-0511-H.

No pronouncement as to costs.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 156599. July 26, 2010]

BORMAHECO, INCORPORATED, *petitioner, vs.* **MALAYAN INSURANCE COMPANY, INCORPORATED and INTERWORLD BROKERAGE CORPORATION,** *respondents.*

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[33] *The Sangguniang Barangay of Barangay Don Mariano Marcos v. Martinez*, G.R. No. 170626, 3 March 2008, 547 SCRA 416.

[34] *Office of the Ombudsman v. Santiago*, G.R. No. 161098, 13 September 2007, 533 SCRA 305.

[35] Section 21, R.A. No. 6770.

SYLLABUS

1. **REMEDIAL LAW; PLEADINGS AND PRACTICE; AMENDMENT OF PLEADINGS; FORMAL AMENDMENTS; RULE; RULE ON AMENDMENT OF PLEADINGS NEED NOT BE APPLIED RIGIDLY, PARTICULARLY WHERE NO SURPRISE OR PREJUDICE IS CAUSED THE OBJECTING PARTY.—** At present, Section 4, Rule 10 of the Revised Rules of Court is quite clear with regard to formal amendments: SEC. 4. *Formal amendments.* – A defect in the designation of the parties and *other clearly clerical or typographical errors* may be summarily corrected by the court at any stage of the action, at its initiative or on motion, provided no prejudice is caused thereby to the adverse party. Although the Rule prior to its revision did not specifically include the phrase "other clearly clerical or typographical errors," a similar intention may be gleaned from the judicial pronouncements then. In an earlier case, the Court decreed that amendments of pleadings may be resorted to subject to the condition that "the amendments sought do not alter the cause of action of the original complaint." More aptly, in another case, the Court pronounced that amendment of pleadings may be resorted to, so long as the intended amendments are not inconsistent with the allegations in the initial complaint, and are obviously intended to clarify the intrinsic ambiguity in it with respect to the time of accrual of the cause of action. x x x. Indeed, the rule on amendment of pleadings need not be applied rigidly, particularly where no surprise or prejudice is caused the objecting party.

2. **ID.; ID.; ID.; ID.; ERROR ON THE ACTUAL DATE OF THE INCIDENT IS PURELY TECHNICAL; CORRECTION THEREOF, PROPER.—** In the case at bench, while the date indicated in the original complaint was February 13, 1986, there is no denying that the actual date of the incident was really February 3, 1986 when the subject cargo was actually withdrawn from the pier and delivered to the Hotel's warehouse. *All* the supporting documents offered in evidence refer to this date and no other. Contrary to Bormaheco's stand, the actual date of the loss was well within the coverage of the insurance policy. Surely, Bormaheco could not have been misled or surprised by the correction of the error. Neither could it have

been prejudiced by the correction of the said date for this was merely a typographical mistake – purely technical. Going back to *Juasing*, this Court quoting from a much earlier case opined, The error in this case is purely technical. To take advantage of it for other purposes than to cure it, does not appeal to a fair sense of justice. Its presentation as fatal to the plaintiff's case smacks of skill rather than right. A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. x x x

3. ID.; ID.; ID.; ID.; A CORRECTION OF TYPOGRAPHICAL ERROR CAN BE SUMMARILY MADE AT ANY STAGE OF THE ACTION PROVIDED NO PREJUDICE IS CAUSED THEREBY TO THE ADVERSE PARTY.— As to the delayed correction of the typographical error, no substantial prejudice was caused to the petitioner either. In one case, it was ruled that "a correction x x x could be summarily made at any stage of the action provided no prejudice is caused thereby to the adverse party, as Section 4 of the same Rule 10 further provides."

4. ID.; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* ONLY QUESTIONS OF LAW ARE ADMITTED THEREIN; THE SUPREME COURT IS NOT A TRIER OF FACTS.— Bormaheco questions the factual findings of both the trial court and the appellate court, more particularly the extent of the damage caused to the cargo. Bormaheco also challenges the findings that its forklift operator, Custodio Trinidad, was at fault or negligent, and insists that the damage to, or loss of, the cargo was due to the improper crating. Bormaheco may have forgotten that the Court is not a trier of facts and that, in this petition for review on *certiorari*, will not admit questions other than questions of law.

5. ID.; EVIDENCE; ABSENT ANY EXCEPTIONAL CIRCUMSTANCES TO WARRANT THE CONTRARY, THE FINDINGS OF FACT OF THE TRIAL COURT, MORE SO WHEN AFFIRMED BY THE COURT OF APPEALS, ARE BINDING AND CONCLUSIVE.— The antecedents mentioned

earlier in this disposition readily show the congruence in the factual findings of the trial court and the appellate court. Thus, and in the absence of any exceptional circumstances to warrant the contrary, this Court must abide by the prevailing rule that findings of fact of the trial court, more so when affirmed by the Court of Appeals, are binding and conclusive upon It. Accordingly, the trial court and the appellate court's findings that the subject "oven, proofing cabinet and lateral proofer were badly dented and deformed and that their glass parts were broken to pieces," and that the oven was also rendered inoperable, stand. The findings of the two courts below, with regard to the fault of Bormaheco's forklift operator, also hold.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; NATURE AND EFFECT OF OBLIGATIONS; A PARTY IS LIABLE UNDER ITS CONTRACT WITH ANOTHER WHERE IT FAILED TO COMPLY WITH ITS OBLIGATION THEREUNDER DUE TO THE GROSS NEGLIGENCE OF THOSE EMPLOYED BY IT.— [T]he Court agrees with the RTC and the CA that Interworld is liable under its contract with the Hotel for the loss of the cargo due to the negligence of those employed by it – Bormaheco and its forklift operator. The relationship between Interworld and the Hotel, in whose place Malayan was subrogated, was contractual arising from the former's commitment to transport the subject cargo to the latter's warehouse. With its failure to comply with this obligation due to the negligence of the forklift operator of Bormaheco whom it contracted to unload the subject cargo and pursuant to Articles 1172 and 1173 of the New Civil Code, Interworld necessarily becomes liable. In turn, Bormaheco is liable to Interworld for the acts of its forklift operator whom the trial court and the appellate court found to have been grossly negligent.

APPEARANCES OF COUNSEL

Geronimo R. L. Recinto for petitioner.

Christian Joseph Marie F. Fajardo for Malayan Insurance Company.

D E C I S I O N

MENDOZA, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing 1] the August 22, 2002 Decision[1] of the Court of Appeals *(CA)*, in CA-G.R. CV NO. 47469, which affirmed the decision of the Regional Trial Court of Manila, Branch 17 *(RTC);* and 2] its December 5, 2002 Resolution which denied the motion for reconsideration of the petitioners.

On December 13, 1985, Marcel Kopfli Company of Lucerne, Switzerland shipped the following cargo to the Manila Peninsula Hotel *(the Hotel)*: (a) one unit Kolb modular construction bakery oven; (b) one steam extraction hood; (c) one lateral proofer; (d) one proofing cabinet; (e) one trolley for setters; (f) eight setters; and (g) spare parts for the Kolb bakery oven. The cargo was packed in one crate and loaded on board the vessel *MS Nedlloyd Dejima* which left the port of Fos, Switzerland on said date. The cargo was insured by the Hotel with the private respondent Malayan Insurance Company *(Malayan)*.

On January 6, 1986, *MS Nedlloyd Dejima* arrived at the port in Manila. The subject cargo was unloaded at Pier 13 of the South Harbor in good order and condition. On February 3, 1986, pursuant to its contract with the Hotel, the other private respondent Interworld Brokerage Corporation *(Interworld)* withdrew the cargo from the pier and delivered it to the Hotel's warehouse. For this undertaking, Interworld secured the services of petitioner Border Machinery & Heavy Equipment Co., Incorporated *(Bormaheco)* to provide a forklift truck and a qualified operator for the purpose of unloading the cargo from the delivery truck.[2]

At the premises of the warehouse, Bormaheco's forklift operator, Custodio Trinidad, proceeded to unload the cargo

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[1] *Rollo*, pp. 87-96. Penned by Justice Conrado M. Vasquez, Jr. and concurred in by Justice Andres B. Reyes, Jr. and Justice Mario L. Guariña III.

[2] *Id.* at 88.

from the delivery truck. He placed the fork under the crate and immediately lifted it. The cargo fell from the fork at a height of six feet and broke open.[3] As a result, the Kolb construction bakery oven, the lateral proofer and the proofing cabinet sustained "extensive damage" and were declared as a "total loss."[4]

For the loss, the Hotel sought indemnity from Malayan under its insurance policy. Malayan paid the Hotel the sum of ₱690,849.68 plus the additional amount of ₱75,151.33 representing the *pro-rata* share of the freight charges on the damaged items. In turn, Malayan, which was subrogated to the rights of the Hotel, made formal demands for reimbursement from Interworld but to no avail.

On August 7, 1986, Malayan filed a complaint against Interworld before the RTC of Manila, docketed as Civil Case No. 86-37017 and raffled to Branch 17 thereof. Interworld, on the other hand, filed a Third-Party Complaint against Bormaheco for indemnity or other relief for the damages of the cargo. After trial, the RTC resolved the conflict in favor of the private respondents as it found that the forklift operator lifted the cargo when it was not yet properly balanced causing it to tilt, fall and sustain damages. The *fallo* of the subject decision[5] reads:

> WHEREFORE, judgment is hereby rendered in favor of plaintiff Malayan Insurance Company, Inc. and against defendant and third-party plaintiff Interworld Brokerage Corporation, ordering the latter to pay the former the sum of ₱756,000.71 with legal interest thereon at the rate of six percent (6%) per annum from August 7, 1986 until the said sum is fully paid, and the further sum of ₱40,000.00 as attorney's fees.
>
> Third-party defendant Bormaheco, Inc. is ordered to pay the defendant and third-party plaintiff whatever sums the latter will pay to the plaintiff by virtue of this judgment.

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[3] *Id.* at 89.

[4] *Id.*, Exhibits "I-2" to "I-3", at 227-228.

[5] *Id.* at 144-149.

Costs are assessed against the defendant and third-party plaintiff in favor of the plaintiff, and against the third-party defendant in favor of the defendant and third-party plaintiff.

The counterclaim of the defendant against the plaintiff as well as the counterclaim of the third-party defendant against the third-party plaintiff are dismissed.

SO ORDERED.

Aggrieved, Interworld and Bormaheco separately filed their respective appeals before the Court of Appeals. After a review of the records, the appellate court affirmed the RTC's finding with regard to the damages sustained by the cargo items.[6] The CA gave probative weight to the Final Report of the appraisal company, Adjustment Standards Company. Interworld and Bormaheco failed to convince the CA that the damage was caused by the faulty packing of the cargo rather than by the forklift operator. According to the appellate court,

x x x. Verily, if the cargo was improperly packed, as appellants would have Us believe, then the accident should have happened while it was in transit. There were a lot of instances when the stacked oven could have caved-in while it was being handled during its voyage yet as the records show, the transport of the cargo went well without incident until that fateful day. There is but one explanation for all these – the cargo was properly handled during transit and corollarily, the trial court was correct in holding the forklift operator responsible for the mishap.

Appellants nevertheless suggest that faulty packing caused the stacked oven to suddenly slip – forcing the crate to tilt to the left as the forklift was lowering it. Such theory is specious. If the crate was properly balanced on the forklift as the operator claims, then there is no reason why the cargo would slip and tilt on its own force seeing as it was stacked horizontally. Appellants' scenario could only be possible if the crate was not properly balanced on the forklift and the heavier weight is concentrated on one flank, in this case the left side. Settled is the rule that evidence to be believed must not only proceed from the mouth of a credible witness, but it must be

[6] *Id.* at 92-93.

credible in itself – such as common experience and observation of mankind can prove as probable under the circumstances. Common experience and observation leads Us to believe that the forklift operator miscalculated the position where he placed the forklift under the crate. This caused the imbalance and eventually induced the crate to tilt and fall towards the left side of the forklift. Hence, Our inclination to believe appellee's explanation that the mishap was brought about by the forklift operator's negligence in suddenly lifting the crate even while it was not yet properly balanced on the fork and thereby causing the entire crate to fall on the ground. This is more in consonance with human observation and experience.[7] (citations omitted)

The CA thus ruled that Interworld was liable under its contract of carriage with the Hotel, wherein the former undertook to transport the subject cargo from the pier to the latter's premises. Since the cargo was damaged when it was being delivered, Interworld is liable therefor pursuant to its contractual undertaking. The appellate court also affirmed the trial court's finding with regard to Bormaheco's liability to Interworld.

On the other hand, Bormaheco is responsible for the work done by persons whom it employs in its performance. Neither can Bormaheco be absolved from liability because it exercised due diligence in the selection of the employee whose negligent act caused the damage in question. The reason is that the obligation of Bormaheco was created by contract, and Article 2180 is not applicable to negligence arising in the course of the performance of a contractual obligation. Article 2180 is exclusively concerned with cases where negligence arises in the absence of agreement.[8] (citations omitted)

Finally, resolving the issue on whether or not the incident was outside or beyond the thirty (30) day period of coverage of the insurance policy, the CA noted that the incident occurred on February 3, 1986 which was well within the said 30-day period reckoned from January 6, 1986, the date of the unloading. According to the CA, the date February 13, 1986 mentioned in

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[7] *Id.* at 93-94.

[8] *Id.* at 95.

Malayan's initial complaint was nothing but a typographical error which was subsequently corrected and rectified.[9]

Not in conformity, Bormaheco filed this petition for review on *certiorari*. Malayan submitted its comment, but Interworld did not, despite several court orders. On June 13, 2007, the National Bureau of Investigation's *(NBI)* reported that it failed to locate Interworld's general manager despite efforts to serve this Court's Order of Arrest and Commitment against its president. The Court eventually resolved to dispense with Interworld's comment.[10] After Bormaheco filed its Reply, the Court gave due course to the petition and required the parties to submit their respective memoranda.

To amplify its prayer for the reversal of the subject decision, in its memorandum, Bormaheco presents the following:

ISSUES

WHETHER OR NOT THE COURT OF APPEALS COMMITTED AN ERROR OF LAW WHEN IT AFFIRMED *IN TOTO* THE DECISION OF BRANCH 17, REGIONAL TRIAL COURT OF MANILA

WHETHER OR NOT THE CLAIM OF THE RESPONDENT MALAYAN IS STILL ENFORCEABLE AGAINST PETITIONER AND RESPONDENT INTERWORLD

WHETHER OR NOT THE PETITIONER SHOULD BE HELD LIABLE FOR THE NEGLIGENCE OF RESPONDENT INTERWORLD FOR THE IMPROPER PACKING OF THE GOODS

WHETHER OR NOT IT WAS RESPONDENT INTERWORLD WHO EXERCISED SUPERVISION OVER THE FORKLIFT OPERATOR.[11]

The petition is devoid of merit.

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[9] *Id.* at 96.

[10] *Id.*, SC Resolution dated June 13, 2007, at 310.

[11] *Id.* at 394.

Primarily, petitioner Bormaheco zeroes in on the fact that the Complaint indicated that the incident happened on February 13, 1986, and was, therefore, filed beyond the 30-day coverage of the insurance policy reckoned from the date of discharge of the shipment from the vessel, on January 6, 1986. For said reason, petitioner claims that the policy already expired. It then argues that Malayan's amendment as to the date should not have been permitted because it was a substantial amendment and was filed three (3) years after a responsive pleading had been submitted.

The Court is not persuaded.

At present, Section 4, Rule 10 of the Revised Rules of Court is quite clear with regard to formal amendments:

> SEC. 4. *Formal amendments.* – A defect in the designation of the parties and *other clearly clerical or typographical errors* may be summarily corrected by the court at any stage of the action, at its initiative or on motion, provided no prejudice is caused thereby to the adverse party.

Although the Rule prior to its revision did not specifically include the phrase "other clearly clerical or typographical errors," a similar intention may be gleaned from the judicial pronouncements then.

In an earlier case, the Court decreed that amendments of pleadings may be resorted to subject to the condition that "the amendments sought do not alter the cause of action of the original complaint."[12] More aptly, in another case, the Court pronounced that amendment of pleadings may be resorted to, so long as the intended amendments are not inconsistent with the allegations in the initial complaint, and are obviously intended to clarify the intrinsic ambiguity in it with respect to the time of accrual of the cause of action.[13] In *Juasing Hardware v. Mendoza*[14]

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[12] *Alger Electric, Inc. v. Court of Appeals,* 219 Phil. 548 (1985).

[13] *Guirao v. Ver*, 123 Phil. 466 (1966).

[14] 201 Phil. 369 (1982).

where the old provision was applied, this Court reiterated its previous pronouncement in *Shaffer v. Palma.*[15] Thus:

> The courts should be liberal in allowing amendments to pleadings to avoid multiplicity of suits and in order that the real controversies between the parties are presented and the case decided on the merits without unnecessary delay. This rule applies with more reason and with greater force when, as in the case at bar, the amendment sought to be made refers to a mere matter of form and no substantial rights are prejudiced.[16]

Indeed, the rule on amendment of pleadings need not be applied rigidly, particularly where no surprise or prejudice is caused the objecting party.[17]

In the case at bench, while the date indicated in the original complaint was February 13, 1986, there is no denying that the actual date of the incident was really February 3, 1986 when the subject cargo was actually withdrawn from the pier and delivered to the Hotel's warehouse. *All* the supporting documents offered in evidence refer to this date and no other. Contrary to Bormaheco's stand, the actual date of the loss was well within the coverage of the insurance policy. Surely, Bormaheco could not have been misled or surprised by the correction of the error. Neither could it have been prejudiced by the correction of the said date for this was merely a typographical mistake – purely technical. Going back to *Juasing*, this Court quoting from a much earlier case opined,

> The error in this case is purely technical. To take advantage of it for other purposes than to cure it, does not appeal to a fair sense of justice. Its presentation as fatal to the plaintiff's case smacks of skill rather than right. A litigation is not a game of technicalities in which one, more deeply schooled and skilled in the subtle art of

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[15] 131 Phil. 22 (1968).

[16] *Supra* note 14 at 375.

[17] *Northern Cement Corporation v. Intermediate Appellate Court*, 242 Phil. 141 (1988).

movement and position, entraps and destroys the other. It is, rather, a contest in which each contending party fully and fairly lays before the court the facts in issue and then, brushing aside as wholly trivial and indecisive all imperfections of form and technicalities of procedure, asks that justice be done upon the merits. x x x[18]

As to the delayed correction of the typographical error, no substantial prejudice was caused to the petitioner either. In one case, it was ruled that "a correction x x x could be summarily made at any stage of the action provided no prejudice is caused thereby to the adverse party, as Section 4 of the same Rule 10 further provides."[19]

Next, Bormaheco questions the factual findings of both the trial court and the appellate court, more particularly the extent of the damage caused to the cargo. Bormaheco also challenges the findings that its forklift operator, Custodio Trinidad, was at fault or negligent, and insists that the damage to, or loss of, the cargo was due to the improper crating. Bormaheco may have forgotten that the Court is not a trier of facts and that, in this petition for review on *certiorari*, will not admit questions other than questions of law.[20]

The antecedents mentioned earlier in this disposition readily show the congruence in the factual findings of the trial court and the appellate court. Thus, and in the absence of any exceptional circumstances[21] to warrant the contrary, this Court must abide

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[18] *Supra* note 14 at 374.

[19] *La Tondena Distillers, Inc. v. Court of Appeals*, G.R. No. 88938, June 8, 1992, 209 SCRA 553; cited in I Herrera, *Remedial Law*, p. 596 (2000).

[20] *Tayao v. Mendoza*, 495 Phil. 655 (2005).

[21] (1) When the conclusion is a finding grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on 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

by the prevailing rule that findings of fact of the trial court, more so when affirmed by the Court of Appeals, are binding and conclusive upon It.[22] Accordingly, the trial court and the appellate court's findings that the subject "oven, proofing cabinet and lateral proofer were badly dented and deformed and that their glass parts were broken to pieces," and that the oven was also rendered inoperable, stand. The findings of the two courts below, with regard to the fault of Bormaheco's forklift operator, also hold.

Hence, the Court agrees with the RTC and the CA that Interworld is liable under its contract with the Hotel for the loss of the cargo due to the negligence of those employed by it – Bormaheco and its forklift operator. The relationship between Interworld and the Hotel, in whose place Malayan was subrogated, was contractual arising from the former's commitment to transport the subject cargo to the latter's warehouse. With its failure to comply with this obligation due to the negligence of the forklift operator of Bormaheco whom it contracted to unload the subject cargo and pursuant to Articles 1172 and 1173 of the New Civil Code,[23] Interworld necessarily becomes

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of both appellant and appellee; (7) when the findings of the Court of Appeals 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 Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record (*Id.*, earlier citations omitted).

[22] *Child Learning Center, Inc. v. Tagorio*, G.R. No. 150920, November 25, 2005, 476 SCRA 236, 241; *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, 400 Phil. 1349 (2000); *Abapo v. Court of Appe*als, 383 Phil. 933 (2000); *Philippine National Construction Corporation v. Mars Construction Enterprises, Inc.*, 382 Phil. 510 (2000).

[23] Art. 1172. Responsibility arising from negligence in the performance of every kind of obligation is also demandable, but such liability may be regulated by the courts, according to the circumstances.

ART. 1173. The fault or negligence of the obligor consists in the omission of that diligence which is required by the nature of the obligation and corresponds

liable. In turn, Bormaheco is liable to Interworld for the acts of its forklift operator whom the trial court and the appellate court found to have been grossly negligent.[24]

WHEREFORE, the August 22, 2002 Decision of the Court of Appeals in CA-G.R. CV NO. 47469 and its December 5, 2002 Resolution are hereby *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Abad, JJ.*, concur.

FIRST DIVISION

[G.R. No. 162608. July 26, 2010]

ADRIAN WILSON INTERNATIONAL ASSOCIATES, INC., *petitioner, vs.* **TMX PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; DAMAGES; IN CONTRACTS AND QUASI-CONTRACTS, THE DAMAGES FOR WHICH THE OBLIGOR WHO ACTED IN GOOD FAITH IS LIABLE

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with the circumstances of the persons, of the time and of the place. When negligence shows bad faith, the provisions of Articles 1171 and 2201, paragraph 2, shall apply.

If the law or contract does not state the diligence which is to be observed in the performance, that which is expected of a good father of a family shall be required.

[24] Art. 1727. The contractor is responsible for the work done by persons employed by him.

SHALL BE THOSE THAT ARE NATURAL AND PROBABLE CONSEQUENCES OF THE BREACH OF THE OBLIGATION; APPLICATION IN CASE AT BAR.— In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the 'natural and probable consequences of the breach of the obligation'. Both the trial court and the CA held AWIA liable for the cost of 11 shoring columns. AWIA no longer challenged this ruling when it withdrew its appeal to the appellate court, rendering the judgment final and executory. We also found that AWIA had breached its duty of contract administration. Had the effects on the marginal strength of the concrete been promptly disclosed to TMX, the cracks and deflections could have been rectified by the contractor before it was issued its final certification of payment and the owner could have been spared from further expenses. There is a causal connection between AWIA's negligence and the expenses incurred by TMX. The latter was compelled to shutdown the plant during the workdays in December to repair the roof. In the process, it incurred expenses for the repairs, including the salaries of its workers who were put on forced leave, for which it can ask for reimbursement as actual damages.

2. ID.; ID.; ACTUAL DAMAGES; AWARD THEREOF MUST BE BASED ON EVIDENCE PRESENTED.— Actual damages puts the claimant in the position in which he had been before he was injured. The award thereof must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and nonsubstantial proof. Under the Civil Code, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved.

3. ID.; ID.; TEMPERATE DAMAGES; IF THE AMOUNT OF CLAIMS CANNOT BE PROVEN WITH CERTAINTY, TEMPERATE DAMAGES MAY BE AWARDED INSTEAD.— To prove that salaries have been paid, TMX has the burden to show that payments have actually been made to its employees. However, the documents it submitted were composed only of a master list of daily and monthly paid employees, summarized and itemized lists and computations of payroll costs during the covered period of shoring installation, salary structures, and vouchers prepared by the accounting department. These pieces

of evidence, as well as the bare assertion of the TMX President, do not show a reasonable degree of certainty of actual payment to and actual receipt by its workers but only reflect the list of disbursements. No other witnesses who could corroborate the actual payment of the salaries of the employees during the shutdown period were presented. Vouchers are not receipts. A receipt is a written and signed acknowledgment that money has been received or goods have been delivered, while a voucher is documentary record of a business transaction. Hence, the RTC correctly preferred the payroll documents (which contain the signatures of employees), implying that these are the primary/best evidence of payment, or "that which [afford] the greatest certainty of the fact in question". While TMX failed to prove the exact amount of the salaries it had paid, we however acknowledge that TMX had to pay its employees during the shutdown and had suffered pecuniary loss for the structural problem. Moreover, we concede to AWIA's stance that the installation of only 11 shoring columns, instead of 118, would significantly reduce the number of days allotted for the repairs. As a matter of equity, therefore, a relief to TMX in the form of temperate damages is warranted. We find the amount of ₱500,000.00 reasonable and sufficient under the circumstances.

APPEARANCES OF COUNSEL

Hector L. Hofileña for petitioner.
Sycip Salazar Hernandez & Gatmaitan for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

A claimant is entitled to be compensated reasonably and commensurately for what he or she has lost as a result of another's act or omission, and the amount of damages to be awarded shall be equivalent to what have been pleaded and adequately proven. Should the claimant fail to prove with exactitude the extent of injury he or she sustained, the court will still allow redress if it finds that the claimant has suffered due to another's fault.

In this petition for review on *certiorari*, petitioner Adrian Wilson International Associates, Inc. (AWIA) assails the Decision[1] of the Court of Appeals (CA) dated August 14, 2003 in CA-G.R. CV No. 49272 which affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Makati City, Branch 150 by further ordering AWIA to pay to respondent TMX Philippines, Inc. (TMX) the amount of ₱1,546,084.00 representing the reimbursement of salaries of TMX's employees. AWIA now pleads that we reinstate the RTC Decision or reduce the amount of actual damages representing the reimbursement of the salaries of the TMX employees.

Factual Antecedents

TMX engaged the services of AWIA for the construction of its watch assembly plant located in the EPZA[3]-run Mactan Export Processing Zone in Cebu (composed of twin modules and another separately designed module).[4] Their Agreement[5] dated December 29, 1978 provided that AWIA would provide basic and detailed architectural designs, plans, and specifications, as well as structural, mechanical, and electrical engineering services.

Specifically, one of AWIA's duties was construction administration, *i.e.*, to guard TMX from defects and deficiencies during the construction phase by determining the progress and quality of the work of the general contractor, P.G. Dakay Construction Company (P.G. Dakay). This is to ensure that this contractor works in accordance with the directed specifications.

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[1] *Rollo*, pp. 7-25; penned by Associate Justice Ruben T. Reyes and concurred in by Associate Justices Jose L. Sabio, Jr. and Hakim S. Abdulwahid.

[2] *Id.* at 117-118; penned by Judge Erna Falloran Aliposa.

[3] EPZA stands for Export Processing Zone Authority.

[4] Two of the buildings, called 'twin modules,' are of the same design for watch assembly and office spaces, while the other one is differently designed to be used as a warehouse.

[5] *Rollo*, pp. 84-100.

Construction began in 1979 and was completed in 1980. After five years, however, TMX noticed numerous cracks and beam deflections (vertical shifting)[6] along the roof girders and beams in columns B, C, F, and G of the twin modules. TMX, opining that the problem may have been due to design errors, informed AWIA of the situation.

In its report dated April 24, 1985,[7] AWIA, thru its project manager Anthony R. Stoner, maintained that its structural roof design of the building was correct and that the building was not in danger of collapsing.

AWIA attributed the existing cracks along column line G to the marginal strength of the concrete that was poured during a heavy rainfall on July 18, 1979. This was based on a construction report dated July 19, 1979, furnished to TMX, of TMXP 2 Project Inspector/AWIA site representative Engr. Gavino Lacanilao (Engr. Lacanilao).[8] In his report, Engr. Lacanilao narrated that the night before, the concrete pouring operations on lines F and G of Bays 11-16, Section C of TMX's main building were temporarily suspended due to the following mistakes committed by the contractor in the pouring of concrete: a) the presence of rainwater that diluted the concrete; b) the failure to apply grout as a binder, and c) the use of concrete that was mixed for more than 45 minutes. To AWIA, these mistakes had cost the quality of the roof's concrete strength. AWIA thus suggested measures to correct the roof problem, one of them being the installation of a lally column using steel pipe sections.

TMX also sought the opinion of two architectural consultancy firms, the Fletcher-Thompson, Inc. (Fletcher-Thompson) and C.N. Ramientos and Associates. Both concluded that the cracks and displacements of the roof's structural system were due to

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[6] *Id.* at 56-59, 71-79.

[7] *Id.* at 428-430.

[8] Records, pp. 499-500.

AWIA's errors in the design calculations and in the factoring of live and dead load and concrete strengths.[9]

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[9] RTC Exhibits, pp. 44-47 and Records, pp. 181-182. Fletcher-Thompson, Inc. enumerated the following errors:

A. Superimposed dead load used in the calculations was less than that actually imposed on the structure.

B. Load distribution from roof beams to roof girders was erroneously assumed to be a uniform loading in lieu of a correct concentrated load distribution.

C. Load redistribution caused by stiffness variations in the structural system was not accounted for.

D. Allowable stresses were calculated assuming the concrete would attain a compressive strength of 5,000 psi in 28 days whereas the project specifications call for a strength attainment of 4,000 psi in 28 days.

E. A live load of 20 psi, as used in the calculations, is not consistent with the drainage system. This live load assumption would be valid only if the roof drainage system would limit rainwater accumulations to 3.85 inches. x x x

On the other hand, Engr. Capistrano Ramientos of C.N. Ramientos and Associates enumerated the following errors:

1. A. Wilson's structural engineers failed to factor in all live and deadloads in their computations/designs which A. Wilson's own architects, mechanical and electrical engineers had designed into the three buildings. This resulted in A. Wilson's structural designs/computations being engineered for load of 95 lbs/square foot, which is 23.70% lower than the correct/actual load of 117.50 per lb/square foot.

2. A. Wilson made a mistake in assuming the loads to be distributed uniformly throughout the length of girders when, in fact, the loads were actually a combination of concentrated and distributed loads in the girders. This resulted in A. Wilson's underestimating the girder's bending moment by 14.38% or fully 95,546 lbs-foot.

3. A. Wilson forgot to take into account the effect of rib-shortening due to post-tensioning of beams and girders. This resulted in A. Wilson mistakenly believing that no additional loads/stress had to be considered in its design, when actually there was an incremental load/stress resulting from rib-shortening of no less than an additional 47,828 lbs load/stress on each Beam-Girder intersection of the ridge girders (lines B and G).

The combined effect of errors 1 to 3 above resulted in A. Wilson underestimating the actual total load in each of the ridge girders (lines B and G)

Similar to the suggestion of AWIA, Fletcher-Thompson recommended the installation of lally columns. Thus, as preventive and corrective measure, TMX shored up the beams and girders with 118 steel lally columns in all the buildings' modules.

The major construction work was done in December 1985, during which TMX was forced to stop its operations from December 1-18, 1985, putting its employees on forced leave with pay. All in all, TMX spent ₱3,931,583.00,[10] *i.e.*, ₱2,385,499.00 for shoring expenses,[11] and ₱1,546,084.00, representing wages of its employees for the period December 1-18, 1985.[12]

Laying the blame on AWIA for the roof defects, TMX sought reimbursement of everything it had spent for the corrective work by suing AWIA for damages before the RTC of Makati. The case was docketed as Civil Case No. 16587 and raffled to Branch 150.[13]

In its Answer, AWIA insisted on the correctness of its design and that the same was approved by TMX. It stressed that it faithfully complied with its obligation of administering the construction contract and was not responsible for whatever mistakes the contractor made. According to AWIA, TMX has its own staff who supervised the construction and to whom AWIA's inspectors submitted their reports. Conversely, AWIA

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of the 3 buildings by 97.6%. This resulted in A. Wilson mistakenly designing girders for a maximum bending moment or load of only 664,044 foot-pounds when the actual bending moment or load is 1,312,360 foot pounds, 97.6% more (or almost 100% or double) A. Wilson's computation.

A. Wilson failed to considered [sic] that 5,000 psi concrete strength is not normally achievable in Cebu using Cebu aggregates.

x x x x

[10] Exhibit "H", folder of exhibits, p. 88.

[11] Folder of exhibits, pp. 89-391.

[12] *Id.* at 408-427.

[13] EPZA was a co-plaintiff in the case, but for lack of cause of action, the court eventually dismissed its complaint against AWIA.

blamed TMX for the cracks, alleging that the latter's supervising staff ignored the July 19, 1979 construction report of Engr. Lacanilao[14] and that TMX refused to conduct an in-place testing of the concrete. Defending itself against the monetary claims of TMX, AWIA averred that the latter overreacted when it installed 118 lally columns, instead of only 11 columns as recommended by Fletcher-Thompson.[15]

Ruling of the Regional Trial Court

After weighing the evidence submitted by the parties, the trial court noted that TMX apparently was satisfied with AWIA's services because after the completion of the Mactan assembly plant in 1980, TMX rehired AWIA four years later for the design of two more separate extensions of the building. All of AWIA's documents, designs, drawings, plans and specifications of the building were subject to TMX and its parent company's approval, which both relayed their comments and instructions to AWIA. During the construction phase, TMX had its own engineering team which actively participated in the project. The trial court concluded that AWIA complied faithfully with its obligations in all phases indicated in the Agreement.[16]

The court *a quo* found that only 11 shoring columns on the roof girders were necessary to remedy the cracks and deflections in lines B and G, and thus reduced the shoring expenses AWIA incurred on a pro-rate basis. It was also noted that the defects were not solely attributable to AWIA, because TMX ignored Engr. Lacanilao's July 19, 1979 construction report on the pouring of diluted concrete. Thus:

This Court finds that there was no necessity at all for plaintiff TMX to have installed 118 shoring columns all over its building.

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[14] *Rollo*, pp. 129-130.

[15] Records, pp. 504-515.

[16] The December 29, 1978 Agreement specified the duties of AWIA during the Schematic Design Phase, the Design Development Phase, the Construction Documents Phase, the Bidding or Negotiation Phase, and the Construction Phase-Administration of the Construction Contract.

Except for the bare allegation of TMX president Rogelio Lim that this was done upon the recommendation of Engr. Ramientos and its U.S.-based consultant Fletcher-Thompson, plaintiff has not shown that it was necessary to put up more than one hundred columns at all beam intersections with sophisticated designs using expensive materials. Admittedly, cracks and deflections appeared in some beams and roof girders after five (5) years from the building's completion. The subject building or any part thereof has not collapsed nor has ever fallen down. As a matter of fact, it was plaintiff's own consultant Fletcher-Thompson in its Beam Deflection Check (Exhibits "5" to "5-J") who recommended the installation of eleven (11) shoring columns on the roof girders which had failures (T.S.N., July 3, 1990, pp. 27-34). Even plaintiff's complaint mentions cracks and deflections only on column lines B and G. To allow plaintiff reimbursement for putting up 118 columns all over the building would unduly favor plaintiff TMX. Only eleven (11) columns would have been necessary to correct the crackings and deflections in column lines B and G. Any excess of that would be considered as a renovation or added improvement of which the defendant should not be made to shoulder.

Thus, the defendant should reimburse TMX only for eleven (11) shoring columns as its just and equitable share in the expenses incurred by plaintiff. Taking the ratio of 11 and 118 columns and applying the same to the total amount of ₱2,385,499.00, the expenses for installing 11 columns would be ₱222,377.00.

As regards the claim for reimbursement of ₱1,546,084.00 representing the salaries and wages that plaintiff allegedly paid its employees during the work stoppage from December 1 to 18, 1985, the same should be denied.

As testified by defendant's witness, Engineer Labrador, it was agreed that the 11 shoring columns will be put up late December since admittedly the last two (2) weeks of December up to the first week of January was plaintiff's scheduled production shutdown as its employees usually go on vacation during those days. Moreover, it is observed that plaintiff failed to present during the hearing of this case the pertinent payroll documents to substantiate its claim. What it produced were only computer printouts of the salaries allegedly paid to its employees for the period in question.

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[17] *Rollo*, p. 127.

The dispositive portion of the trial court's Decision reads:

WHEREFORE, the Court hereby renders judgment as follows:

1. Defendant is ordered to pay plaintiff TMX the amount of ₱222,377.00 as compensatory damages;

2. Defendant is ordered to pay ₱80,000.00 to plaintiff TMX as attorney's fees and litigation expenses;

3. The complaint of plaintiff EPZA against defendant is DISMISSED.

4. The counterclaim of defendant is DISMISSED.

SO ORDERED.[18]

Both parties appealed to the CA but AWIA later withdrew its appeal leaving TMX to contest the judgment of the trial court.

Ruling of the Court of Appeals

The CA agreed with the RTC that AWIA is responsible for the payment of only 11 shoring columns. However, the CA differed as to the RTC's finding that AWIA completely abided by its obligations. To the CA, AWIA failed to promptly and adequately notify its principal of the quality and progress of the work, including the defects and deficiencies in the construction and a determination of how these will be rectified by the contractor. It said:

To excuse AWIA from any liability for the contractor's failure to carry out the work in accordance with the contract documents, it is required, under their Agreement, to "have kept the OWNER currently and **adequately informed** in writing of the progress and quality of the work." In the case at bar, We hold that the written report given by AWIA to TMX of the incident could not be the proper notice contemplated in the Agreement. Notably, the report merely contains statements and account of events that transpired during such pouring operations. It did not contain any warning or recommendation

[18] *Id.* at 128.

as to put TMX on notice that something has to be done. Nor did it inform TMX that said incident threatened the strength of concrete or structural integrity of the roof. For this, AWIA is liable. x x x[19]

The CA further modified the RTC's Decision by ordering AWIA to reimburse TMX the amount of ₱1,546,084.00 representing the salaries TMX had paid to its employees during the involuntary work stoppage. The appellate court found the check vouchers and financial schedule of payments as sufficient proofs.

Issues

Hence, AWIA filed this Petition for Review on *Certiorari*,[20] raising the following issues: a) whether AWIA properly discharged its duty as construction administrator and b) whether there is a valid basis for the reimbursement of the salaries paid to the employees of TMX.

Petitioner's Arguments

AWIA's arguments are summed up as follows:

a) It complied with its obligation to keep TMX adequately informed about the progress and quality of the work of the contractor. Engr. Lacanilao, AWIA's site representative, even delayed the pouring of the concrete and rejected the concrete that had been mixed for more than 45 minutes during the July 18, 1979 incident. These actions were immediately reported to TMX the following day. TMX's staff of engineers however found no cause for alarm to take remedial measures after being informed. On the contrary, TMX accepted the work done on the building without objections and considered Engr. Lacanilao's report as sufficient compliance with AWIA's responsibility of submitting a report.

b) Assuming that AWIA failed to keep TMX adequately informed of the ill-effects of the July 18, 1979 incident, still,

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[19] *Id.* at 68-69.

[20] TMX likewise elevated the case before us, docketed as G.R. No. 159580, but we denied its petition on October 22, 2003 for want of reversible error.

AWIA cannot be held liable for all the salaries allegedly paid to TMX employees during December, 1985. The factory shutdown for the whole month of December cannot be solely attributed to AWIA's inadequate reporting of weak cement mixture, but was also due to TMX's decision to install 118 permanent shoring columns instead of only 11 columns as recommended by Fletcher-Thompson.

Moreover, AWIA contends that TMX failed to prove its claim of payment of alleged salaries during the shutdown period because the pieces of evidence it presented are mere summaries of salaries paid and vouchers for checks deposited in a bank for the alleged salaries. There are no proofs that TMX employees actually received their salaries during said shutdown period. And even if it could be held responsible for reimbursing the employees' salaries, AWIA claims that it should not be held liable for the TMX employees' salaries during the entire period of installation. Had only 11 columns been installed, the period of shutdown due to remedial work would have been shorter. AWIA thus asks for a reduction of the award, computed at a formula used by the trial court as basis for awarding TMX the cost of installing only 11 columns. Hence, the salary should be computed at 11/118 of ₱1,546,084.00, or ₱144,210.37.

Respondent's Arguments

On the other hand, TMX maintains that:

a) AWIA can no longer challenge the finding of the RTC and the CA of its liability. The fact that the trial court ordered the payment of the costs of the 11 columns is an implicit recognition that AWIA was responsible for the roof damage. AWIA did not appeal this judgment and thus this decision had become final and executory. At most, AWIA can only challenge the CA Decision insofar as the additional award of reimbursement of the employees' salaries is concerned.

b) The CA was correct in its finding that AWIA breached the Agreement. The report of Engr. Lacanilao had misled TMX into believing that no problem existed and that nothing was to be rectified when it was AWIA's duty under the Agreement

to notify and promptly alert TMX of remedial measures that must be taken when there are defects in the work of the contractor.

c) The breach warrants a full reimbursement of salaries TMX claims. AWIA cannot use as defense the adequacy of Engr. Lacanilao's report when this contradicts its own answer to the complaint, stating therein that the cause of the roof failure was the "marginal strength of the concrete during a rainfall." The construction and repair of certain portions of the roof system forced TMX to undergo work stoppage and pay its employees wages during the repair period, the ultimate cause of which was AWIA's failure to warn TMX of the possible consequences of the July 18, 1979 incident. Furthermore, the pieces of documentary evidence TMX submitted to support a claim of reimbursement, which included the names of employees, their gross pay and deductions, were never contested during the trial and were appreciated by the CA. The evidence, coupled by the testimony of TMX President Rogelio Lim that the amounts stated in the documents were actually paid to the employees, constituted competent and admissible evidence.

TMX also contends that it was baseless and speculative for AWIA to assume that the time necessary to install 11 columns would not require a period of two weeks, considering that the construction work for installing permanent shoring columns was disruptive. Certain factors, such as pre-installation activities (*e.g.* careful individual packing of hundreds of TMX's sensitive equipment and materials necessary for watch-making and the painstaking excavation of areas where the new columns were to be attached, which may take long depending on the difficulty and the location), and faster pace of work as time progresses, should be taken into account. Nonetheless, for TMX, AWIA's proposed computation of 11/118 multiplied by the amount of salaries claimed was erroneous, because AWIA assumed that all the 118 columns had been installed from December 1-18, 1995, when the installation was completed in four weeks. Even if it would be assumed that AWIA's mathematical formula was correct, and assuming that half of the 118 columns were installed

from December 1-18, 1995, the proper calculation should be 11/50 multiplied by ₱1,546,084.00, or ₱288,253.00.

Our Ruling

AWIA failed in its duty to guard TMX against the contractor's work deficiencies

AWIA persistently faults TMX for its alleged neglect of Engr. Lacanilao's report. But according to the parties' Agreement, the duty of alerting TMX of the problems in the construction of the building behooves entirely on AWIA. The following provisions in the December 29, 1978 Agreement state what AWIA's specific responsibilities are in contract administration:

CONSTRUCTION PHASE – ADMINISTRATION OF THE CONSTRUCTION CONTRACT

x x x x x x x x x

1.1.14 The CONSULTANT, shall make periodic and regular visits to the site to determine the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. On the basis of his on-site observations as a CONSULTANT, he shall guard the OWNER against, and shall promptly notify the OWNER in writing of, defects and deficiencies in the Work of the Contractor and non-compliance with the Contract Documents. The CONSULTANT shall be required to make such on-site inspections as may be reasonably determined by the OWNER to be necessary. Provided that the CONSULTANT shall have kept the OWNER currently and adequately informed in writing of the progress and quality of the work, the CONSULTANT shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions in connection with the Work, and he shall not be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents.

1.1.15 Based on such observations at the site and on the Contractor's Applications for Payment, the CONSULTANT shall determine the amount owing to the Contractor and shall issue Certificates for Payment in such amounts. The issuance of a Certificate for Payment shall constitute a representation by the CONSULTANT to the OWNER, based on the CONSULTANT's observations at the

site as provided in Subparagraph 1.1.14 and on the data comprising the Application for Payment, that the Work has progressed to the point indicated; that to the best of the CONSULTANT's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion to the results of any subsequent tests required by the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified. By issuing a Certificate for Payment, the CONSULTANT shall not be deemed to represent that he has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum.

1.1.16 The CONSULTANT shall be, in the first instance, the interpreter of the requirements of the Contract Documents and the impartial judge of the performance thereunder by the Contractor. The CONSULTANT shall make decisions on all claims of the Contractor relating to the execution and progress of the Work and all other matters or questions related thereto.

1.1.17 The CONSULTANT shall have authority to reject Work which does not conform to the Contract Documents. Whenever, in his reasonable opinion, he considers it necessary or advisable to insure the proper implementation of the intent of the Contract Documents, he will have authority, with the OWNER's approval, to require special inspection or testing of any Work in accordance with the provisions of the Contract Documents whether or not such Work be then fabricated, installed or completed.

x x x x x x x x x

1.1.20 The CONSULTANT shall conduct inspections to determine the Dates of Substantial Completion and final completion, shall receive and review written guarantees and related documents assembled by the Contractor, and shall issue a final Certificate for Payment. The CONSULTANT shall use its best efforts to enforce warranties and guarantees furnished by the Contractor or by suppliers of materials or equipment to the extent of assisting OWNER in any arbitration or court action if necessary.

1.1.21 The CONSULTANT shall not be responsible for the acts or omissions of the Contractor, or any Subcontractors, or any of the Contractor's or Subcontractor's agents or employees, or any other persons performing any of the Work but will promptly inform OWNER thereof in writing and determine how such acts or omissions will be rectified by the Contractor prior to issuing a final Certificate of Payment.

x x x x x x x x x[21]

As can be inferred from the contract, TMX could solely and absolutely rely on the assessments and recommendations of AWIA. Under the aforementioned provisions, AWIA was tasked to guard TMX against construction problems and to ensure the quality of P.G. Dakay's performance. It also had the authority to approve or reject the contractor's work, and it could issue certificates of payments for the progress billings of the contractor only if it found the latter's job as covered by each of the billings satisfactory. Thus, it is irrelevant whether TMX has its own engineering staff to evaluate the reports about the construction work. Taking together Sections 1.1.14 and 1.1.21, AWIA is not liable for the contractor's construction errors on the following conditions: a) that it promptly and adequately informs TMX of whatever defects and deficiencies in the construction are and b) that it determines how these problems could be repaired. AWIA should not release a final certification of payment in favor of the contractor unless these had been done.

The July 19, 1979 report[22] of Engr. Lacanilao is quoted below:

TO MR. ROGELIO Q. LIM

FROM GAVINO S. LACANILAO

DATE 19 JULY 1979

TMXP 2, General Manager TMXP 2, Project Inspector

SUBJECT HEAVY RAINS DURING THE POURING

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[21] *Rollo*, pp. 87-89.

[22] Records, pp. 504-515.

Last night at 22:45 hours while we were continuously pouring (Monolythic Concreting) on lines F and G of Bays 11 to 16 Section C of Main Building a signal for heavy rains coming was noted, so all the personnel involved in the pouring covered the newly poured concrete with polyethylene (Plastic) sheets to protect from the rain. When the rain started the newly poured concrete were protected.

During the heavy rain the pouring was temporarily suspended. Since I was the only one who has a rain coat, I inspected the whole top area and found out that rain water accumulated which was approximately thirteen (13) inches deep, because the water line was just below one (1) inch of my rubber boots.

So I removed all the temporary plugs of the C.I. downspouts to prevent accumulated rain water from destruction, and that was the only time that the water dispersed little by little.

When the rain stopped, Engineers Ramon Aseniero and E. Gahi told me that they will continue the pouring. I advised that they must first remove the water on top of both the plastic sheets and the newly poured concrete so that the concrete to be poured will not be diluted.

While men working between bays 15 and 16 were busy applying air pressure on the surface of the fresh concrete with water and the forms to be poured, I suddenly saw the contents in the bucket of one of the overhead cranes was about to be poured out on the newly poured concrete. So I ran and told Engr. E. Gahi why he is already pouring the concrete in the bucket while the rain water is still there? And Engr. Gahi told me that he was just following the order of Mr. John Y. Lim who just arrived and without assessing the situation and asking my decision being the inspector of the project.

So I approached Mr. Lim and asked him why he gave the order of pouring the concrete? He told me right away and pointing at the stopped poured concrete is already sitting. So I told him that if he continue [sic] pouring the concrete, I will go out of the construction site or I will not certify the said area. That was the time our argument stopped.

The following are my reasons why I delay the pouring:

*The poured concrete before the rain was with standing water.

*All the forms to be concreted were covered with water.

Note: If they will pour concrete on the above reasons, the mixed concrete will be diluted too much with water that it will lessen the strength of the roofing slab.

*They were pouring the concrete without first applying grout to act as binder on the surface of the washed concrete.

*They [sic] concrete they were trying to pour was already more than 45 minutes in the mixer, because the rain stopped at 01:15 hrs of July 20, 1979.

Specification manual page 02800-6 Section 1.04.04 truck mixing second to the last paragraph says:

> "Concrete not in place within 45 minutes from the time the ingredients were charged into the mixing drum or that has developed initial sitting should not be used. No exemption. So I rejected the two (2) batches."

Respectfully,

(Signed) G.S. LACANILAO
TMXP 2, Project Inspector

The subject report is merely a narration of what Engr. Lacanilao had done and the justifications why he delayed the pouring of concrete and why he rejected two batches of concrete mix. Engr. Lacanilao explained that P.G. Dakay's representative did not proceed with the pouring of the substandard concrete mix, after he was informed that he (Engr. Lacanilao) would not certify the area. TMX then was led to believe that this incident was no cause for alarm since apparently, Engr. Lacanilao had prevented a possible problem. The report did not in any way warn TMX that the quality of the roof may be in jeopardy and that it had to be rectified. AWIA even approved all of P.G. Dakay's progress billings and issued a final certification of payment, an assurance that it found no problems at all with the construction work. Ironically though, when the cracks and deflections in certain sections of the roof had appeared, AWIA cited the marginal strength of the concrete as a result of the July 18, 1979 incident as the most probable cause of the cracks in TMX's roof.

AWIA's failure to adequately inform TMX of the possible implications of the contractor's mistake in the concrete pouring

was a crucial factor that had cost the former to spend for the repairs.

AWIA breached its responsibility to inform TMX of the contractor's mistake. TMX may demand for damages duly proven as a natural consequence of the roof failures it has suffered. If the amount it claims cannot be proven with certainty, temperate damages may be awarded instead.

In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the 'natural and probable consequences of the breach of the obligation'.[23]

Both the trial court and the CA held AWIA liable for the cost of 11 shoring columns. AWIA no longer challenged this ruling when it withdrew its appeal to the appellate court, rendering the judgment final and executory.[24] We also found that AWIA had breached its duty of contract administration. Had the effects on the marginal strength of the concrete been promptly disclosed to TMX, the cracks and deflections could have been rectified by the contractor before it was issued its final certification of payment and the owner could have been spared from further expenses. There is a causal connection between AWIA's negligence and the expenses incurred by TMX. The latter was compelled to shutdown the plant during the workdays in December to repair the roof. In the process, it incurred expenses for the repairs, including the salaries of its workers who were put on

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[23] CIVIL CODE, Article 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.

[24] *Development Bank of the Philippines v. Pingol Land Transport System Company, Inc.*, 465 Phil. 641, 650 (2004).

forced leave, for which it can ask for reimbursement as actual damages.

Actual damages puts the claimant in the position in which he had been before he was injured. The award thereof must be based on the evidence presented, not on the personal knowledge of the court; and certainly not on flimsy, remote, speculative and nonsubstantial proof.[25] Under the Civil Code, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved.[26]

After an exhaustive perusal of the records pertaining to the claim of the salaries covering December 1-18, 1985 allegedly paid to TMX employees, we find that TMX's pieces of evidence do not substantiate such plea for the full reimbursement of the salaries. To prove that salaries have been paid, TMX has the burden to show that payments have actually been made to its employees. However, the documents it submitted were composed only of a master list of daily and monthly paid employees, summarized and itemized lists and computations of payroll costs during the covered period of shoring installation, salary structures, and vouchers prepared by the accounting department. These pieces of evidence, as well as the bare assertion of the TMX President, do not show a reasonable degree of certainty of actual payment to and actual receipt by its workers but only reflect the list of disbursements. No other witnesses who could corroborate the actual payment of the salaries of the employees during the shutdown period were presented. Vouchers are not receipts. A receipt is a written and signed acknowledgment that money has been received or goods have been delivered, while a voucher is documentary record of a business transaction.[27] Hence, the RTC

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[25] *Spouses Ong v. Court of Appeals*, 361 Phil. 338, 353 (1999).

[26] CIVIL CODE, Art. 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages.

[27] *Towne and City Development Corporation v. Court of Appeals*, 478 Phil. 466, 475 (2004).

correctly preferred the payroll documents (which contain the signatures of employees), implying that these are the primary/best evidence of payment, or "that which [afford] the greatest certainty of the fact in question".[28]

While TMX failed to prove the exact amount of the salaries it had paid, we however acknowledge that TMX had to pay its employees during the shutdown and had suffered pecuniary loss for the structural problem. Moreover, we concede to AWIA's stance that the installation of only 11 shoring columns, instead of 118, would significantly reduce the number of days allotted for the repairs. As a matter of equity, therefore, a relief to TMX in the form of temperate damages[29] is warranted. We find the amount of ₱500,000.00 reasonable and sufficient under the circumstances.

WHEREFORE, the instant petition is *PARTIALLY GRANTED*. The Decision of the Court of Appeals in CA-G.R. CV No. 49272 is *AFFIRMED with the MODIFICATION* that the award of ₱1,546,084.00 as part of actual damages is deleted, and in lieu thereof, temperate damages amounting to ₱500,000.00 are awarded. Costs against AWIA.

SO ORDERED.

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

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[28] *Philippine National Bank v. Court of Appeals*, 326 Phil. 326, 337 (1996).

[29] CIVIL CODE, Article 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount cannot, from the nature of the case, be provided with certainty.

FIRST DIVISION

[G.R. No. 165554. July 26, 2010]

LAZARO PASCO and LAURO PASCO, *petitioners, vs.* **HEIRS OF FILOMENA DE GUZMAN, represented by CRESENCIA DE GUZMAN-PRINCIPE,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; A DECISION BASED ON COMPROMISE AGREEMENT IS IMMEDIATELY FINAL AND EXECUTORY AND CANNOT BE THE SUBJECT OF APPEAL; ALTERNATIVE REMEDY IS SPECIAL CIVIL ACTION FOR *CERTIORARI*.— Indeed, a decision based on a compromise agreement is immediately final and executory and cannot be the subject of appeal, for when parties enter into a compromise agreement and request a court to render a decision on the basis of their agreement, it is presumed that such action constitutes a waiver of the right to appeal said decision. While there may have been other remedies available to assail the decision, petitioners were well within their rights to institute a special civil action under Rule 65.

2. CIVIL LAW; SPECIAL POWER OF ATTORNEY (SPA); THE SPA NECESSARILY INCLUDED THE POWER OF THE ATTORNEY-IN-FACT TO COMPROMISE THE CASE; APPLICATION IN CASE AT BAR.— Our ruling in *Trinidad v. Court of Appeals* is illuminating. In *Trinidad*, the heirs of Vicente Trinidad executed a SPA in favor of Nenita Trinidad (Nenita) to be their representative in litigation involving the sale of real property covered by the decedent's estate. As here, there was no specific authority to enter into a Compromise Agreement. When a compromise agreement was finally reached, the heirs later sought to invalidate it, claiming that Nenita was not specifically authorized to enter into the compromise agreement. We held then, as we do now, that the SPA necessarily included the power of the attorney-in-fact to compromise the case, and that Nenita's co-heirs could not belatedly disavow their original authorization. This ruling is even more significant here, where the co-heirs have not taken any action to invalidate

the Compromise Agreement or assail their SPA. Moreover, we note that petitioners never assailed the validity of the SPA during the pre-trial stage prior to entering the Compromise Agreement. This matter was never even raised as a ground in petitioners' Motion to Set Aside the compromise, or in the initial Petition before the RTC. It was only months later, in December 2002, that petitioners – rather self-servingly - claimed that the SPA was insufficient.

3. ID.; DAMAGES; THE LEGAL INTEREST OF 12% MUST BE IMPOSED IN LIEU OF THE EXCESSIVE INTEREST STIPULATED IN THE AGREEMENT; SUSTAINED.— Although the petition is unmeritorious, we find the 5% monthly interest rate stipulated in Clause 4 of the Compromise Agreement to be iniquitous and unconscionable. Accordingly, the legal interest of 12% per annum must be imposed in lieu of the excessive interest stipulated in the agreement. As we held in *Castro v. Tan:* In several cases, we have ruled that stipulations authorizing iniquitous or unconscionable interests are contrary to morals, if not against the law. In *Medel v. Court of Appeals*, we annulled a stipulated 5.5% per month or 66% *per annum* interest on a ₱500,000.00 loan and a 6% per month or 72% *per annum* interest on a ₱60,000.00 loan, respectively, for being excessive, iniquitous, unconscionable and exorbitant. In *Ruiz v. Court of Appeals*, we declared a 3% monthly interest imposed on four separate loans to be excessive. In both cases, the interest rates were reduced to 12% *per annum*. In this case, the 5% monthly interest rate, or 60% *per annum*, compounded monthly, stipulated in the *Kasulatan* is even higher than the 3% monthly interest rate imposed in the *Ruiz* case. Thus, we similarly hold the 5% monthly interest to be excessive, iniquitous, unconscionable and exorbitant, contrary to morals, and the law. It is therefore void *ab initio* for being violative of Article 1306 of the Civil Code. x x x

4. REMEDIAL LAW; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE; THE PROCEEDS OF THE LOAN SHOULD BE RELEASED TO THE HEIRS ONLY AFTER THE SETTLEMENT OF THE DECEDENT'S ESTATE; APPLICATION IN CASE AT BAR.— Finally, it is true that Filomena's estate has a different juridical personality than that of the heirs. Nonetheless, her heirs certainly have an interest in the preservation of the estate and the recovery of its

properties, for at the moment of Filomena's death, the heirs start to own the property, subject to the decedent's liabilities. In this connection, Article 777 of the Civil Code states that "[t]he rights to the succession are transmitted from the moment of the death of the decedent." Unfortunately, the records before us do not show the status of the proceedings for the settlement of the estate of Filomena, if any. But to allow the release of the funds directly to the heirs would amount to a distribution of the estate; which distribution and delivery should be made only after, not before, the payment of all debts, charges, expenses, and taxes of the estate have been paid. We thus decree that respondent Cresencia should deposit the amounts received from the petitioners with the MTC of Bocaue, Bulacan and in turn, the MTC of Bocaue, Bulacan should hold in abeyance the release of the amounts to Filomena's heirs until after a showing that the proper procedure for the settlement of Filomena's estate has been followed.

APPEARANCES OF COUNSEL

People's Law Office for petitioners.
Federico Tolentino and *Ricardo M. Perez* for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

No court should shield a party from compliance with valid obligations based on wholly unsubstantiated claims of mistake or fraud. Having refused to abide by a compromise agreement, the aggrieved party may either enforce it or regard it as rescinded and insist upon the original demand.

This Petition for Review on *Certiorari*[1] assails the May 13, 2004 Decision[2] of the Court of Appeals (CA) and its October 5,

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[1] *Rollo*, pp. 8-27.

[2] *Id.* at 29-36; penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices B.A. Adefuin-de la Cruz and Arturo D. Brion (now a Member of this Court).

2004 Resolution[3] in CA-G.R. SP No. 81464 which dismissed petitioners' appeal and affirmed the validity of the parties' Compromise Agreement.

Factual Antecedents

The present petition began with a *Complaint for Sum of Money and Damages*[4] filed on December 13, 2000 by respondents, the heirs of Filomena de Guzman (Filomena), represented by Cresencia de Guzman-Principe (Cresencia), against petitioners Lauro Pasco (Lauro) and Lazaro Pasco (Lazaro). The case was filed before the Municipal Trial Court (MTC) of Bocaue, Bulacan, and docketed as Civil Case No. MM-3191.[5]

In their Complaint,[6] herein respondents alleged that on February 7, 1997, petitioners obtained a loan in the amount of ₱140,000.00 from Filomena (now deceased). To secure the petitioners' loan, Lauro executed a chattel mortgage on his Isuzu Jeep in favor of Filomena. Upon her death, her heirs sought to collect from the petitioners, to no avail. Despite numerous demands, petitioners refused to either pay the balance of the loan or surrender the Isuzu Jeep to the respondents. Thus, respondents were constrained to file the collection case to compel the petitioners to pay the principal amount of ₱140,000.00 plus damages in the amount of 5% monthly interest from February 7, 1997, 25% attorney's fees, exemplary damages, and expenses of litigation.

Filomena's heirs, consisting of Avelina de Guzman-Cumplido, Cecilia de Guzman, Rosita de Guzman, Natividad de Guzman, and Cresencia de Guzman-Principe, authorized Cresencia to act as their attorney-in-fact through a Special Power of Attorney[7]

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[3] *Id.* at 38-40; penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Arturo D. Brion and Japar B. Dimaampao.

[4] Records, pp. 89-92.

[5] Presided over by Judge Lauro G. Bernardo.

[6] Records, p. 93. See *Kasulatan ng Sanglaan ng Ari-Ariang Natitinag*, Annex "A" of the Complaint. The records do not contain the date of Filomena de Guzman's death.

[7] *Id.* at 133.

(SPA) dated April 6, 1999. The SPA authorized Cresencia to do the following on behalf of the co-heirs:

1) To represent us on all matters concerning the intestate estate of our deceased sister, Filomena de Guzman;

2) To file cases for collection of all accounts due said Filomena de Guzman or her estate, including the power to file petition for foreclosure of mortgaged properties;

3) To do and perform all other acts necessary to carry out the powers hereinabove conferred.

During the pre-trial of the case on February 15, 2002, the parties verbally agreed to settle the case. On February 21, 2002, the parties jointly filed a Compromise Agreement[8] that was signed by the parties and their respective counsel. Said Compromise Agreement, approved by the MTC in an Order[9] dated April 4, 2002, contained the following salient provisions:

1. That [petitioners] admit their principal loan and obligation to the [respondents] in the sum of One Hundred Forty Thousand Pesos (₱140,000.00) Philippine currency; in addition to the incidental and other miscellaneous expenses that they have incurred in the pursuit of this case, in the further sum of ₱18,700.00;

2. That, [petitioners] undertake to pay to the [respondents] their aforementioned obligations, together with attorney's fees equivalent to ten percentum (10%) of the total sum thereof, directly at the BULACAN OFFICE of the [respondents'] counsel, located at No. 24 Hornbill Street, St. Francis Subdivision, Bo. Pandayan, Meycauayan, Bulacan, WITHOUT NEED OF FURTHER DEMAND in the following specific manner, to wit:

₱60,000.00 – to be paid on or before May 15, 2002

₱10,000.00 – monthly payments thereafter, starting June 15, 2002 up to and until the aforementioned obligations shall have been fully paid;

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

[9] *Id.* at 19-20.

3. That, provided that [petitioners] shall truely [sic] comply with the foregoing specifically agreed manner of payments, [respondents] shall forego and waive all the interests charges of 5% monthly from February 7, 1998 and the 25% attorney's fees provided for in Annex "AA" of the Complaint;

4. In the event of failure on the part of the [petitioners] to comply with any of the specific provisions of this Compromise Agreement, the [respondents] shall be entitled to the issuance of a "Writ of Execution" to enforce the satisfaction of [petitioners'] obligations, as mentioned in paragraph 1, together with the 5% monthly interests charges and attorney's fees mentioned in paragraph 3 thereof.[10]

Ruling of the Municipal Trial Court

Unfortunately, this was not the end of litigation. On May 2, 2002, petitioners filed a verified *Motion to Set Aside Decision*[11] alleging that the Agreement was written in a language not understood by them, and the terms and conditions thereof were not fully explained to them. Petitioners further questioned the MTC's jurisdiction, arguing that the total amount allegedly covered by the Compromise Agreement amounted to ₱588,500.00, which exceeded the MTC's ₱200,000.00 jurisdictional limit. In an Order[12] dated June 28, 2002, the MTC denied the motion; it also granted Cresencia's prayer for the issuance of a writ of execution. The writ of execution[13] was subsequently issued on July 3, 2002. Petitioners' *Motion for Reconsideration and to Quash Writ/Order of Execution*[14] dated August 1, 2002 was denied by the MTC in an Order[15] dated September 5, 2002.

Undeterred, on October 10, 2002, petitioners filed a *Petition for Certiorari and Prohibition with Application for Temporary*

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[10] *Id*.

[11] *Id.* at 25-29.

[12] *Id.* at 21-23.

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

[14] *Id.* at 32-36.

[15] *Id.* at 30.

Restraining Order/Preliminary Injunction[16] before the Regional Trial Court (RTC) of Bocaue. The case was raffled to Branch 82,[17] and docketed as Civil Case No. 764-M-2002. In their petition, petitioners argued that the MTC gravely abused its discretion in approving the Compromise Agreement because (1) the amount involved was beyond the jurisdiction of the MTC; (2) the MTC failed to ascertain that the parties fully understood the contents of the Agreement; (3) Crescencia had no authority to represent her co-heirs because Filomena's estate had a personality of its own; and (4) the Compromise Agreement was void for failure of the judge and Cresencia to explain the terms and conditions to the petitioners.

In their *Comment*[18] dated October 29, 2002, respondents argued that (1) the principal claim of ₱140,000.00 was within the MTC's jurisdiction; and (2) the records reveal that it was the petitioners themselves, assisted by their counsel, who proposed the terms of the settlement, which offer of compromise was accepted in open court by the respondents. Thus, the Compromise Agreement merely reduced the parties' agreement into writing.

Ruling of the Regional Trial Court

The RTC initially granted petitioners' prayer for the issuance of a Temporary Restraining Order (TRO)[19] on November 18, 2002, and later issued a preliminary injunction in an Order[20] dated December 10, 2002, primarily on the ground that the SPA did not specifically authorize Cresencia to settle the case. However, Presiding Judge Herminia V. Pasamba later inhibited herself,[21] so the case was re-raffled to Branch 6, presided over

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[16] *Id.* at 3-18.

[17] Presided over by Judge Herminia V. Pasamba.

[18] Records, pp. 70-77.

[19] *Id.* at 98-100.

[20] *Id.* at 141-143.

[21] Order dated January 24, 2003, *id.* at 179.

by Judge Manuel D.J. Siayngo.[22] The grant of the preliminary injunction was thus reconsidered and set aside in an Order[23] dated May 15, 2003. In the same Order, the RTC dismissed the petition and held that (1) the MTC had jurisdiction over the subject matter; (2) Cresencia was authorized to institute the action and enter into a Compromise Agreement on behalf of her co-heirs; and (3) the MTC's approval of the Compromise Agreement was not done in a capricious, whimsical, or arbitrary manner; thus, petitioners' resort to *certiorari* under Rule 65 was improper. Petitioners' Motion for Reconsideration[24] was denied,[25] hence they sought recourse before the CA.

Ruling of the Court of Appeals

In its Decision[26] dated May 13, 2004 and Resolution[27] dated October 5, 2004, the CA dismissed petitioners' appeal, and held that:

1) the MTC had jurisdiction, since the principal amount of the loan only amounted to ₱140,000.00;

2) Cresencia was duly authorized by her co-heirs to enter into the Compromise Agreement;

3) Petitioners improperly sought recourse before the RTC through a Petition for *Certiorari* under Rule 65, when the proper remedy was a Petition for Relief from Judgment under Rule 38.

Issues

Before us, petitioners claim that, *first*, they correctly resorted to the remedy of *certiorari* under Rule 65; *second*, the RTC gravely erred in dismissing their Petition for *Certiorari* and

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[22] Order dated February 6, 2003, *id.* at 183.

[23] *Id.* at 207-211.

[24] *Id.* at 214-227.

[25] Order dated September 5, 2003, *id.* at 241-244.

[26] *Rollo*, at 29-36.

[27] *Id.* at 38-40.

Prohibition, when the matter under consideration was merely the propriety of the grant of the preliminary injunction; and *third*, that the SPA did not validly authorize Cresencia to enter into the Compromise Agreement on behalf of her co-heirs.

Our Ruling

We deny the petition.

The MTC had jurisdiction over the case.

It bears stressing that the question of the MTC's jurisdiction has not been raised before this Court; hence, petitioners appear to have admitted that the MTC had jurisdiction to approve the Compromise Agreement. In any event, it is beyond dispute that the Judiciary Reorganization Act of 1980, or *Batas Pambansa* (BP) *Blg*. 129,[28] as amended by Republic Act No. 7691,[29] fixes the MTC's jurisdiction over cases where "the demand does not exceed Two hundred thousand pesos (₱200,000.00) *exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses, and costs*."[30] Thus, respondents' initiatory complaint,

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[28] An Act Reorganizing The Judiciary, Appropriating Funds Therefor, And For Other Purposes.

[29] An Act Expanding The Jurisdiction Of The Metropolitan Trial Courts, Municipal Trial Courts, And Municipal Circuit Trial Courts, Amending For The Purpose Batas Pambansa Blg. 129, Otherwise Known As The "Judiciary Reorganization Act Of 1980" (1994).

[30] Section 33 of BP No. 129, as amended, provides:

Section 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in civil cases.* — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

(1) Exclusive original jurisdiction over civil actions and probate proceedings, testate and intestate, including the grant of provisional remedies in proper cases, where the value of the personal property, estate, or amount of the demand does not exceed One hundred thousand pesos (₱100,000.00) or, in Metro Manila where such personal property, estate, or amount of the demand does not exceed Two hundred thousand pesos (₱200,000.00) exclusive of

covering the principal amount of ₱140,000.00, falls squarely within the MTC's jurisdiction.

Petitioners properly resorted to the special civil action of certiorari.

On the first question, the CA held that the proper remedy from the MTC's Order approving the Compromise Agreement was a Petition for Relief from Judgment under Rule 38 and not a Petition for *Certiorari* under Rule 65. We recall that petitioners filed a verified *Motion to Set Aside Decision* on May 2, 2002,[31] which was denied by the MTC on June 28, 2002. This Order of denial was properly the subject of a petition for *certiorari*, pursuant to Rule 41, Section 1, of the Rules of Court:

> Section 1. *Subject of Appeal* – An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.
>
> No appeal may be taken from:
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> x x x x x x x x x
>
> (e) an order denying a motion to set aside a judgment by consent, confession or compromise on the ground of fraud, mistake or duress, or any other ground vitiating consent.
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> x x x x x x x x x
>
> In all the above instances where the judgment or final order is not appealable, the aggrieved party may file an appropriate special civil action under Rule 65.

From the express language of Rule 41, therefore, the MTC's denial of petitioners' Motion to Set Aside Decision could not

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interest, damages of whatever kind, attorney's fees, litigation expenses, and costs, the amount of which must be specifically alleged: Provided, That where there are several claims or causes of action between the same or different parties, embodied in the same complaint, the amount of the demand shall be the totality of the claims in all the causes of action, irrespective of whether the causes of action arose out of the same or different transactions;

[31] Records, pp. 25-29.

have been appealed. Indeed, a decision based on a compromise agreement is immediately final and executory and cannot be the subject of appeal,[32] for when parties enter into a compromise agreement and request a court to render a decision on the basis of their agreement, it is presumed that such action constitutes a waiver of the right to appeal said decision.[33] While there may have been other remedies available to assail the decision,[34] petitioners were well within their rights to institute a special civil action under Rule 65.

The Regional Trial Court rightly dismissed the petition for certiorari.

On the second issue, petitioners argue that the RTC, in reconsidering the order granting the application for writ of preliminary injunction, should not have gone so far as dismissing the main case filed by the petitioners. They claim that the issue in their application for writ of preliminary injunction was different from the issues in the main case for *certiorari*, and that the dissolution of the preliminary injunction should have been without prejudice to the conduct of further proceedings in the main case. They also claim that the RTC did not have the power to dismiss the case without requiring the parties to file memoranda.

These assertions are belied, however, by petitioners' own submissions. Their arguments were exactly the same, whether relating to the preliminary or permanent injunction. Identical matters were at issue – the MTC's jurisdiction, petitioners' alleged vitiated consent, and the propriety of enforcing the Compromise Agreement. The reliefs sought, too, were the same, that is, the grant of an injunction against the enforcement of the compromise:[35]

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[32] *Hon. Abarintos v. Court of Appeals,* 374 Phil. 157, 169 (1999).

[33] *Cadano v. Cadano,* 151 Phil. 156, (1973).

[34] For instance, remedies under Rules 38 or 47 of the Rules of Court.

[35] Records, p. 15.

WHEREFORE, it is most respectfully prayed that:

1) A Temporary Restraining Order and/or Preliminary Injunction issue *ex parte* directing the respondents to cease and desist from enforcing, executing, or implementing in any manner the Decision dated April 4, 2002 and acting in Civil Case No. MM-3191 until further orders from this Honorable Court.

2) After hearing, the temporary restraining order/*ex parte* injunction be replaced by a writ of preliminary injunction.

3) After hearing on the merits, judgment be rendered:

a. Making the injunction permanent.

Since the RTC found at the preliminary injunction phase that petitioners were not entitled to an injunction (whether preliminary or permanent), that petitioners' arguments were insufficient to support the relief sought, and that the MTC's approval of the Compromise Agreement was not done in a capricious, whimsical, or arbitary manner, the RTC was not required to engage in unnecessary duplication of proceedings. As such, it rightly dismissed the petition.

In addition, nothing in the Rules of Court commands the RTC to require the parties to file Memoranda. Indeed, Rule 65, Sec. 8 is explicit in that the court "may dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration."[36]

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[36] Rule 65, Sec. 8 of the Rules of Court provides:

Sec. 8. Proceedings after comment is filed.

After the comment or other pleadings required by the court are filed, or the time for the filing thereof has expired, the court may hear the case or require the parties to submit memoranda. If after such hearing or submission of memoranda or the expiration of the period for the filing thereof the court finds that the allegations of the petition are true, it shall render judgment for the relief prayed for or to which the petitioner is entitled.

The court, however, may dismiss the petition if it finds the same to be patently without merit, prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration.

Cresencia was authorized to enter into the Compromise Agreement.

As regards the third issue, petitioners maintain that the SPA was fatally defective because Cresencia was not specifically authorized to enter into a compromise agreement. Here, we fully concur with the findings of the CA that:

> x x x It is undisputed that Cresencia's co-heirs executed a Special Power of Attorney, dated 6 April 1999, designating the former as their attorney-in-fact and empowering her to file cases for collection of all the accounts due to Filomena or her estate. Consequently, Cresencia entered into the subject Compromise Agreement in order to collect the overdue loan obtained by Pasco from Filomena. In so doing, Cresencia was merely performing her duty as attorney-in-fact of her co-heirs pursuant to the Special Power of Attorney given to her.[37]

Our ruling in *Trinidad v. Court of Appeals*[38] is illuminating. In *Trinidad,* the heirs of Vicente Trinidad executed a SPA in favor of Nenita Trinidad (Nenita) to be their representative in litigation involving the sale of real property covered by the decedent's estate. As here, there was no specific authority to enter into a Compromise Agreement. When a compromise agreement was finally reached, the heirs later sought to invalidate it, claiming that Nenita was not specifically authorized to enter into the compromise agreement. We held then, as we do now, that the SPA necessarily included the power of the attorney-in-fact to compromise the case, and that Nenita's co-heirs could not belatedly disavow their original authorization.[39] This ruling is even more significant here, where the co-heirs have not taken any action to invalidate the Compromise Agreement or assail their SPA.

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[37] *Rollo,* p. 34.

[38] 411 Phil. 44, 50-51 (2001).

[39] A reading of the special power of attorney, as well as the concurrent turn of events, would precisely point to the fact that the special power of attorney was intended to have Nenita Trinidad help resolve the differences of the parties in the contract to sell.

Moreover, we note that petitioners never assailed the validity of the SPA during the pre-trial stage prior to entering the Compromise Agreement. This matter was never even raised as a ground in petitioners' Motion to Set Aside the compromise, or in the initial Petition before the RTC. It was only months later, in December 2002, that petitioners – rather self-servingly - claimed that the SPA was insufficient.

The stated interest rate should be reduced.

Although the petition is unmeritorious, we find the 5% monthly interest rate stipulated in Clause 4 of the Compromise Agreement to be iniquitous and unconscionable. Accordingly, the legal interest of 12% per annum must be imposed in lieu of the excessive interest stipulated in the agreement. As we held in *Castro v. Tan:*[40]

> In several cases, we have ruled that stipulations authorizing iniquitous or unconscionable interests are contrary to morals, if not against the law. In *Medel v. Court of Appeals*, we annulled a stipulated 5.5% per month or 66% *per annum* interest on a ₱500,000.00 loan and a 6% per month or 72% *per annum* interest on a ₱60,000.00 loan, respectively, for being excessive, iniquitous, unconscionable and exorbitant. In *Ruiz v. Court of Appeals*, we declared a 3% monthly interest imposed on four separate loans to be excessive. In both cases, the interest rates were reduced to 12% *per annum*.
>
> In this case, the 5% monthly interest rate, or 60% *per annum*, compounded monthly, stipulated in the *Kasulatan* is even higher than the 3% monthly interest rate imposed in the *Ruiz* case. Thus, we similarly hold the 5% monthly interest to be excessive, iniquitous, unconscionable and exorbitant, contrary to morals, and the law. It is therefore void *ab initio* for being violative of Article 1306 of the Civil Code. x x x (citations omitted)

The proceeds of the loan should be released to Filomena's heirs only upon settlement of her estate.

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[40] G.R. No. 168940, November 24, 2009, 605 SCRA 231, 238.

Finally, it is true that Filomena's estate has a different juridical personality than that of the heirs. Nonetheless, her heirs certainly have an interest in the preservation of the estate and the recovery of its properties,[41] for at the moment of Filomena's death, the heirs start to own the property, subject to the decedent's liabilities. In this connection, Article 777 of the Civil Code states that "[t]he rights to the succession are transmitted from the moment of the death of the decedent."[42]

Unfortunately, the records before us do not show the status of the proceedings for the settlement of the estate of Filomena, if any. But to allow the release of the funds directly to the heirs would amount to a distribution of the estate; which distribution and delivery should be made only after, not before, the payment of all debts, charges, expenses, and taxes of the estate have been paid.[43] We thus decree that respondent Cresencia should deposit the amounts received from the petitioners with the MTC of Bocaue, Bulacan and in turn, the MTC of Bocaue, Bulacan should hold in abeyance the release of the amounts to Filomena's heirs until after a showing that the proper procedure for the settlement of Filomena's estate has been followed.

WHEREFORE, the petition is *DENIED*. The May 13, 2004 Decision of the Court of Appeals and its October 5, 2004 Resolution are *AFFIRMED with MODIFICATIONS* that the interest rate of 5% per month (60% per annum) is ordered reduced to 12 % per annum. Respondent Cresencia De Guzman-Principe

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[41] *Palicte v. Judge Ramolete*, 238 Phil. 128, 134 (1987).

[42] The possession of hereditary property is deemed transmitted to the heir without interruption and from the moment of the death of the decedent, in case the inheritance is accepted (Civil Code of the Philippines, Art. 533). Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs. See *Acebedo v. Abesamis*, G.R. No. 102380, January 18, 1993, 217 SCRA 186, 194-195; *Mendoza I v. Court of Appeals*, G.R. No. L-44664, July 31, 1991, 199 SCRA 778, 787; CIVIL CODE OF THE PHILIPPINES, Art. 1078.

[43] RULES OF COURT, Rule 90, Section 1; *Lat v. Court of Appeals and Banzuela*, 115 Phil. 205, 209 (1962).

is *DIRECTED* to deposit with the Municipal Trial Court of Bocaue, Bulacan the amounts received from the petitioners. The Municipal Trial Court of Bocaue, Bulacan is likewise *DIRECTED* to hold in abeyance the release of any amounts recovered from the petitioners until after a showing that the procedure for settlement of estates of Filomena de Guzman's estate has been followed, and after all charges on the estate have been fully satisfied.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 166250. July 26, 2010]

UNSWORTH TRANSPORT INTERNATIONAL (PHILS.), INC., *petitioner, vs.* **COURT OF APPEALS and PIONEER INSURANCE AND SURETY CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL ISSUES MAY BE RAISED.— Well established is the rule that factual questions may not be raised in a petition for review on *certiorari* as clearly stated in Section 1, Rule 45 of the Rules of Court, *viz.*: Section 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition

for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

2. CIVIL LAW; TRANSPORTATION; FREIGHT FORWARDERS; DEFINED; LIABILITY LIMITATION.— The term "freight forwarder" refers to a firm holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and, in the ordinary course of its business, (1) to assemble and consolidate, or to provide for assembling and consolidating, shipments, and to perform or provide for break-bulk and distribution operations of the shipments; (2) to assume responsibility for the transportation of goods from the place of receipt to the place of destination; and (3) to use for any part of the transportation a carrier subject to the federal law pertaining to common carriers. A freight forwarder's liability is limited to damages arising from its own negligence, including negligence in choosing the carrier; however, where the forwarder contracts to deliver goods to their destination instead of merely arranging for their transportation, it becomes liable as a common carrier for loss or damage to goods. A freight forwarder assumes the responsibility of a carrier, which actually executes the transport, even though the forwarder does not carry the merchandise itself.

3. ID.; ID.; BILL OF LADING; DEFINED AND CONSTRUED.— A bill of lading is a written acknowledgement of the receipt of goods and an agreement to transport and to deliver them at a specified place to a person named or on his or her order. It operates both as a receipt and as a contract. It is a receipt for the goods shipped and a contract to transport and deliver the same as therein stipulated. As a receipt, it recites the date and place of shipment, describes the goods as to quantity, weight, dimensions, identification marks, condition, quality, and value. As a contract, it names the contracting parties, which include the consignee; fixes the route, destination, and freight rate or charges; and stipulates the rights and obligations assumed by the parties.

4. ID.; ID.; COMMON CARRIERS; EXTENT OF LIABILITY, EXPLAINED.— Common carriers, as a general rule, are presumed to have been at fault or negligent if the goods they transported deteriorated or got lost or destroyed. That is, unless

they prove that they exercised extraordinary diligence in transporting the goods. In order to avoid responsibility for any loss or damage, therefore, they have the burden of proving that they observed such diligence. Mere proof of delivery of the goods in good order to a common carrier and of their arrival in bad order at their destination constitutes a *prima facie* case of fault or negligence against the carrier. If no adequate explanation is given as to how the deterioration, loss, or destruction of the goods happened, the transporter shall be held responsible.

5. ID.; ID.; ID.; PACKAGE LIMITATION RULE; SUSTAINED; RATIONALE.— We affirm the applicability of the Package Limitation Rule under the COGSA, contrary to the RTC and the CA's findings. It is to be noted that the Civil Code does not limit the liability of the common carrier to a fixed amount per package. In all matters not regulated by the Civil Code, the rights and obligations of common carriers are governed by the Code of Commerce and special laws. Thus, the COGSA supplements the Civil Code by establishing a provision limiting the carrier's liability in the absence of a shipper's declaration of a higher value in the bill of lading. Section 4(5) of the COGSA provides: (5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package of lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be *prima facie* evidence, but shall not be conclusive on the carrier. In the present case, the shipper did not declare a higher valuation of the goods to be shipped. Contrary to the CA's conclusion, the insertion of the words "L/C No. LC No. 1-187-008394/ NY 69867 covering shipment of raw materials for pharmaceutical Mfg. x x x" cannot be the basis of petitioner's liability. Furthermore, the insertion of an invoice number does not in itself sufficiently and convincingly show that petitioner had knowledge of the value of the cargo. In light of the foregoing, petitioner's liability should be limited to $500 per steel drum. In this case, as there was only one drum lost, private respondent is entitled to receive

only $500 as damages for the loss. In addition to said amount, as aptly held by the trial court, an interest rate of 6% *per annum* should also be imposed, plus 25% of the total sum as attorney's fees.

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario for petitioner.
Baltazar Y. Repol for private respondent.

D E C I S I O N

NACHURA, *J.*:

For review is the Court of Appeals (CA) Decision[1] dated April 29, 2004 and Resolution[2] dated November 26, 2004. The assailed Decision affirmed the Regional Trial Court (RTC) decision[3] dated February 22, 2001; while the assailed Resolution denied petitioner Unsworth Transport International (Philippines), Inc., American President Lines, Ltd. (APL), and Unsworth Transport International, Inc.'s (UTI's) motion for reconsideration.

The facts of the case are:

On August 31, 1992, the shipper Sylvex Purchasing Corporation delivered to UTI a shipment of 27 drums of various raw materials for pharmaceutical manufacturing, consisting of: "1) 3 drums (of) extracts, flavoring liquid, flammable liquid x x x banana flavoring; 2) 2 drums (of) flammable liquids x x x turpentine oil; 2 pallets. STC: 40 bags dried yeast; and 3) 20 drums (of) Vitabs: Vitamin B Complex Extract."[4] UTI issued Bill of Lading No. C320/C15991-2,[5] covering the aforesaid shipment. The subject

[1] Penned by Associate Justice Mariano C. del Castillo (now a member of this Court), with Associate Justices Marina L. Buzon and Magdangal M. de Leon, concurring; *rollo*, pp. 79-98.

[2] *Id.* at 129.

[3] Penned by Presiding Judge Ignacio M. Capulong; records, pp. 443-456.

[4] *Rollo*, p. 80.

[5] Exhs. "C" and "C1"; records, pp. 242-243.

shipment was insured with private respondent Pioneer Insurance and Surety Corporation in favor of Unilab against all risks in the amount of ₱1,779,664.77 under and by virtue of Marine Risk Note Number MC RM UL 0627 92[6] and Open Cargo Policy No. HO-022-RIU.[7]

On the same day that the bill of lading was issued, the shipment was loaded in a sealed 1x40 container van, with no. APLU-982012, boarded on APL's vessel *M/V "Pres. Jackson,"* Voyage 42, and transshipped to APL's *M/V "Pres. Taft"*[8] for delivery to petitioner in favor of the consignee United Laboratories, Inc. (Unilab).

On September 30, 1992, the shipment arrived at the port of Manila. On October 6, 1992, petitioner received the said shipment in its warehouse after it stamped the Permit to Deliver Imported Goods[9] procured by the Champs Customs Brokerage.[10] Three days thereafter, or on October 9, 1992, Oceanica Cargo Marine Surveyors Corporation (OCMSC) conducted a stripping survey of the shipment located in petitioner's warehouse. The survey results stated:

> 2-pallets STC 40 bags Dried Yeast, both in good order condition and properly sealed
>
> 19- steel drums STC Vitamin B Complex Extract, all in good order condition and properly sealed
>
> 1-steel drum STC Vitamin B Complex Extra[ct] with cut/hole on side, with approx. spilling of 1%[11]

On October 15, 1992, the arrastre Jardine Davies Transport Services, Inc. (Jardine) issued Gate Pass No. 7614[12] which

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[6] Exh. "B"; *id.* at 234.

[7] Exhs. "B-1" to "B-7"; *id.* at 235-241.

[8] *Rollo*, p. 81.

[9] Exh. "3-APL" and Exh. "5-Unsworth"; records, p. 378.

[10] *Rollo*, p. 81.

[11] Exh. "G-2"; records, p. 249.

[12] Exh. "1-APL" and Exh. "1-Unsworth"; *id.* at 372.

stated that "22 drums[13] Raw Materials for Pharmaceutical Mfg." were loaded on a truck with Plate No. PCK-434 facilitated by Champs for delivery to Unilab's warehouse. The materials were noted to be complete and in good order in the gate pass.[14] On the same day, the shipment arrived in Unilab's warehouse and was immediately surveyed by an independent surveyor, J.G. Bernas Adjusters & Surveyors, Inc. (J.G. Bernas). The Report stated:

> 1-p/bag torn on side contents partly spilled
> 1-s/drum #7 punctured and retaped on bottom side content lacking
> 5-drums shortship/short delivery[15]

On October 23 and 28, 1992, the same independent surveyor conducted final inspection surveys which yielded the same results. Consequently, Unilab's quality control representative rejected one paper bag containing dried yeast and one steel drum containing Vitamin B Complex as unfit for the intended purpose.[16]

On November 7, 1992, Unilab filed a formal claim[17] for the damage against private respondent and UTI. On November 20, 1992, UTI denied liability on the basis of the gate pass issued by Jardine that the goods were in complete and good condition; while private respondent paid the claimed amount on March 23, 1993. By virtue of the Loss and Subrogation Receipt[18] issued by Unilab in favor of private respondent, the latter filed a complaint for *Damages* against APL, UTI and petitioner with the RTC of Makati.[19] The case was docketed as Civil Case No. 93-3473 and was raffled to Branch 134.

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[13] As opposed to 27 drums as stated in the Bill of Lading.

[14] *Rollo*, p. 82.

[15] Exh. "H"; records, p. 250.

[16] *Rollo*, p. 83.

[17] Exh. "A"; records, p. 233.

[18] Exh. "K"; *id.* at 255.

[19] Records, pp. 1-4.

After the termination of the pre-trial conference, trial on the merits ensued. On February 22, 2001, the RTC decided in favor of private respondent and against APL, UTI and petitioner, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered in favor of plaintif PIONEER INSURANCE & SURETY CORPORATION and against the defendants AMERICAN PRESIDENT LINES and UNSWORTH TRANSPORT INTERNATIONAL (PHILS.), INC. (now known as JUGRO TRANSPORT INT'L., PHILS.), ordering the latter to pay, jointly and severally, the former the following amounts:
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> 1. The sum of SEVENTY SIX THOUSAND TWO HUNDRED THIRTY ONE and 27/100 (Php76,231.27) with interest at the legal rate of 6% per annum to be computed starting from September 30, 1993 until fully paid, for and as actual damages;
>
> 2. The amount equivalent to 25% of the total sum as attorney's fees;
>
> 3. Cost of this litigation.
>
> SO ORDERED.[20]

On appeal, the CA affirmed the RTC decision on April 29, 2004. The CA rejected UTI's defense that it was merely a forwarder, declaring instead that it was a common carrier. The appellate court added that by issuing the Bill of Lading, UTI acknowledged receipt of the goods and agreed to transport and deliver them at a specific place to a person named or his order. The court further concluded that upon the delivery of the subject shipment to petitioner's warehouse, its liability became similar to that of a depositary. As such, it ought to have exercised ordinary diligence in the care of the goods. And as found by the RTC, the CA agreed that petitioner failed to exercise the required diligence. The CA also rejected petitioner's claim that its liability should be limited to $500 per package pursuant to the Carriage of Goods by Sea Act (COGSA) considering that the value of the shipment was declared pursuant to the letter of

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[20] *Id.* at 455-456.

credit and the pro forma invoice. As to APL, the court considered it as a common carrier notwithstanding the non-issuance of a bill of lading inasmuch as a bill of lading is not indispensable for the execution of a contract of carriage.[21]

Unsatisfied, petitioner comes to us in this petition for review on *certiorari*, raising the following issues:

1. WHETHER OR NOT THE HONORABLE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION IN UPHOLDING THE DECISION OF THE REGIONAL TRIAL COURT DATED 22 FEBRUARY 2001, AWARDING THE SUM OF SEVENTY SIX THOUSAND TWO HUNDRED THIRTY ONE AND 27/100 PESOS (PHP76,231.27) WITH LEGAL INTEREST AT 6% PER ANNUM AS ACTUAL DAMAGES AND 25% AS ATTORNEY'S FEES.

2. WHETHER OR NOT PETITIONER UTI IS A COMMON CARRIER.

3. WHETHER OR NOT PETITIONER UTI EXERCISED THE REQUIRED ORDINARY DILIGENCE.

4. WHETHER OR NOT THE PRIVATE RESPONDENT SUFFICIENTLY ESTABLISHED THE ALLEGED DAMAGE TO ITS CARGO.[22]

Petitioner admits that it is a forwarder but disagrees with the CA's conclusion that it is a common carrier. It also questions the appellate court's findings that it failed to establish that it exercised extraordinary or ordinary diligence in the vigilance over the subject shipment. As to the damages allegedly suffered by private respondent, petitioner counters that they were not sufficiently proven. Lastly, it insists that its liability, in any event, should be limited to $500 pursuant to the package limitation rule. Indeed, petitioner wants us to review the factual findings of the RTC and the CA and to evaluate anew the evidence presented by the parties.

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[21] *Rollo*, pp. 85-97.

[22] *Id.* at 399.

The petition is partly meritorious.

Well established is the rule that factual questions may not be raised in a petition for review on *certiorari* as clearly stated in Section 1, Rule 45 of the Rules of Court, *viz.*:

> Section 1. *Filing of petition with Supreme Court.* – A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

Admittedly, petitioner is a freight forwarder. The term "freight forwarder" refers to a firm holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and, in the ordinary course of its business, (1) to assemble and consolidate, or to provide for assembling and consolidating, shipments, and to perform or provide for break-bulk and distribution operations of the shipments; (2) to assume responsibility for the transportation of goods from the place of receipt to the place of destination; and (3) to use for any part of the transportation a carrier subject to the federal law pertaining to common carriers.[23]

A freight forwarder's liability is limited to damages arising from its own negligence, including negligence in choosing the carrier; however, where the forwarder contracts to deliver goods to their destination instead of merely arranging for their transportation, it becomes liable as a common carrier for loss or damage to goods. A freight forwarder assumes the responsibility of a carrier, which actually executes the transport, even though the forwarder does not carry the merchandise itself.[24]

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[23] *Chemsource, Inc. v. Hub Group, Inc.*, 106 F. 3d 1358, C.A. 7 (Ill.) (1997).

[24] *Motorola, Inc. v. Federal Exp. Corp.*, 308 F. 3d 995, C.A. 9 (Cal.) (2002).

It is undisputed that UTI issued a bill of lading in favor of Unilab. Pursuant thereto, petitioner undertook to transport, ship, and deliver the 27 drums of raw materials for pharmaceutical manufacturing to the consignee.

A bill of lading is a written acknowledgement of the receipt of goods and an agreement to transport and to deliver them at a specified place to a person named or on his or her order.[25] It operates both as a receipt and as a contract. It is a receipt for the goods shipped and a contract to transport and deliver the same as therein stipulated. As a receipt, it recites the date and place of shipment, describes the goods as to quantity, weight, dimensions, identification marks, condition, quality, and value. As a contract, it names the contracting parties, which include the consignee; fixes the route, destination, and freight rate or charges; and stipulates the rights and obligations assumed by the parties.[26]

Undoubtedly, UTI is liable as a common carrier. Common carriers, as a general rule, are presumed to have been at fault or negligent if the goods they transported deteriorated or got lost or destroyed. That is, unless they prove that they exercised extraordinary diligence in transporting the goods. In order to avoid responsibility for any loss or damage, therefore, they have the burden of proving that they observed such diligence.[27] Mere proof of delivery of the goods in good order to a common carrier and of their arrival in bad order at their destination constitutes a *prima facie* case of fault or negligence against the carrier. If no adequate explanation is given as to how the deterioration, loss, or destruction of the goods happened, the transporter shall be held responsible.[28]

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[25] *V. Rivera S. En C. v. Texas & N.O.R. Co.*, 211 La. 969, 31 So. 2d 180, 172 A.L.R. 791 (1947).

[26] *Iron Bulk Shipping Phil. Co., Ltd. v. Remington Industrial Sales Corporation*, 462 Phil. 694, 704 (2003), citing *Phoenix Assurance Co., Ltd. v. United States Lines*, No. L-24033, February 22, 1968, 22 SCRA 674, 678.

[27] *Belgian Overseas Chartering and Shipping N.V. v. Philippine First Insurance Co., Inc.*, 432 Phil. 567, 579 (2002).

[28] *Id.* at 580.

Though it is not our function to evaluate anew the evidence presented, we refer to the records of the case to show that, as correctly found by the RTC and the CA, petitioner failed to rebut the *prima facie* presumption of negligence in the carriage of the subject shipment.

First, as stated in the bill of lading, the subject shipment was received by UTI in apparent good order and condition in New York, United States of America. *Second*, the OCMSC Survey Report stated that one steel drum STC Vitamin B Complex Extract was discovered to be with a cut/hole on the side, with approximate spilling of 1%. *Third*, though Gate Pass No. 7614, issued by Jardine, noted that the subject shipment was in good order and condition, it was specifically stated that there were 22 (should be 27 drums per Bill of Lading No. C320/C15991-2) drums of raw materials for pharmaceutical manufacturing. *Last*, J.G. Bernas' Survey Report stated that "1-s/drum was punctured and retaped on the bottom side and the content was lacking, and there was a short delivery of 5-drums."

All these conclusively prove the fact of shipment in good order and condition, and the consequent damage to one steel drum of Vitamin B Complex Extract while in the possession of petitioner which failed to explain the reason for the damage. Further, petitioner failed to prove that it observed the extraordinary diligence and precaution which the law requires a common carrier to exercise and to follow in order to avoid damage to or destruction of the goods entrusted to it for safe carriage and delivery.[29]

However, we affirm the applicability of the Package Limitation Rule under the COGSA, contrary to the RTC and the CA's findings.

It is to be noted that the Civil Code does not limit the liability of the common carrier to a fixed amount per package. In all matters not regulated by the Civil Code, the rights and obligations of common carriers are governed by the Code of Commerce

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[29] *Id.* at 582.

and special laws. Thus, the COGSA supplements the Civil Code by establishing a provision limiting the carrier's liability in the absence of a shipper's declaration of a higher value in the bill of lading.[30] Section 4(5) of the COGSA provides:

(5) Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with the transportation of goods in an amount exceeding $500 per package of lawful money of the United States, or in case of goods not shipped in packages, per customary freight unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading. This declaration, if embodied in the bill of lading, shall be *prima facie* evidence, but shall not be conclusive on the carrier.

In the present case, the shipper did not declare a higher valuation of the goods to be shipped. Contrary to the CA's conclusion, the insertion of the words "L/C No. LC No. 1-187-008394/ NY 69867 covering shipment of raw materials for pharmaceutical Mfg. x x x" cannot be the basis of petitioner's liability.[31] Furthermore, the insertion of an invoice number does not in itself sufficiently and convincingly show that petitioner had knowledge of the value of the cargo.[32]

In light of the foregoing, petitioner's liability should be limited to $500 per steel drum. In this case, as there was only one drum lost, private respondent is entitled to receive only $500 as damages for the loss. In addition to said amount, as aptly held by the trial court, an interest rate of 6% *per annum* should also be imposed, plus 25% of the total sum as attorney's fees.

WHEREFORE, premises considered, the petition is *PARTIALLY GRANTED*. The Court of Appeals Decision dated April 29, 2004 and Resolution dated November 26, 2004 are

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[30] *Id.* at 587.

[31] *Id.*

[32] See *Everett Steamship Corp. v. CA*, 358 Phil. 129 (1998).

AFFIRMED with *MODIFICATION* by reducing the principal amount due private respondent Pioneer Insurance and Surety Corporation from ₱76,231.27 to $500, with interest of 6% *per annum* from date of demand, and 25% of the amount due as attorney's fees.

The other aspects of the assailed Decision and Resolution *STAND*.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 167390. July 26, 2010]

SPOUSES ADOLFO FERNANDEZ, SR., and LOURDES FERNANDEZ, *petitioners, vs.* **SPOUSES MARTINES CO and ERLINDA CO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER AND FORCIBLE ENTRY; ONLY ISSUE TO BE DETERMINED IS WHO BETWEEN THE CONTENDING PARTIES HAS THE BETTER RIGHT TO POSSESS THE CONTESTED PROPERTY, INDEPENDENT OF ANY CLAIM OF OWNERSHIP.— In unlawful detainer and forcible entry cases, the only issue to be determined is who between the contending parties has the better right to possess the contested property, independent of any claim of ownership. However, where the issue of ownership is so intertwined with the issue of possession, the courts may pass

upon the issue of ownership if only to determine who has the better right to possess the property.

2. CIVIL LAW; PROPERTY; POSSESSION; CONTINUOUS AND ACTUAL PHYSICAL POSSESSION OF SUBJECT PROPERTY PROVEN BY EVIDENCE ON RECORD; DISCUSSED.— The evidence on record shows that respondents and their predecessors-in--interest have been in continuous and actual physical possession of the subject property, and are the registered owners thereof. Respondents' predecessor-in-interest, Emilio Torres, applied for a free patent over the subject property under Section 44 of Commonwealth Act 141, which provides: Sec. 44. Any natural-born citizen of the Philippines who is not the owner of more than twenty-four hectares, and who since July fourth nineteen hundred and twenty-six or prior thereto, **has continuously occupied and cultivated, either by himself or through his predecessor-in-interest, a tract or tract of agricultural public lands subject to disposition, or who shall have paid the real tax thereon while the same has not been occupied by any other person shall be entitled, under the provisions of this chapter, to have a free patent issued to him** for such tract or tracts of such land not to exceed twenty-four hectares. The application was granted as evidenced by OCT No. P-35620 covering the subject property identified as Lot No. 978, Cad. 439-D of the Calasiao Cadastre, registered in the name of Emilio Torres on June 13, 1996. The Court may presume, absent any evidence to the contrary, that the free patent over the subject property was issued to Emilio Torres only after a determination that he had duly complied with all the requirements, specifically the requirement of continuous occupation and cultivation of the property. Moreover, petitioners' adverse claim that was annotated on the original title of Emilio Torres was cancelled, since petitioner Adolfo Fernandez had earlier executed an Affidavit recognizing Emilio Torres as the true owner of the subject property. x x x Upon the sale of the subject property by the spouses Emilio and Pilar Torres to respondents, respondents took possession of the property, and a new transfer certificate of title was issued in the name of respondents. Hence, respondents had actual, physical possession of the subject property.

3. ID.; LAND TITLES AND DEEDS; LAND REGISTRATION; PRESIDENTIAL DECREE NO. 1529 (PROPERTY REGISTRATION DECREE); CERTIFICATE OF TITLE; NOT SUBJECT TO COLLATERAL ATTACK AND CANNOT BE ALTERED, MODIFIED OR CANCELLED EXCEPT IN A DIRECT PROCEEDING IN ACCORDANCE WITH LAW.— The issue of the validity of the title of respondents can only be assailed in an action expressly instituted for that purpose. Section 48 of Presidential Decree No. 1529 specifically states that a certificate of title shall not be subject to collateral attack, and that it cannot be altered, modified or cancelled, except in a direct proceeding in accordance with law.

4. POLITICAL LAW; CONSTITUTIONAL LAW; DUE PROCESS; NO DENIAL IN CASE AT BAR; THE COURT OF APPEALS IS NOT OBLIGED TO INFORM THE PARTIES THAT THE PETITION WILL BE GIVEN DUE COURSE BASED ON THE COMMENT AND REPLY OF THE PARTIES.— Petitioners also contend that the Court of Appeals erred in hastily deciding the appeal after the Comment and Reply were filed, without informing petitioners that the case had already been submitted for decision, insinuating that they were denied due process. The contention is without merit. The Court of Appeals already resolved the same issue in its Resolution dated March 10, 2005, wherein it stated that petitioners cannot feign denial of due process as they were afforded the opportunity to present their side through their Comment, which was taken into account by the appellate court. The Court of Appeals is not obliged to inform the parties that the petition will be given due course based on the Comment and Reply of the parties. It has the discretion to resolve the case after the Comment and Reply have been filed, or it may still require the parties to submit a Memorandum before resolution of the case. x x x In this case, the case was deemed submitted for decision upon the filing of the last pleading, which is the Reply, required by the Court of Appeals.

5. REMEDIAL LAW; CIVIL PROCEDURE; RULES OF PROCEDURE; STRICT AND RIGID APPLICATION ESPECIALLY ON TECHNICAL MATTERS, WHICH TEND TO FRUSTRATE RATHER THAN PROMOTE SUBSTANTIAL JUSTICE, MUST BE AVOIDED.— [R]ules

of procedure are merely tools designed to facilitate the attainment of justice. Their strict and rigid application especially on technical matters, which tend to frustrate rather than promote substantial justice, must be avoided.

6. ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER AND FORCIBLE ENTRY; COURT'S ADJUDICATION OF OWNERSHIP IN AN EJECTMENT CASE IS MERELY PROVISIONAL.— [T]he court's adjudication of ownership in an ejectment case is merely provisional, and affirmance of the trial court's decision would not prejudice an action between the same parties involving title to the property. Section 18, Rule 70 of the Rules of Court specifically provides: Sec. 18. x x x **The judgment rendered in an action for forcible entry or detainer shall be conclusive with respect to the possession only** and shall in no wise bind the title or affect the ownership of the land or building. Such judgment shall not bar an action between the same parties respecting title to the land or building.

APPEARANCES OF COUNSEL

Romeo L. Gutierrez for petitioners.
Aquilino P. Bolinas for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Decision[2] of the Court of Appeals dated November 30, 2004 in CA-G.R. SP No. 85994, and its Resolution[3] dated March 10, 2005, denying petitioners' motion for reconsideration.

The Decision of the Court of Appeals reversed and set aside the Decision of the Regional Trial Court (RTC) of Dagupan

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

[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; *rollo*, pp. 39-48.

[3] *Id.* at 50.

City, Branch 44, and reinstated the Decision of the Municipal Trial Court (MTC) of Calasiao, Pangasinan, finding respondents entitled to possession of the property involved in this case, but deleting the award of moral and exemplary damages for lack of legal basis.

The facts are as follows:

The property involved in this case is Lot 978, Cad. 439-D, with an area of 1,209 square meters, located in Nalsian, Calasiao, Pangasinan.

Respondents' predecessor-in-interest, Emilio Torres, married to Pilar Torres, applied for, and was granted, a free patent over the subject property, described as Lot 978, Cad. 439-D, Calasiao Cadastre. The said free patent, issued on June 10, 1996 by President Fidel V. Ramos, was registered with the Register of Deeds for the Province of Pangasinan, and *Katibayan ng Orihinal na Titulo Blg.* P-35620[4] covering the subject property was issued in the name of Emilio Torres. Petitioner Adolfo Fernandez filed an Affidavit of Adverse Claim with the Register of Deeds of Pangasinan and had the same annotated on Emilio Torres' title on July 16, 1996.[5]

The adverse claim was eventually cancelled when Emilio Torres filed an Affidavit of Cancellation of Adverse Claim[6] with the Register of Deeds of Pangasinan, alleging, among others, that adverse claimant Adolfo Fernandez failed to pursue his claim in court, and that he executed an Affidavit[7] dated March 20, 1996, wherein he admitted that Emilio Torres is the actual owner in possession of the subject property. The Affidavit of petitioner Adolfo Fernandez reads:

I, ADOLFO FERNANDEZ, of legal age, married, Filipino citizen, and resident of Lasip, Calasiao, Pangasinan, after having been duly sworn to in accordance with law hereby depose and say:

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[4] Exhibit "11", records, Vol. 1, p. 129.

[5] Exhibit "11-A", *id.* at 130.

[6] Exhibit "M", *id.* at 196.

[7] Exhibit "L", *id.* at 195.

That I know personally EMILIO L. TORRES, of legal age, married, Filipino citizen and resident of Lasip, Calasiao, Pangasinan as the legal and true owner of a parcel of land described as Lot No. 978, Cad. 439-D situated at Nalsian, Calasiao, Pangasinan;

That I am one and the same person who was listed as survey claimant over Lot No. 978, Cad. 439-D situated at Nalsian, Calasiao, Pangasinan; and that Rodolfo Fernandez and Adolfo Fernandez are one and the same person which refers to me;

That during the execution of the Cadastral Survey of Calasiao, Pangasinan, the surveyor who executed the survey made a mistake or an error in putting my name as survey claimant over Lot No. 978, Cad. 439-D, while in truth and in fact the actual owner of said lot is Emilio L. Torres who is in actual possession and cultivation of said land;

That I execute this Affidavit freely and voluntarily and have read and understood the contents hereof.[8]

Thereafter, Emilio Torres executed an Affidavit of Request for Issuance of New Transfer Certificate of Title[9] dated September 20, 1996 and filed the same before the Register of Deeds of Pangasinan. Acting favorably thereon, the Register of Deeds of Pangasinan cancelled *Katibayan ng Orihinal na Titulo Blg.* P-35620 and issued Transfer Certificate of Title (TCT) No. 216709[10] in the name of Emilio Torres. Emilio Torres declared the subject property for taxation.[11]

On June 6, 1997, the spouses Emilio and Pilar Torres sold the subject property to respondents spouses Martines and Erlinda Co, as evidenced by a Deed of Absolute Sale.[12] TCT No. T-216709 in the name of Emilio Torres was cancelled, and TCT No. T-236032[13] was issued in the name of

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[8] *Id.* (Emphasis supplied.)

[9] Exhibit "N", records, Vol. 1, p. 197.

[10] Exhibit "O", *id.* at 198.

[11] Exhibits "T", and "U", *id.* at 203-204.

[12] Exhibit "F", *id.* at 187.

[13] Exhibit "A", *id.* at 179.

respondents spouses Martines and Erlinda Co. Respondents took actual physical possession of the property, and erected concrete posts and barbed wire fence enclosing the property.

On August 14, 1997, respondents obtained a loan from Solid Bank in the amount of ₱8,000,000.00, and mortgaged the subject property to secure the loan.[14]

Subsequently, a portion of the property, denominated as Lot 978-B, was segregated and made part of the Judge Jose De Venecia, Sr. Highway covered by TCT No. T-236033 (Road Lot).[15] The remaining portion, denominated as Lot 978-A, covered by TCT No. T-236032,[16] now subject matter of the controversy, pertained to respondents.

On September 3, 2001, respondents' possession of the subject property was disturbed by petitioner Adolfo Fernandez, who destroyed the perimeter fence surrounding the property and started construction work therein.

In order to protect their interest, respondents filed a Complaint for quieting of title and injunction with damages before the RTC of Dagupan City, but the complaint was dismissed for lack of jurisdiction.

On January 22, 2002, respondents filed a Complaint for forcible entry/ejectment before the MTC in Calasiao, Pangasinan (trial court).

In their Answer to the Complaint and, later, Position Paper, petitioners alleged that respondents had no cause of action against them as the subject property belonged to them. Petitioners claimed to have long been in actual possession of Lot No. 978 when the said lot, including Lot No. 661-A and Lot No. 661-B originally formed part of an unirrigated riceland with an area of 3,904 square meters, originally recorded as Cadastral Lot No. 661

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[14] Exhibit "V", *id.* at 205.

[15] Exhibit "B", *id.* at 180.

[16] *Supra* note 11.

under Tax Declaration No. 16357[17] issued in the names of petitioners in 1973. Tax Declaration No. 16357 was cancelled and Tax Declaration No. 455[18] was issued in 1980 by the Calasiao Municipal Assessor's Office. Subsequently, Tax Declaration No. 455 was cancelled and Tax Declaration No. 494[19] was issued in 1982 in the names of petitioners.

Petitioners further alleged that when Cadastral Lot No. 661 was traversed by the Judge Jose de Venecia, Sr. Highway, the said lot was subdivided into Cadastral Lot No. 661-A, Cadastral Lot 661-B, and Cadastral Lot No. 978. Tax Declaration No. 13162,[20] covering Cadastral Lot No. 661-A, was issued in the name of the Republic of the Philippines on December 12, 1995. Tax Declaration No. 13163, covering Lot No. 661-B,[21] was allegedly issued in the name of petitioners. Tax Declaration No. 13161,[22] covering Lot No. 978, was issued in the name of petitioners.

Petitioners averred that sometime in 1996, they learned that Lot No. 978, Cad. 439-D was covered by Original Certificate of Title (OCT) No. P-35620 by virtue of the issuance of a Free Patent in the name of Emilio Torres. Hence, petitioners executed an Affidavit of Adverse Claim, which adverse claim was annotated on the original title of Emilio Torres.

Petitioners claimed that they had the subject lot fenced, and the lot was leased on January 4, 2000 to Architect Andres L. Gutierrez, Jr., who constructed the necessary building and improvements thereon for the operation of a car wash. They asserted that it was not true that respondents fenced the lot with concrete posts and perimeter barbed wire, because it was already fenced by petitioners.

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[17] Exhibit "2", records, Vol. 1, p. 119.

[18] Exhibit "3", *id.* at 120.

[19] Exhibit "4", *id.* at 121.

[20] Exhibit "8", *id.* at 125.

[21] No evidence on record.

[22] Exhibit "7", records, Vol. 1, p. 124.

Petitioners alleged that respondents' reliance on TCT No. 216709, which was fraudulently issued in the name of Emilio Torres, who is respondents' predecessor-in-interest, cannot be maintained as the subject property is private land belonging to petitioners; hence, it cannot be the subject of a free patent.

Respondents' prayer for the issuance of a Writ of Preliminary Injunction was denied by the trial court for lack of merit.

On March 31, 2003, the trial court rendered a Decision[23] in favor of respondents, the dispositive portion of which reads:

> WHEREFORE, premises duly considered, judgment is hereby rendered, ordering the defendants and any and all persons acting for and [in] their behalf to vacate and surrender possession of Lot 978, Cad. 439-D, Calasiao Cadastre, to and in favor of the plaintiffs. The defendants are ordered further to pay to the plaintiffs, the following:
>
> 1. The amount of ₱12,000.00 per month as the reasonable rental for the use and occupation of the premises commencing from September 13, 2001 (first judicial demand) until the actual physical possession of the premises shall have been surrendered by the defendants to the plaintiffs;
> 2. ₱100,000.00 as moral damages;
> 3. ₱50,000.00 as exemplary damages;
> 4. ₱30,000.00 as attorney's fees; and other expenses of litigation, and
> 5. The costs of suit.[24]

The trial court found that the evidence adduced by respondents showed that they and their predecessors-in-interest were the ones in actual, continuous physical possession of the subject lot for thirty (30) years being the registered owners thereof.

Moreover, the trial court pointed out that the adverse claim of petitioners, which was annotated on the original title of Emilio

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[23] *Rollo*, pp. 85-92.

[24] *Id.* at 91-92.

Torres, respondents' predecessor-in-interest, was cancelled by reason of the Affidavit dated March 20, 1996, wherein petitioner Adolfo Fernandez recognized Emilio Torres as the legal and true owner in actual possession and cultivation of the subject property.

Further, the trial court held that petitioners' allegation that Lot 978 is part of Lot 661, which they owned, is belied by the approved cadastral survey of Calasiao, Pangasinan, showing that Lot 978 and Lot 661 are two distinct lots. According to the trial court, the claim of petitioners that they are in prior possession of Lot 978 is based on the false assumption that Lot 978 is part of Lot 661. While petitioners are the owners and in possession of Lot 661, respondents are the owners and in possession of Lot 978. In his Affidavit dated March 20, 1996, petitioner Adolfo Fernandez recognized the possession and ownership of the subject lot by Emilio Torres, respondents' predecessor-in-interest. Hence, petitioners now cannot claim otherwise; they are bound by their own admission.

The trial court also held that respondents cannot just be unlawfully deprived of peaceful possession of their property by petitioners under Article 536 of the Civil Code of the Philippines.

Petitioners appealed the trial court's decision to the RTC of Dagupan City, Branch 44.

In a Decision[25] dated January 12, 2004, the RTC reversed the decision of the trial court. The dispositive portion of the decision reads:

> WHEREFORE, the appeal is given due course and the Decision appealed from is REVERSED. In this connection, the ejectment case is DISMISSED.
>
> The plaintiffs-appellees are ordered to pay ₱100,000.00 to the defendants-appellants by way of moral damages, and ₱25,000.00 by way of exemplary damages. The plaintiffs-appellees are also ordered to pay the amount of ₱40,000.00 for the services of counsel and ₱1,000.00 per appearance.[26]

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[25] *Id.* at 93-107.

[26] *Id.* at 107.

The RTC stated that although a Deed of Absolute Sale was executed by the spouses Emilio and Pilar Torres in favor of respondents, the title of respondents is void on two grounds: (1) the property is a private unirrigated riceland owned by petitioners; hence, it cannot be the subject of a free patent; and (2) even assuming for the sake of argument that the property could be the subject of a free patent, the same was disposed within the prohibitory period.

Respondents appealed the RTC's Decision to the Court of Appeals via a petition for review.

On November 30, 2004, the Court of Appeals rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, the present petition is GRANTED and the Decision dated January 12, 2004 rendered by the Regional Trial Court in Dagupan City is REVERSED and SET ASIDE. The Decision dated March 31, 2003 of the Municipal Trial Court is reinstated, with the MODIFICATION that the award of moral and exemplary damages is hereby deleted for lack of legal basis.[27]

The Court of Appeals held that the Affidavit of petitioner Adolfo Fernandez, dated March 20, 1996, wherein he admitted that respondents' predecessor-in-interest, Emilio L. Torres, was in actual possession and cultivation of the subject property and was the owner thereof, belied petitioners' claim that they were the owners and possessors of the subject property.

Petitioners' motion for reconsideration was denied in a Resolution dated March 10, 2005.

Hence, petitioners filed this petition, raising the following issues:

I.

THE COURT OF APPEALS GRIEVOUSLY ERRED ON A QUESTION OF LAW WHEN IT RULED THAT IT IS UNNECESSARY TO INQUIRE ON THE VALIDITY OF TITLE OF RESPONDENTS

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[27] *Id.* at 48.

DESPITE THE FACT THAT THE CLAIM OF POSSESSION BY THE RESPONDENTS IS ANCHORED ON THEIR ALLEGED OWNERSHIP OF THE SUBJECT PARCEL OF LAND.

II.

THE COURT OF APPEALS GRIEVOUSLY ERRED ON A QUESTION OF LAW WHEN [IT DECIDED] CA-G.R. SP NO. 85994 ON THE ISSUE [OF] *DE FACTO* POSSESSION DESPITE RULING THAT THE ISSUES IN SAID CASE SHOULD HAVE ULTIMATELY BEEN RESOLVED BY THE AFFIDAVIT OF PETITIONER ADOLFO FERNANDEZ WHICH INVOLVES A QUESTION OF OWNERSHIP.

III.

THE COURT OF APPEALS GRIEVOUSLY ERRED ON A QUESTION OF LAW WHEN IT FAILED TO RULE THAT PETITIONERS HAVE BEEN IN JURIDICAL AND MATERIAL POSSESSION AS PROVEN BY OVERWHELMING EVIDENCE.

IV.

THE COURT OF APPEALS GRIEVOUSLY ERRED ON A QUESTION OF LAW WHEN IT DID NOT RULE ON THE PROCEDURAL MISSTEPS COMMITTED BY RESPONDENTS WHICH SHOULD HAVE MERITED THE DISMISSAL OF CA-G.R. SP NO. 85994.

V.

THE COURT OF APPEALS GRIEVOUSLY ERRED ON A QUESTION OF LAW WHEN IT HASTILY DECIDED CA-G.R. SP NO. 85994 WITHOUT INFORMING PETITIONERS THAT SAID CASE HAD ALREADY BEEN SUBMITTED FOR DECISION.

VI.

THE COURT OF APPEALS GRIEVOUSLY ERRED ON A QUESTION OF LAW WHEN IT DECIDED CA-G.R. SP NO. 85994 BASED ON A DOCUMENT WHICH SHOULD NOT HAVE BEEN ADMITTED AS EVIDENCE IN THE FIRST PLACE.[28]

The main issue in this case is who between the parties is entitled to the possession of Lot 978, Cad. 439-D located in Nalsian, Calasiao, Pangasinan.

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[28] *Id.* at 18-19.

The Court upholds the Decision of the Court of Appeals, reinstating the decision of the trial court that respondents are entitled to the possession of Lot 978, Cad. 439-D.

In unlawful detainer and forcible entry cases, the only issue to be determined is who between the contending parties has the better right to possess the contested property, independent of any claim of ownership.[29] However, where the issue of ownership is so intertwined with the issue of possession, the courts may pass upon the issue of ownership if only to determine who has the better right to possess the property.[30]

The evidence on record shows that respondents and their predecessors-in--interest have been in continuous and actual physical possession of the subject property, and are the registered owners thereof.

Respondents' predecessor-in-interest, Emilio Torres, applied for a free patent over the subject property under Section 44 of Commonwealth Act 141, which provides:

> Sec. 44. Any natural-born citizen of the Philippines who is not the owner of more than twenty-four hectares, and who since July fourth nineteen hundred and twenty-six or prior thereto, **has continuously occupied and cultivated, either by himself or through his predecessor- in-interest, a tract or tract of agricultural public lands subject to disposition, or who shall have paid the real tax thereon while the same has not been occupied by any other person shall be entitled, under the provisions of this chapter, to have a free patent issued to him** for such tract or tracts of such land not to exceed twenty-four hectares.[31]

The application was granted as evidenced by OCT No. P-35620[32] covering the subject property identified as Lot No. 978, Cad.

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[29] *Panganiban v. Roldan*, G.R. No. 163053, November 25, 2009, 605 SCRA 382, 389.

[30] *Id.*

[31] Emphasis supplied.

[32] Exhibit "K", records, Vol. 1, p. 193.

439-D of the Calasiao Cadastre, registered in the name of Emilio Torres on June 13, 1996.

The Court may presume, absent any evidence to the contrary, that the free patent over the subject property was issued to Emilio Torres only after a determination that he had duly complied with all the requirements, specifically the requirement of continuous occupation and cultivation of the property.

Moreover, petitioners' adverse claim that was annotated on the original title of Emilio Torres was cancelled, since petitioner Adolfo Fernandez had earlier executed an Affidavit[33] recognizing Emilio Torres as the true owner of the subject property. The pertinent portion of the Affidavit of petitioner Adolfo Fernandez states:

x x x x x x x x x

That during the execution of the Cadastral Survey of Calasiao, Pangasinan, the surveyor who executed the survey made a mistake or an error in putting my name as survey claimant over Lot No. 978, Cad. 439-D, **while in truth and in fact the actual owner of said lot is Emilio L. Torres who is in actual possession and cultivation of said land**.[34]

Petitioner Adolfo Fernandez is bound by this admission in his Affidavit, which he declared was freely and voluntarily executed by him. The admission proves that petitioners have not been in actual physical and material possession of the subject property, but respondents' predecessor-in-interest, Emilio Torres, had been in actual possession and cultivation of the property.

Upon the sale of the subject property by the spouses Emilio and Pilar Torres to respondents, respondents took possession of the property, and a new transfer certificate of title was issued in the name of respondents. Hence, respondents had actual, physical possession of the subject property.

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[33] *Supra* note 7.

[34] Emphasis supplied.

Moreover, the Court agrees with the finding of the trial court that petitioners' claim of being in prior possession of Lot 978 is based on the false assumption that Lot 978 is part of Lot No. 661. Petitioners claimed in their Answer[35] that they have long been in actual possession of Lot 978 when the said lot, including Lot No. 661-A and Lot No. 661-B originally formed part of an unirrigated riceland recorded as Cadastral Lot No. 661 under Tax Declaration No. 16357 issued in the names of petitioners.

The Court notes that based on the original cadastral survey[36] of Calasiao, Pangasinan, Lot 978 is distinct from Lot No. 661, although they are adjacent lots.

The tax declarations[37] issued in the name of petitioners showed that petitioners declared ownership and paid for real property taxes of Lot No. 661 alone. Lot No. 661 was described in Tax Declarations Nos. 455, 494 and 457[38] as a parcel of unirrigated riceland with an area of 3,904 square meters. However, in the survey[39] made for petitioner Adolfo Fernandez by Geodetic Engineer Leonardo V. De Vera on November 13, 1995, Lot No. 661 had a land area of only 2,679 square meters, which should prevail over the land area stated in petitioners' tax declarations (3,904 square meters).

After a part of Lot No. 661 was purchased on December 11, 1995 by the Republic of the Philippines, petitioners claimed that Lot No. 661 was subdivided into Lot No. 661-A, Lot No. 661-B and Lot 978.

In 1996, petitioners declared ownership of Lot 978 in Tax Declaration No. 13161,[40] which cancelled Tax Declaration

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[35] Records, Vol. 1, p. 19 (No. 3).

[36] Exhibit "Y", *id.* at 209.

[37] Tax Declarations Nos. 22537, 16357, 455, 494, 457, *id.* at 118-122.

[38] Records, Vol. 1, pp. 120-122.

[39] Exhibit "Z", records, Vol. 1, p. 211.

[40] Exhibit "7", *supra* note 24.

No. 457[41] pertaining to declaration of ownership and payment of the real property tax of Lot No. 661 alone. It must be emphasized that petitioners' previous tax declarations pertained only to Lot No. 661, and did not include Lot 978, which is a distinct lot from Lot No. 661 in the original cadastral survey[42] of Calasiao, Pangasinan.

In view of the foregoing, the Court finds that petitioners' allegation that that they have long been in actual possession of the subject property converting it into their private property has not been substantiated.

Further, petitioners contend that even if the free patent title issued to Emilio Torres is valid, the sale of the property by Emilio Torres to respondents within the five-year prohibitive period renders respondents' title null and void; hence, the possession being claimed by respondents must necessarily fail.

The Court is not persuaded.

Ejectment proceedings are summary proceedings only intended to provide an expeditious means of protecting actual possession or right to possession of property.[43] The sole issue to be resolved is who is entitled to the physical or material possession of the premises or possession *de facto*.[44] The Court sustains the Decision of the Court of Appeals that respondents are entitled to the possession of the subject property as they are found to be the ones in actual possession of the property after it was sold to them by the registered owners, Emilio and Pilar Torres. The issue of the validity of the title of respondents can only be assailed in an action expressly instituted for that purpose.[45]

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[41] Records, Vol. 1, p. 122.

[42] *Supra* note 35.

[43] *Lee v. Dela Paz*, G.R. No. 183606, October 27, 2009, 604 SCRA 522, 534.

[44] *Id.*

[45] *Soriente v. Estate of the Late Arsenio E. Concepcion*, G.R. No. 160239, November 25, 2009, 605 SCRA 315, 330.

Section 48 of Presidential Decree No. 1529[46] specifically states that a certificate of title shall not be subject to collateral attack, and that it cannot be altered, modified or cancelled, except in a direct proceeding in accordance with law.

In *Mediran v. Villanueva*,[47] the Court held:

> x x x In giving recognition to the action of forcible entry and detainer the purpose of the law is to protect the person who in fact has actual possession; and in case of controverted right, it requires the parties to preserve the *status quo* until one or the other of them sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership. It is obviously just that the person who has first acquired possession should remain in possession pending this decision; and the parties cannot be permitted meanwhile to engage in a petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order. Therefore, where a person supposes himself to be the owner of a piece of property and desires to vindicate his ownership against the party actually in possession, it is incumbent upon him to institute an action to this end in a court of competent jurisdiction; and he [cannot] be permitted, by invading the property and excluding the actual possessor, to place upon the latter the burden of instituting an action to try the property right.

In addition, petitioners contend that respondents' petition for review should have been dismissed by the Court of Appeals for failing to state in their certification of forum shopping that an action to quiet title was filed by petitioners against respondents which was pending before the RTC of Dagupan City, Branch 44.

The contention is unmeritorious.

The Court of Appeals correctly held in its Resolution dated March 10, 2005, denying petitioners' motion for reconsideration, that respondents' non-disclosure of the action to quiet title cannot

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[46] Known as the *Property Registration Decree*.

[47] 37 Phil. 752, 757 (1918).

be taken against them, because ejectment cases proceed independently of any claim of ownership.[48]

Petitioners also contend that the Court of Appeals erred in hastily deciding the appeal after the Comment and Reply were filed, without informing petitioners that the case had already been submitted for decision, insinuating that they were denied due process.

The contention is without merit.

The Court of Appeals already resolved the same issue in its Resolution dated March 10, 2005, wherein it stated that petitioners cannot feign denial of due process as they were afforded the opportunity to present their side through their Comment, which was taken into account by the appellate court.

The Court of Appeals is not obliged to inform the parties that the petition will be given due course based on the Comment and Reply of the parties. It has the discretion to resolve the case after the Comment and Reply have been filed, or it may still require the parties to submit a Memorandum before resolution of the case. Sections 6 and 9 of Rule 42 of the Rules of Court state:

SEC. 6. *Due Course*. — If upon the filing of the comment or such other pleadings as the court may allow or require, or after the expiration of the period for the filing thereof without such comment or pleading having been submitted, the Court of Appeals finds *prima facie* that the lower court has committed an error of fact or law that will warrant a reversal or modification of the appealed decision, it may accordingly give due course to the petition.

SEC. 9. *Submission for decision.* — If the petition is given due course, the Court of Appeals may set the case for oral argument or require the parties to submit memoranda within a period of fifteen (15) days from notice. The case shall be **deemed** submitted for decision upon the filing of the last pleading or memorandum required by these Rules or by the court itself.[49]

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[48] *Spouses Diu v. Ibajan*, 379 Phil. 482 (2000).

[49] Emphasis and underscoring supplied.

In this case, the case was deemed submitted for decision upon the filing of the last pleading, which is the Reply, required by the Court of Appeals.

As regards the other technical defects raised in issue, We agree with the Court of Appeals that rules of procedure are merely tools designed to facilitate the attainment of justice. Their strict and rigid application especially on technical matters, which tend to frustrate rather than promote substantial justice, must be avoided.[50]

The other technical issues raised by petitioners to have been committed by the trial court was overlooked by it in the interest of justice. The trial court correctly held that rules of procedure are construed liberally in order not to defeat or supplant substantive rights of the parties, considering that respondents have a cause of action against petitioners who forcibly deprived respondents' possession of the subject property in contravention of Article 536 of the Civil Code, thus:

> Art. 536. In no case may possession be acquired through force or intimidation as long as there is a possessor who objects thereto. He who believes that he has an action or a right to deprive another of the holding of a right, must invoke the aid of the competent court, if the holder should refuse to deliver the thing.

As a final word, the court's adjudication of ownership in an ejectment case is merely provisional, and affirmance of the trial court's decision would not prejudice an action between the same parties involving title to the property.[51] Section 18, Rule 70 of the Rules of Court specifically provides:

> Sec. 18. x x x **The judgment rendered in an action for forcible entry or detainer shall be conclusive <u>with respect to the possession only</u>** and shall in no wise bind the title or affect the ownership of the land or building. Such judgment shall not bar an action between the same parties respecting title to the land or building.[52]

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[50] *Quirao v. Quirao*, 460 Phil. 605, 612 (2003).

[51] *Soriente v. Estate of the Late Arsenio E. Concepcion*, *supra* note 45.

[52] Emphasis and underscoring supplied.

WHEREFORE, the petition is *DENIED*. The Decision of the Court of Appeals dated November 30, 2004 in CA-G.R. SP No. 85994, and its Resolution dated March 10, 2005, are hereby *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 167526. July 26, 2010]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **DANTE TAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; DOUBLE JEOPARDY; ELEMENTS; PRESENT IN CASE AT BAR.— The elements of double jeopardy are (1) the complaint or information was sufficient in form and substance to sustain a conviction; (2) the court had jurisdiction; (3) the accused had been arraigned and had pleaded; and (4) the accused was convicted or acquitted, or the case was dismissed without his express consent. These elements are present here: (1) the Informations filed in Criminal Cases Nos. 119831 and 119832 against respondent were sufficient in form and substance to sustain a conviction; (2) the RTC had jurisdiction over Criminal Cases Nos. 119831 and 119832; (3) respondent was arraigned and entered a plea of not guilty; and (4) the RTC dismissed Criminal Cases Nos. 119831 and 119832 on a demurrer to evidence on the ground of insufficiency of evidence which amounts to an acquittal from which no appeal can be had.

2. ID.; ID.; ID.; ID.; ONLY INSTANCE WHEN DOUBLE JEOPARDY WILL NOT ATTACH IS WHEN THE TRIAL COURT ACTED WITH GRAVE ABUSE OF DISCRETION; NO APPLICATION TO CASE AT BAR.— The rule on double jeopardy, however, is not without exceptions. In *People v. Laguio, Jr.*, this Court stated that the only instance when double jeopardy will not attach is when the RTC acted with grave abuse of discretion, thus: **x x x The only instance when double jeopardy will not attach is when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was denied the opportunity to present its case or where the trial was a sham**. However, while *certiorari* may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice. After an extensive review of previous Court decisions relevant to herein petition, this Court finds that the abovementioned exception is inapplicable to the factual milieu herein. This Court finds that the RTC did not abuse its discretion in the manner it conducted the proceedings of the trial, as well as its grant of respondent's demurrer to evidence.

3. ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ELUCIDATED.— Grave abuse of discretion defies exact definition, but it generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross as to amount to an evasion of 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.

4. ID.; ID.; ID.; ID.; ABSENT IN CASE AT BAR; RIGHT TO DUE PROCESS, NOT VIOLATED.— [I]t is clear that the RTC never prevented petitioner from presenting its case. Unlike in *Bocar* and *Saldana* where the prosecution was prevented from completing its presentation of evidence, petitioner was given the opportunity to present its case, formally offer its evidence and oppose respondent's demurrer. It even bears to point out that the RTC even allowed petitioner to withdraw its

formal offer of evidence after having initially rested its case and then continue its presentation by introducing additional witnesses. Thus, no grave abuse can be attributed to the RTC as petitioner's right to due process was not violated. Even *Galman* finds no application to the case at bar as clearly such trial cannot be considered a sham based on the abovementioned considerations. x x x While it would have been ideal for the RTC to hold in abeyance the resolution of the demurrer to evidence, nowhere in the rules, however, is it mandated to do so. Furthermore, even if this Court were to consider the same as an error on the part of the RTC, the same would merely constitute an error of procedure or of judgment and not an error of jurisdiction as persistently argued by petitioner. Errors or irregularities, which do not render the proceedings a nullity, will not defeat a plea of *antrefois acquit*. We are bound by the dictum that whatever error may have been committed effecting the dismissal of the case cannot now be corrected because of the timely plea of double jeopardy. To reiterate, the only instance when double jeopardy will not attach is when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction which cannot be attributed to the RTC simply because it chose not to hold in abeyance the resolution of the demurrer to evidence. Consequently, petitioner's attempt to put in issue the December 11, 2003 and January 27, 2004 Orders of the RTC which denied admission of certain documentary exhibits in evidence must fail. As correctly manifested by the CA, the said Orders have already been overtaken by the March 16, 2004 Order, which already granted respondent's demurrer to evidence. Hence, this Court would be violating the rules on double jeopardy if the twin orders were to be reviewed after a finding that the CA did not commit any grave abuse of discretion in granting the demurrer to evidence.

5. ID.; CRIMINAL PROCEDURE; MOTION TO QUASH; DOUBLE JEOPARDY; FUNDAMENTAL PHILOSOPHY BEHIND THE CONSTITUTIONAL PROSCRIPTION AGAINST DOUBLE JEOPARDY.— Withal, it bears to stress that the fundamental philosophy behind the constitutional proscription against double jeopardy is to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Santos & Maranan for respondent.

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 June 14, 2004 Resolution[2] and February 24, 2005 Resolution[3] of the Court of Appeals (CA), in CA-G.R. SP No. 83433.

The facts of the case are as follows:

On December 21, 2000, two Informations for violation of Rule 36 (a)-1,[4] in relation to Sections 32 (a)-1[5] and

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[1] *Rollo*, pp. 8-47.

[2] Penned by Associate Justice Godardo A. Jacinto, with Associate Justices Jose L. Sabio, Jr. and Noel G. Tijam concurring; *id.* at 48-58.

[3] *Id.* at 59-62.

[4] Sec. 36. *Directors, officers and principal stockholders*. — (a) Every person who is directly or indirectly the beneficial owner of more than ten (10%) per centum of any class of any equity security which is registered pursuant to this Act, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a securities exchange or by the effective date of a registration statement or within ten (10) days after he becomes such a beneficial owner, director, or officer, a statement with the Commission and, if such security is registered on a securities exchange, also with the exchange, of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten (10) days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission, and if such security is registered on a securities exchange, shall also file with the exchange, a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

[5] Sec. 32. *Reports*. – (a) (1) Any person who, after acquiring directly or indirectly the beneficial ownership of any equity security of a class which is

56[6] of the Revised Securities Act, were filed by petitioner People of the Philippines against respondent Dante Tan in the Regional Trial Court (RTC) of Pasig City, Branch 153. They were docketed as Criminal Cases Nos. 119831 and 119832.

The Information[7] in Criminal Case No. 119831 reads:

That on December 10, 1998, or thereabout, in the City of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being the beneficial owner of 84,030,000 Best World Resources Corporation shares, a registered security sold pursuant to Sections 4 and 8 of the Revised Securities Act, which beneficial ownership constitutes 18.6% of the outstanding shares of the company, way above the 10% required by law to be reported, and covered by Certificate Nos. DT-UK 55485704 and DT-UR 55485776, did then and there willfully, unlawfully and criminally fail to file with the Securities and Exchange Commission and with the Philippine Stock Exchange a sworn statement of the amount of all BWRC shares of which he is the beneficial owner, within ten (10) days after he became such beneficial owner, in violation

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registered pursuant to this Act, is directly or indirectly the beneficial owner of more than ten (10%) per centum of such class shall, within ten days after such acquisition or such reasonable time as fixed by the Commission, submit to the issuer of the security, to the stock exchanges where the security is traded, and to the Commission a sworn statement x x x.

[6] Sec. 56. *Penalties*. Any person who violates any of the provisions of this Act, or the rules and regulations promulgated by the Commission under authority thereof, or any person who, in a registration statement filed under this Act, makes any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading, shall, upon conviction, suffer a fine of not less than five thousand (₱5,000.00) pesos nor more than five hundred thousand (₱500,000.00) pesos or imprisonment of not less than seven (7) years nor more than twenty-one (21) years, or both in the discretion of the court. If the offender is a corporation, partnership or association or other juridical entity, the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for the violation, and if such officer is an alien, he shall, in addition to the penalties prescribed, be deported without further proceedings after service of sentence.

[7] *Rollo,* pp. 74-76.

of the Revised Securities Act and/or the rules and regulations prescribed and pursuant thereto.

CONTRARY TO LAW.[8]

The Information[9] in Criminal Case No. 119832 reads:

That on June 18, 1999, or thereabout, in the City of Pasig, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused being the beneficial owner of 75,000,000 Best World Resources Corporation shares, a registered security which has been sold pursuant to Sections 4 and 8 of the Revised Securities Act, which beneficial ownership constitutes 18.6% of the outstanding shares of the company, way above the 10% required by law to be reported, did then and there willfully, unlawfully and criminally fail to file with the Securities and Exchange Commission and with the Philippine Stock Exchange a sworn statement of the amount of all BWRC shares of which he is the beneficial owner, within ten (10) days after he became such beneficial owner, in violation of the Revised Securities Act and/or the rules and regulations prescribed pursuant thereto.

CONTRARY TO LAW.[10]

After arraignment, respondent pleaded not guilty[11] to both charges and the trial ensued.

On November 24, 2003, petitioner made its formal offer of evidence,[12] consisting of Exhibits "A" to "E" with sub-exhibits, Exhibits "K-1", "K-10" and "K-11", "Q", "R", "S", "T" and "W" with sub-exhibits, and Exhibit "X".

On December 11, 2003, the RTC issued an Order[13] admitting Exhibits "A", "B", "W" and "X", but denied admission of all the other exhibits on the grounds stated therein.

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[8] *Id.* at 74-75.

[9] *Id.* at 77-79.

[10] *Id.* at 77-78.

[11] *Id.* at 14.

[12] *Id.* at 94-98.

[13] *Id.* at 101-104.

Aggrieved, petitioner filed a Motion for Reconsideration, but it was denied by the RTC in an Order[14] dated January 27, 2004.

In the meantime, on December 18, 2003, respondent filed an Omnibus Motion for Leave to File Demurrer to Evidence[15] and to admit the attached Demurrer to Evidence.

On January 29, 2004, the RTC issued another Order[16] granting respondents' Motion for Leave to File the Demurrer and forthwith admitted respondent's attached Demurrer. The RTC also ordered petitioner to file an opposition.

On February 18, 2004, petitioner filed its Opposition[17] to the Demurrer to Evidence. Respondent then filed a Reply.[18]

On March 16, 2004, the RTC issued an Order[19] granting respondent's Demurrer to Evidence, the dispositive portion of which reads:

> WHEREFORE, finding the Demurrer to Evidence filed by accused Dante Tan to be meritorious, the same is GRANTED.
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> SO ORDERED.[20]

On April 12, 2004,[21] petitioner filed a Petition for *Certiorari*[22] before the CA assailing the December 11, 2003, January 27, 2004, and March 16, 2004 Orders of the RTC.

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[14] *Id.* at 105-115.

[15] *Id.* at 116-119.

[16] *Id.* at 120-124.

[17] *Id.* at 125-142.

[18] *Id.* at 148-152.

[19] *Id.* at 153-181.

[20] *Id.* at 181.

[21] Note that the attached copy of petitioner's petition before the CA was stamped as received by the CA on April 15, 2004 and not April 12, 2004.

[22] *Rollo,* pp. 182-231.

On June 14, 2004, the CA issued a Resolution denying the petition, the dispositive portion of which reads:

> WHEREFORE, in the context of all the foregoing considerations, it would be futile to take further action on the herein petition, which is therefore DISMISSED outright for evident want of merit.
>
> SO ORDERED.[23]

In denying the petition, the CA ruled that the dismissal of a criminal action by the grant of a Demurrer to Evidence is one on the merits and operates as an acquittal, for which reason, the prosecution cannot appeal therefrom as it would place the accused in double jeopardy.[24]

Aggrieved, petitioner filed a Motion for Reconsideration, which was, however, denied by the CA in a Resolution dated February 24, 2005.

Hence, herein petition, with petitioner raising the lone assignment of error, to wit:

RESPONDENT COURT GRAVELY ERRED IN PRECLUDING THE PEOPLE FROM PROSECUTING ITS CASES AGAINST DANTE TAN.[25]

The petition has no merit.

Notwithstanding the RTC's grant of respondent's Demurrer to Evidence, petitioner contends that the CA erred in applying the rules on double jeopardy. Specifically, petitioner argues that double jeopardy does not apply in cases decided by the trial court without jurisdiction and in violations of petitioner's right to due process.[26]

In *People v. Sandiganbayan*,[27] this Court explained the general rule that the grant of a demurrer to evidence operates as an acquittal and is, thus, final and unappealable, to wit:

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[23] *Id.* at 58.

[24] *Id.* at 52.

[25] *Id.* at 23.

[26] *Id.*

[27] 488 Phil. 293 (2004).

The demurrer to evidence in criminal cases, such as the one at bar, is "*filed after the prosecution had rested its case*," and when the same is granted, it calls "for an appreciation of the evidence adduced by the prosecution and its sufficiency to warrant conviction beyond reasonable doubt, resulting in a *dismissal of the case on the merits, tantamount to an acquittal of the accused*." Such dismissal of a criminal case by the grant of demurrer to evidence may not be appealed, for to do so would be to place the accused in double jeopardy. The verdict being one of acquittal, the case ends there.[28]

The elements of double jeopardy are (1) the complaint or information was sufficient in form and substance to sustain a conviction; (2) the court had jurisdiction; (3) the accused had been arraigned and had pleaded; and (4) the accused was convicted or acquitted, or the case was dismissed without his express consent.[29]

These elements are present here: (1) the Informations filed in Criminal Cases Nos. 119831 and 119832 against respondent were sufficient in form and substance to sustain a conviction; (2) the RTC had jurisdiction over Criminal Cases Nos. 119831 and 119832; (3) respondent was arraigned and entered a plea of not guilty; and (4) the RTC dismissed Criminal Cases Nos. 119831 and 119832 on a demurrer to evidence on the ground of insufficiency of evidence which amounts to an acquittal from which no appeal can be had.

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[28] *Id.* at 309-310. (Italics in the original).

[29] Paragraph 1, Section 7, Rule 117 of the Rules of Court provides:

SEC. 7. *Former conviction or acquittal; double jeopardy*. — When an accused has been convicted or acquitted, or the case against him dismissed or otherwise terminated without his express consent by a court of competent jurisdiction, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the conviction or acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for the offense charged, or for any attempt to commit the same or frustration thereof, or for any offense which necessarily includes or is necessarily included in the offense charged in the former complaint or information.

The rule on double jeopardy, however, is not without exceptions. In *People v. Laguio, Jr.*,[30] this Court stated that the only instance when double jeopardy will not attach is when the RTC acted with grave abuse of discretion, thus:

> **x x x The only instance when double jeopardy will not attach is when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction, such as where the prosecution was denied the opportunity to present its case or where the trial was a sham**. However, while certiorari may be availed of to correct an erroneous acquittal, the petitioner in such an extraordinary proceeding must clearly demonstrate that the trial court blatantly abused its authority to a point so grave as to deprive it of its very power to dispense justice.[31]

After an extensive review of previous Court decisions relevant to herein petition, this Court finds that the abovementioned exception is inapplicable to the factual milieu herein. This Court finds that the RTC did not abuse its discretion in the manner it conducted the proceedings of the trial, as well as its grant of respondent's demurrer to evidence.

Grave abuse of discretion defies exact definition, but it generally refers to "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be patent and gross as to amount to an evasion of 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.[32]

In *Galman v. Sandiganbayan*,[33] this Court ruled that the prosecution was denied due process of law when the trial was but a mock trial, to wit:

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[30] G.R. No. 128587, March 16, 2007, 518 SCRA 393.

[31] *Id.* at 408, citing *Sanvicente v. People*, 441 Phil. 139 (2002). (Emphasis supplied.)

[32] *People v. Court of Appeals*, 368 Phil. 169, 180 (1999).

[33] No. 72670, September 12, 1986, 144 SCRA 43.

More so does the rule against the invoking of double jeopardy hold in the cases at bar where as we have held, the sham trial was but a mock trial where the authoritarian president ordered respondents Sandiganbayan and Tanodbayan to rig the trial and closely monitored the entire proceedings to assure the predetermined final outcome of acquittal and total absolution as innocent of all the respondents-accused.[34]

In addition, in *People v. Bocar*,[35] this Court ruled that there is no double jeopardy when the prosecution was not allowed to complete its presentation of evidence by the trial court, to wit:

It is evident from the brief transcript of the proceedings held on July 7, 1967 that the parties were not placed under oath before they answered the queries of the respondent Judge (pp. 11-17, rec.). Verily, no evidence in law had as yet been entered into the records of the case before respondent Court. Respondent Court's issuance of the questioned dismissal order was arbitrary, whimsical and capricious, a veritable abuse of discretion which this Court cannot permit.

Moreover, it is clear from the same transcript that the prosecution never had a chance to introduce and offer its evidence formally in accordance with the Rules of Court (pp. 11-17, rec.). Verily, the prosecution was denied due process.

Where the prosecution is deprived of a fair opportunity to prosecute and prove its case, its right to due process is thereby violated. x x x[36]

Likewise, in *People v. Judge Albano*,[37] this Court held that there is no double jeopardy when the trial court preemptively dismissed the case, thus:

The trial court exceeded its jurisdiction when it practically held that the prosecution failed to establish the culpability of the accused in a proceeding which does not even require the prosecution to do

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[34] *Id.* at 87.

[35] No. L- 27935, August 16, 1985, 138 SCRA 166.

[36] *Id.* at 170.

[37] 246 Phil. 530 (1988).

so. It acted with grave abuse of discretion, tantamount to lack of jurisdiction, when it preemptively dismissed the cases and, as a consequence thereof, deprived the prosecution of its right to prosecute and prove its case, thereby violating its fundamental right to due process." With this violation, its Orders, dated 28 October 1976 and 20 December 1976, are therefore null and void. Likewise, for being null and void, said orders cannot constitute a proper basis for a claim of double jeopardy.[38]

In *Saldana v. Court of Appeals*,[39] this Court ruled that the prosecution's right to due process is violated when the trial court aborted its right to complete its presentation of evidence, thus:

> The order of the Court of Appeals reinstating the criminal case for further hearing by the trial court does not violate the rule on double jeopardy. One of the elements of double jeopardy is a competent court. The trial court in this case was ousted from its jurisdiction when it violated the right of the prosecution to due process by aborting its right to complete the presentation of its evidence. Hence, the first jeopardy had not been terminated. The remand of the case for further hearing or trial is merely a continuation of the first jeopardy. It does not expose the accused to a second jeopardy. x x x[40]

Thus, the question to be resolved, given the factual molding of herein petition, is "did the RTC violate petitioner's right to due process?" On this note, this Court rules that petitioner was given more than ample opportunity to present its case as gleaned from the factual antecedents which led to the grant of respondent's demurrer.

On September 18, 2001, petitioner completed its presentation of evidence and, on the day after, filed its formal offer of evidence. On January 21, 2002, respondent filed an opposition to petitioner's formal offer. Instead of filing a reply as directed by the RTC, petitioner filed a "Motion to Withdraw Prosecution's Formal

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[38] *Id.* at 543.

[39] G.R. No. 88889, October 11, 1990, 190 SCRA 396.

[40] *Id.* at 402.

Offer of Evidence and to Re-open Presentation of Evidence."[41] Said motion was granted by the RTC and petitioner thus continued its presentation of evidence.

On January 28, 2003, petitioner ended its presentation of additional witnesses and was then ordered by the RTC to formally offer its exhibits. On February 26, 2003, petitioner filed a request for marking of certain documents and motion to admit attached formal offer of evidence.[42] The motion was initially denied by the RTC, but on motion for reconsideration the same was granted by the RTC. The RTC, thus, ordered petitioner to file anew its formal offer of evidence. Finally, on November 24, 2003, petitioner filed its Formal Offer of Evidence.[43]

After respondent filed its Demurer to Evidence, the RTC, in an Order dated January 29, 2004, directed petitioner to file its opposition thereto. On February 18, 2004, petitioner filed its Opposition[44] to the demurrer.

Based on the foregoing, it is clear that the RTC never prevented petitioner from presenting its case. Unlike in *Bocar* and *Saldana* where the prosecution was prevented from completing its presentation of evidence, petitioner was given the opportunity to present its case, formally offer its evidence and oppose respondent's demurrer. It even bears to point out that the RTC even allowed petitioner to withdraw its formal offer of evidence after having initially rested its case and then continue its presentation by introducing additional witnesses. Thus, no grave abuse can be attributed to the RTC as petitioner's right to due process was not violated. Even *Galman* finds no application to the case at bar as clearly such trial cannot be considered a sham based on the abovementioned considerations.

Petitioner argues that the RTC displayed resolute bias when it chose to grant respondent's demurrer to evidence

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[41] *Rollo,* pp. 80-84.

[42] *Id.* at 85-87 (with attachments).

[43] *Id.* at 94-98.

[44] *Id.* at 125-142.

notwithstanding that it had filed a "Motion to Hold in Abeyance the Resolution of Accused Dante Tan's Demurrer to Evidence and The Prosecution's Opposition Thereto."[45] Petitioner contends that instead of acting on the motion, the RTC peremptorily granted respondent's demurrer to evidence which prevented petitioner from its intention to file a petition for *certiorari* to question the December 11, 2003 and January 27, 2004 Orders of the RTC.

While it would have been ideal for the RTC to hold in abeyance the resolution of the demurrer to evidence, nowhere in the rules, however, is it mandated to do so. Furthermore, even if this Court were to consider the same as an error on the part of the RTC, the same would merely constitute an error of procedure or of judgment and not an error of jurisdiction as persistently argued by petitioner. Errors or irregularities, which do not render the proceedings a nullity, will not defeat a plea of *antrefois acquit*.[46] We are bound by the dictum that whatever error may have been committed effecting the dismissal of the case cannot now be corrected because of the timely plea of double jeopardy.[47] To reiterate, the only instance when double jeopardy will not attach is when the trial court acted with grave abuse of discretion amounting to lack or excess of jurisdiction which cannot be attributed to the RTC simply because it chose not to hold in abeyance the resolution of the demurrer to evidence. Consequently, petitioner's attempt to put in issue the December 11, 2003 and January 27, 2004 Orders of the RTC which denied admission of certain documentary exhibits in evidence must fail. As correctly manifested by the CA, the said Orders have already been overtaken

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[45] *Id.* at 143-146.

[46] *People v. Hernando*, No. 55213, October 9, 1981, 108 SCRA 121, 131.

[47] *Commission on Elections v. Court of Appeals*, G.R. No. 108120, January 26, 1994, 229 SCRA 501, 507, citing *People v. Francisco*, 128 SCRA 110 (1984); *People v. City Court of Silay*, 74 SCRA 247 (1976); *City Fiscal of Cebu v. Kintanar*, 32 SCRA 601 (1970); *People v. Nieto*, 103 Phil. 1133 (1958).

by the March 16, 2004 Order, which already granted respondent's demurrer to evidence. Hence, this Court would be violating the rules on double jeopardy if the twin orders were to be reviewed after a finding that the CA did not commit any grave abuse of discretion in granting the demurrer to evidence.

Lastly, even if this Court were to review the action taken by the RTC in granting the demurrer to evidence, no grave abuse can be attributed to it as it appears that the 29-page Order granting the demurrer was arrived at after due consideration of the merits thereto. As correctly observed by the CA, the RTC extensively discussed its position on the various issues brought to contention by petitioner. One of the main reasons for the RTC's decision to grant the demurrer was the absence of evidence to prove the classes of shares that the Best World Resources Corporation stocks were divided into, whether there are preferred shares as well as common shares, or even which type of shares respondent had acquired, thus:

> To secure conviction for the violations of RSA Secs. 32 (a-1) and 36 (a), it is necessary to prove the following: (1) the BW Resources Corporation ("BW") has equity securities registered under the Revised Securities Act; [2] that the equity securities of BW Resources Corporation are divided into classes, and that these classes are registered pursuant to the Revised Securities Act; (3) the number of shares of BW Resources Corporation (authorized the number of shares of BW Resources (authorized capital stock) and the total number of shares per class of stock; (4) the number of shares of a particular class of BW stock acquired by the accused; (5) the fact of the exact date, the accused [becomes] the beneficial owner of ten (10%) percent of a particular class of BW shares; and (6) the fact, the accused failed to disclose his ten (10%) percent ownership within ten days from becoming such owner.
>
> **It is very clear from the evidence formally offered, that the foregoing facts were not proven or established. These cases were for Violations of RSA Rule 32 (a)-1 and Section 56 of Revised Securities Act, however, it is very surprising that the prosecution never presented in evidence the Article of Incorporation of BW Resources Corporation. This document is very vital and is the key to everything, including the conviction of the accused.**

Without the Article of Incorporation, the Court has no way of knowing the capitalization authorized capital stock of the BW Resources Corporation, the classes of shares into which its stock is divided and the exact holdings of Dante Tan in the said corporation. Its not being a prosecution's evidence renders impossible the determination of the ten (10%) percent beneficial ownership of accused Dante Tan, as there is no focal point to base the computation of his holdings, and the exact date of his becoming an owner of ten (10%) percent.[48]

There is no showing that the conclusions made by the RTC on the sufficiency of the evidence of the prosecution at the time the prosecution rested its case, is manifestly mistaken. Assuming, however, that there is an error of judgment on the denial of admission of certain exhibits of the prosecution and the appreciation of the prosecution's case, there is to this Court's mind, no capricious exercise of judgment that would overcome the defense of double jeopardy.

Withal, it bears to stress that the fundamental philosophy behind the constitutional proscription against double jeopardy is to afford the defendant, who has been acquitted, final repose and safeguard him from government oppression through the abuse of criminal processes.[49] While petitioner insists that the RTC acted with grave abuse of discretion, this Court finds that none can be attributed to the RTC. Consequently, the CA did not err when it affirmed the assailed Orders of the RTC.

On a final note, this Court is aware of this Court's Third Division Decision dated April 21, 2009 entitled *Dante Tan v. People of the Philippines*[50] wherein respondent argued that his right to a speedy trial was violated by the prosecution. This Court denied the petition and ruled for the remand of the case to the RTC for further proceedings. It must be pointed out that

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[48] *Rollo*, pp. 49-50. (Emphasis supplied.)

[49] *People of the Philippines v. Court of Appeals*, 468 Phil. 1, 13 (2004).

[50] G.R. No. 173637.

said decision involves Criminal Case No. 119830,[51] which is distinct and separate from Criminal Case No. 119831 and Criminal Case No. 119832 which are the subject matter of herein petition. Thus, the resolution of the case at bar is without prejudice to the proceedings that are being conducted in Criminal Case No. 119830 at whatever stage it may be.

WHEREFORE, premises considered, the petition is *DENIED*. The June 14, 2004 Resolution and February 24, 2005 Resolution of the Court of Appeals, in CA-G.R. SP No. 83433 are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Bersamin,[*] *Abad,* and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 168583. July 26, 2010]

ATTY. ALLAN S. MONTAÑO, *petitioner, vs.* **ATTY. ERNESTO C. VERCELES,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; BUREAU OF LABOR RELATIONS (BLR); HAVE

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[51] Criminal Case No. 119830 pertains to allegations that Dante Tan employed manipulative devises in the purchase of Best World Resources Corporation (BW) shares.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per Raffle dated July 19, 2010.

CONCURRENT JURISDICTION WITH THE REGIONAL DIRECTORS OF THE DEPARTMENT OF LABOR OVER INTER-UNION AND INTRA-UNION DISPUTES.— Section 226 of the Labor Code clearly provides that the BLR and the Regional Directors of DOLE have concurrent jurisdiction over inter-union and intra-union disputes. Such disputes include the conduct or nullification of election of union and workers' association officers. There is, thus, no doubt as to the BLR's jurisdiction over the instant dispute involving member-unions of a federation arising from disagreement over the provisions of the federation's constitution and by-laws. We agree with BLR's observation that: Rule XVI lays down the decentralized intra-union dispute settlement mechanism. Section 1 states that any complaint in this regard 'shall be filed in the Regional Office where the union is domiciled.' The concept of domicile in labor relations regulation is equivalent to the place where the union seeks to operate or has established a geographical presence for purposes of collective bargaining or for dealing with employers concerning terms and conditions of employment. The matter of venue becomes problematic when the intra-union dispute involves a federation, because the geographical presence of a federation may encompass more than one administrative region. Pursuant to its authority under Article 226, this Bureau exercises original jurisdiction over intra-union disputes involving federations. It is well-settled that FFW, having local unions all over the country, operates in more than one administrative region. Therefore, this Bureau maintains original and exclusive jurisdiction over disputes arising from any violation of or disagreement over any provision of its constitution and by-laws.

2. ID.; ID.; ID.; EXHAUSTION OF REMEDIES WITHIN THE UNION, PROPERLY MADE; PETITION TO ANNUL ELECTION WITH THE BLR, NOT PREMATURELY FILED.— It is true that under the Implementing Rules, redress must first be sought within the organization itself in accordance with its constitution and by-laws. However, this requirement is not absolute but yields to exception under varying circumstances. In the case at bench, Atty. Verceles made his protest over Atty. Montaño's candidacy during the plenary session before the holding of the election proceedings. The FFW COMELEC, notwithstanding its reservation and despite

objections from certain convention delegates, allowed Atty. Montaño's candidacy and proclaimed him winner for the position. Under the rules, the committee on election shall endeavor to settle or resolve all protests during or immediately after the close of election proceedings and any protest left unresolved shall be resolved by the committee within five days after the close of the election proceedings. A day or two after the election, Atty. Verceles made his written/formal protest over Atty. Montaño's candidacy/proclamation with the FFW COMELEC. He exhausted the remedies under the constitution and by-laws to have his protest acted upon by the proper forum and even asked for a formal hearing on the matter. Still, the FFW COMELEC failed to timely act thereon. Thus, Atty. Verceles had no other recourse but to take the next available remedy to protect the interest of the union he represents as well as the whole federation, especially so that Atty. Montaño, immediately after being proclaimed, already assumed and started to perform the duties of the position. Consequently, Atty. Verceles properly sought redress from the BLR so that the right to due process will not be violated. To insist on the contrary is to render the exhaustion of remedies within the union as illusory and vain.

3. REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR RECONSIDERATION; NEW ISSUES CANNOT BE RAISED FOR THE FIRST TIME THEREON.— Atty. Montaño accuses Atty. Verceles of violating the rules on forum shopping. We note however that this issue was only raised for the first time in Atty. Montaño's motion for reconsideration of the Decision of the CA, hence, the same deserves no merit. It is settled that new issues cannot be raised for the first time on appeal or on motion for reconsideration. While this allegation is related to the ground of forum shopping alleged by Atty. Montaño at the early stage of the proceedings, the latter, as a ground for the dismissal of actions, is separate and distinct from the failure to submit a proper certificate against forum shopping.

4. POLITICAL LAW; JUDICIAL DEPARTMENT; POWER OF JUDICIAL REVIEW; MOOT AND ACADEMIC CASES; THERE IS NECESSITY TO RESOLVE THE CASE DESPITE THE ISSUES HAVING BECOME MOOT IF SUCH ISSUES ARE CAPABLE OF REPETITION YET EVADING REVIEW, AS IN THE PRESENT CASE.— During the pendency of this

case, the challenged term of office held and served by Atty. Montaño expired in 2006, thereby rendering the issues of the case moot. In addition, Atty. Verceles' appointment in 2003 as NLRC Commissioner rendered the case moot as such supervening event divested him of any interest in and affiliation with the federation in accordance with Article 213 of the Labor Code. However, in a number of cases, we still delved into the merits notwithstanding supervening events that would ordinarily render the case moot, if the issues are *capable of repetition, yet evading review*, as in this case. As manifested by Atty. Verceles, Atty. Montaño ran and won as FFW National President after his challenged term as FFW National Vice-President had expired. It must be stated at this juncture that the legitimacy of Atty. Montaño's leadership as National President is beyond our jurisdiction and is not in issue in the instant case. The only issue for our resolution is petitioner's qualification to run as FFW National Vice-President during the May 26-27, 2001 elections. We find it necessary and imperative to resolve this issue not only to prevent further repetition but also to clear any doubtful interpretation and application of the provisions of FFW Constitution & By-laws in order to ensure credible future elections in the interest and welfare of affiliate unions of FFW.

5. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; OMNIBUS RULES IMPLEMENTING THE LABOR CODE; THE COMMITTEE ON ELECTION IS THE FINAL ARBITER OF ALL ELECTION PROTESTS.— To begin with, FFW COMELEC is vested with authority and power, under the FFW Constitution and By-Laws, to screen candidates and determine their qualifications and eligibility to run in the election and to adopt and promulgate rules concerning the conduct of elections. Under the Rules Implementing the Labor Code, the Committee shall have the power to prescribe rules on the qualification and eligibility of candidates and such other rules as may facilitate the orderly conduct of elections. The Committee is also regarded as the final arbiter of all election protests. From the foregoing, FFW COMELEC, undeniably, has sufficient authority to adopt its own interpretation of the explicit provisions of the federation's constitution and by-laws and unless it is shown to have committed grave abuse of discretion, its decision and ruling will not be interfered with.

The FFW Constitution and By-laws are clear that no member of the Governing Board shall at the same time perform functions of the rank-and-file staff. The BLR erred in disregarding this clear provision. The FFW COMELEC's ruling which considered Atty. Montaño's candidacy in violation of the FFW Constitution is therefore correct. We, thus, concur with the CA that Atty. Montaño is not qualified to run for the position but not for failure to meet the requirement specified under Section 26 (d) of Article VIII of FFW Constitution and By-Laws. We note that the CA's declaration of the illegitimate status of FFW Staff Association is proscribed by law, owing to the preclusion of collateral attack. We nonetheless resolve to affirm the CA's finding that Atty. Montaño is disqualified to run for the position of National Vice-President in view of the proscription in the FFW Constitution and By-Laws on federation employees from sitting in its Governing Board. Accordingly, the election of Atty. Montaño as FFW Vice-President is null and void.

APPEARANCES OF COUNSEL

Estrada and Associates Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The Federation/Union's Constitution and By-Laws govern the relationship between and among its members. They are akin to ordinary contracts in that their provisions have obligatory force upon the federation/ union and its member. What has been expressly stipulated therein shall be strictly binding on both.

By this Petition for Review on *Certiorari*,[1] petitioner Atty. Allan S. Montaño (Atty. Montaño) assails the Decision[2]

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[1] *Rollo*, pp. 3-47.

[2] *Id.* at 48-62; penned by Associate Justice Perlita J. Tria Tirona and concurred in by Associate Justices Conrado M. Vasquez, Jr. and Jose C. Reyes, Jr.

dated May 28, 2004 and Resolution[3] dated June 28, 2005 of the Court of Appeals (CA) in CA-G.R. SP No. 71731, which declared as null and void his election as the National Vice-President of Federation of Free Workers (FFW), thereby reversing the May 8, 2002 Decision[4] of the Bureau of Labor Relations (BLR) in BLR-O-TR-66-7-13-01.

Factual Antecedents

Atty. Montaño worked as legal assistant of FFW Legal Center on October 1, 1994.[5] Subsequently, he joined the union of rank-and-file employees, the FFW Staff Association, and eventually became the employees' union president in July 1997. In November 1998, he was likewise designated officer-in-charge of FFW Legal Center.[6]

During the 21st National Convention and Election of National Officers of FFW, Atty. Montaño was nominated for the position of National Vice-President. In a letter dated May 25, 2001,[7] however, the Commission on Election (FFW COMELEC), informed him that he is not qualified for the position as his candidacy violates the 1998 FFW Constitution and By-Laws, particularly Section 76 of Article XIX[8] and Section 25 (a) of Article VIII,[9] both in Chapter II thereof. Atty. Montaño thus

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[3] *Id.* at 82-85.

[4] *Id.* at 113-119; penned by BLR Director Hans Leo J. Cacdac.

[5] *Id.* at 141.

[6] *Id.* at 139.

[7] *Id.* at 140.

[8] Section *76*. Except as otherwise provided in this Constitution, no Member of the Governing Board shall at the same time be an employee in the staff of the Federation. (see 1998 FFW Constitution & By-Laws, CA *rollo*, pp. 53-70.)

[9] Section *25*. A Candidate/Nominee for the position of Governing Board Member, whether Titular or Deputy shall, except as otherwise provided in this Constitution, possess the following qualifications:

a. he/she must be a bonafide member of the Federation for at least two (2) consecutive years and a member of an affiliated organization which is up

filed an Urgent Motion for Reconsideration[10] praying that his name be included in the official list of candidates.

Election ensued on May 26-27, 2001 in the National Convention held at Subic International Hotel, Olongapo City. Despite the pending motion for reconsideration with the FFW COMELEC, and strong opposition and protest of respondent Atty. Ernesto C. Verceles (Atty. Verceles), a delegate to the convention and president of University of the East Employees' Association (UEEA-FFW) which is an affiliate union of FFW, the convention delegates allowed Atty. Montaño's candidacy. He emerged victorious and was proclaimed as the National Vice-President.

On May 28, 2001, through a letter[11] to the Chairman of FFW COMELEC, Atty. Verceles reiterated his protest over Atty. Montaño's candidacy which he manifested during the plenary session before the holding of the election in the Convention. On June 18, 2001, Atty. Verceles sent a follow-up letter[12] to the President of FFW requesting for immediate action on his protest.

Proceedings before the Bureau of Labor Relations

On July 13, 2001, Atty. Verceles, as President of UEEA-FFW and officer of the Governing Board of FFW, filed before the BLR a petition[13] for the nullification of the election of Atty. Montaño as FFW National Vice-President. He alleged that, as already ruled by the FFW COMELEC, Atty. Montaño is not qualified to run for the position because Section 76 of Article XIX of the FFW Constitution and By-Laws prohibits federation employees from sitting in its Governing Board. Claiming that Atty. Montaño's premature assumption of duties and formal

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to date with its monthly dues to the Federation. (see 1998 FFW Constitution and By-Laws, *id.*)

[10] *Rollo*, pp. 142-147.

[11] *Id.* at 175.

[12] *Id.* at 176.

[13] *Id.* at 155-161.

induction as vice-president will cause serious damage, Atty. Verceles likewise prayed for injunctive relief.[14]

Atty. Montaño filed his Comment with Motion to Dismiss[15] on the grounds that the Regional Director of the Department of Labor and Employment (DOLE) and not the BLR has jurisdiction over the case; that the filing of the petition was premature due to the pending and unresolved protest before the FFW COMELEC; and that, Atty. Verceles has no legal standing to initiate the petition not being the real party in interest.

Meanwhile, on July 16, 2001, the FFW COMELEC sent a letter to FFW National President, Bro. Ramon J. Jabar, in reference to the election protest filed before it by Atty. Verceles. In this correspondence, which was used by Atty. Verceles as an additional annex to his petition before the BLR, the FFW COMELEC intimated its firm stand that Atty. Montaño's candidacy contravenes the FFW's Constitution, by stating:

> At the time Atty. Verceles lodged his opposition in the floor before the holding of the election, we, the Comelec unanimously made the decision that Atty. Montaño and others are disqualified and barred from running for any position in the election of the Federation, in view of pertinent provisions of the FFW Constitution.
>
> Our decision which we repeated several times as final was however further deliberated upon by the body, which then gave the go signal for Atty. Montaño's candidacy notwithstanding our decision barring him from running and despite the fact that several delegates took the floor [stating] that the convention body is not a constitutional convention body and as such could not qualify to amend the FFW's present constitution to allow Atty. Montaño to run.
>
> We would like to reiterate what we stated during the plenary session that our decision was final in view of the cited pertinent provisions of the FFW Constitution and we submit that the decision of the convention body in allowing Atty. Montaño's candidacy is not valid in view of the fact that it runs counter to the FFW Constitution and

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[14] *Id.* at 162.

[15] *Id.* at 167-174.

the body at that time was not acting as a Constitutional Convention body empowered to amend the FFW Constitution on the spot.

Our having conducted the election does not depart from the fact that we did not change our decision disqualifying candidates such as Atty. Allan S. Montaño, and others from running. The National Convention as a co-equal constitutional body of the Comelec was not given the license nor the authority to violate the Constitution. It therefore, cannot reverse the final decision of the Comelec with regard to the candidacy of Atty. Allan Montaño and other disqualified candidates.[16]

The BLR, in its Order dated August 20, 2001,[17] did not give due course to Atty. Montaño's Motion to Dismiss but ordered the latter to submit his answer to the petition pursuant to the rules. The parties thereafter submitted their respective pleadings and position papers.

On May 8, 2002, the BLR rendered a Decision[18] dismissing the petition for lack of merit. While it upheld its jurisdiction over the intra-union dispute case and affirmed, as well, Atty. Verceles' legal personality to institute the action as president of an affiliate union of FFW, the BLR ruled that there were no grounds to hold Atty. Montaño unqualified to run for National Vice-President of FFW. It held that the applicable provision in the FFW Constitution and By-Laws to determine whether one is qualified to run for office is not Section 76 of Article XIX[19] but Section 26 of Article VIII[20] thereof. The BLR opined that

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[16] FFW COMELEC letter dated July 16, 2001. *Id.* at 151-152.

[17] *Id.* at 191.

[18] *Id.* at 113-119.

[19] *Supra* note 8.

[20] Section 26. A candidate for the position of National President, National Vice-President, and National Treasurer shall possess the following qualifications:

a. a candidate must be a bonafide member of the Federation for at least two (2) consecutive years;

b. a candidate must be of good moral character and has not been convicted by a final judgment of a crime involving moral turpitude before a candidate's election to office or during a candidate's incumbency;

there was sufficient compliance with the requirements laid down by this applicable provision and, besides, the convention delegates unanimously decided that Atty. Montaño was qualified to run for the position of National Vice-President.

Atty. Verceles filed a Motion for Reconsideration but it was denied by the BLR.

Proceedings before the Court of Appeals

Atty. Verceles thus elevated the matter to the CA *via* a petition for *certiorari*,[21] arguing that the Convention had no authority under the FFW Constitution and By-Laws to overrule and set aside the FFW COMELEC's Decision rendered pursuant to the latter's power to screen candidates.

On May 28, 2004, the CA set aside the BLR's Decision. While it agreed that jurisdiction was properly lodged with the BLR, that Atty. Verceles has legal standing to institute the petition, and that the applicable provision of FFW Constitution and By-Laws is Section 26 of Article VIII and not Section 76 of Article XIX, the CA however ruled that Atty. Montaño did not possess the qualification requirement under paragraph (d) of Section 26 that candidates must be an officer or member of a legitimate labor organization. According to the CA, since Atty. Montaño, as legal assistant employed by FFW, is considered as confidential employee, consequently, he is ineligible to join FFW Staff Association, the rank-and-file union of FFW. The CA, thus, granted the petition and nullified the election of Atty. Montaño as FFW National Vice-President.

Atty. Montaño moved for reconsideration claiming that the CA seriously erred in granting Atty. Verceles' petition on the

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c. except the Treasurer, a candidate must serve the Federation full time for the period of his/her incumbency;

d. a candidate for National President and National Vice-President must be or must have been an officer or member of a legitimate labor organization in the FFW for at least three (3) years. A legitimate labor organization shall mean a duly registered labor union as defined by the Labor Code as Amended. (see 1998 FFW Constitution & By-Laws, CA *rollo*, pp. 53-70.)

[21] *Id.* at 2-24.

ground that FFW Staff Association, of which he is an officer and member, is not a legitimate labor organization. He asserted that the legitimacy of the union was never raised as an issue. Besides, the declaration of the CA that FFW Staff Association is not a legitimate labor organization amounts to a collateral attack upon its legal personality, which is proscribed by law. Atty. Montaño also reiterated his allegations of lack of jurisdiction and lack of cause of action due to a pending protest. In addition, he claimed violation of the mandatory requirement on certification against forum shopping and mootness of the case due to the appointment of Atty. Verceles as Commissioner of the National Labor Relations Commission (NLRC), thereby divesting himself of interest in any matters relating to his affiliation with FFW.

Believing that it will be prejudiced by the CA Decision since its legal existence was put at stake, the FFW Staff Association, through its president, Danilo A. Laserna, sought intervention.

On June 28, 2005, the CA issued a Resolution[22] denying both Atty. Montaño's motion for reconsideration[23] and FFW Staff Association's motion for intervention/clarification.[24]

Issues

Hence, this petition anchored on the following grounds:

I.

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, IN RENDERING THE ASSAILED DECISION, IN THAT:

A.) THE SOLE GROUND USED AND/OR INVOKED IN GRANTING THE PETITION *A QUO* WAS NOT EVEN RAISED AND/OR INVOKED BY PETITIONER;

B.) THE DECLARATION THAT "FFW STAFF ASSOCIATION IS NOT A LEGITIMATE LABOR ORGANIZATION,"

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[22] *Rollo*, pp. 82-85.

[23] *Id.* at 63-80.

[24] *Id.* at 278-292.

WITHOUT GIVING SAID ORGANIZATION A 'DAY IN COURT' AMOUNTS TO A COLLATERAL ATTACK PROSCRIBED UNDER THE LAW; AND

C.) THE COURT OF APPEALS FAILED AND/OR REFUSED TO PASS UPON OTHER LEGAL ISSUES WHICH HAD BEEN TIMELY RAISED, SPECIFICALLY ON THE PREMATURITY OF THE COMPLAINT AND THE LACK OF CERTIFICATION AGAINST FORUM SHOPPING OF THE PETITION *A QUO*.

II.

THE COURT OF APPEALS ERRED IN UPHOLDING THE EXERCISE OF JURISDICTION BY HEREIN RESPONDENT BUREAU AND IN NOT ORDERING THE DISMISSAL OF THE CASE, DESPITE EXPRESS PROVISION OF LAW GRANTING SAID JURISDICTION OVER CASES INVOLVING *PROTESTS AND PETITIONS FOR ANNULMENT OF RESULTS OF ELECTIONS* TO THE REGIONAL DIRECTORS OF THE DEPARTMENT OF LABOR AND EMPLOYMENT.

III.

IN THE ALTERNATIVE, THE COURT OF APPEALS LIKEWISE ERRED IN NOT ORDERING THE DISMISSAL OF THE PETITION *A QUO*, IN THAT:

A.) THE FILING OF THE PETITION FOR NULLIFICATION OF THE RESULT OF ELECTION IS PREMATURE, IN VIEW OF PENDENCY OF HEREIN RESPONDENT ATTY. VERCELES' PROTEST BEFORE THE COMMISSION ON ELECTION OF THE FEDERATION OF FREE WORKERS (FFW COMELEC) AT THE TIME OF THE FILING OF THE SAID PETITION, HENCE, HE HAS NO CAUSE OF ACTION; AND

B.) HEREIN RESPONDENT ATTY. VERCELES HAS VIOLATED SECTION 5, RULE 7 OF THE 1997 RULES ON CIVIL PROCEDURE, AS HIS PETITION *A QUO* HAS NO CERTIFICATION AGAINST FORUM SHOPPING, WHICH IS A MANDATORY REQUIREMENT. IT IS ALSO IN UTTER DISREGARD AND IN GROSS VIOLATION OF SUPREME COURT CIRCULAR NO. 04-94.

IV.

FINALLY, *ASSUMING ARGUENDO* THAT HEREIN RESPONDENT BUREAU ACTED WITH JURISDICTION OVER THE CASE; AND *ASSUMING FURTHER* THAT HEREIN RESPONDENT ATTY. VERCELES HAS A CAUSE OF ACTION, DESPITE THE PENDENCY OF HIS PROTEST BEFORE FFW'S COMELEC AT THE TIME HE FILED HIS PETITION *A QUO;* AND *ASSUMING FINALLY,* THAT HEREIN RESPONDENT ATTY. VERCELES BE EXCUSED IN DISREGARDING THE MANDATORY REQUIREMENT ON CERTIFICATION AGAINST FORUM SHOPPING WHICH WAS TIMELY OBJECTED TO, THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION, AMOUNTING TO LACK AND/OR EXCESS OF JURISDICTION, IN NOT ORDERING THE DISMISSAL OF THE CASE FOR HAVING BEEN RENDERED MOOT AND ACADEMIC BY A SUPERVENING EVENT –THAT WAS, WHEN HEREIN RESPONDENT ATTY. VERCELES SOUGHT APPOINTMENT AND WAS APPOINTED AS COMMISSIONER OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), THUS, DIVESTING HIMSELF WITH ANY INTEREST WITH MATTERS RELATING TO HIS FORMER MEMBERSHIP AND AFFILIATION WITH THE FEDERATION OF FREE WORKERS (FFW), HENCE, HE IS NO LONGER A REAL PARTY IN INTEREST, AS HE DOES NOT STAND TO BE INJURED OR BENEFITED BY THE JUDGMENT IN THE INSTANT CASE.[25]

Atty. Montaño contends that the CA gravely erred in upholding the jurisdiction of the BLR; in not declaring as premature the petition in view of the pending protest before FFW COMELEC; in not finding that the petition violated the rule on non-forum shopping; in not dismissing the case for being moot in view of the appointment of Atty. Verceles as NLRC Commissioner; and in granting the petition to annul his election as FFW National Vice-President on the ground that FFW Staff Association is not a legitimate labor organization.

Our Ruling

The petition is devoid of merit.

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[25] *Id.* at 19-21.

The BLR has jurisdiction over intra-union disputes involving a federation.

We find no merit in petitioner's claim that under Section 6 of Rule XV[26] in relation to Section 1 of Rule XIV[27] of Book V of the Omnibus Rules Implementing the Labor Code, it is the Regional Director of the DOLE and not the BLR who has jurisdiction over election protests.

Section 226 of the Labor Code[28] clearly provides that the BLR and the Regional Directors of DOLE have concurrent jurisdiction over inter-union and intra-union disputes. Such disputes include the conduct or nullification of election of union and workers' association officers.[29] There is, thus, no doubt as to the BLR's jurisdiction over the instant dispute involving member-unions of a federation arising from disagreement over the provisions of the federation's constitution and by-laws.

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[26] SEC. 6. *Protests and petitions for annulment of election results***. –** Protests or petitions for annulment of the result of an election shall be filed with and acted upon by the Regional Director in accordance with the provisions prescribed in Rule XIV of this Book. No protest or petition shall be entertained by the Regional Director unless the issue raised has been resolved by the committee.

[27] SEC 1. *Complaint; who may file***. –** Any member of a union may file with the Regional Director a complaint for any violation of the constitution and by-laws and the rights and conditions of membership under Article 241 of the Code. x x x. Such complaint shall be filed in the Regional Office where the union is domiciled.

[28] ART. 226. BUREAU OF LABOR RELATIONS. – The Bureau of Labor Relations and the Labor Relations Divisions in the regional offices of the Department of Labor shall have original and exclusive authority to act, at their own initiative or upon request of either or both parties, on all inter-union and intra-union conflicts, and all disputes, grievances or problems arising from or affecting labor-management relations in all workplaces whether agricultural or nonagricultural, except those arising from the implementation or interpretation of collective bargaining agreements which shall be the subject of grievance procedure and/or voluntary arbitration.

x x x x x x x x x.

[29] See OMNIBUS RULES IMPLEMENTING THE LABOR CODE, Book V, Rule XI, Section 1.

We agree with BLR's observation that:

> Rule XVI lays down the decentralized intra-union dispute settlement mechanism. Section 1 states that any complaint in this regard 'shall be filed in the Regional Office where the union is domiciled.' The concept of domicile in labor relations regulation is equivalent to the place where the union seeks to operate or has established a geographical presence for purposes of collective bargaining or for dealing with employers concerning terms and conditions of employment.
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> The matter of venue becomes problematic when the intra-union dispute involves a federation, because the geographical presence of a federation may encompass more than one administrative region. Pursuant to its authority under Article 226, this Bureau exercises original jurisdiction over intra-union disputes involving federations. It is well-settled that FFW, having local unions all over the country, operates in more than one administrative region. Therefore, this Bureau maintains original and exclusive jurisdiction over disputes arising from any violation of or disagreement over any provision of its constitution and by-laws.[30]

The petition to annul Atty. Montaño's election as VP was not prematurely filed.

There is likewise no merit to petitioner's argument that the petition should have been immediately dismissed due to a pending and unresolved protest before the FFW COMELEC pursuant to Section 6, Rule XV, Book V of the Omnibus Rules Implementing the Labor Code.[31]

It is true that under the Implementing Rules, redress must first be sought within the organization itself in accordance with its constitution and by-laws. However, this requirement is not absolute but yields to exception under varying circumstances.[32] In the case at bench, Atty. Verceles made his protest over Atty.

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[30] *Rollo*, pp. 115-116.

[31] *Supra* note 26.

[32] *Villar v. Hon. Inciong*, 206 Phil. 366, 381 (1983).

Montaño's candidacy during the plenary session before the holding of the election proceedings. The FFW COMELEC, notwithstanding its reservation and despite objections from certain convention delegates, allowed Atty. Montaño's candidacy and proclaimed him winner for the position. Under the rules, the committee on election shall endeavor to settle or resolve all protests during or immediately after the close of election proceedings and any protest left unresolved shall be resolved by the committee within five days after the close of the election proceedings.[33] A day or two after the election, Atty. Verceles made his written/formal protest over Atty. Montaño's candidacy/proclamation with the FFW COMELEC. He exhausted the remedies under the constitution and by-laws to have his protest acted upon by the proper forum and even asked for a formal hearing on the matter. Still, the FFW COMELEC failed to timely act thereon. Thus, Atty. Verceles had no other recourse but to take the next available remedy to protect the interest of the union he represents as well as the whole federation, especially so that Atty. Montaño, immediately after being proclaimed, already assumed and started to perform the duties of the position. Consequently, Atty. Verceles properly sought redress from the BLR so that the right to due process will not be violated. To insist on the contrary is to render the exhaustion of remedies within the union as illusory and vain.[34]

The allegation regarding certification against forum shopping was belatedly raised.

Atty. Montaño accuses Atty. Verceles of violating the rules on forum shopping. We note however that this issue was only raised for the first time in Atty. Montaño's motion for reconsideration of the Decision of the CA, hence, the same deserves no merit. It is settled that new issues cannot be raised

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[33] OMNIBUS RULES IMPLEMENTING THE LABOR CODE, Book V, Rule XV, Sections 4 and 5.

[34] *Diokno v. Cacdac*, G.R. No. 168475, July 4, 2007, 526 SCRA 440, 458-459.

for the first time on appeal or on motion for reconsideration.[35] While this allegation is related to the ground of forum shopping alleged by Atty. Montaño at the early stage of the proceedings, the latter, as a ground for the dismissal of actions, is separate and distinct from the failure to submit a proper certificate against forum shopping.[36]

There is necessity to resolve the case despite the issues having become moot.

During the pendency of this case, the challenged term of office held and served by Atty. Montaño expired in 2006, thereby rendering the issues of the case moot. In addition, Atty. Verceles' appointment in 2003 as NLRC Commissioner rendered the case moot as such supervening event divested him of any interest in and affiliation with the federation in accordance with Article 213 of the Labor Code. However, in a number of cases,[37] we still delved into the merits notwithstanding supervening events that would ordinarily render the case moot, if the issues are *capable of repetition, yet evading review*, as in this case.

As manifested by Atty. Verceles, Atty. Montaño ran and won as FFW National President after his challenged term as FFW National Vice-President had expired. It must be stated at this juncture that the legitimacy of Atty. Montaño's leadership as National President is beyond our jurisdiction and is not in issue in the instant case. The only issue for our resolution is petitioner's qualification to run as FFW National Vice-President during the May 26-27, 2001 elections. We find it necessary

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[35] *Arceño v. Government Service Insurance System,* G.R. No. 162374, June 18, 2009, 589 SCRA 420, 426.

[36] *Juaban v. Espina,* G.R. No. 170049, March 14, 2008, 548, SCRA 588, 605; *Spouses Melo v. Court of Appeals*, 376 Phil. 204, 213 (1999).

[37] *Province of North Cotabato v. Government of the Republic of the Philippines Peace Panel on Ancestral Domain (GRP),* G.R. No. 183591, October 14, 2008, 568 SCRA 402, 460-461; *Manalo v. Calderon,* G.R. No. 178920, October 15, 2007, 536 SCRA 290, 301; *Albaña v. Commission on Elections*, 478 Phil. 941, 949 (2004); *Gov. Mandanas v. Hon. Romulo,* 473 Phil. 806, 827 (2004).

and imperative to resolve this issue not only to prevent further repetition but also to clear any doubtful interpretation and application of the provisions of FFW Constitution & By-laws in order to ensure credible future elections in the interest and welfare of affiliate unions of FFW.

Atty. Montaño is not qualified to run as FFW National Vice-President in view of the prohibition established in Section 76, Article XIX of the 1998 FFW Constitution and By-Laws.

Section 76, Article XIX of the FFW Constitution and By-laws provides that no member of the Governing Board shall at the same time be an employee in the staff of the federation. There is no dispute that Atty. Montaño, at the time of his nomination and election for the position in the Governing Board, is the head of FFW Legal Center and the President of FFW Staff Association. Even after he was elected, albeit challenged, he continued to perform his functions as staff member of FFW and no evidence was presented to show that he tendered his resignation.[38] On this basis, the FFW COMELEC disqualified Atty. Montaño. The BLR, however, overturned FFW COMELEC's ruling and held that the applicable provision is Section 26 of Article VIII. The CA subsequently affirmed this ruling of the BLR but held Atty. Montaño unqualified for the position for failing to meet the requirements set forth therein.

We find that both the BLR and CA erred in their findings.

To begin with, FFW COMELEC is vested with authority and power, under the FFW Constitution and By-Laws, to screen candidates and determine their qualifications and eligibility to run in the election and to adopt and promulgate rules concerning the conduct of elections.[39] Under the Rules Implementing the

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[38] See FFW Administrative and Communication Staff Certification dated October 13, 2001, *rollo*, p. 153.

[39] Section 56 (c) and (g), Article XIII of the FFW Constitution and By-Laws, CA *rollo*, pp. 53-70.

Labor Code, the Committee shall have the power to prescribe rules on the qualification and eligibility of candidates and such other rules as may facilitate the orderly conduct of elections.[40] The Committee is also regarded as the final arbiter of all election protests.[41] From the foregoing, FFW COMELEC, undeniably, has sufficient authority to adopt its own interpretation of the explicit provisions of the federation's constitution and by-laws and unless it is shown to have committed grave abuse of discretion, its decision and ruling will not be interfered with. The FFW Constitution and By-laws are clear that no member of the Governing Board shall at the same time perform functions of the rank-and-file staff. The BLR erred in disregarding this clear provision. The FFW COMELEC's ruling which considered Atty. Montaño's candidacy in violation of the FFW Constitution is therefore correct.

We, thus, concur with the CA that Atty. Montaño is not qualified to run for the position but not for failure to meet the requirement specified under Section 26 (d) of Article VIII of FFW Constitution and By-Laws. We note that the CA's declaration of the illegitimate status of FFW Staff Association is proscribed by law, owing to the preclusion of collateral attack.[42] We nonetheless resolve to affirm the CA's finding that Atty. Montaño is disqualified to run for the position of National Vice-President in view of the proscription in the FFW Constitution and By-Laws on federation employees from sitting in its Governing Board. Accordingly, the election of Atty. Montaño as FFW Vice-President is null and void.

WHEREFORE, the petition is *DENIED*. The assailed May 28, 2004 Decision of the Court of Appeals in CA-G.R. SP

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[40] OMNIBUS RULES IMPLEMENTING THE LABOR CODE, Book V, Rule XV, Section 2 (b) and (i).

[41] *Id.* Section 2 (g).

[42] *San Miguel Corporation Employees Union-Phil. Transport and General Workers Org. v. San Miguel Packaging Products Employees Union-Pambansang Diwa ng Manggagawang Pilipino,* G.R. No. 171153, September 12, 2007, 533 SCRA 125, 145.

No. 71731 nullifying the election of Atty. Allan S. Montaño as FFW National Vice-President and the June 28, 2005 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. 169999. July 26, 2010]

NEW PUERTO COMMERCIAL and RICHARD LIM, *petitioners, vs.* **RODEL LOPEZ and FELIX GAVAN,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL OF EMPLOYEE; PROCEDURAL DUE PROCESS REQUIREMENTS FOR A VALID DISMISSAL.— In termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.

2. ID.; ID.; ID.; ID.; THERE WAS SUFFICIENT COMPLIANCE WITH THE TWIN REQUIREMENTS OF NOTICE AND

HEARING EVEN IF THE NOTICES WERE SENT AND HEARING CONDUCTED AFTER THE FILING OF THE LABOR COMPLAINT.— The mere fact that the notices were sent to respondents after the filing of the labor complaint does not, by itself, establish that the same was a mere afterthought. The surrounding circumstances of this case adequately explain why the requirements of procedural due process were satisfied only after the filing of the labor complaint. x x x As can be seen, under the peculiar circumstances of this case, it cannot be concluded that the sending of the notices and setting of hearings were a mere afterthought because petitioners were still awaiting the report from Bagasala when respondents pre-empted the results of the ongoing investigation by filing the subject labor complaint. For this reason, there was sufficient compliance with the twin requirements of notice and hearing even if the notices were sent and the hearing conducted after the filing of the labor complaint. Thus, the award of nominal damages by the appellate court is improper.

APPEARANCES OF COUNSEL

Jose Bayani J. Usman for petitioners.
A.L. Tagle Law Office for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

In order to validly dismiss an employee, he must be accorded both substantive and procedural due process by the employer. Procedural due process requires that the employee be given a notice of the charge against him, an ample opportunity to be heard, and a notice of termination. Even if the aforesaid procedure is conducted after the filing of the illegal dismissal case, the legality of the dismissal, as to its procedural aspect, will be upheld provided that the employer is able to show that compliance with these requirements was not a mere afterthought.

This Petition for Review on *Certiorari* seeks to reverse and set aside the Court of Appeal's (CA's) June 2, 2005 Decision[1] in CA-G.R. SP. No. 83577, which affirmed with modification the October 28, 2003 Decision[2] of the National Labor Relations Commission (NLRC) in NCR CA No. 034421-03, and the September 23, 2005 Resolution[3] denying petitioners' motion for partial reconsideration.

Factual Antecedents

Petitioner New Puerto Commercial hired respondent Felix Gavan (Gavan) as a delivery panel driver on February 1, 1999 and respondent Rodel Lopez (Lopez) as roving salesman on October 12, 1999. Petitioner Richard Lim is the operations manager of New Puerto Commercial.

Under a rolling store scheme, petitioners assigned respondents to sell goods stocked in a van on cash or credit to the sari-sari stores of far-flung *barangays* and municipalities outside Puerto Princesa City, Palawan. Respondents were duty-bound to collect the accounts receivables and remit the same upon their return to petitioners' store on a weekly basis.

On November 3, 2000, respondents filed a Complaint[4] for illegal dismissal and non-payment of monetary benefits against petitioners with the Regional Office of the Department of Labor and Employment in Puerto Princesa City. On November 20, 2000, a conciliation conference was held but the parties failed to reach an amicable settlement. As a result, the complaint was endorsed for compulsory arbitration at the Regional Arbitration Branch of the NLRC on February 13, 2001.

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[1] *Rollo*, pp. 22-32; penned by Associate Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Lucas P. Bersamin and Celia C. Librea-Leagogo.

[2] *Id.* at 47-54; penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioner Tito F. Genilo.

[3] *Id.* at 33.

[4] NLRC Records, p. 1.

Previously or on November 28, 2000, petitioners sent respondents notices to explain why they should not be dismissed for gross misconduct based on (1) the alleged misappropriation of their sales collections, and (2) their absence without leave for more than a month. The notice also required respondents to appear before petitioners' lawyer on December 2, 2000 to give their side with regard to the foregoing charges. Respondents refused to attend said hearing.

On December 6, 2000, petitioners filed a complaint for three counts of estafa before the prosecutor's office against respondents in connection with the alleged misappropriation of sales collections.

Thereafter, petitioners sent another set of notices to respondents on December 7, 2000 to attend a hearing on December 15, 2000 but respondents again refused to attend. On December 18, 2000, petitioners served notices of termination on respondents on the grounds of gross misconduct and absence without leave for more than one month.

On February 5, 2001, an information for the crime of estafa was filed by the city prosecutor against respondents with the Municipal Trial Court in Puerto Princesa City.

In due time, the parties submitted their respective position papers.

Labor Arbiter's Ruling

On August 29, 2002, Labor Arbiter Cresencio G. Ramos, Jr. rendered a Decision[5] dismissing the complaint for illegal dismissal but ordering petitioners to pay respondents' proportionate 13th month pay:

WHEREFORE, in the light of the foregoing premises, the above case for illegal dismissal is hereby DISMISSED for being devoid of legal merit. Respondents, however, are directed to pay herein

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[5] *Rollo*, pp. 34-46.

complainants their proportionate 13th month pay for the year 2002[6] [sic] as follows:

(1.) Rodel Lopez- ₱2,998.67

(2.) Felix Gavan- ₱2,998.67

SO ORDERED.[7]

The Labor Arbiter ruled that there is substantial evidence tending to establish that respondents committed the misappropriation of their sales collections from the rolling store business. These acts constituted serious misconduct and formed sufficient bases for loss of confidence which are just causes for termination. The records also showed that respondents were given opportunities to explain their side. Both substantive and procedural due processes were complied with, hence, the dismissal is valid. Petitioners, however, failed to prove that they paid the proportionate amount of 13th month pay due to respondents at the time of their dismissal. Thus, the Labor Arbiter ordered petitioners to pay respondents the same.

National Labor Relations Commission's Ruling

On October 28, 2003, the NLRC rendered a Decision affirming the ruling of the Labor Arbiter, *viz:*

WHEREFORE, the appeal is DENIED. The Decision of the Labor Arbiter dated August 29, 2002 is AFFIRMED *en toto*.

SO ORDERED.[8]

The NLRC agreed with the Labor Arbiter that respondents' act of misappropriating company funds constitutes gross misconduct resulting in loss of confidence. It noted that respondents never denied that (1) they failed to surrender their collections to petitioners, and (2) they stopped reporting for

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[6] Should be year 2000.

[7] *Rollo*, p. 46.

[8] *Id.* at 54.

work during the last week of October 2000. Further, respondents admitted misappropriating the subject collections before the hearing officer of the Palawan labor office during the conciliation conference on November 20, 2000. The NLRC also observed that the investigation on the misappropriation of company funds was not a mere afterthought and complied with the twin-notice rule. Last, it ruled that damages cannot be awarded in favor of respondents because their dismissal was for just causes.

Court of Appeal's Ruling

The CA, in its June 2, 2005 Decision, affirmed with modification the ruling of the NLRC, *viz*:

> WHEREFORE, in view of the foregoing, the Decision of the NLRC dated 29 August 2002[9] is hereby **MODIFIED** in that private respondents are ordered to pay petitioners nominal damages of ₱30,000.00 each. The decision is affirmed in all other respect.
>
> SO ORDERED.[10]

The appellate court held that it was bound by the factual findings of the NLRC because a petition for *certiorari* is limited to issues of want or excess of jurisdiction, or grave abuse of discretion. Thus, the failure of respondents to report for work and their misappropriation of company funds have become settled. These acts constitute grave misconduct which is a valid cause for termination under Article 282 of the Labor Code.

While the dismissal was for just cause, the appellate court found, however, that respondents were denied procedural due process. It held that the formal investigation of respondents for misappropriation of company funds was a mere afterthought because it was conducted after petitioners had notice of the complaint filed before the labor office in Palawan. In consonance with the ruling in *Agabon v. National Labor Relations Commission*,[11] respondents are entitled to an award of ₱30,000.00

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[9] Should be October 28, 2003.

[10] *Id.* at 31-32.

[11] 485 Phil. 248 (2004).

each as nominal damages for failure of petitioners to comply with the twin requirements of notice and hearing before dismissing the respondents.

From this decision, only petitioners appealed.

Issues

Petitioners raise the following issues for our resolution:

1. Whether x x x the Court of Appeals erred in construing that the investigation held by petitioners is an afterthought; and
2. Whether x x x the Court of Appeals erred in awarding the sum of ₱30,000.00 each to the respondents as nominal damages.[12]

Petitioners' Arguments

Petitioners contend that the investigation of respondents was not an afterthought. They stress the following peculiar circumstances of this case: First, when the labor complaint was filed on November 3, 2000, respondents had not yet been dismissed by petitioners. Rather, it was respondents who were guilty of not reporting for work; Lopez starting on October 23, 2000 and Gavan on October 28, 2000. Second, at this time also, petitioners were still in the process of collecting evidence on the alleged misappropriation of company funds after they received reports of respondents' fraudulent acts. Considering the distance between the towns serviced by respondents and Puerto Princesa City, it took a couple of weeks for petitioners' representative, Armel Bagasala (Bagasala), to unearth the anomalies committed by respondents. Thus, it was only on November 18, 2000 when Bagasala finished the investigation and submitted to petitioners the evidence establishing that respondents indeed misappropriated company funds. Naturally, this was the only time when they could begin the formal investigation of respondents wherein they followed the

[12] *Rollo*, p. 16.

twin-notice rule and which led to the termination of respondents on December 18, 2000 for gross misconduct and absence without leave for more than a month.

Petitioners lament that the filing of the labor complaint on November 3, 2000 was purposely sought by respondents to pre-empt the results of the then ongoing investigation after respondents got wind that petitioners were conducting said investigation because respondents were reassigned to a different sales area during the period of investigation.

Respondents' Arguments

Respondents counter that their abandonment of employment was a concocted story. No evidence was presented, like the daily time record, to establish this claim. Further, the filing of the illegal dismissal complaint negates abandonment. Assuming *arguendo* that respondents abandoned their work, no proof was presented that petitioners' served a notice of abandonment at respondents' last known addresses as required by Section 2, Rule XVI, Book V of the Omnibus Rules Implementing the Labor Code. According to respondents, on November 3, 2000, petitioners verbally advised them to look for another job because the company was allegedly suffering from heavy losses. For this reason, they sought help from the Palawan labor office which recommended that they file a labor complaint.

Respondents also contest the finding that they misappropriated company funds. They claim that the evidence is insufficient to prove that they did not remit their sales collections to petitioners. Neither were the minutes of the proceedings before the labor officer presented to prove that they admitted misappropriating the company funds. Respondents add that they did not hold a position of trust and confidence. They claim that the criminal cases for estafa against respondents were belatedly filed in order to further justify their dismissal from employment and act as leverage relative to the subject labor case they filed against petitioners.

Our Ruling

The petition is meritorious.

When the requirements of procedural due process are satisfied, the award of nominal damages is improper.

At the outset, we note that respondents did not appeal from the decision of the CA which found that, as to the issue of substantive due process, the dismissal was valid because it was based on just causes (*i.e.*, grave misconduct and loss of trust and confidence) due to respondents' misappropriation of their sales collections. Thus, the only proper issue for our determination, as raised in the instant petition, is whether respondents were denied procedural due process justifying the award of nominal damages in accordance with the ruling in *Agabon v. National Labor Relations Commission*.[13]

In termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. The requirement of a hearing is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.[14] As we explained in *Perez v. Philippine Telegraph and Telephone Company*:[15]

An employee's right to be heard in termination cases under Article 277 (b) as implemented by Section 2 (d), Rule I of the Implementing Rules of Book VI of the Labor Code should be

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[13] *Supra* note 10.

[14] *Solid Development Corporation Workers Association (SDCWA-UWP) v. Solid Development Corporation*, G.R. No. 165995, August 14, 2007, 530 SCRA 132, 140-141.

[15] G.R. No. 152048, April 7, 2009, 584 SCRA 110.

interpreted in broad strokes. It is satisfied not only by a formal face to face confrontation but by any meaningful opportunity to controvert the charges against him and to submit evidence in support thereof.

A hearing means that a party should be given a chance to adduce his evidence to support his side of the case and that the evidence should be taken into account in the adjudication of the controversy. *"To be heard" does not mean verbal argumentation alone inasmuch as one may be heard just as effectively through written explanations, submissions or pleadings.* Therefore, while the phrase "ample opportunity to be heard" [in Article 277 of the Labor Code] may in fact include an actual hearing, it is not limited to a formal hearing only. In other words, the existence of an actual, formal "trial-type" hearing, although preferred, is not absolutely necessary to satisfy the employee's right to be heard.[16]

In the instant case, the appellate court ruled that there are two conflicting versions of the events and that, in a petition for *certiorari* under Rule 65 of the Rules of Court, the courts are precluded from resolving factual issues. Consequently, the factual findings of the Labor Arbiter, as affirmed by the NLRC, that petitioners stopped reporting from work and misappropriated their sales collection are binding on the courts. However, the CA found that respondents were denied their right to procedural due process because the investigation held by petitioners was an afterthought considering that it was called after they had notice of the complaint filed before the labor office in Palawan.[17]

Indeed, appellate courts accord the factual findings of the Labor Arbiter and the NLRC not only respect but also finality when supported by substantial evidence.[18] The Court does not substitute its own judgment for that of the tribunal in determining where the weight of evidence lies or what evidence is credible. It is not for the Court to re-examine conflicting evidence, re-evaluate the credibility of the witnesses nor substitute the

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[16] *Id.* at 123-124.

[17] *Rollo*, pp. 29-30.

[18] *SECON Philippines, Ltd. v. National Labor Relations Commission*, 377 Phil. 711, 717 (1999).

findings of fact of an administrative tribunal which has gained expertise in its specialized field.[19]

However, while we agree with the CA that the labor tribunal's factual determinations can no longer be disturbed for failure of respondents to show grave abuse of discretion on the part of the Labor Arbiter and NLRC, as in fact respondents effectively accepted these findings by their failure to appeal from the decision of the CA, we find that the appellate court misapprehended the import of these factual findings. For if it was duly established, as affirmed by the appellate court itself, that respondents failed to report for work starting from October 22, 2000 for respondent Lopez and October 28, 2000 for respondent Gavan,[20] then at the time of the filing of the complaint with the labor office on November 3, 2000, respondents were not yet dismissed from employment. Prior to this point in time, there was, thus, no necessity to comply with the twin requirements of notice and hearing.

The mere fact that the notices were sent to respondents after the filing of the labor complaint does not, by itself, establish that the same was a mere afterthought. The surrounding circumstances of this case adequately explain why the requirements of procedural due process were satisfied only after the filing of the labor complaint. Sometime in the third week of October 2000, petitioners received information that respondents were not remitting their sales collections to the company. Thereafter, petitioners initiated an investigation by sending one of their trusted salesmen, Bagasala, in the route being serviced by respondents. To prevent a possible cover up, respondents were temporarily reassigned to a new route to service. Subsequently, respondents stopped reporting for work (*i.e.*, starting from October 22, 2000 for respondent Lopez and October 28, 2000 for respondent Gavan) after they got wind of the fact that they were being investigated for misappropriation of their sales collection, and,

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[19] *Id.*

[20] *Rollo,* pp. 27-28.

on November 3, 2000, respondents filed the subject illegal dismissal case to pre-empt the outcome of the ongoing investigation. On November 18, 2000, Bagasala returned from his month-long investigation in the far-flung areas previously serviced by respondents and reported that respondents indeed failed to remit ₱2,257.03 in sales collections. As a result, on November 28, 2000, termination proceedings were commenced against respondents by sending notices to explain with a notice of hearing scheduled on December 2, 2000. As narrated earlier, respondents failed to give their side despite receipt of said notices. Petitioners sent another set of notices to respondents on December 7, 2000 to attend a hearing on December 15, 2000 but respondents again refused to attend. Thus, on December 18, 2000, petitioners served notices of termination on respondents for gross misconduct in misappropriating their sales collections and absence without leave for more than a month.

As can be seen, under the peculiar circumstances of this case, it cannot be concluded that the sending of the notices and setting of hearings were a mere afterthought because petitioners were still awaiting the report from Bagasala when respondents pre-empted the results of the ongoing investigation by filing the subject labor complaint. For this reason, there was sufficient compliance with the twin requirements of notice and hearing even if the notices were sent and the hearing conducted after the filing of the labor complaint. Thus, the award of nominal damages by the appellate court is improper.

WHEREFORE, the petition is *GRANTED*. The June 2, 2005 Decision and September 23, 2005 Resolution in CA-G.R. SP. No. 83577 are *REVERSED* and *SET ASIDE*. The October 28, 2003 Decision of the National Labor Relations Commission in NCR CA No. 034421-03 is *REINSTATED and AFFIRMED*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 172988. July 26, 2010]

JOSE P. ARTIFICIO, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, RP GUARDIANS SECURITY AGENCY, INC., JUAN VICTOR K. LAURILLA, ALBERTO AGUIRRE, and ANTONIO A. ANDRES,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; PREVENTIVE SUSPENSION OF AN EMPLOYEE, WHEN JUSTIFIED; APPLICATION.— [P]reventive suspension is justified where the employee's continued employment poses a serious and imminent threat to the life or property of the employer or of the employee's co-workers. Without this kind of threat, preventive suspension is not proper. In this case, Artificio's preventive suspension was justified since he was employed as a security guard tasked precisely to safeguard respondents' client. His continued presence in respondents' or its client's premises poses a serious threat to respondents, its employees and client in light of the serious allegation of conduct unbecoming a security guard such as abandonment of post during night shift duty, light threats and irregularities in the observance of proper relieving time.

2. ID.; ID.; MANAGEMENT PREROGATIVE, EXPLAINED.— [A]s the employer, respondent has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. Management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations. This Court has upheld a company's management prerogatives so long as they are exercised in good faith for the advancement of the employer's interest and not

for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements.

3. ID.; TERMINATION OF EMPLOYMENT; SEPARATION PAY AWARDED ALTHOUGH THERE WAS NO ILLEGAL DISMISSAL.— Having determined that the imposition on Artificio of preventive suspension was proper and that such suspension did not amount to illegal dismissal, we see no basis for the grant of backwages. Nonetheless, given the attendant circumstances in this case, namely, that Artificio had been working with the company for a period of sixteen (16) years and without any previous derogatory record, the ends of social and compassionate justice would be served if Artificio be given some equitable relief in the form of separation pay. Artificio is entitled to separation pay considering that while reinstatement is an option, Artificio himself has never, at anytime after the notice of preventive suspension, intended to remain in the employ of private respondents.

APPEARANCES OF COUNSEL

Real Brotarlo Real Law Offices for petitioner.
Gana & Manlangit Law Office for respondents.

D E C I S I O N

PEREZ, *J.*:

The instant petition for *certiorari* under Rule 45 seeks to set aside the Decision[1] dated 31 March 2006, as well as the Resolution[2] dated 1 June 2006, of the Court of Appeals in CA-G.R. SP No. 88188. The appellate court affirmed the Decision[3] dated 31 August 2004 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 00-08-05942-2002/NLRC CA

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[1] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Edgardo P. Cruz and Rosalinda Asuncion-Vicente, concurring. *Rollo*, pp. 25-37.

[2] *Id.* at 38.

[3] CA *rollo*, pp. 18-25.

No. 037809-03 finding that Petitioner Jose P. Artificio (Artificio) was not illegally dismissed and ordering respondents to reinstate Artificio to his former position without loss of seniority rights. The appellate court at the same time vacated and set aside the decision of the Labor Arbiter dated 6 October 2003, in NLRC NCR Case No. 08-05942-2002 that Artificio was illegally dismissed by the respondents.[4]

The pertinent facts are as follows:

Petitioner Jose P. Artificio was employed as security guard by respondent RP Guardians Security Agency, Inc., a corporation duly organized and existing under Philippine Laws and likewise duly licensed to engage in the security agency business.

Sometime in June 2002, Artificio had a heated argument with a fellow security guard, Merlino B. Edu (Edu). On 25 July 2002, Edu submitted a confidential report[5] to Antonio A. Andres (Andres), Administration & Operations Manager, requesting that Artificio be investigated for maliciously machinating Edu's hasty relief from his post and for leaving his post during night shift duty to see his girlfriend at a nearby beerhouse.

On 29 July 2002, another security guard, Gutierrez Err (Err), sent a report[6] to Andres stating that Artificio arrived at the office of RP Guardians Security Agency, Inc. on 25 June 2002, under the influence of liquor. When Artificio learned that no salaries would be given that day, he bad-mouthed the employees of RP Guardians Security Agency, Inc. and threatened to "arson" their office.

The report reads:

Sir:

On or about 1710 hrs. June 25, 2002 PSG ARTIFICIO JOSE assigned to BF CITYLAND CORPORATION, under influence of

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[4] *Rollo,* pp. 79-92.

[5] *Id.* at 39.

[6] CA *rollo,* p. 83.

liquor arrived to *(sic)* TLC BLDG. To verify their salaries to RP GUARDIANS SECURITY AGENCY EMPLOYEES. After knowing *(sic)* no *(sic)* salaries to received on that time or day, he irked *(sic)* and bad *(sic)* mounting all employee of RP GUARDIAN'S OFFICE and before leaving the TLC Bldg. *(sic)* He shouted to arson *(sic)* the RP GUARDIAN'S OFFICE, on that moment I (sic) pacifying him to RAMBO, PSG ARTIFICIO JOSE but he ignored me.[7]

On even date, Andres issued a Memorandum[8] temporarily relieving Artificio from his post and placing him under preventive suspension pending investigation for conduct unbecoming a

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[7] *Rollo,* p. 87.

[8] 1. References:

a) RPGSAI Circular No. 2 dtd January 6, 2002
b) Attached letter request for investigation fm PSG Edu dtd July 25, 2002
c) Verbal instruction from client

2. In connection with the above references, you are hereby temporarily relieved from your post and placed under preventive suspension effective July 29, 2002 pending investigation of the offense/s you have allegedly committed. Hence, FA issued to you, is hereby recalled effective this date.

3. Further, you are directed to report to this Office and submit an answer in writing immediately upon receipt of this memo, to the following offenses to wit:

a) Conduct unbecoming of a Security Guard

Facts:

Abandonment of post during night shift duty
Light threats
Irregularities in the observance of proper relieving time which are contrary to the pertinent provisions of Agency Policies and RA 5487, as amended.

For your guidance and strict compliance.

(SGD) PSUPT ANTONIO A. ANDRES (inact)
Admin/Oprns Manager

Acknowledge Receipt

By (SGD) JOSE P. ARTIFICIO
Signature above printed name (Please print legibly)
Date and Time 1400 Hr 7-29-02. *Id.* at 36.

security guard, such as, abandonment of post during night shift duty, light threats and irregularities in the observance of proper relieving time. He also directed Artificio to report to the office of RP Guardians Security Agency, Inc. and submit his written answer immediately upon receipt of the memorandum.

In another memorandum, Andres informed Artificio that a hearing will be held on 12 August 2002.[9]

Without waiting for the hearing to be held, Artificio filed on 5 August 2002, a complaint for illegal dismissal, illegal suspension, non-payment of overtime pay, holiday pay, premium pay for holiday and rest days, 13th month pay, and damages. He also prayed for payment of separation pay in lieu of reinstatement.[10]

After hearing, the Labor Arbiter rendered a decision dated 6 October 2003, finding respondents guilty of illegal suspension and dismissal. It ruled that Edu's allegation of irregularity in the observance of relieving time was not specifically detailed. Since Edu had an axe to grind against Artificio, his allegation should be taken with utmost caution. It was also held that Artificio should have been allowed to confront Edu and Err before he was preventively suspended. Since he was denied due process, his preventive suspension was illegal. Such preventive suspension ripened into illegal dismissal. The Labor Arbiter explained that:

> On July 29, 2002, complainant received two (2) separate Memoranda from his employer. One Memo immediately placed him under preventive suspension effective that very day. It further directed him "to report to this Office and submit an answer in writing immediately upon receipt of this Memo x x x." Complainant received this at about 2:00 P.M., July 29, 2002.
>
> Another Memo, likewise dated July 29, 2002, and also received on the same day by complainant directed him "to appear before this Office on Monday, August 12, 2002 (10:00 A.M.) to answer the charges leveled against you x x x."

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[9] *Id.* at 27.

[10] *Id.* at 221.

A sensible person who received two separate Memo directing him first to "answer in writing immediately"; and, second, to appear on August 12, 2002 would be "confused," to say the least. How much more herein complainant who might have felt that the whole [world] had fallen on him on that fateful day of July 29, 2002 as he received Memos (with attached letter-accusations) after another.

Feeling aggrieved and confused, he sought the assistance of this tribunal to air his predicament and plight. This should not be taken against him. It should be borne in mind that when he was directed to immediately answer in writing, he did not stand on equal footing with his superiors.

From the foregoing, the suspensions of complainant, is illegal. And under the peculiar circumstances, this illegal suspension ripened into an illegal dismissal.

Even as the complainant does not seek reinstatement when he filed this cases, he is nevertheless entitled to backwages, albeit limited. Complainant is also entitled to separation pay in lieu of reinstatement, the computation thereof to be reckoned not from 1979 but only from 1986.

As to money claims, the supporting documents submitted by the respondents prove that other than the payment of ECOLA and the refund of the ₱30.00 monthly Trust Fund, herein complainant had been duly paid of his money claims.[11]

The *fallo* of the decision rendered by the Labor Arbiter reads:

WHEREFORE, in view of the foregoing, judgment is hereby rendered declaring respondents guilty of illegal suspension/lay-off and illegal dismissal.

Since the complainant does not seek reinstatement, he is entitled to limited backwages and separation pay.

Respondent [RP]. Guardian Security Agency, Inc., is hereby ordered to pay complainant as follows:

1. Limited backwages computed from July 29, 2002 up to the date of this Decision in the amount of ₱217,033.79;

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[11] *Id.* at 90-91.

2. In lieu of reinstatement, separation pay equivalent to one-half (1/2) month's salary for every year of service computed from 1986 in the amount of ₱81,507.60;

3. ECOLA from November 5, 2001 up to July 31, 2002, in the amount of ₱6,628.50[;] and

4. Refund of ₱30.00 monthly contribution to Trust Fund in the amount of ₱5,970.00;

5. Ten percent (10%) of the total award as attorney's fees in the amount of ₱31,113.99.

All other claims herein sought and prayed for are hereby denied for lack of legal and factual bases.[12]

On appeal, the NLRC, in a Decision[13] dated 31 August 2004, set aside the decision of the Labor Arbiter. It ruled that the Labor Arbiter erred in considering preventive suspension as a penalty. While it is true that preventive suspension can ripen into constructive dismissal when it goes beyond the 30-day maximum period allowed by law, such is not prevailing in this case since Artificio immediately filed a complaint before the labor tribunal. It added that it was Artificio who terminated his relationship with respondents when he asked for separation pay *in lieu* of reinstatement although he has not yet been dismissed. The NLRC clarified further that:

x x x While it is true that preventive suspension can ripen into a constructive dismissal when such goes beyond the 30 day maximum period allowable by law, such is not prevailing in the case at bar as it was complainant who chose to file a complaint and have due process before the courts of law. It was complainant who terminated the relationship with respondents by asking for separation pay in lieu of reinstatement when the fact of dismissal has not yet happened. From the documents presented, complainant was put on preventive suspension pending investigation of company violations which were supported by documentary evidences on July 29, 2002. He was set

[12] *Id.* at 91-92.

[13] *Id.* at 114.

to be heard on August 12, 2002 but before the respondents could hear his side, he filed this instant complaint on August 5, 2002, pre-empting the administrative investigation undertaken by respondents.[14]

In the end, the NLRC decreed:

WHEREFORE, premises considered, the decision of the Labor Arbiter is hereby **VACATED** and **SET ASIDE** and a new one entered, ordering respondents to reinstate complainant to his former position without loss of seniority rights. All other claims are hereby dismissed for lack of merit.[15]

The motion for reconsideration filed by Artificio was denied for lack of merit by the NLRC in a resolution dated 29 October 2004.[16]

Artificio next filed a petition for *certiorari* before the Court of Appeals docketed as CA G.R. SP No. 88188. On 31 March 2006, the Court of Appeals rendered a decision which affirmed the NLRC decision.[17] Artificio filed a motion for reconsideration which the Court of Appeals again denied for lack of merit in a resolution dated 1 June 2006, hence, the instant petition raising the following issues:

I.

WHETHER OR NOT PETITIONER MAY BE TERMINATED FROM HIS EMPLOYMENT ON THE VERY DATE HE RECEIVED A LETTER FOR HIS PURPORTED RELIEF WITHOUT FIRST BEING GIVEN AN OPPORTUNITY TO ANSWER THE CHARGES LEVELED AGAINST HIM AND BEING INFORMED OF [THE] NATURE AND CAUSE OF HIS DISMISSAL.

II.

WHETHER OR NOT PETITIONER MAY BE VALIDLY SUSPENDED FOR AN INDEFINITE PERIOD WITHOUT BEING CONSIDERED DISMISSED CONSTRUCTIVELY FROM HIS EMPLOYMENT.

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[14] *Id.* at 118.

[15] *Id.* at 120.

[16] *Id.* at 129.

[17] *Id.* at 25.

III.

WHETHER OR NOT THE PUBLIC RESPONDENT COURT OF APPEALS ERRED IN AFFIRMING THE ASSAILED RESOLUTIONS OF THE NLRC WHICH MISTAKENLY APPLIED THE RULING IN *GLOBE-MACKAY AND RADIO VS. NLRC*, G.R. NO. 82511, MARCH 3, 1992 TO THE INSTANT CASE.

IV.

WHETHER OR NOT AN EMPLOYEE WHO LOYALLY AND EFFICIENTLY SERVED HIS EMPLOYER FOR TWENTY THREE (23) YEARS BE VALIDLY TERMINATED FROM EMPLOYMENT WITHOUT VIOLATING HIS RIGHTS TO DUE [PROCESS] ON THE PRETEXT OF A PURPORTED CHARGE WHICH DID NOT SET FORTH THE DETAILS, PLACE, AND TIME OF THEIR ALLEGED COMMISSION.

V.

WHETHER OR NOT THE PUBLIC RESPONDENT COURT OF APPEALS GRAVELY ERRED IN NOT GIVING CREDENCE TO THE FINDINGS OF FACTS OF THE LABOR ARBITER WHICH HAS A FIRST HAND AND DIRECT CONTACT WITH THE PARTY-LITIGANTS.

VI.

WHETHER OR NOT AN EMPLOYEE WHOSE RELATIONSHIP WITH HIS EMPLOYER WAS STRAINED BY THE FILING OF A LEGITIMATE LABOR COMPLAINT BE CORRECTLY ORDERED REINSTATED.[18]

Artificio maintains that he was illegally suspended since his preventive suspension was for an indefinite period and was imposed without investigation. He also argues that he was illegally dismissed because the charges against him were couched in general and broad terms. Further, he was not given any notice requiring him to explain his side.

Respondents counter that Artificio was not dismissed but merely placed under preventive suspension pending investigation of the charges against him.

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[18] *Id.* at 12-13.

Sections 8 and 9 of Rule XXIII, Implementing Book V of the Omnibus Rules Implementing the Labor Code provides:

SEC. 8. ***Preventive suspension.*** – The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

SEC. 9. ***Period of suspension.*** – No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

As succinctly stated above, preventive suspension is justified where the employee's continued employment poses a serious and imminent threat to the life or property of the employer or of the employee's co-workers. Without this kind of threat, preventive suspension is not proper.[19]

In this case, Artificio's preventive suspension was justified since he was employed as a security guard tasked precisely to safeguard respondents' client. His continued presence in respondents' or its client's premises poses a serious threat to respondents, its employees and client in light of the serious allegation of conduct unbecoming a security guard such as abandonment of post during night shift duty, light threats and irregularities in the observance of proper relieving time.

Besides, as the employer, respondent has the right to regulate, according to its discretion and best judgment, all aspects of employment, including work assignment, working methods, processes to be followed, working regulations, transfer of

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[19] *Maricalum Mining Corporation v. Decorion*, G.R. No. 158637, 12 April 2006, 487 SCRA 182, 188; *Valiao v. Court of Appeals*, G.R. No. 146621, 30 July 2004, 435 SCRA 543, 554.

employees, work supervision, lay-off of workers and the discipline, dismissal and recall of workers. Management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers pursuant to company rules and regulations.

This Court has upheld a company's management prerogatives so long as they are exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws or under valid agreements.[20]

This delineation of management prerogatives is relevant to the observation of the NLRC that:

> x x x even assuming that one of the fellow guards, PSG Edu had an axe to grind against complainant that's why he wrote the letter asking for the latter's investigation on certain violations he has committed, the allegation that complainant committed irregularity on company's policy on relieving time was amply supported by the logbook. In fact, the labor arbiter in her decision even cited that accusation boils [down] to the alleged irregularity of complainant in the observance of relieving of time. Further, on July 25, 2002, complainant was again reported for reporting under the influence of liquor and badmouthed respondent's employees with threat to "arson" the respondent's office. Such report came from another guard in the name of PSG Gutierrez, who had no axe to grind against complainant. The allegation was also not denied by complainant. Respondents therefore could not be faulted in putting complainant under preventive suspension pending investigation of his alleged acts especially that he was the head guard.[21]

These observations can no longer be disturbed. They are now established facts before us.

Significantly, Artificio regrettably chose not to present his side at the administrative hearing scheduled to look into the factual issues that accompanied the accusation against him. In

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[20] *Challenge Socks Corporation v. Court of Appeals,* G.R. No. 165268, 8 November 2005, 474 SCRA 356, 363.

[21] *Rollo,* pp. 119-120.

fact, he avoided the investigation into the charges by filing his illegal dismissal complaint ahead of the scheduled investigation. He, on his own decided that his preventive suspension was in fact illegal dismissal and that he is entitled to backwages and separation pay. Indeed, Artificio would even reject reinstatement revealing his bent to have his own way through his own means. As aptly noted by the NLRC, Artificio preempted the investigation that could have afforded him the due process of which he would then say he was denied.

That resolved, we next proceed to the benefits due Artificio.

As already mentioned, after Artificio was placed under preventive suspension on 29 July 2002, he forthwith, or on 5 August 2002, filed a complaint for illegal dismissal and illegal suspension. From that date until the present, he has insisted on his submission that he was illegally dismissed and that he is not seeking reinstatement as in fact right from the start, his prayer was for separation pay. Having determined that the imposition on Artificio of preventive suspension was proper and that such suspension did not amount to illegal dismissal, we see no basis for the grant of backwages.

Nonetheless, given the attendant circumstances in this case, namely, that Artificio had been working with the company for a period of sixteen (16) years and without any previous derogatory record, the ends of social and compassionate justice would be served if Artificio be given some equitable relief in the form of separation pay.[22]

Artificio is entitled to separation pay considering that while reinstatement is an option, Artificio himself has never, at anytime after the notice of preventive suspension intended to remain in the employ of private respondents.

WHEREFORE, the instant petition is *PARTIALLY GRANTED*. The Decision dated 31 March 2006, as well as the Resolution

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[22] *Tanala v. National Labor Relations Commission,* 322 Phil. 342, 349-350 (1996) cited in *Solid Bank v. National Labor Relations Commission,* G.R. No. 165951, 30 March 2010.

dated 1 June 2006, of the Court of Appeals in CA-G.R. SP No. 88188 are hereby *AFFIRMED* with the modification that, in lieu of reinstatement, separation pay be granted to Artificio computed at the rate of one (1) month pay for every year of service reckoned from the start of his employment with the respondents in 1986 until 2002.

No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 176868. July 26, 2010]

SOLAR HARVEST, INC., *petitioner, vs.* **DAVAO CORRUGATED CARTON CORPORATION,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS; DEMAND IS GENERALLY NECESSARY BEFORE THE OBLIGOR CAN BE CONSIDERED IN DEFAULT.— In reciprocal obligations, as in a contract of sale, the general rule is that the fulfillment of the parties' respective obligations should be simultaneous. Hence, no demand is generally necessary because, once a party fulfills his obligation and the other party does not fulfill his, the latter automatically incurs in delay. But when different dates for performance of the obligations are fixed, the default for each obligation must be determined by the rules given in the first paragraph of the present article, that is, the other party would incur in delay only from the moment the other party

demands fulfillment of the former's obligation. Thus, even in reciprocal obligations, if the period for the fulfillment of the obligation is fixed, demand upon the obligee is still necessary before the obligor can be considered in default and before a cause of action for rescission will accrue.

2. ID.; ID.; ID.; EFFECT OF LACK OF DEMAND; CASE AT BAR.— Evident from the records and even from the allegations in the complaint was the lack of demand by petitioner upon respondent to fulfill its obligation to manufacture and deliver the boxes. The Complaint only alleged that petitioner made a "follow-up" upon respondent, which, however, would not qualify as a demand for the fulfillment of the obligation. Petitioner's witness also testified that they made a follow-up of the boxes, but not a demand. Note is taken of the fact that, with respect to their claim for reimbursement, the Complaint alleged and the witness testified that a demand letter was sent to respondent. Without a previous demand for the fulfillment of the obligation, petitioner would not have a cause of action for rescission against respondent as the latter would not yet be considered in breach of its contractual obligation.

3. REMEDIAL LAW; APPEALS; ISSUES; BREACH OF CONTRACT IS A FACTUAL MATTER NOT REVIEWABLE IN A RULE 45 PETITION.— The existence of a breach of contract is a factual matter not usually reviewed in a petition for review under Rule 45. The Court, in petitions for review, limits its inquiry only to questions of law. After all, it is not a trier of facts, and findings of fact made by the trial court, especially when reiterated by the CA, must be given great respect if not considered as final. In dealing with this petition, we will not veer away from this doctrine and will thus sustain the factual findings of the CA, which we find to be adequately supported by the evidence on record.

4. CIVIL LAW; CONTRACTS; RESCISSION, ABSENCE OF CAUSE OF ACTION FOR.— [T]he Court finds that petitioner failed to establish a cause of action for rescission, the evidence having shown that respondent did not commit any breach of its contractual obligation. As previously stated, the subject boxes are still within respondent's premises. To put a rest to this dispute, we therefore relieve respondent from the burden of having to keep the boxes within its premises and, consequently,

give it the right to dispose of them, after petitioner is given a period of time within which to remove them from the premises.

APPEARANCES OF COUNSEL

Palabasan Taala & Santiago Law Offices for petitioner.
Pasquil Sevilla Magulta & Garde for respondent.

D E C I S I O N

NACHURA, *J.*:

Petitioner seeks a review of the Court of Appeals (CA) Decision[1] dated September 21, 2006 and Resolution[2] dated February 23, 2007, which denied petitioner's motion for reconsideration. The assailed Decision denied petitioner's claim for reimbursement for the amount it paid to respondent for the manufacture of corrugated carton boxes.

The case arose from the following antecedents:

In the first quarter of 1998, petitioner, Solar Harvest, Inc., entered into an agreement with respondent, Davao Corrugated Carton Corporation, for the purchase of corrugated carton boxes, specifically designed for petitioner's business of exporting fresh bananas, at US$1.10 each. The agreement was not reduced into writing. To get the production underway, petitioner deposited, on March 31, 1998, US$40,150.00 in respondent's US Dollar Savings Account with Westmont Bank, as full payment for the ordered boxes.

Despite such payment, petitioner did not receive any boxes from respondent. On January 3, 2001, petitioner wrote a demand letter for reimbursement of the amount paid.[3] On February 19,

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[1] Penned by Associate Justice Rebecca de Guia-Salvador, with Associate Justices Magdangal M. de Leon and Ramon R. Garcia, concurring; *rollo*, pp. 103-114.

[2] *Id.* at 127.

[3] Records, p. 96.

2001, respondent replied that the boxes had been completed as early as April 3, 1998 and that petitioner failed to pick them up from the former's warehouse 30 days from completion, as agreed upon. Respondent mentioned that petitioner even placed an additional order of 24,000 boxes, out of which, 14,000 had been manufactured without any advanced payment from petitioner. Respondent then demanded petitioner to remove the boxes from the factory and to pay the balance of US$15,400.00 for the additional boxes and ₱132,000.00 as storage fee.

On August 17, 2001, petitioner filed a Complaint for sum of money and damages against respondent. The Complaint averred that the parties agreed that the boxes will be delivered within 30 days from payment but respondent failed to manufacture and deliver the boxes within such time. It further alleged

> 6. That repeated follow-up was made by the plaintiff for the immediate production of the ordered boxes, but every time, defendant [would] only show samples of boxes and ma[k]e repeated promises to deliver the said ordered boxes.
>
> 7. That because of the failure of the defendant to deliver the ordered boxes, plaintiff ha[d] to cancel the same and demand payment and/or refund from the defendant but the latter refused to pay and/or refund the US$40,150.00 payment made by the former for the ordered boxes.[4]

In its Answer with Counterclaim,[5] respondent insisted that, as early as April 3, 1998, it had already completed production of the 36,500 boxes, contrary to petitioner's allegation. According to respondent, petitioner, in fact, made an additional order of 24,000 boxes, out of which, 14,000 had been completed without waiting for petitioner's payment. Respondent stated that petitioner was to pick up the boxes at the factory as agreed upon, but petitioner failed to do so. Respondent averred that, on October 8, 1998, petitioner's representative, Bobby Que (Que), went to the factory and saw that the boxes were ready for pick up. On

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[4] *Rollo,* p. 27.

[5] *Id.* at 33-36.

February 20, 1999, Que visited the factory again and supposedly advised respondent to sell the boxes as rejects to recoup the cost of the unpaid 14,000 boxes, because petitioner's transaction to ship bananas to China did not materialize. Respondent claimed that the boxes were occupying warehouse space and that petitioner should be made to pay storage fee at ₱60.00 per square meter for every month from April 1998. As counterclaim, respondent prayed that judgment be rendered ordering petitioner to pay $15,400.00, plus interest, moral and exemplary damages, attorney's fees, and costs of the suit.

In reply, petitioner denied that it made a second order of 24,000 boxes and that respondent already completed the initial order of 36,500 boxes and 14,000 boxes out of the second order. It maintained that respondent only manufactured a sample of the ordered boxes and that respondent could not have produced 14,000 boxes without the required pre-payments.[6]

During trial, petitioner presented Que as its sole witness. Que testified that he ordered the boxes from respondent and deposited the money in respondent's account.[7] He specifically stated that, when he visited respondent's factory, he saw that the boxes had no print of petitioner's logo.[8] A few months later, he followed-up the order and was told that the company had full production, and thus, was promised that production of the order would be rushed. He told respondent that it should indeed rush production because the need for the boxes was urgent. Thereafter, he asked his partner, Alfred Ong, to cancel the order because it was already late for them to meet their commitment to ship the bananas to China.[9] On cross-examination, Que further testified that China Zero Food, the Chinese company that ordered the bananas, was sending a ship to Davao to get

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[6] Records, 31-32.

[7] TSN, July 10, 2003, p. 5.

[8] *Id.* at 7.

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

the bananas, but since there were no cartons, the ship could not proceed. He said that, at that time, bananas from Tagum Agricultural Development Corporation (TADECO) were already there. He denied that petitioner made an additional order of 24,000 boxes. He explained that it took three years to refer the matter to counsel because respondent promised to pay.[10]

For respondent, Bienvenido Estanislao (Estanislao) testified that he met Que in Davao in October 1998 to inspect the boxes and that the latter got samples of them. In February 2000, they inspected the boxes again and Que got more samples. Estanislao said that petitioner did not pick up the boxes because the ship did not arrive.[11] Jaime Tan (Tan), president of respondent, also testified that his company finished production of the 36,500 boxes on April 3, 1998 and that petitioner made a second order of 24,000 boxes. He said that the agreement was for respondent to produce the boxes and for petitioner to pick them up from the warehouse.[12] He also said that the reason why petitioner did not pick up the boxes was that the ship that was to carry the bananas did not arrive.[13] According to him, during the last visit of Que and Estanislao, he asked them to withdraw the boxes immediately because they were occupying a big space in his plant, but they, instead, told him to sell the cartons as rejects. He was able to sell 5,000 boxes at ₱20.00 each for a total of ₱100,000.00. They then told him to apply the said amount to the unpaid balance.

In its March 2, 2004 Decision, the Regional Trial Court (RTC) ruled that respondent did not commit any breach of faith that would justify rescission of the contract and the consequent reimbursement of the amount paid by petitioner. The RTC said that respondent was able to produce the ordered boxes but petitioner

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[10] *Id.* at 18-22.

[11] TSN, October 16, 2003, p. 14.

[12] TSN, December 4, 2003, p. 13.

[13] *Id.* at 15.

failed to obtain possession thereof because its ship did not arrive. It thus dismissed the complaint and respondent's counterclaims, disposing as follows:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of defendant and against the plaintiff and, accordingly, plaintiff's complaint is hereby ordered DISMISSED without pronouncement as to cost. Defendant's counterclaims are similarly dismissed for lack of merit.
>
> SO ORDERED.[14]

Petitioner filed a notice of appeal with the CA.

On September 21, 2006, the CA denied the appeal for lack of merit.[15] The appellate court held that petitioner failed to discharge its burden of proving what it claimed to be the parties' agreement with respect to the delivery of the boxes. According to the CA, it was unthinkable that, over a period of more than two years, petitioner did not even demand for the delivery of the boxes. The CA added that even assuming that the agreement was for respondent to deliver the boxes, respondent would not be liable for breach of contract as petitioner had not yet demanded from it the delivery of the boxes.[16]

Petitioner moved for reconsideration,[17] but the motion was denied by the CA in its Resolution of February 23, 2007.[18]

In this petition, petitioner insists that respondent did not completely manufacture the boxes and that it was respondent which was obliged to deliver the boxes to TADECO.

We find no reversible error in the assailed Decision that would justify the grant of this petition.

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[14] *Rollo,* p. 60.

[15] *Supra* note 1, at 113-114.

[16] *Id.* at 110-112.

[17] *Rollo,* pp. 115-121.

[18] *Supra* note 2.

Petitioner's claim for reimbursement is actually one for rescission (or resolution) of contract under Article 1191 of the Civil Code, which reads:

> Art. 1191. The power to rescind obligations is implied in reciprocal ones, in case one of the obligors should not comply with what is incumbent upon him.
>
> The injured party may choose between the fulfillment and the rescission of the obligation, with the payment of damages in either case. He may also seek rescission, even after he has chosen fulfillment, if the latter should become impossible.
>
> The court shall decree the rescission claimed, unless there be just cause authorizing the fixing of a period.
>
> This is understood to be without prejudice to the rights of third persons who have acquired the thing, in accordance with Articles 1385 and 1388 and the Mortgage Law.

The right to rescind a contract arises once the other party defaults in the performance of his obligation. In determining when default occurs, Art. 1191 should be taken in conjunction with Art. 1169 of the same law, which provides:

> Art. 1169. Those obliged to deliver or to do something incur in delay from the time the obligee judicially or extrajudicially demands from them the fulfillment of their obligation.
>
> However, the demand by the creditor shall not be necessary in order that delay may exist:
>
> (1) When the obligation or the law expressly so declares; or
>
> (2) When from the nature and the circumstances of the obligation it appears that the designation of the time when the thing is to be delivered or the service is to be rendered was a controlling motive for the establishment of the contract; or
>
> (3) When demand would be useless, as when the obligor has rendered it beyond his power to perform.
>
> In reciprocal obligations, neither party incurs in delay if the other does not comply or is not ready to comply in a proper manner with what is incumbent upon him. From the moment one of the parties fulfills his obligation, delay by the other begins.

In reciprocal obligations, as in a contract of sale, the general rule is that the fulfillment of the parties' respective obligations should be simultaneous. Hence, no demand is generally necessary because, once a party fulfills his obligation and the other party does not fulfill his, the latter automatically incurs in delay. But when different dates for performance of the obligations are fixed, the default for each obligation must be determined by the rules given in the first paragraph of the present article,[19] that is, the other party would incur in delay only from the moment the other party demands fulfillment of the former's obligation. Thus, even in reciprocal obligations, if the period for the fulfillment of the obligation is fixed, demand upon the obligee is still necessary before the obligor can be considered in default and before a cause of action for rescission will accrue.

Evident from the records and even from the allegations in the complaint was the lack of demand by petitioner upon respondent to fulfill its obligation to manufacture and deliver the boxes. The Complaint only alleged that petitioner made a "follow-up" upon respondent, which, however, would not qualify as a demand for the fulfillment of the obligation. Petitioner's witness also testified that they made a follow-up of the boxes, but not a demand. Note is taken of the fact that, with respect to their claim for reimbursement, the Complaint alleged and the witness testified that a demand letter was sent to respondent. Without a previous demand for the fulfillment of the obligation, petitioner would not have a cause of action for rescission against respondent as the latter would not yet be considered in breach of its contractual obligation.

Even assuming that a demand had been previously made before filing the present case, petitioner's claim for reimbursement would still fail, as the circumstances would show that respondent was not guilty of breach of contract.

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[19] IV ARTURO M. TOLENTINO, *Commentaries and Jurisprudence on the Civil Code of the Philippines* (1985 ed.), p. 10, citing 8 Manresa.

The existence of a breach of contract is a factual matter not usually reviewed in a petition for review under Rule 45.[20] The Court, in petitions for review, limits its inquiry only to questions of law. After all, it is not a trier of facts, and findings of fact made by the trial court, especially when reiterated by the CA, must be given great respect if not considered as final.[21] In dealing with this petition, we will not veer away from this doctrine and will thus sustain the factual findings of the CA, which we find to be adequately supported by the evidence on record.

As correctly observed by the CA, aside from the pictures of the finished boxes and the production report thereof, there is ample showing that the boxes had already been manufactured by respondent. There is the testimony of Estanislao who accompanied Que to the factory, attesting that, during their first visit to the company, they saw the pile of petitioner's boxes and Que took samples thereof. Que, petitioner's witness, himself confirmed this incident. He testified that Tan pointed the boxes to him and that he got a sample and saw that it was blank. Que's absolute assertion that the boxes were not manufactured is, therefore, implausible and suspicious.

In fact, we note that respondent's counsel manifested in court, during trial, that his client was willing to shoulder expenses for a representative of the court to visit the plant and see the boxes.[22] Had it been true that the boxes were not yet completed, respondent would not have been so bold as to challenge the court to conduct an ocular inspection of their warehouse. Even in its Comment to this petition, respondent prays that petitioner be ordered to remove the boxes from its factory site,[23] which could only mean that the boxes are, up to the present, still in respondent's premises.

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[20] *Omengan v. Philippine National Bank*, G.R. No. 161319, January 23, 2007, 512 SCRA 305, 309.

[21] *Filipinas (Pre-Fab Bldg.) Systems, Inc. v. MRT Development Corporation*, G.R. Nos. 167829-30, November 13, 2007, 537 SCRA 609, 638-639.

[22] TSN, December 4, 2003, p. 26.

[23] *Rollo*, p. 137.

We also believe that the agreement between the parties was for petitioner to pick up the boxes from respondent's warehouse, contrary to petitioner's allegation. Thus, it was due to petitioner's fault that the boxes were not delivered to TADECO.

Petitioner had the burden to prove that the agreement was, in fact, for respondent to deliver the boxes within 30 days from payment, as alleged in the Complaint. Its sole witness, Que, was not even competent to testify on the terms of the agreement and, therefore, we cannot give much credence to his testimony. It appeared from the testimony of Que that he did not personally place the order with Tan, thus:

Q. No, my question is, you went to Davao City and placed your order there?
A. I made a phone call.

Q. You made a phone call to Mr. Tan?
A. The first time, the first call to Mr. Alf[re]d Ong. Alfred Ong has a contact with Mr. Tan.

Q. So, your first statement that you were the one who placed the order is not true?
A. That's true. The Solar Harvest made a contact with Mr. Tan and I deposited the money in the bank.

Q. You said a while ago [t]hat you were the one who called Mr. Tan and placed the order for 36,500 boxes, isn't it?
A. First time it was Mr. Alfred Ong.

Q. It was Mr. Ong who placed the order[,] not you?
A. Yes, sir.[24]

Q. Is it not a fact that the cartons were ordered through Mr. Bienvenido Estanislao?
A. Yes, sir.[25]

Moreover, assuming that respondent was obliged to deliver the boxes, it could not have complied with such obligation.

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[24] TSN, July 10, 2003, p. 15.

[25] *Id.* at 21.

Que, insisting that the boxes had not been manufactured, admitted that he did not give respondent the authority to deliver the boxes to TADECO:

> Q. Did you give authority to Mr. Tan to deliver these boxes to TADECO?
> A. No, sir. As I have said, before the delivery, we must have to check the carton, the quantity and quality. But I have not seen a single carton.
>
> Q. Are you trying to impress upon the [c]ourt that it is only after the boxes are completed, will you give authority to Mr. Tan to deliver the boxes to TADECO[?]
> A. Sir, because when I checked the plant, I have not seen any carton. I asked Mr. Tan to rush the carton but not…[26]
>
> Q. Did you give any authority for Mr. Tan to deliver these boxes to TADECO?
> A. Because I have not seen any of my carton.
>
> Q. You don't have any authority yet given to Mr. Tan?
> A. None, your Honor.[27]

Surely, without such authority, TADECO would not have allowed respondent to deposit the boxes within its premises.

In sum, the Court finds that petitioner failed to establish a cause of action for rescission, the evidence having shown that respondent did not commit any breach of its contractual obligation. As previously stated, the subject boxes are still within respondent's premises. To put a rest to this dispute, we therefore relieve respondent from the burden of having to keep the boxes within its premises and, consequently, give it the right to dispose of them, after petitioner is given a period of time within which to remove them from the premises.

WHEREFORE, premises considered, the petition is *DENIED*. The Court of Appeals Decision dated September 21, 2006 and

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[26] *Id.* at 25.

[27] *Id.* at 27.

Resolution dated February 23, 2007 are *AFFIRMED*. In addition, petitioner is given a period of 30 days from notice within which to cause the removal of the 36,500 boxes from respondent's warehouse. After the lapse of said period and petitioner fails to effect such removal, respondent shall have the right to dispose of the boxes in any manner it may deem fit.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 177637. July 26, 2010]

DR. DIOSCORO CARBONILLA, *petitioner, vs.* **MARCELO ABIERA and MARICRIS ABIERA PAREDES, SUBSTITUTED BY HER HEIRS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EJECTMENT; UNLAWFUL DETAINER; THE CASE WILL NOT NECESSARILY BE DECIDED IN FAVOR OF THE ONE WHO PRESENTED PROOF OF OWNERSHIP OF THE SUBJECT PROPERTY.— [W]hile petitioner may have proven his ownership of the land, as there can be no other piece of evidence more worthy of credence than a Torrens certificate of title, he failed to present any evidence to substantiate his claim of ownership or right to the possession of the building. Like the CA, we cannot accept the Deed of Extrajudicial Settlement of Estate (Residential Building) with Waiver and Quitclaim of Ownership executed by the Garcianos as proof that petitioner acquired ownership of the

building. There is no showing that the Garcianos were the owners of the building or that they had any proprietary right over it. Ranged against respondents' proof of possession of the building since 1977, petitioner's evidence pales in comparison and leaves us totally unconvinced. Without a doubt, the registered owner of real property is entitled to its possession. However, the owner cannot simply wrest possession thereof from whoever is in actual occupation of the property. To recover possession, he must resort to the proper judicial remedy and, once he chooses what action to file, he is required to satisfy the conditions necessary for such action to prosper. In the present case, petitioner opted to file an ejectment case against respondents. Ejectment cases—forcible entry and unlawful detainer—are summary proceedings designed to provide expeditious means to protect actual possession or the right to possession of the property involved. The only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable. For this reason, an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property. Key jurisdictional facts constitutive of the particular ejectment case filed must be averred in the complaint and sufficiently proven.

2. ID.; ID.; ID.; REQUISITE FOR A VALID CAUSE OF ACTION IN AN UNLAWFUL DETAINER CASE; APPLICATION.— The statements in the complaint that respondents' possession of the building was by mere tolerance of petitioner clearly make out a case for unlawful detainer. Unlawful detainer involves the person's withholding from another of the possession of the real property to which the latter is entitled, after the expiration or termination of the former's right to hold possession under the contract, either expressed or implied. A requisite for a valid cause of action in an unlawful detainer case is that possession must be originally lawful, and such possession must have turned unlawful only upon the expiration of the right to possess. It must be shown that the possession was initially lawful; hence, the basis of such lawful possession must be established. If, as in this case, the claim is that such possession is by mere tolerance of the plaintiff, the acts of

tolerance must be proved. Petitioner failed to prove that respondents' possession was based on his alleged tolerance. He did not offer any evidence or even only an affidavit of the Garcianos attesting that they tolerated respondents' entry to and occupation of the subject properties. A bare allegation of tolerance will not suffice. Plaintiff must, at least, show overt acts indicative of his or his predecessor's permission to occupy the subject property. x x x In addition, plaintiff must also show that the supposed acts of tolerance have been present right from the very start of the possession—from entry to the property. Otherwise, if the possession was unlawful from the start, an action for unlawful detainer would be an improper remedy. Notably, no mention was made in the complaint of how entry by respondents was effected or how and when dispossession started. Neither was there any evidence showing such details.

APPEARANCES OF COUNSEL

Gaspar V. Tagle for petitioner.
Renato M. Rances for respondents.

D E C I S I O N

NACHURA, *J.*:

Assailed in this petition for review are the Decision[1] of the Court of Appeals (CA) dated September 18, 2006 and the Resolution dated April 17, 2007, which dismissed petitioner's complaint for ejectment against respondents.

The case arose from the following antecedents:

Petitioner, Dr. Dioscoro Carbonilla, filed a complaint for ejectment against respondents, Marcelo Abiera and Maricris Abiera Paredes, with the Municipal Trial Court in Cities (MTCC), Maasin City. The complaint alleged that petitioner is the registered owner of a parcel of land, located in *Barangay* Canturing, Maasin

[1] Penned by Executive Justice Arsenio J. Magpale, with Associate Justices Marlene Gonzales-Sison and Antonio L. Villamor, concurring; *rollo*, pp. 85-95.

City, identified as Lot No. 1781-B-P-3-B-2-B PSD-08-8452-D, Maasin Cadastre. The land is purportedly covered by a certificate of title, and declared for assessment and taxation purposes in petitioner's name. Petitioner further claimed that he is also the owner of the residential building standing on the land, which building he acquired through a Deed of Extrajudicial Settlement of Estate (Residential Building) with Waiver and Quitclaim of Ownership. He maintained that the building was being occupied by respondents by mere tolerance of the previous owners. Petitioner asserted that he intends to use the property as his residence, thus, he sent a demand letter to respondents asking them to leave the premises within 15 days from receipt of the letter, but they failed and refused to do so. Conciliation efforts with the *Barangay* proved futile.[2]

To corroborate his claim, petitioner presented copies of Transfer Certificate of Title (TCT) No. T-3784; Deed of Extrajudicial Settlement of Estate (Residential Building) with Waiver and Quitclaim of Ownership dated November 10, 2002, executed by the heirs of Jovita Yanto Garciano; Tax Declaration (TD) with ARP No. 07020-000019; and Demand Letter dated November 20, 2002. TCT No. T-3784 shows that the land was originally registered on January 30, 1968 in the name of Diosdado Carbonilla, petitioner's father, under Original Certificate of Title No. 185.

In their defense, respondents vehemently denied petitioner's allegation that they possessed the building by mere tolerance of the previous owners. Instead, they asserted that they occupied the building as owners, having inherited the same from Alfredo Abiera and Teodorica Capistrano, respondent Marcelo's parents and respondent Maricris' grandparents. They maintained that they have been in possession of the building since 1960, but it has not been declared for taxation purposes. As for the subject land, respondents claimed that they inherited the same from Francisco Plasabas, grandfather of Alfredo Abiera. They pointed

[2] *Id.* at 17-19.

out that the land had, in fact, been declared for taxation purposes in the name of Francisco Plasabas under TD No. 4676, before the Second World War. This TD was later cancelled by TD No. 8735 in 1948, TD No. 14363 in 1958, and TD No. 16182 in 1963. Respondents averred that the building was previously a garage-like structure but, in 1977, Alfredo Abiera and Teodorica Capistrano repaired and remodeled it, for which reason, they obtained a building permit on April 11, 1977 from the then Municipality of Maasin. Finally, respondents contended that the case should be dismissed for failure to implead as defendants respondent Marcelo's siblings, who are co-heirs of the subject properties.[3] Respondents presented copies of the two TDs in the name of Francisco Plasabas and the Building Permit dated April 11, 1977.

The MTCC decided the case in favor of respondents. It opined that petitioner's claim of ownership over the subject parcel of land was not successfully rebutted by respondents; hence, petitioner's ownership of the same was deemed established.[4] However, with respect to the building, the court declared respondents as having the better right to its material possession in light of petitioner's failure to refute respondents' claim that their predecessors had been in prior possession of the building since 1960 and that they have continued such possession up to the present.[5] In so ruling, the court applied Art. 546[6] of the Civil Code which allows the possessor in good faith to retain

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[3] *Id.* at 20-24.

[4] *Id.* at 29 and 31.

[5] *Id.* at 29-30.

[6] Art. 546 of the Civil Code reads in full:

Art. 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

the property until he is reimbursed for necessary expenses. Thus, in its decision dated March 15, 2004, the MTCC pronounced:

> WHEREFORE, foregoing premises considered and the collated evidences at hand [have] preponderantly established, JUDGMENT is hereby rendered in favor of the defendants DECLARING the defendants to have the better rights of (material) possession to the assailed building and deemed as possessors in good faith and are legally entitled to its possession and occupancy.
>
> The plaintiff judicially affirmed as the land owner is enjoined to respect the rights of the defendants pursuant to the provisions of Art. 546, Chapter III, New Civil Code of the Philippines[, w]ithout prejudice to the provisions of Arts. 547 and 548, New Civil Code of the Philippines. No pronouncement as to costs as defendants' predecessors-in-interest are deemed possessors and builders in good faith.
>
> SO ORDERED.[7]

Petitioner elevated the case to the Regional Trial Court (RTC). On July 12, 2004, the RTC reversed the MTCC decision. The RTC agreed with the MTCC that the land is owned by petitioner. The two courts differed, however, in their conclusion with respect to the building. The RTC placed the burden upon respondents to prove their claim that they built it prior to petitioner's acquisition of the land, which burden, the court found, respondents failed to discharge. The RTC held that, either way—whether the building was constructed before or after petitioner acquired ownership of the land—petitioner, as owner of the land, would have every right to evict respondents from the land. As theorized by the RTC, if the building was erected before petitioner or his predecessors acquired ownership of the land, then Article 445[8] of the Civil Code would apply. Thus, petitioner, as owner of

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[7] *Rollo,* pp. 31-32.

[8] Art. 445 of the Civil Code reads in full:

> ART. 445. Whatever is built, planted or sown on the land of another and the improvements or repairs made thereon, belong to the owner of the land, subject to the provisions of the following articles.

the land, would be deemed the owner of the building standing thereon, considering that, when ownership of the land was transferred to him, there was no reservation by the original owner that the building was not included in the transfer. On the other hand, if the building was constructed after petitioner became the owner of the land, it is with more reason that petitioner has the right to evict respondents from the land. The dispositive portion of the RTC decision reads:

> WHEREFORE, premises considered, judgment is hereby rendered
>
> 1. Reversing the decision of the court *a quo;*
>
> 2. Ordering defendants to immediately vacate the residential house/building subject of this litigation;
>
> 3. Ordering defendants to pay attorney's fee in the amount of ₱30,000.00; and
>
> 4. To pay the cost of the suit.
>
> SO ORDERED.[9]

Respondents then filed a petition for review with the CA. Finding no evidence to prove that respondents' possession of the building was by mere tolerance, the CA reversed the RTC decision and ordered the dismissal of petitioner's complaint. Because of this, the CA, following this Court's ruling in *Ten Forty Realty and Development Corporation v. Cruz,* categorized the complaint as one for forcible entry. It then proceeded to declare that the action had prescribed since the one-year period for filing the forcible entry case had already lapsed. The dispositive portion of the CA Decision dated September 18, 2006 reads:

> WHEREFORE, premises considered, the assailed decision promulgated on July 12, 2004 of Branch 25 of the Regional Trial Court (RTC), Maasin City, Southern Leyte in Civil Case No. R-3382 is hereby declared NULL and VOID for failure of the plaintiff (herein

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[9] *Rollo,* pp. 40-41.

respondent) to prove that the case at bar is for unlawful detainer or forcible entry. Accordingly, the instant case is hereby DISMISSED.

x x x x x x x x x

SO ORDERED.[10]

Petitioner sought reconsideration of the Decision, but the CA denied petitioner's motion for lack of merit.[11] Hence, petitioner came to this Court through a petition for review on *certiorari*.

On September 3, 2007, respondents' counsel informed this Court that respondent, Maricris Abiera Paredes, died on June 25, 2006 of asphyxia due to hanging, and moved that the latter's heirs be allowed to substitute for the deceased.[12] In the Resolution[13] dated November 14, 2007, the Court granted the motion.

Petitioner argues that he has sufficiently established his ownership of the subject properties; consequently, he asserts the right to recover possession thereof.

The petition has no merit.

To set the record straight, while petitioner may have proven his ownership of the land, as there can be no other piece of evidence more worthy of credence than a Torrens certificate of title, he failed to present any evidence to substantiate his claim of ownership or right to the possession of the building. Like the CA, we cannot accept the Deed of Extrajudicial Settlement of Estate (Residential Building) with Waiver and Quitclaim of Ownership executed by the Garcianos as proof that petitioner acquired ownership of the building. There is no showing that the Garcianos were the owners of the building or that they had any proprietary right over it. Ranged against

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[10] *Supra* note 1, at 94-95.

[11] *Rollo*, p. 105.

[12] *Id.* at 113-115.

[13] *Id.* at 130.

respondents' proof of possession of the building since 1977, petitioner's evidence pales in comparison and leaves us totally unconvinced.

Without a doubt, the registered owner of real property is entitled to its possession. However, the owner cannot simply wrest possession thereof from whoever is in actual occupation of the property. To recover possession, he must resort to the proper judicial remedy and, once he chooses what action to file, he is required to satisfy the conditions necessary for such action to prosper.

In the present case, petitioner opted to file an ejectment case against respondents. Ejectment cases—forcible entry and unlawful detainer—are summary proceedings designed to provide expeditious means to protect actual possession or the right to possession of the property involved.[14] The only question that the courts resolve in ejectment proceedings is: who is entitled to the physical possession of the premises, that is, to the possession *de facto* and not to the possession *de jure*. It does not even matter if a party's title to the property is questionable.[15] For this reason, an ejectment case will not necessarily be decided in favor of one who has presented proof of ownership of the subject property. Key jurisdictional facts constitutive of the particular ejectment case filed must be averred in the complaint and sufficiently proven.

The statements in the complaint that respondents' possession of the building was by mere tolerance of petitioner clearly make out a case for unlawful detainer. Unlawful detainer involves the person's withholding from another of the possession of the real property to which the latter is entitled, after the expiration or termination of the former's right to hold possession under the contract, either expressed or implied.[16]

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[14] *Go, Jr. v. Court of Appeals,* 415 Phil. 172, 183-184 (2001).

[15] *David v. Cordova,* 502 Phil. 626 (2005).

[16] *Republic v. Luriz,* G.R. No. 158992, January 26, 2007, 513 SCRA 140, 152-153.

A requisite for a valid cause of action in an unlawful detainer case is that possession must be originally lawful, and such possession must have turned unlawful only upon the expiration of the right to possess.[17] It must be shown that the possession was initially lawful; hence, the basis of such lawful possession must be established. If, as in this case, the claim is that such possession is by mere tolerance of the plaintiff, the acts of tolerance must be proved.

Petitioner failed to prove that respondents' possession was based on his alleged tolerance. He did not offer any evidence or even only an affidavit of the Garcianos attesting that they tolerated respondents' entry to and occupation of the subject properties. A bare allegation of tolerance will not suffice. Plaintiff must, at least, show overt acts indicative of his or his predecessor's permission to occupy the subject property. Thus, we must agree with the CA when it said:

> A careful scrutiny of the records revealed that herein respondent miserably failed to prove his claim that petitioners' possession of the subject building was by mere tolerance as alleged in the complaint. **Tolerance** must be [present] right from the start of possession sought to be recovered to be within the purview of unlawful detainer. Mere tolerance always carries with it "permission" and not merely silence or inaction for silence or inaction is negligence, not tolerance.[18]

In addition, plaintiff must also show that the supposed acts of tolerance have been present right from the very start of the possession—from entry to the property. Otherwise, if the possession was unlawful from the start, an action for unlawful detainer would be an improper remedy.[19] Notably, no mention was made in the complaint of how entry by respondents was effected or how and when dispossession started. Neither was there any evidence showing such details.

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[17] *Spouses Macasaet v. Spouses Macasaet,* 482 Phil. 853 (2004).

[18] *Rollo,* p. 91.

[19] *Valdez, Jr. v. Court of Appeals,* G.R. No. 132424, May 4, 2006, 489 SCRA 369, 377.

In any event, petitioner has some other recourse. He may pursue recovering possession of his property by filing an *accion publiciana,* which is a plenary action intended to recover the better right to possess; or an *accion reivindicatoria,* a suit to recover ownership of real property. We stress, however, that the pronouncement in this case as to the ownership of the land should be regarded as merely provisional and, therefore, would not bar or prejudice an action between the same parties involving title to the land.[20]

WHEREFORE, premises considered, the petition is *DENIED*. The CA Decision dated September 18, 2006 and Resolution dated April 17, 2007 are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.*, concur.

SECOND DIVISION

[G.R. No. 178495. July 26, 2010]

SPOUSES RODOLFO A. NOCEDA and ERNA T. NOCEDA, *petitioners, vs.* **AURORA ARBIZO-DIRECTO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; PRINCIPLE OF *RES JUDICATA*; TWO MAIN RULES.—

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[20] *Asis v. Asis Vda. de Guevarra,* G.R. No. 167554, February 26, 2008, 546 SCRA 580, 583.

The doctrine of *res judicata* is set forth in Section 47 of Rule 39 of the Rules of Court x x x. The principle of *res judicata* lays down two main rules, namely: (1) the judgment or decree of a court of competent jurisdiction on the merits concludes the litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same. These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence. The first general rule above stated, and which corresponds to x x x paragraph (b) of Section 47, Rule 39 of the Rules of Court, is referred to as "bar by former judgment"; while the second general rule, which is embodied in paragraph (c) of the same section and rule, is known as "conclusiveness of judgment."

2. ID.; ID.; ID.; ID.; CONCEPT OF CONCLUSIVENESS OF JUDGMENT; ELUCIDATED.— The Court in *Calalang v. Register of Deeds of Quezon City* explained the second concept which we reiterate herein, to wit: "The second concept — conclusiveness of judgment — states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same

point or question was in issue and adjudicated in the first suit (*Nabus v. Court of Appeals*, 193 SCRA 732 [1991]). Identity of cause of action is not required but merely identity of issue. Justice Feliciano, in *Smith Bell & Company (Phils.), Inc. v. Court of Appeals* (197 SCRA 201, 210 [1991]), reiterated *Lopez v. Reyes* (76 SCRA 179 [1977]) in regard to the distinction between bar by former judgment which bars the prosecution of a second action upon the same claim, demand, or cause of action, and conclusiveness of judgment which bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action. The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions necessarily implied in the final judgment, although no specific finding may have been made in reference thereto and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself."

3. ID.; ID.; ID.; ID.; ID.; BARS THE RELITIGATION OF PARTICULAR FACTS OR ISSUES IN ANOTHER LITIGATION BETWEEN THE SAME PARTIES ON A DIFFERENT CLAIM OR CAUSE OF ACTION.— Under the principle of conclusiveness of judgment, such material fact becomes binding and conclusive on the parties. When a right or fact has been judicially tried and determined by a court of competent jurisdiction, or when an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them. Thus, petitioners can no longer question respondent's ownership over Lot No. 1121 in the instant suit for quieting of title. Simply put, conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

4. CIVIL LAW; SPECIAL CONTRACTS; SALES; BUYERS IN BAD FAITH; A PARTY IS A BUYER IN BAD FAITH WHEN HE HAS ACTUAL KNOWLEDGE OF FACTS THAT WOULD IMPEL A REASONABLE MAN TO INQUIRE FURTHER ON A POSSIBLE DEFECT IN THE TITLE OF THE SELLER; CASE AT BAR.— [W]e find no reversible error in the appellate court's ruling that petitioners are in fact buyers in bad faith. We quote: "With appellants' actual knowledge of facts that would impel a reasonable man to inquire further on [a] possible defect in the title of Obispo, considering that she was found not to have been in actual occupation of the land in CA-G.R. CV No. 38126, they cannot simply invoke protection of the law as purchasers in good faith and for value. In a suit to quiet title, defendant may set up equitable as well as legal defenses, including acquisition of title by adverse possession and a prior adjudication on the question under the rule on *res judicata*. Appellants' status as holders in bad faith of a certificate of title, taken together with the preclusive effect of the right of possession and ownership over the disputed portion, which was adjudged in favor of appellee in Civil Case No. RTC-354-I, thus provide ample justification for the court *a quo* to grant the demurrer to evidence and dismiss their suit for quieting of title filed against the said appellee."

APPEARANCES OF COUNSEL

Eufracio Segundo C. Pagunuran for petitioners.
Edano & Pangan Law Office for respondent.

D E C I S I O N

NACHURA, *J.*:

Assailed in the instant petition is the Decision[1] of the Court of Appeals (CA), dismissing the appeal on the ground of *res judicata*.

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[1] Docketed as CA-G.R. CV No. 87026, penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Hakim S. Abdulwahid and Arturo G. Tayag, concurring; *rollo*, pp. 29-44.

On September 16, 1986, respondent Aurora Arbizo-Directo filed a complaint against her nephew, herein petitioner Rodolfo Noceda, for "Recovery of Possession and Ownership and Rescission/Annulment of Donation" with the Regional Trial Court (RTC) of Iba, Zambales, Branch 71, docketed as Civil Case No. RTC-354-I. Respondent alleged that she and her co-heirs have extra-judicially settled the property they inherited from their late father on August 19, 1981, consisting of a parcel of land, described as Lot No. 1121, situated in Bitoong, San Isidro, Cabangan, Zambales. She donated a portion of her hereditary share to her nephew, but the latter occupied a bigger area, claiming ownership thereof since September 1985.

Judgment was rendered in favor of respondent on November 6, 1991, where the RTC (a) declared the Extra-Judicial Settlement-Partition dated August 19, 1981 valid; (b) declared the Deed of Donation dated June 1, 1981 revoked; (c) ordered defendant to vacate and reconvey that donated portion of Lot 2, Lot 1121 subject of the Deed of Donation dated June 1, 1981 to the plaintiff or her heirs or assigns; (d) ordered the defendant to remove the house built inside the donated portion at the defendant's expense or pay a monthly rental of ₱300.00 Philippine Currency; and (e) ordered the defendant to pay attorney's fees in the amount of ₱5,000.00.[2] The decision was appealed to the CA, docketed as CA-G.R. CV No. 38126.

On January 5, 1995, spouses Rodolfo Dahipon and Cecilia Obispo- Dahipon filed a complaint for recovery of ownership and possession, and annulment of sale and damages against spouses Antonio and Dominga Arbizo, spouses Rodolfo and Erna Noceda, and Aurora Arbizo-Directo with the RTC, Iba, Zambales, Branch 70. This was docketed as Civil Case No. RTC-1106-I. In the complaint, spouses Dahipon alleged that they were the registered owners of a parcel of land, consisting of 127,298 square meters, situated in Barangay San Isidro, Cabangan, Zambales, designated as Lot 1121-A. The Original

[2] *Id.* at 30.

Certificate of Title No. P-9036 over the land was issued in the name of Cecilia Obispo-Dahipon, pursuant to Free Patent No. 548781. Spouses Dahipon claimed that the defendants therein purchased portions of the land from them without paying the full amount. Except for Aurora, a compromise agreement was entered into by the parties, as a result of which, a deed of absolute sale was executed, and TCT No. T-50730 was issued in the name of spouses Noceda for their portion of the land. For her part, Aurora questioned Dahipon's alleged ownership over the same parcel of land by filing an adverse claim.

In the meantime, a decision was rendered in CA-G.R. CV No. 38126 on March 31, 1995 with the following *fallo*:

> WHEREFORE, judgment is hereby rendered, ORDERING defendant Rodolfo Noceda to VACATE the portion known as Lot "C" of Lot 1121 per Exhibit E, which was allotted to plaintiff Aurora Arbizo-Directo. Except for this modification, the Decision dated November 6, 1991 of the RTC, Iba, Zambales, Branch 71, in Civil Case No. RTC-354-I, is hereby AFFIRMED in all other respects. Costs against defendant Rodolfo Noceda.[3]

Undaunted, petitioners filed a petition for review with this Court, which was docketed as G.R. No. 119730. The Court found no reversible error, much less grave abuse of discretion, with the factual findings of the two courts below, and thus denied the petition on September 2, 1999.[4] The decision became final and executory, and a writ of execution was duly issued by the RTC on March 6, 2001 in Civil Case No. RTC-354-I.

On December 4, 2003, petitioners instituted an action for quieting of title against respondent, docketed as Civil Case No. 2108-I. In the complaint, petitioners admitted that Civil Case No. RTC-354-I was decided in favor of respondent and a writ of execution had been issued, ordering them to vacate the property. However, petitioners claimed that the land, which

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[3] *Id.* at 31.

[4] Decision was penned by Justice Minerva Gonzaga-Reyes (ret.).

was the subject matter of Civil Case No. RTC-354-I, was the same parcel of land owned by spouses Dahipon from whom they purchased a portion; and that a title (TCT No. T-37468) was, in fact, issued in their name. Petitioners prayed for the issuance of a writ of preliminary injunction to enjoin the implementation of the Writ of Execution dated March 6, 2001 in Civil Case No. RTC-354-I, and that "a declaration be made that the property bought, occupied and now titled in the name of [petitioners] was formerly part and subdivision of Lot No. 1121 Pls-468-D, covered by OCT No. P-9036 in the name of Cecilia Obispo-Dahipon."[5]

Respondent filed a Motion to Dismiss on the ground of *res judicata.* Respondent averred that petitioners, aware of their defeat in Civil Case No. RTC-354-I, surreptitiously negotiated with Cecilia Obispo-Dahipon for the sale of the land and filed the present suit in order to subvert the execution thereof.

The trial court denied the motion, holding that there was no identity of causes of action.

Trial thereafter ensued. On January 25, 2006, after petitioners presented their evidence, respondent filed a Demurrer to Evidence, stating that the claim of ownership and possession of petitioners on the basis of the title emanating from that of Cecilia Obispo-Dahipon was already raised in the previous case (Civil Case No. RTC-354-I).

On February 22, 2006, the trial court issued a resolution granting the demurrer to evidence.

The CA affirmed. Hence, petitioners now come to this Court, raising the following issues:

WHETHER OR NOT THE PRINCIPLE OF *RES JUDICATA* OR DOCTRINE OF CONCLUSIVENESS OF JUDGMENT IS APPLICABLE UNDER THE FACTS OBTAINING IN THE PRESENT CASE[;]

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[5] *Rollo,* p. 32.

WHETHER OR NOT THE RESPONDENT HAS A BETTER TITLE THAN THE PETITIONERS[; and]

WHETHER OR NOT THE RULING ON PURCHASERS IN BAD FAITH IS APPLICABLE IN THE PRESENT CASE[.][6]

Petitioners assert that *res judicata*[7] does not apply, considering that the essential requisites as to the identity of parties, subject matter, and causes of action are not present.

The petition is bereft of merit.

The doctrine of *res judicata* is set forth in Section 47 of Rule 39 of the Rules of Court, as follows:

> Sec. 47. Effect of judgments or final orders. - The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
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> x x x x x x x x x
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> (b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and
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> (c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which actually and necessarily included therein or necessary thereto.

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[6] *Id.* at 16.

[7] The requisites essential for the application of the principle of *res judicata* are as follows: (1) there must be a final judgment or order; (2) said judgment or order must be on the merits; (3) the Court rendering the same must have jurisdiction on the subject matter and the parties; and (4) there must be between the two cases identity of parties, subject matter and causes of action. (*Cruz v. Court of Appeals*, G.R. No. 164797, Feb. 13, 2006, 482 SCRA 379.)

The principle of *res judicata* lays down two main rules, namely: (1) the judgment or decree of a court of competent jurisdiction on the merits concludes the litigation between the parties and their privies and constitutes a bar to a new action or suit involving the same cause of action either before the same or any other tribunal; and (2) any right, fact, or matter in issue directly adjudicated or necessarily involved in the determination of an action before a competent court in which a judgment or decree is rendered on the merits is conclusively settled by the judgment therein and cannot again be litigated between the parties and their privies whether or not the claims or demands, purposes, or subject matters of the two suits are the same. These two main rules mark the distinction between the principles governing the two typical cases in which a judgment may operate as evidence.[8] The first general rule above stated, and which corresponds to the afore-quoted paragraph (b) of Section 47, Rule 39 of the Rules of Court, is referred to as "bar by former judgment"; while the second general rule, which is embodied in paragraph (c) of the same section and rule, is known as "conclusiveness of judgment."[9]

The Court in *Calalang v. Register of Deeds of Quezon City*[10] explained the second concept which we reiterate herein, to wit:

> The second concept — conclusiveness of judgment — states that a fact or question which was in issue in a former suit and was there judicially passed upon and determined by a court of competent jurisdiction, is conclusively settled by the judgment therein as far as the parties to that action and persons in privity with them are concerned and cannot be again litigated in any future action between such parties or their privies, in the same court or any other court of concurrent jurisdiction on either the same or different cause of action, while the judgment remains unreversed by proper authority. It has been held that in order that a judgment in one action can be conclusive as to a particular matter in another action between the

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[8] *Vda. de Cruzo v. Carriaga, Jr.*, G.R. Nos. 75109-10, June 28, 1989, 174 SCRA 330, 338.

[9] *Alamayri v. Pabale*, G.R. No. 151243, April 30, 2008, 553 SCRA 146.

[10] G.R. Nos. 76265 and 83280, March 11, 1994, 231 SCRA 88.

same parties or their privies, it is essential that the issue be identical. If a particular point or question is in issue in the second action, and the judgment will depend on the determination of that particular point or question, a former judgment between the same parties or their privies will be final and conclusive in the second if that same point or question was in issue and adjudicated in the first suit (*Nabus v. Court of Appeals*, 193 SCRA 732 [1991]). Identity of cause of action is not required but merely identity of issue.

Justice Feliciano, in *Smith Bell & Company (Phils.), Inc. v. Court of Appeals* (197 SCRA 201, 210 [1991]), reiterated *Lopez v. Reyes* (76 SCRA 179 [1977]) in regard to the distinction between bar by former judgment which bars the prosecution of a second action upon the same claim, demand, or cause of action, and conclusiveness of judgment which bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.

> The general rule precluding the relitigation of material facts or questions which were in issue and adjudicated in former action are commonly applied to all matters essentially connected with the subject matter of the litigation. Thus, it extends to questions necessarily implied in the final judgment, although no specific finding may have been made in reference thereto and although such matters were directly referred to in the pleadings and were not actually or formally presented. Under this rule, if the record of the former trial shows that the judgment could not have been rendered without deciding the particular matter, it will be considered as having settled that matter as to all future actions between the parties and if a judgment necessarily presupposes certain premises, they are as conclusive as the judgment itself.[11]

The foregoing disquisition finds application in the case at bar. Undeniably, the present case is closely related to the previous case (Civil Case No. RTC-354-I), where petitioners raised the issue of ownership and possession of Lot No. 1121 and the annulment of the donation of said lot to them. The RTC found for respondent, declaring the deed of donation she executed in

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

favor of petitioners revoked; and ordered petitioners to vacate and reconvey the donated portion to respondent. The decision of the RTC was affirmed by the CA, and became final with the denial of the petition for review by this Court in G.R. No. 119730. In that case, the Court noted the established fact "that petitioner Noceda occupied not only the portion donated to him by respondent Aurora Arbizo-Directo, but he also fenced the whole area of Lot C which belongs to private respondent Directo, thus, petitioner's act of occupying the portion pertaining to private respondent Directo without the latter's knowledge and consent is an act of usurpation which is an offense against the property of the donor and considered as an act of ingratitude of a donee against the donor."[12] Clearly, therefore, petitioners have no right of ownership or possession over the land in question.

Under the principle of conclusiveness of judgment, such material fact becomes binding and conclusive on the parties. When a right or fact has been judicially tried and determined by a court of competent jurisdiction, or when an opportunity for such trial has been given, the judgment of the court, as long as it remains unreversed, should be conclusive upon the parties and those in privity with them.[13] Thus, petitioners can no longer question respondent's ownership over Lot No. 1121 in the instant suit for quieting of title. Simply put, conclusiveness of judgment bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action.[14]

Furthermore, we agree that petitioners instituted the instant action with unclean hands. Aware of their defeat in the previous case, they attempted to thwart execution and assert their alleged ownership over the land through their purported purchase of a lot from Cecilia Obispo-Dahipon. This later transaction appears to be suspect. A perusal of G.R. No. 119730 reveals that the

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[12] *Noceda v. Court of Appeals*, G.R. No. 119730, Sept. 2, 1999, 313 SCRA 504, 518-519.

[13] *Cruz v. Court of Appeals*, *supra* note 7.

[14] *Tan v. Court of Appeals*, 415 Phil. 675 (2001).

Court was not unaware of Dahipon's alleged claim over the same parcel of land. It noted that Dahipon did not even bother to appear in court to present her free patent upon respondent's request, or to intervene in the case, if she really had any legitimate interest over the land in question.[15] In any event, petitioners' assertion of alleged good title over the land cannot stand considering that they purchased the piece of land from Dahipon knowing fully well that the same was in the adverse possession of another.

Thus, we find no reversible error in the appellate court's ruling that petitioners are in fact buyers in bad faith. We quote:

> With appellants' actual knowledge of facts that would impel a reasonable man to inquire further on [a] possible defect in the title of Obispo, considering that she was found not to have been in actual occupation of the land in CA-G.R. CV No. 38126, they cannot simply invoke protection of the law as purchasers in good faith and for value. In a suit to quiet title, defendant may set up equitable as well as legal defenses, including acquisition of title by adverse possession and a prior adjudication on the question under the rule on *res judicata.* Appellants' status as holders in bad faith of a certificate of title, taken together with the preclusive effect of the right of possession and ownership over the disputed portion, which was adjudged in favor of appellee in Civil Case No. RTC-354-I, thus provide ample justification for the court *a quo* to grant the demurrer to evidence and dismiss their suit for quieting of title filed against the said appellee.[16]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CV No. 87026 is *AFFIRMED in toto.*

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.*, concur.

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[15] *Noceda v. Court of Appeals, supra* note 12, at 519.

[16] *Supra* note 1, at 43.

SECOND DIVISION

[G.R. No. 178591. July 26, 2010]

SM SYSTEMS CORPORATION (formerly Springsun Management Systems Corporation), *petitioner, vs.* **OSCAR CAMERINO, EFREN CAMERINO, CORNELIO MANTILE, DOMINGO ENRIQUEZ, and HEIRS OF NOLASCO DEL ROSARIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; DEFINED.— Forum shopping is the act of a litigant who repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and on the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.

2. ID.; ID.; ID.; RATIONALE.—The rationale against forum shopping is that a party should not be allowed to pursue simultaneous remedies in two different *fora*. Filing multiple petitions or complaints constitutes abuse of court processes, which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts. Thus, the rule proscribing forum shopping seeks to promote candor and transparency among lawyers and their clients in the pursuit of their cases before the courts to promote the orderly administration of justice, to prevent undue inconvenience upon the other party, and to save the precious time of the courts. It also aims to prevent the embarrassing situation of two or more courts or agencies rendering conflicting resolutions or decisions upon the same issue.

3. ID.; ID.; ID.; RULE AGAINST FORUM SHOPPING, WHEN VIOLATED.— To determine whether a party violated the rule against forum shopping, the most important question to ask is

whether the elements of *litis pendentia* are present or whether a final judgment in one case will result to *res judicata* in another.

4. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMPROMISES; COMPROMISE AGREEMENT; MAY BE EXECUTED EVEN AFTER THE FINALITY OF THE DECISION.— Once a case is terminated by final judgment, the rights of the parties are settled; hence, a compromise agreement is no longer necessary. Though it may not be prudent to do so, we have seen in a number of cases that parties still considered and had, in fact, executed such agreement. To be sure, the parties may execute a compromise agreement even after the finality of the decision. A reciprocal concession inherent in a compromise agreement assures benefits for the contracting parties. For the defeated litigant, obvious is the advantage of a compromise after final judgment as the liability decreed by the judgment may be reduced. As to the prevailing party, it assures receipt of payment because litigants are sometimes deprived of their winnings because of unscrupulous mechanisms meant to delay or evade the execution of a final judgment.

5. REMEDIAL LAW; COURTS; POWER TO STAY PROCEEDINGS; THE COURT IN WHICH AN ACTION IS PENDING MAY, IN THE EXERCISE OF SOUND DISCRETION, HOLD THE ACTION IN ABEYANCE TO ABIDE BY THE OUTCOME OF ANOTHER CASE PENDING IN ANOTHER COURT.— The court in which an action is pending may, in the exercise of sound discretion, hold the action in abeyance to abide by the outcome of another case pending in another court. Undeniably, the power to stay proceedings is an incident to the power inherent in every court to control the disposition of the cases on its dockets, considering its time and effort, and those of counsel and litigants. Every order suspending proceedings must be guided by the following precepts: it shall be done in order to avoid multiplicity of suits and to prevent vexatious litigations, conflicting judgments, confusion between litigants and courts, or when the rights of parties to the second action cannot be properly determined until the questions raised in the first action are settled.

APPEARANCES OF COUNSEL

Pizarras & Associates Law Office for petitioner.
Gilberto C. Alfafara for Mariano Nocom.

R E S O L U T I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* of the Court of Appeals (CA) Decision[1] dated October 23, 2006, and its Resolution[2] dated June 29, 2007, in CA-G.R. SP No. 92994.

The facts of the case, as summarized in *Springsun Management Systems Corporation v. Camerino*,[3] and as found by the CA, are as follows:

Victoria Homes, Inc. (Victoria Homes) was the registered owner of three (3) lots (subject lots), covered by Transfer Certificate of Title (TCT) Nos. (289237) S-6135, S-72244, and (289236) S-35855, with an area of 109,451 square meters, 73,849 sq m, and 109,452 sq m, respectively. These lots are situated in Barrio Bagbagan, Muntinlupa, Rizal (now Barangay Tunasan, Muntinlupa City, Metro Manila).

Since 1967, respondents Oscar Camerino, Efren Camerino, Cornelio Mantile, Domingo Enriquez, and Nolasco del Rosario (herein represented by his heirs) were farmers-tenants of Victoria Homes, cultivating and planting rice and corn on the lots.

On February 9, 1983 and July 12, 1983, Victoria Homes, without notifying respondents, sold the subject lots to Springsun Management Systems Corporation (Springsun), the predecessor-

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[1] Penned by Associate Justice Magdangal M. de Leon, with Associate Justices Rebecca de Guia-Salvador and Ramon R. Garcia, concurring; *rollo*, pp. 61-77.

[2] *Id.* at 79-80.

[3] 489 Phil. 769 (2005).

in-interest of petitioner SM Systems Corporation.[4] The Deeds of Sale were registered with the Registry of Deeds of Rizal. Accordingly, TCT Nos. (289237) S-6135, (289236) S-35855, and S-72244 in the name of Victoria Homes were cancelled and, in lieu thereof, TCT Nos. 120541, 120542, and 123872 were issued in the name of Springsun. Springsun subsequently mortgaged the subject lots to Banco Filipino Savings and Mortgage Bank (Banco Filipino) as security for its various loans amounting to ₱11,545,000.00. When Springsun failed to pay its loans, the mortgage was foreclosed extra-judicially. At the public auction sale, the lots were sold to Banco Filipino, being the highest bidder, but they were eventually redeemed by Springsun.

On March 7, 1995, respondents filed with the Regional Trial Court (RTC), Branch 256, Muntinlupa City, a complaint against Springsun and Banco Filipino for Prohibition/*Certiorari*, Reconveyance/Redemption, Damages, Injunction with Preliminary Injunction and Temporary Restraining Order or, simply, an action for Redemption.[5] On January 25, 2002, the RTC rendered a decision[6] in favor of respondents, authorizing them to redeem the subject lots from Springsun for the total price of ₱9,790,612.00. On appeal to the CA, the appellate court affirmed the RTC decision with a modification on the award of attorney's fees.[7]

Aggrieved, Springsun elevated the matter to this Court *via* a petition for review on *certiorari*. The case was docketed as G.R. No. 161029. On January 19, 2005, we affirmed the CA Decision.[8] With the denial of Springsun's motion for

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[4] Victoria sold the lots covered by TCT Nos. (289237) S-6135 and (289236) S-35855 for ₱7,223,799.00; and the lot covered by TCT No. S-72244 for ₱2,566,813.00.

[5] *Rollo,* pp. 93-100.

[6] Penned by Presiding Judge Alberto Lerma; *id.* at 111-117.

[7] Embodied in a Decision dated September 23, 2003; penned by Associate Justice Renato C. Dacudao, with Presiding Justice Cancio C. Garcia (now a retired member of this Court) and Associate Justice Danilo B. Pine, concurring; *id.* at 133-153.

[8] Embodied in a Decision penned by Associate Justice Angelina Sandoval-Gutierrez (ret.), with former Chief Justice Artemio V. Panganiban and

reconsideration, the same became final and executory; accordingly, an entry of judgment was made.[9] Respondents thus moved for the execution of the Decision.[10]

Petitioner[11] instituted an action for Annulment of Judgment with prayer for the issuance of a Temporary Restraining Order before the CA, docketed as CA-G.R. SP No. 90931.[12] Petitioner sought the annulment of the RTC decision allowing respondents to redeem the subject property. Petitioner argued that it was deprived of the opportunity to present its case on the ground of fraud, manipulations and machinations of respondents. It further claimed that the Department of Agrarian Reform, not the RTC, had jurisdiction over the redemption case. The CA, however, dismissed the petition on October 20, 2005.[13] Its motion for reconsideration was also denied for lack of merit.[14] The matter was elevated to this Court *via* a petition for review on *certiorari* in G.R. No. 171754, but the same was denied on June 28, 2006.[15] After the denial of its motion for reconsideration, the Decision became final and executory; and an entry of judgment was subsequently made.[16]

Meanwhile, on December 18, 2003, respondents executed an Irrevocable Power of Attorney in favor of Mariano Nocom

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Associate Justices Renato C. Corona (now Chief Justice) and Conchita Carpio Morales, concurring; 489 Phil. 769.

[9] *Rollo*, p. 64.

[10] *Id.* at 178-185.

[11] At this point, Springsun already changed its name to SM Systems Corporation, as shown in its Amended Articles of Incorporation.

[12] *Rollo*, pp. 188-220.

[13] Embodied in a Resolution penned by Associate Justice Arcangelita M. Romilla-Lontok, with Associate Justices Marina L. Buzon and Danilo B. Pine, concurring; *id.* at 221-229.

[14] *Id.* at 230.

[15] Embodied in a Minute Resolution of the First Division; *id.* at 279.

[16] *Id.* at 419.

(Nocom), authorizing him, among other things, to comply with our January 19, 2005 Decision by paying the redemption price to Springsun and/or to the court.[17] Respondents, however, challenged the power of attorney in an action for revocation with the RTC. In a summary judgment, the RTC annulled the Irrevocable Power of Attorney for being contrary to law and public policy. The RTC explained that the power of attorney was a disguised conveyance of the statutory right of redemption that is prohibited under Republic Act No. 3844. The CA affirmed the RTC decision. However, this Court, in G.R. No. 182984, set aside the CA Decision and concluded that the RTC erred in rendering the summary judgment. The Court thus remanded the case to the RTC for proper proceedings and proper disposition, according to the rudiments of a regular trial on the merits and not through an abbreviated termination of the case by summary judgment.

On August 4, 2005, as petitioner refused to accept the redemption amount of ₱9,790,612.00, plus ₱147,059.18 as commission, respondents deposited the said amounts, duly evidenced by official receipts, with the RTC. The RTC further granted respondents' motion for execution and, consequently, TCT Nos. 120542, 120541, and 123872 in the name of petitioner were cancelled and TCT Nos. 15895, 15896, and 15897 were issued in the names of respondents. It also ordered that the "Irrevocable Power of Attorney," executed on December 18, 2003 by respondents in favor of Nocom, be annotated in the memorandum of encumbrances of TCT Nos. 15895, 15896, and 15897.[18]

On August 20, 2005, petitioner and respondents (except Oscar Camerino) executed a document, denominated as *Kasunduan*,[19] wherein the latter agreed to receive ₱300,000.00 each from the

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[17] *Nocom v. Camerino*, G.R. No. 182984, February 10, 2009, 578 SCRA 390.

[18] *Id.* at 397.

[19] *Rollo*, pp. 869-875.

former, as compromise settlement. Petitioner then filed a Motion to Hold Execution in Abeyance on the Ground of Supervening Event.[20]

On September 7, 2005, the RTC denied petitioner's motion, thus:

> WHEREFORE, in view of the foregoing, defendant's Motion to Hold in Abeyance Execution on Ground of Supervening Event is denied and the Kasunduan separately entered into by Efren Camerino, Cornelio Mantile, Domingo Enriquez[,] and the Heirs of Nolasco del Rosario are hereby disapproved.
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> SO ORDERED.[21]

Aggrieved by the aforesaid Order and the denial of its motion for reconsideration, petitioner elevated the matter to the CA. On May 8, 2006, counsel for respondents moved that they be excused from filing the required comment, considering that only Oscar Camerino was impleaded as private respondent in the amended petition; and also because respondents already transferred *pendente lite* their contingent rights over the case in favor of Nocom.[22] Nocom, in turn, filed a Motion for Leave of Court to Admit Attached Comment to the Petition.[23]

On October 23, 2006, the appellate court rendered the assailed Decision, finding petitioner guilty of forum shopping. The CA concluded that the present case was substantially similar to G.R. No. 171754. It further held that the compromise agreement could not novate the Court's earlier Decision in G.R. No. 161029 because only four out of five parties executed the agreement.

Undaunted, petitioner comes before us in this petition for review on *certiorari,* raising the following issues:

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[20] *Id.* at 431-436.

[21] *Id.* at 458.

[22] CA *rollo,* pp. 171-174.

[23] *Id.* at 175-218.

1. Whether or not the *Kasunduan* effectively novated the judgment obligation.
2. Whether or not the Court should rule on the Motion to Expunge the Comment of Mariano Nocom filed by the Petitioner.
3. Whether or not Mariano Nocom should be allowed to participate in the instant case on the basis of the null and void Irrevocable Power of Attorney.
4. Whether or not the (sic) there is grave abuse of discretion when Judge Lerma denied the Motion to inhibit filed by Petitioner despite Judge Lerma's clear showing of partiality for the other party.
5. Whether or not there is forum-shopping.[24]

Contrary to the conclusion of the CA, we find petitioner not guilty of forum shopping.

Forum shopping is the act of a litigant who repetitively avails of several judicial remedies in different courts, simultaneously or successively, all substantially founded on the same transactions and on the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court, to increase his chances of obtaining a favorable decision if not in one court, then in another.[25]

The rationale against forum shopping is that a party should not be allowed to pursue simultaneous remedies in two different *fora*. Filing multiple petitions or complaints constitutes abuse of court processes, which tends to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts. Thus, the rule proscribing forum shopping seeks to promote candor and transparency among lawyers and their clients in the

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[24] *Rollo*, pp. 1090-1091.

[25] *Briones v. Henson-Cruz*, G.R. No. 159130, August 22, 2008, 563 SCRA 69, 84.

pursuit of their cases before the courts to promote the orderly administration of justice, to prevent undue inconvenience upon the other party, and to save the precious time of the courts. It also aims to prevent the embarrassing situation of two or more courts or agencies rendering conflicting resolutions or decisions upon the same issue.[26]

To determine whether a party violated the rule against forum shopping, the most important question to ask is whether the elements of *litis pendentia* are present or whether a final judgment in one case will result to *res judicata* in another.[27]

It is true that after the finality of this Court's Decision in G.R. No. 161029 dated January 19, 2005, petitioner instituted and filed various petitions and motions which essentially prevented the execution of the aforesaid Decision. Yet, we do not agree with the CA that the instant case is dismissible because it earlier filed an action for annulment of judgment that involved substantially the same set of facts, issues, and reliefs sought. While petitioner's goal in filing the instant case is the same as that in G.R. No. 171754 (which stemmed from the petition for annulment of judgment), that is to prevent the execution of the January 19, 2005 Decision, still, there is no forum shopping.

In the action for annulment of judgment, petitioner sought the nullification of the January 19, 2005 Decision on the ground that it was deprived of its opportunity to present its case and that the RTC had no jurisdiction to decide the case. While in the instant case, petitioner prays that the execution of the January 19, 2005 Decision be held in abeyance in view of the compromise agreement entered into by petitioner and four respondents. In short, the issue threshed out in the annulment case was the validity of the 2005 Decision, while in this case, the issue is focused on the effect of the compromise agreement entered into after the finality of the Decision sought to be executed. Clearly, therefore, there is no identity of issues in the two cases.

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[26] *Huibonhoa v. Concepcion*, G.R. No. 153785, August 3, 2006, 497 SCRA 562, 570.

[27] *Id.*

In view of the foregoing, a review of the assailed Decision is in order, particularly on the effect of the compromise agreement entered into after final judgment has been rendered.

Once a case is terminated by final judgment, the rights of the parties are settled; hence, a compromise agreement is no longer necessary.[28] Though it may not be prudent to do so, we have seen in a number of cases that parties still considered and had, in fact, executed such agreement. To be sure, the parties may execute a compromise agreement even after the finality of the decision.[29] A reciprocal concession inherent in a compromise agreement assures benefits for the contracting parties. For the defeated litigant, obvious is the advantage of a compromise after final judgment as the liability decreed by the judgment may be reduced. As to the prevailing party, it assures receipt of payment because litigants are sometimes deprived of their winnings because of unscrupulous mechanisms meant to delay or evade the execution of a final judgment.[30]

As much as we would like to settle the issues raised in this petition, we cannot make a definitive conclusion on the validity of the compromise agreement because of some facts that complicate the present case.

We must recall that, in our January 19, 2005 Decision, we upheld respondents' right to redeem the subject lots for ₱9,790,612.00. On December 18, 2003, respondents executed an Irrevocable Power of Attorney in favor of Nocom, authorizing him to redeem the subject lots. Pursuant to the aforesaid authority, Nocom deposited with the court the redemption money plus commission on August 4, 2005. Consequently, the certificates of title in the name of petitioner were cancelled, and new ones were issued in the name of respondents. It was only on August

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[28] *Magbanua v. Uy*, 497 Phil. 511 (2005).

[29] *Cosmos Bottling Corporation v. Nagrama, Jr.*, G.R. No. 164403, March 4, 2008, 547 SCRA 571.

[30] *Magbanua v. Uy*, *supra* note 28, at 196.

20, 2005 that petitioner and respondents executed the *Kasunduan* or the compromise agreement. Although we could have easily declared that the agreement was invalid as there was nothing more to compromise at that time with the redemption of the property by Nocom, yet, as narrated earlier, respondents assailed in a separate case the validity of the Irrevocable Power of Attorney allegedly executed by them in favor of Nocom. The case had reached this Court in G.R. No. 182984, but we remanded it to the RTC of Muntinlupa City, Branch 203, for further proceedings and in accordance with the rudiments of a regular trial, with the instruction not to dispose of the case through a summary judgment.

The Court notes that respondents herein are the farmers-tenants, but records show that the pleadings in answer to the petition were filed by Nocom for and in his own behalf. Nocom is actively participating herein on the basis of the questioned Irrevocable Power of Attorney. But to date, the authority of Nocom to exercise the right of redemption is still in issue in a separate case.

With the foregoing discussion, the resolution of the issues herein have to be held in abeyance, pending the settlement of the questions raised in the other action.[31] We are not unmindful of the right of every party to a speedy disposition of his case,[32] but the rights of the parties herein cannot be properly determined until the resolution of the issues in the other action.

The court in which an action is pending may, in the exercise of sound discretion, hold the action in abeyance to abide by the outcome of another case pending in another court.[33] Undeniably, the power to stay proceedings is an incident to the power inherent

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[31] Before the RTC of Muntinlupa City, Branch 203.

[32] *SM Prime Holdings, Inc. v. Madayag*, G.R. No. 164687, February 12, 2009, 578 SCRA 552, 558.

[33] *Magestrado v. People*, G.R. No. 148072, July 10, 2007, 527 SCRA 125.

in every court to control the disposition of the cases on its dockets, considering its time and effort, and those of counsel and litigants.[34] Every order suspending proceedings must be guided by the following precepts: it shall be done in order to avoid multiplicity of suits and to prevent vexatious litigations, conflicting judgments, confusion between litigants and courts, or when the rights of parties to the second action cannot be properly determined until the questions raised in the first action are settled.[35]

WHEREFORE, premises considered, the resolution of this petition is hereby *SUSPENDED* or *HELD IN ABEYANCE* until after the proceedings in Civil Case No. 05-172 shall have been terminated.

Let a copy of this Resolution be furnished the Regional Trial Court of Muntinlupa City, Branch 203, where the above-cited case is pending. The said court is hereby directed to resolve the case pending before it with dispatch.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.*, concur.

FIRST DIVISION

[G.R. No. 178621. July 26, 2010]

MIGUEL RUBIA, *petitioner, vs.* **NATIONAL LABOR RELATIONS COMMISSION, FOURTH DIVISION, CEBU CITY, COMMUNITY WATER AND SANITATION COOPERATIVE AND THE BOARD OF DIRECTORS,** *respondents.*

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[34] *SM Prime Holdings, Inc. v. Madayag, supra* note 32, at 557-558; *id.* at 141.

[35] *SM Prime Holdings, Inc. v. Madayag, supra,* at 558.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS, PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTION; PRESENT IN CASE AT BAR.— The issues raised by petitioner are evidently factual in nature. By giving due course to his petition, this Court is not departing from the well-settled rule that questions of facts are not reviewable. The discordant findings between the Labor Arbiter and the NLRC however open the door for review.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; WHEN CONSIDERED A VALID GROUND FOR DISMISSAL.— Article 282(c) of the Labor Code allows an employer to terminate the services of an employee for fraud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representative. For there to be a valid dismissal based on loss of trust and confidence, the employee concerned must be holding a position of trust and confidence and there must be an act that would justify the loss of trust and confidence.

3. ID.; ID.; ID.; ID.; ID.; A GENERAL MANAGER HOLDS A POSITION OF TRUST AND CONFIDENCE; CASE AT BAR.—Petitioner held the position of General Manager of COWASSCO prior to his termination. As General Manager, he was tasked the general operation of the cooperative. Undoubtedly, petitioner held a position of trust and confidence. As correctly pointed out by the Court of Appeals, "the nature of petitioner's work as manager requires a substantial amount of trust and confidence reposed on him by his employer. He occupies a highly sensitive and critical position which involves a high degree of responsibility."

4. ID.; ID.; ID.; ID.; ID.; GUIDELINES FOR THE APPLICATION OF LOSS OF TRUST AND CONFIDENCE AS A JUST CAUSE FOR DISMISSAL OF AN EMPLOYEE FROM THE SERVICE.— Having established that petitioner is a managerial employee, we shall proceed to determine whether the guidelines for the application of loss of trust and confidence as a just cause for dismissal of an employee from the service were

complied with, *i.e.*, 1) loss of confidence should not be simulated; 2) it should not be used as subterfuge for causes which are improper, illegal or unjustified; 3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and 4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith.

5. ID.; ID.; ID.; ID.; ID.; TO CONSTITUTE A VALID CAUSE FOR DISMISSAL, THE BREACH OF TRUST MUST BE WILLFUL.— For breach of trust to constitute a valid cause for dismissal, it must be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable excuse. x x x Petitioner's failure to closely monitor the contamination of water supply, his repeated failure to appear before the *Sangguniang Bayan* to explain his lapses, and his overall indifference in performing the task assigned to him as general manager clearly demonstrate a willful breach of trust.

6. ID.; ID.; ID.; NOTICE AND HEARING; REQUIRED IN DISMISSAL CASES.— Aside from dismissal for a just cause, the other part of the two-tiered rule for a valid dismissal is the observance of due process [pursuant to Article 277(b) of the Labor Code]. x x x In addition, Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code, requires the employer to furnish the employee with two written notices. These are: (1) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and (2) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

7. ID.; ID.; ID.; ID.; PURPOSE.— The twin requirements of notice and hearing constitute the elements of due process in cases of employee's dismissal. The requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss and the reason for the proposed dismissal. Upon the other hand the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected.

8. ID.; ID.; ID.; ID.; AS LONG AS AN EMPLOYEE IS GIVEN AN OPPORTUNITY TO EXPLAIN HIS SIDE, THE REQUIREMENTS OF DUE PROCESS ARE SUBSTANTIALLY COMPLIED WITH.— The essence of due process is simply an opportunity to be heard; it is the denial of this opportunity that constitutes violation of due process of law. As long as petitioner was given an opportunity to explain his side, the requirements of due process have been substantially complied with.

APPEARANCES OF COUNSEL

Rodolfo A. Ugand, Sr. for petitioner.
Almirante Almirante & Echavez Law Office for respondents.

D E C I S I O N

PEREZ, *J.*:

In this petition for review on *certiorari*, petitioner Miguel Rubia seeks to reverse the Decision[1] and Resolution[2] of the Court of Appeals in CA-G.R. SP. No. 00165, which affirmed the ruling [3] of the National Labor Relations Commission (NLRC) declaring petitioner's dismissal as valid.

Petitioner served as member of the Board of Community Water and Sanitation Cooperative (COWASSCO), a cooperative primarily engaged in water and sanitation service for the municipality of Argao in Cebu, before he was appointed its General Manager in 1 October 1994.[4]

On 28 August 2000, COWASSCO, through its Chairman of the Board, issued Memorandum No. 001-2000 charging petitioner

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[1] Penned by Associate Justice Antonio L. Villamor with Associate Justices Arsenio J. Magpale and Marlene Gonzales-Sison, concurring. *Rollo*, pp. 18-29.

[2] *Id.* at 36-37.

[3] Penned by Commissioner Oscar S. Uy with Commissioners Edgardo M. Enerlan and Gerardo C. Nograles concurring. Records, pp. 162-176.

[4] *Id.* at 12.

with mismanagement of operation relating to the non-monitoring and non-compliance on the application of the correct dosage of chlorine to the water system and requesting an explanation from him. The Memorandum reads:

> Please be informed that during the Special Meeting of the Board of Directors, held last August 26, 2000, which was presided over by the outgoing Chairman, Engr. Jovencio S. Egos, it deliberated the issue of MISMANAGEMENT IN YOUR OPERATION — the non-monitoring/non-compliance on the application of the correct dosage of Chlorine to the system. Not only this month, August, that the *Sangguniang Bayan* called our attention to explain in writing, but we were also called last year, when there was an outbreak in dysentery wherein you made promises to them, that this will not happen again, and this time, the issue is purely mismanagement.
>
> To this effect, you are hereby requested to submit your Letter [of] Explanation to the Board within forty eight (48) hours after the receipt of this Memorandum. Failure to the satisfaction of the Board of Directors of your explanation and much so, if you will not submit it, the Board will take a drastic action against you and this shall be dealt with accordingly.[5]

Petitioner submitted his letter-explanation and claimed that he complied with all the recommendations of the *Sangguniang Bayan*. He shifted the blame to the Chlorinator and the Master Plumber who were directly responsible over the chlorination. He likewise asserted that the Board of Directors was equally culpable and accountable to the lapses committed by the Chlorinator and Master Plumber.[6]

On 18 September 2000, the Board adopted Resolution No. 9 terminating the services of petitioner for loss of trust and confidence. The Resolution reads:

> Resolution No. 09
> Series of 2000

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[5] *Id.* at 26.

[6] *Id.* at 27-28.

A RESOLUTION TERMINATING THE SERVICES OF MR. MIGUEL S. RUBIA AS GENERAL MANAGER OF THE COMMUNITY WATER AND SANITATION SERVICE COOPERATIVE (COWASSCO)

WHEREAS, the Community Water and Sanitation Service Cooperative (COWASSCO) has started its operation as cooperative effective January 18, 1994, after it was registered as a cooperative under Registration No. CBU-1117;

WHEREAS, Mr. Miguel S. Rubia was appointed as General Manager by the Board of Directors on October 1, 1994, until present;

WHEREAS, as General Manager, he was tasked the general operation of the cooperative;

WHEREAS, on February 14, 1998, the Board of Directors passed Resolution No. 02, Series of 1998 providing for the retirement of employees of the cooperative who reached the compulsory age of sixty give (65) but was declared illegal by Hon. Judge Efipanio Llanos, Regional Trial Court, Region VII, Branch XXVI, Argao, Cebu;

WHEREAS, in October 1998, his attention was called by the *Sangguniang Bayan* of Argao for no supply of water in the Poblacion area, Lamacan and Canbanua during the eve of the town fiesta, on September 28, 1998;

WHEREAS, in 1999, he was invited by the *Sangguniang Bayan* on its Regular Session, to explain why the water of the cooperative was contaminated resulting in the typhoid fever epidemic in most *barangays* covered by COWASSCO, but he did not appear in the investigation;

WHEREAS, on July 26, 2000, the Rural Health Officer (RHO), Argao, Cebu reported the contamination of the water of COWASSCO, which might lead to another epidemic;

WHEREAS, Mr. Miguel S. Rubia was again invited by the *Sangguniang Bayan* in its regular session on August 21, 2000 to explain on the contamination of the water of the cooperative, but again he failed to attend;

WHEREAS, in that meeting, the members of the *Sangguniang Bayan* had recommended for the resignation or termination of Mr. Rubia for his mismanagement of the water system;

WHEREAS, in its Memorandum No. 01-2000, dated August 28, 2000, the Board of Directors of the Cooperative, through the Chairman, requested the General Manager to explain, why no disciplinary action be taken against him for mismanagement of the operation of the water system;

WHEREAS, finding the answer of the General Manager unsatisfactory, the Board of Directors decided to create an Investigation Committee tasked to investigate the performance of the General Manager in performing his duties;

WHEREAS, during the investigation, it was found out, that Mr. Rubia has not properly safeguarded the safety of the water consumers as gleaned by the following:

1. The water of COWASSCO was contaminated in 1999 resulting in the typhoid fever epidemic.
2. It was again contaminated as per report of the Municipal Health Officer dated July 26, 2000;
3. He failed to fully implement a Board Resolution directing him to fence and put open launders to all the spring boxes in Sua so that flood water cannot penetrate inside the boxes;
4. He failed to implement a Board Resolution to install a water gauge in Sua reservoir;
5. He failed to implement the recommendation of the *Sangguniang Bayan* in 1999 to provide a logbook for recording of daily chlorine reading and other activities of the cooperative;
6. He relied on "*bula-bula*" system in the application of chlorine in Sua reservoir;
7. Submission of a fictitious daily chlorine reading report to the Board of Directors; and
8. Shows no concern to the water users when he reacted, "*Wala pa man kaha'y namatay*!" after being informed of the report of Dr. Mamac, Municipal Health Officer.

WHEREAS, he has not implemented a Board Resolution providing for a Code of Ethical Standard to employees of the cooperative which include the following violations:

1. That vehicles of the cooperative are continuously used by employees and him even after office hours without memorandums and trip ticket;

2. Has not called the attention of employees who frequently loaf during office hours and comes late to work; and

3. While there were dialogues and investigations, no documentation were made.

WHEREAS, in his response to the memorandum of the BOD, Mr. Miguel S. Rubia, did not assume responsibility of the mistakes committed, instead, he passed the buck to his men and accuse the BOD as equally culpable of the lapse of his men;

WHEREAS, the Board of Directors of COWASSCO, has totally lost its trust and confidence with the General Manager, Mr. Miguel S. Rubia;

WHEREFORE, on the mass motion of all the Directors present, duly seconded by the same;

BE IT RESOLVED, AS IT HEREBY RESOLVED, that the Board of Directors in the course of their investigation of the case of Mr. Miguel S. Rubio, General Manager of the cooperative found him guilty of mismanagement of the cooperative and is hereby terminated with cause as General Manager of the cooperative effective Monday, October 16, 2000;

RESOLVED FURTHER, that Mr. Miguel S. Rubia is directed to cease and desist from reporting to duty, effective upon receipt of a Memorandum together with this Resolution;

RESOLVED FURTHER, that he is also directed turn over all records of the cooperative to the Chairman, Board of Directors;

RESOLVED FURTHERMORE, to furnish a copy of this Resolution to Mr. Miguel S. Rubia, General Manager of COWASSCO, Argao, Cebu, for his information and guidance;

RESOLVED FINALLY, to furnish copies of the Resolution to the Municipal Mayor, Argao, Cebu, the members of the *Sangguniang Bayan*, Argao, Cebu, the Cooperative Development Authority Officer, Cebu City Office, the Manager, Development Bank of the Philippines (DBP) Cebu City, the Manager, Rural Bank of Cebu South, Argao,

Cebu and the Manager Cooperative Bank, Cebu City for their information.[7]

On 4 April 2002, petitioner filed a complaint for illegal dismissal and prayed for reinstatement, payment of backwages, moral and exemplary damages and attorney's fees.[8]

Failing to reach an amicable settlement, the parties were ordered to file their position papers.

Petitioner claimed that respondents wanted to oust him from his position as early as in 1998 when he received a notice from COWASSCO advising him that he was deemed retired effective 1 April 1998.[9] Petitioner averred that his dismissal was illegal as there was no clear showing of a clear, valid and legal cause. Petitioner added that the Master Plumber and the Chlorinator, who both admitted their lapses, were not even summoned and investigated.[10]

Respondents COWASSCO and its Board justified petitioner's dismissal as valid on the ground of loss of trust and confidence after finding him guilty of mismanagement. Respondent also claimed to have observed due process in terminating petitioner's employment.[11]

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[7] *Id.* at 33-35.

[8] *Id.* at 1-2.

[9] Said notice was the effect of a resolution adopted by the Board providing for policies for the retirement of COWASSCO employees who had reached 65 years of age. Petitioner disregarded the notice. Another resolution was adopted directing petitioner to cease and desist from reporting for official duties. Petitioner in fact filed an action for injunction before the Regional Trial Court (RTC) to enjoin respondents from enforcing the assailed resolutions. The trial court granted the prayer of petitioner. Respondents sought relief from the Court of Appeals and Supreme Court, respectively. Finally, the Supreme Court dismissed with finality respondents' petition and the resolution of the trial court enjoining and prohibiting respondents from enforcing and implementing COWASSCO's resolutions became final and executory. *Id.* at 13-14.

[10] *Id.* at 17.

[11] CA *rollo*, p. 63.

The labor arbiter[12] found petitioner's dismissal as illegal. The dispositive portion of the labor arbiter's decision reads as follows:

> WHEREFORE, premises considered, judgment is hereby rendered declaring that complainant was illegally dismissed thereby ordering respondents COMMUNITY WATER & SANITATION COOPERATIVE and the BOARD OF DIRECTORS to pay complainant the amount of THREE HUNDRED EIGHTY THOUSAND ONE HUNDRED SIXTY PESOS (₱380,160.00) in the concept of separation pay, backwages and attorney's fees.[13]

The labor arbiter ruled that respondents failed to prove that there was mismanagement of operations on the part of petitioner to support the ground of loss of trust and confidence in dismissing the latter's employment. Moreover, the labor arbiter observed that petitioner was not accorded due process when only one incident of mismanagement was mentioned in the show-cause notice but petitioner was dismissed on the ground of several other incidents.[14]

Aggrieved, respondents appealed to the NLRC. In a Decision dated 25 June 2004, the NLRC reversed and set aside the labor arbiter's decision. It upheld petitioner's dismissal as valid on the ground of loss of trust and confidence. The dispositive portion provides:

> WHEREFORE, premises considered, the Decision of the Labor Arbiter is hereby REVERSED, SET ASIDE and VACATED and a new one entered DISMISSING the case of illegal dismissal. Respondent COWASSCO is however ordered to pay complainant the sum of P14,400.00 by way of financial assistance.[15]

Notably, the NLRC was mum on the issue of due process.

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[12] Violeta Ortiz-Bantug, Regional Arbitration Branch No. VII, Cebu City. Records, pp. 47-58.

[13] *Id.* at 57.

[14] *Id.* at 56-57.

[15] *Id.* at 175.

Petitioner moved for reconsideration but it was denied in a Resolution dated 17 November 2004.[16]

Petitioner filed a petition for *certiorari* before the Court of Appeals. Finding no grave abuse of discretion on the part of the NLRC, the Court of Appeals dismissed the petition on 21 November 2006. The appellate court held that petitioner was remiss in his duties and responsibilities as general manager of COWASSCO in failing to see to it that the correct dosage of chlorine was added to the water resource thus resulting in its contamination with *coliform* organisms. Hence, according to the appellate court, petitioner was rightfully dismissed on the ground of loss of trust and confidence.[17] However, the appellate court ordered respondents to pay nominal damages to petitioner amounting to ₱30,000.00 for failure to observe the due process requirement in the termination of an employee.[18]

Petitioner filed a motion for reconsideration of the Court of Appeals' decision. Its denial prompted petitioner to elevate the case to this Court via petition for review on *certiorari*.

Petitioner insists that respondents failed to prove that there was mismanagement on the part of petitioner resulting from the alleged non-monitoring/non-compliance on the application of the correct dosage of *chlorine* in the water system. Thus, petitioner argues that it was not a sufficient basis for loss of trust and confidence, which is a cause for his termination.[19]

Moreover, petitioner maintains that he was denied due process because the first notice requirement for dismissing an employee was not faithfully observed by respondents. Petitioner elucidates that the show-cause notice mentioned only of one incident, which respondents considered as constituting mismanagement,

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[16] *Id.* at 209-210.

[17] CA *rollo*, pp. 181-182.

[18] *Id.* at 183-185.

[19] *Rollo*, p. 11.

but in the resolution terminating petitioner, there were other incidents cited which petitioner was not previously informed.[20]

In fine, petitioner seeks to reinstate the labor arbiter's decision.

Respondents allege that petitioner was validly dismissed for his numerous infractions, which were all mentioned in the letter dated 23 August 2000 sent to respondents by the *Sangguniang Bayan*.[21]

Respondents reiterate that petitioner was afforded due process. Respondents explain that they sent a memorandum to petitioner requiring him to explain why no disciplinary action should be taken against him. Unsatisfied with this explanation, respondents conducted a formal investigation wherein petitioner was given the full opportunity to defend himself.[22]

Respondents assert that petitioner is not entitled to his money claims because he was not illegally dismissed from service.[23]

The core issues to be resolved are: (1) whether petitioner was validly dismissed on the ground of loss of trust and confidence; and (2) whether the due process requirement for termination was observed.

The issues raised by petitioner are evidently factual in nature. By giving due course to his petition, this Court is not departing from the well-settled rule that questions of facts are not reviewable.[24] The discordant findings between the Labor Arbiter and the NLRC however open the door for review.[25]

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[20] *Id.* at 12.

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

[22] *Id.* at 142.

[23] *Id.* at 144.

[24] *Yokohama Tire Philippines, Inc. v. Yokohama Employees Union*, G.R. No. 163532, 10 March 2010.

[25] *Molina v. Pacific Plans*, G.R. No. 165476, 10 March 2006 citing *Diamond Motors Corporation v. Court of Appeals*, 462 Phil. 452, 458 (2003).

Respondents invoked loss of trust and confidence as a just cause for terminating petitioner from employment. Article 282 (c) of the Labor Code allows an employer to terminate the services of an employee for fraud or willful breach by the employee of the trust reposed in him by his employer or his duly authorized representative.

For there to be a valid dismissal based on loss of trust and confidence, the employee concerned must be holding a position of trust and confidence and there must be an act that would justify the loss of trust and confidence.[26]

Petitioner held the position of General Manager of COWASSCO prior to his termination. As General Manager, he was tasked the general operation of the cooperative.[27] Undoubtedly, petitioner held a position of trust and confidence. As correctly pointed out by the Court of Appeals, "the nature of petitioner's work as manager requires a substantial amount of trust and confidence reposed on him by his employer. He occupies a highly sensitive and critical position which involves a high degree of responsibility."[28]

Having established that petitioner is a managerial employee, we shall proceed to determine whether the guidelines for the application of loss of trust and confidence as a just cause for dismissal of an employee from the service were complied with, *i.e.*, 1) loss of confidence should not be simulated; 2) it should not be used as subterfuge for causes which are improper, illegal or unjustified; 3) it may not be arbitrarily asserted in the face of overwhelming evidence to the contrary; and 4) it must be genuine, not a mere afterthought to justify earlier action taken in bad faith.[29]

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[26] *Benjamin v. Amellar Corporation*, G.R. No. 183383, 5 April 2010.

[27] Records, p. 33.

[28] *Rollo*, p. 22.

[29] *Bibiana Farms and Mills v. Lado*, G.R. No. 157861, 2 February 2010; *Ancheta v. Destiny Financial Plans*, G.R. No. 179702, 16 February 2010 citing *Midas Touch Food Corp. v. National Labor Relations Commission*, G.R. No. 111639, 29 July 1996, 259 SCRA 652, 659-660.

The notice of termination stated that petitioner was terminated for loss of confidence premised on his alleged mismanagement resulting in the contamination of the water system in the municipality of Argao, Cebu. Records reveal that based on the laboratory tests conducted, the water provided by COWASSCO was contaminated. It appears that there were indeed previous incidents relating to the water supply which petitioner failed to act upon. In 28 September 1998, there was no water supply. In 1999, there was an outbreak of typhoid fever, which was traceable to the water supply of COWASSCO. And finally, the *Sangguniang Bayan* summoned petitioner to explain the finding that the water supplied by COWASSCO is positive of coliform organisms. Despite numerous invitations on petitioner to appear before the *Sangguniang Bayan* to explain these lapses, petitioner failed to do so.

As the general manager, petitioner is tasked to perform key functions such as the monitoring of COWASSCO's day-to-day operation. Therefore, any lapse brought to the company's attention must be directly addressed by the manager. The NLRC aptly observed:

> x x x That complainant holds a very sensitive position cannot be over-emphasized. As General Manager, he is tasked with the duty of delivering safe, clean and potable water to the consumers. In his hands therefore lies the health and even lives of the people of the Municipality of Argao. Even the slightest case of water contamination, (in this case, the presence of *coliform* organisms) if not treated immediately could result in an epidemic of epic proportions thus putting at risk the lives of thousands of innocent consumers. He cannot simply ignore the case with the wry remark "*Wa pa man kahay namatay*" (Nobody has died yet). He cannot also exculpate himself by saying that he already implemented the recommendations of the SB and the Board of Directors, nor can he wash his hands by saying that it was the fault of the Chlorinator/Reservoir Tender and Master Plumber. As earlier pointed out, the job of General Manager of a water service cooperative calls for a hands-on leader not a swivel chair executive who contents himself with issuing memos and office orders. He has to make himself visible in the field to keep the men working under him on their toes guarding against seepage of contaminated water. This is the kind of General Manager that

respondents want, not the herein complainant who was quick to pass the buck to the Board of Directors under the principle of command responsibility.[30]

For breach of trust to constitute a valid cause for dismissal, it must be willful, meaning it must be done intentionally, knowingly, and purposely, without justifiable excuse.[31]

Petitioner did not deny that he was remiss in his duties, particularly in monitoring the application of the correct dosage of chlorine in the water system. What he did was to shift the blame to his subordinates — the Chlorinator and Master Plumber. During the investigation however, it appears that petitioner did not even bother to impose disciplinary action against these erring employees. As manager, petitioner should have paid close attention to the persistent problem of chlorination given the fact that the *Sangguniang Bayan* had repeatedly called his attention on the matter.

Petitioner's failure to closely monitor the contamination of water supply, his repeated failure to appear before the *Sanggunaing Bayan* to explain his lapses, and his overall indifference in performing the task assigned to him as general manager clearly demonstrate a willful breach of trust.

Aside from dismissal for a just cause, the other part of the two-tiered rule for a valid dismissal is the observance of due process.

Article 277 (b) of the Labor Code provides:

ART. 277. Miscellaneous provisions. — x x x (b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized

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[30] CA *rollo*, p. 30.

[31] *Baron v. National Labor Relations Commission*, G.R. No. 182299, 22 February 2010; *St. Luke's Medical Center v. Fadrigo*, G.R. No. 185933, 25 November 2009; *Norsk Hydro Inc. v. Rosales, Jr.*, G.R. No. 162871, 31 January 2007, 513 SCRA 583, 590; *Echeverria v. Venutek Medika, Inc.*, G.R. No. 169231, 15 February 2007, 516 SCRA 72, 80.

cause and without prejudice to the requirement of notice under Article 283 of this Code, the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of the causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment x x x.

In addition, Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code, requires the employer to furnish the employee with two written notices. These are: (1) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and (2) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

The twin requirements of notice and hearing constitute the elements of due process in cases of employee's dismissal. The requirement of notice is intended to inform the employee concerned of the employer's intent to dismiss and the reason for the proposed dismissal. Upon the other hand the requirement of hearing affords the employee an opportunity to answer his employer's charges against him and accordingly to defend himself therefrom before dismissal is effected.[32] On these essentials of due process, we modify the findings of the Court of Appeals.

The Court of Appeals observed that petitioner was not afforded a hearing or conference before the termination was effected.[33] This is however belied by the evidence presented by respondents. Petitioner was in fact given the opportunity to defend himself

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[32] *Maquiling v. Philippine Tuberculosis Society, Inc.*, G.R. No. 143384, 4 February 2005, 450 SCRA 465, 477 citing *Century Textile Mills, Inc. v. National Labor Relations Commission*, G.R. No. 77859, 25 May 1988, 161 SCRA 528, 535.

[33] *Rollo*, p. 25.

in an investigation conducted by the Board of Directors on 12 September 2000. In the presence of the Board of Directors, petitioner insisted that he and the Board of Directors are equally culpable.[34] Petitioner however failed to squarely address the issue of his mismanagement.

Petitioner also harps on the inclusion of several other incidents in the notice of termination which were not mentioned in the show cause notice. The simple fact that petitioner failed to closely monitor the application of chlorine, resulting in the contamination of the water system in Argao, Cebu, is a sufficient and valid ground for respondents to lose their trust and confidence on the management skills of petitioner. The invocation of an additional ground in the resolution terminating the services of petitioner, *i.e.*, the failure to implement a Board Resolution providing for a Code of Ethical Standard to employees of COWASSCO, does not by itself constitute denial of due process. Petitioner was informed in the first memorandum regarding the incorrect application of chlorine, which was the more important ground by which his dismissal was premised. Petitioner did not make a categorical denial of this allegation against him. Instead of assuming responsibility over the lapses he committed, petitioner resorted to finger pointing, blaming the Master Plumber and Chlorinator for the incorrect dosage of chlorine. In the second notice, the issue of incorrect chlorination was also discussed in detail. The Board of Directors cited instances showing that petitioner had not properly safeguarded the well-being of the water consumers.[35] Hence, it cannot be concluded that there was denial of due process.

The essence of due process is simply an opportunity to be heard; it is the denial of this opportunity that constitutes violation of due process of law.[36] As long as petitioner was given an

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[34] CA *rollo*, pp. 145-147.

[35] Records, pp. 33-35.

[36] *Technol Eight Philippines Corporation v. National Labor Relations Commission*, G.R. No. 187605, 13 April 2010; *Bibiana Farms and Mills, Inc. v. Lado*, G.R. No. 157861, 2 February 2010.

opportunity to explain his side, the requirements of due process have been substantially complied with.

WHEREFORE, the petition is *DENIED*. The Decision dated 21 November 2006 and the Resolution dated 28 May 2007 of the Court of Appeals in CA-G.R. SP. No. 00165 are *AFFIRMED* insofar as its findings of loss of trust and confidence are concerned, but it is *REVERSED* on its findings of lack of due process. The award of nominal damages in the amount of ₱30,000.00 is, accordingly, *DELETED*.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 179105. July 26, 2010]

METROPOLITAN BANK AND TRUST COMPANY, *petitioner, vs.* **LARRY MARIÑAS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS ARE BINDING AND CONCLUSIVE UPON THE SUPREME COURT.— It is apt to stress the well-settled principle that factual findings of the trial court, affirmed by the CA, are binding and conclusive upon this Court. In the absence of any showing that the findings complained of are totally devoid of support in the evidence on record, or that they are so glaringly erroneous as to constitute serious abuse of discretion, such findings must stand. The Court is not a trier of facts, its jurisdiction being limited to reviewing

only errors of law that may have been committed by the lower courts. It is not the function of the Court to analyze or weigh all over again the evidence or premises supportive of such factual determination. The law creating the CA was intended mainly to take away from the Supreme Court the work of examining the evidence, so that it may confine its task to the determination of questions which do not call for the reading and study of transcripts containing the testimony of witnesses.

2. CIVIL LAW; OBLIGATIONS AND CONTRACTS; OBLIGATORY FORCE OF CONTRACTS; OBLIGATIONS ARISING FROM CONTRACTS HAVE THE FORCE OF LAW BETWEEN THE CONTRACTING PARTIES AND SHOULD BE COMPLIED WITH IN GOOD FAITH.— [W]e find that petitioner is empowered to make lawful deductions from respondent's accounts for such amounts due it. This is authorized in the Promissory Notes and Deeds of Assignment with Power of Attorney executed by respondent x x x. As provided in Article 1159 of the Civil Code, "obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith." Verily, parties may freely stipulate their duties and obligations which perforce would be binding on them. Not being repugnant to any legal proscription, the agreement entered into between petitioner and respondent must be respected and given the force of law between them.

3. ID.; DAMAGES; MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES; WHEN AWARDED.— When we consider the total amount of respondent's deposits in his dollar accounts inclusive of interests earned *vis-à-vis* his total obligations to petitioner, we find that the total depletion of his accounts is not warranted. Hence, we find no reason to disturb the CA conclusion on the award of damages. As aptly explained in *Bank of the Philippine Islands v. Court of Appeals:* "For the above reasons, the Court finds no reason to disturb the award of damages granted by the CA against petitioner. This whole incident would have been avoided had petitioner adhered to the standard of diligence expected of one engaged in the banking business. A depositor has the right to recover reasonable moral damages even if the bank's negligence may not have been attended with malice and bad faith, if the former suffered mental anguish, serious anxiety,

embarrassment and humiliation. Moral damages are not meant to enrich a complainant at the expense of defendant. It is only intended to alleviate the moral suffering she has undergone. The award of exemplary damages is justified, on the other hand, when the acts of the bank are attended by malice, bad faith or gross negligence. The award of reasonable attorney's fees is proper where exemplary damages are awarded. It is proper where depositors are compelled to litigate to protect their interest."

APPEARANCES OF COUNSEL

Sedigo & Associates for petitioner.
Manalo Puno Jocson & Guerzon Law Office for respondent.

D E C I S I O N

NACHURA, *J.*:

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court, seeking to annul and set aside the Court of Appeals (CA) Decision[1] dated July 31, 2007, affirming with modification the Regional Trial Court (RTC) decision[2] dated October 14, 2004.

The factual and procedural antecedents are as follows:

Sometime in April 1998, respondent Larry Mariñas returned to the Philippines from the United States of America. He opened a personal dollar savings account[3] by depositing US$100,000.00 with petitioner Metropolitan Bank and Trust Company. On April 13, 1998, respondent obtained a loan from petitioner in the amount of ₱2,300,000.00, evidenced by Promissory Note No. 355873.[4] From the initial deposit of US$100,000.00,

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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. 32-42.

[2] Penned by Judge Raul Bautista Villanueva; records, pp. 425-439.

[3] Covered by Account No. 2264-00145-0; *id.* at 137.

[4] *Id.* at 138.

respondent withdrew[5] US$67,227.95,[6] then deposited it under Account No. 0-26400171-6 (Foreign Currency Deposit [FCD] No. 505671),[7] which he used as security[8] for the ₱2,300,000.00 loan.

Respondent subsequently opened two more foreign currency accounts — Account No. 0-26400244-5 (FCD No. 505688)[9] and Account No. 0-264-00357-3 (FCD No. 739809)[10] — depositing therein US$25,000.00 and US$17,000.00, respectively. On April 30, 1999, respondent obtained a second loan of ₱645,150.00,[11] secured[12] by Account No. 0-264-00357-3 (FCD No. 739809).

When he inquired about his dollar deposits, respondent discovered that petitioner made deductions against the former's accounts. On May 31, 1999, respondent, through his counsel, demanded from petitioner a proper and complete accounting of his dollar deposits, and the restoration of his deposits to their proper amount without the deductions.[13] In response, petitioner explained that the deductions made from respondent's dollar accounts were used to pay the interest due on the latter's loan with the former. These deductions, according to petitioner, were authorized by respondent through the Deeds of Assignment with Power of Attorney voluntarily executed by respondent.[14]

Unsatisfied, and believing that the deductions were unauthorized, respondent commenced an action for *Damages*

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[5] Evidenced by the Debit Account Slip signed by respondent; *id.* at 246.

[6] Or US$70,000.00.

[7] Records, p. 248.

[8] Evidenced by the Deed of Assignment with Power of Attorney; *id.* at 140.

[9] *Id.* at 142.

[10] *Id.* at 256.

[11] Evidenced by Promissory Note No. 355961; *id.* at 252.

[12] Evidenced by Deed of Assignment with Power of Attorney; *id.* at 254.

[13] *Id.* at 143.

[14] *Id.* at 258.

against petitioner and its Kabihasnan, Parañaque City Branch Manager Expedito Fernandez (Fernandez) before the RTC, Las Piñas City. The case was docketed as Civil Case No. 99-0172 and was raffled to Branch 255. While admitting the existence of the ₱2,300,000.00 and ₱645,150.00 loans, respondent claimed that when he signed the loan documents, they were all in blank and they were actually filled up by petitioner. Aside from the complete accounting of his dollar accounts and the restoration of the true amounts of his deposits, respondent sought the payment of ₱400,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱100,000.00 as attorney's fees.[15]

On its part, petitioner insisted that respondent freely and voluntarily signed the loan documents. While admitting the full payment of respondent's ₱2,300,000.00 and ₱645,150.00 loans, petitioner claimed that the payments were made using the former's US$67,227.95, US$25,000.00, and US$17,000.00 time deposits. Accordingly, there was nothing to account for and restore. By way of counterclaim, petitioner prayed for the payment of ₱200,000.00 as attorney's fees, ₱1,000,000.00 as moral damages, and ₱500,000.00 as exemplary damages.[16]

As no amicable settlement was reached, trial on the merits ensued.

On October 14, 2004, the RTC rendered a decision in favor of respondent, the dispositive portion of which reads:

> WHEREFORE, the foregoing considered, judgment is hereby rendered in favor of plaintiff Larry Mari[ñ]as, and against the defendants Metropolitan Bank and Trust Company and Expedito Fernandez, ordering the said defendants to account for the dollar deposits of the plaintiff in the amounts of US$30,000.00 and US$25,000.00, respectively, and then return the same, including the interests due thereon reckoned from 31 May 1999 until fully paid.

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[15] *Id.* at 2-13.

[16] *Id.* at 38-52.

Likewise, the defendants are hereby directed to pay to the herein plaintiff the following amounts, to wit:

1. ₱100,000.00 in moral damages;
2. ₱50,000.00 in exemplary damages;
3. ₱50,000.00 as and by way of attorney's fees; and
4. Costs of suit.

SO ORDERED.[17]

The RTC sustained the validity and regularity of the loan documents signed by respondent, and consequently the existence of the ₱2,300,000.00 and ₱645,150.00 loans obtained from petitioner. Acknowledging the full payment of both loans, the trial court found that the payments were made from respondent's foreign currency deposits, particularly Account Numbers 0-26400171-6 (FCD No. 505671) and 0-264-00357-3 (FCD No. 739809), amounting to US$67,227.95 and US$17,000.00, respectively. There is no doubt that respondent specifically assigned these accounts to secure the payment of his loans pursuant to the Deeds of Assignment with Power of Attorney. Hence, the deductions made from such accounts were valid. However, the RTC found that petitioner should account for and eventually return the US$30,000.00 and US$25,000.00 deposits of respondent since they were not assigned to answer for the latter's loans, and that any deductions made from these accounts were, therefore, illegal. Consequently, petitioner was made to answer for damages suffered by respondent.[18] Being the petitioner's Kabihasnan Branch Manager, Fernandez was declared solidarily liable with petitioner.

On appeal, the CA modified the RTC decision by absolving Fernandez from liability. The appellate court held that Fernandez could not be made to answer for acts done in the performance of his duty absent any showing that he assented to patently

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[17] *Supra* note 2, at 439.

[18] Records, pp. 10-13.

unlawful acts of the corporation or was guilty of bad faith or gross negligence in directing its affairs, or that he agreed to hold himself personally and solidarily liable with the corporation.[19] No proof was adduced in this regard.

Hence, the instant petition raising the following issues:

1. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN ORDERING PETITIONER TO ACCOUNT FOR AND RETURN TO RESPONDENT THE SUMS OF US$30,000.00 AND US$25,000.00.
2. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN HOLDING PETITIONER LIABLE TO RESPONDENT FOR MORAL AND EXEMPLARY DAMAGES, AS WELL AS ATTORNEY'S FEES AND COSTS OF SUIT.[20]

Petitioner assails the CA Decision affirming the former's culpability for making unlawful deductions from respondent's dollar accounts without the latter's consent. Additionally, it questions the award of moral and exemplary damages, as well as attorney's fees.

We agree with the CA's factual findings as to the deposits and withdrawals made and loans obtained by respondent. We do not, however, agree with its conclusion that petitioner absolutely lacked the authority to make deductions from respondent's deposits for the payment of his outstanding obligations.

It is apt to stress the well-settled principle that factual findings of the trial court, affirmed by the CA, are binding and conclusive upon this Court.[21] In the absence of any showing that the findings complained of are totally devoid of support in the evidence on record, or that they are so glaringly erroneous as to constitute

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[19] *Supra* note 1.

[20] *Rollo*, p. 18.

[21] *Citibank, N.A. v. Jimenez, Sr.*, G.R. No. 166878, December 18, 2007, 540 SCRA 573, 581.

serious abuse of discretion, such findings must stand.[22] The Court is not a trier of facts, its jurisdiction being limited to reviewing only errors of law that may have been committed by the lower courts.[23] It is not the function of the Court to analyze or weigh all over again the evidence or premises supportive of such factual determination.[24] The law creating the CA was intended mainly to take away from the Supreme Court the work of examining the evidence, so that it may confine its task to the determination of questions which do not call for the reading and study of transcripts containing the testimony of witnesses.[25]

In the present case, we find no justification to deviate from the factual findings of the trial court and the appellate court. Petitioner has utterly failed to convince us that the assailed findings are devoid of basis or are not supported by substantial evidence.

It is noteworthy that respondent opened four accounts with petitioner: 1) Account No. 2264-00145-0 for US$100,000.00; 2) Account No. 0-26400171-6 (FCD No. 505671) for US$67,227.95; 3) Account No. 0-26400244-5 (FCD No. 505688) for US$25,000.00; and 4) Account No. 0-264-00357-3 (FCD No. 739809) for US$17,000.00. Admittedly, respondent withdrew $70,000.00 from Account No. 2264-00145-0, leaving a balance of $30,000.00.

It is likewise undisputed that respondent obtained two separate loans from petitioner in amounts of ₱2,300,000.00 and ₱645,150.00. These were evidenced by promissory notes and secured by respondents two dollar accounts-Account Numbers 0-26400171-6 (FCD No. 505671) and 0-264-00357-3 (FCD

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[22] *Philippine National Bank v. Pike*, G.R. No. 157845, September 20, 2005, 470 SCRA 328, 340.

[23] *Prudential Bank v. Lim*, G.R. No. 136371, November 11, 2005, 474 SCRA 485, 491.

[24] *Id.*

[25] *Citibank, N.A. v. Jimenez, Sr.*, *supra* note 21, at 581, citing *Sta. Ana, et al. v. Hernandez*, 125 Phil. 61 (1966).

No. 739809) for US$67,227.95 and US$17,000.00, respectively. Respondent's first loan of ₱2,300,000.00, obtained on April 13, 1998, was payable on April 8, 1999; while the second loan of ₱645,150.00, obtained on April 30, 1999, was payable on April 24, 2000. Records show that the first loan was paid on April 21, 1999, with the payment therefor taken from Account No. 0-26400171-6. The second loan, on the other hand, was paid on May 10, 1999, out of respondent's Account No. 0-264-00357-3. It should be clarified, though, that these payments referred only to the payment of the principal (₱2,300,000.00 and ₱645,150.00) of respondent's loans, exclusive of interests stipulated in the promissory notes executed by the latter.

Aside from obligating himself to pay ₱2,300,000.00 as principal, respondent also agreed to pay interest at the rate of 22.929% *per annum* (not monthly) from April 13, 1998 until full payment. As respondent made full payment of the principal on April 21, 1999, respondent was also obliged to pay interest until that date. As to the ₱645,150.00 loan, respondent agreed to pay interest at the rate of 16.987% *per annum*.

Respondent later discovered that his accounts with petitioner were all depleted. Upon inquiry from petitioner, it explained that pursuant to the Deeds of Assignment with Power of Attorney executed by respondent, it deducted from respondent's accounts the interest due on his loans.

Contrary to the conclusions of the RTC and the CA, we find that petitioner is empowered to make lawful deductions from respondent's accounts for such amounts due it. This is authorized in the Promissory Notes and Deeds of Assignment with Power of Attorney executed by respondent, to wit:

> I/We hereby give the Bank a general lien upon, and/or right of set-off and/or right to hold and/or apply to the loan account, or any claim of the Bank against any of us, all my/our rights, title and interest in and to the balance of every deposit account, money, negotiable instruments, commercial papers, notes, bonds, stocks, dividends, securities, interest, credits, chose in action, claims, demands, funds or any interest in any thereof, and in any other property, rights and

interest of any of us or any evidence thereof, which have been, or at any time shall be delivered to, or otherwise come into the possession, control or custody of the Bank or any of its subsidiaries, affiliates, agents or correspondents now or anytime hereafter, for any purpose, whether or not accepted for the purpose or purposes for which they are delivered or intended. For this purpose, I/We hereby appoint the Bank as my/our irrevocable Attorney-in-fact with full power of substitution/delegation to sign or endorse any and all documents and perform any and all acts and things required or necessary in the premises.[26]

Effective upon default in the payment of CREDIT, or any part thereof, the ASSIGNOR hereby grants to the ASSIGNEE, full power and authority to collect/withdraw the deposit/proceeds/receivables/investments/securities and apply the collection/deposit to the payment of the outstanding principal, interest and other charges on the CREDIT. For this purpose, the ASSIGNOR hereby names, constitutes and appoints the ASSIGNEE as his/its true and lawful Attorney-in-Fact, with powers of substitution, to ask, demand, collect, sue for, recover and receive the deposit/proceeds/receivables/investments/securities or any part thereof, as well as to encash, negotiate and endorse checks, drafts and other commercial papers/instruments received by and paid to the ASSIGNEE, incident thereto and to execute all instruments and agreements connected therewith. A written Certification by the ASSIGNEE of the amount of its claims from the ASSIGNOR and/or the BORROWER shall be conclusive on the ASSIGNOR and/or the BORROWER absent manifest error.[27]

As provided in Article 1159 of the Civil Code, "obligations arising from contract have the force of law between the contracting parties and should be complied with in good faith." Verily, parties may freely stipulate their duties and obligations which perforce would be binding on them. Not being repugnant to any legal proscription, the agreement entered into between petitioner and respondent must be respected and given the force of law between them.[28]

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[26] Records, pp. 138 and 252.

[27] *Id.* at 140 and 254.

[28] *National Sugar Trading v. Philippine National Bank*, 444 Phil. 599 (2003).

Upon the maturity of the first loan on April 8, 1999, petitioner was authorized to automatically deduct, by way of offsetting, respondent's outstanding debt (including interests) to it from the latter's deposit accounts and their accumulated interest. Respondent did not object to the deduction made from the proceeds of Account No. 0-26400171-6, but would limit such deduction only to the payment of the principal of ₱2,300,000.00. However, it should be borne in mind that in addition to the authority to effect the said deduction for the principal loan amount, petitioner was authorized to make further deductions for interest payments at the rate of 22.929% *per annum* until April 21, 1999.

With respect to the second loan, barely a month after the execution of the promissory note and definitely prior to the maturity date, respondent already paid the principal of ₱645,150.00 out of the deposited amount in Account No. 0-264-00357-3. Pursuant to the promissory note, respondent agreed to pay interest at the rate of 16.987% *per annum*. While it is conceded that petitioner had the right to offset the unpaid interests due it against the deposits of respondent, the issue of whether it acted judiciously is an entirely different matter.[29] As business affected with public interest, and because of the nature of their functions, banks are under obligation to treat the accounts of their depositors with meticulous care, always having in mind the fiduciary nature of their relationship.[30]

Pursuant to the above disquisition, it is clear that despite such authority, petitioner should still account for whatever excess deductions made on respondent's deposits and return to respondent such amounts taken from him. To be sure, respondent had interest-earning deposits with petitioner in accordance with their agreement. On the other hand, after respondent paid the principal on April 21, 1999 and May 10, 1999 on the two loans which he obtained from petitioner, the latter had the authority to make deductions for the payment of interest as stipulated in respondent's promissory notes.

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[29] *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 136202, January 25, 2007, 512 SCRA 620; *Associated Bank v. Tan*, 487 Phil. 512 (2004).

[30] *Bank of the Philippine Islands v. Court of Appeals*, *supra*, at 638-639.

When we consider the total amount of respondent's deposits in his dollar accounts inclusive of interests earned vis-à-vis his total obligations to petitioner, we find that the total depletion of his accounts is not warranted. Hence, we find no reason to disturb the CA conclusion on the award of damages. As aptly explained in *Bank of the Philippine Islands v. Court of Appeals:*

> For the above reasons, the Court finds no reason to disturb the award of damages granted by the CA against petitioner. This whole incident would have been avoided had petitioner adhered to the standard of diligence expected of one engaged in the banking business. A depositor has the right to recover reasonable moral damages even if the bank's negligence may not have been attended with malice and bad faith, if the former suffered mental anguish, serious anxiety, embarrassment and humiliation. Moral damages are not meant to enrich a complainant at the expense of defendant. It is only intended to alleviate the moral suffering she has undergone. The award of exemplary damages is justified, on the other hand, when the acts of the bank are attended by malice, bad faith or gross negligence. The award of reasonable attorney's fees is proper where exemplary damages are awarded. It is proper where depositors are compelled to litigate to protect their interest.[31]

WHEREFORE, premises considered, the Court of Appeals Decision dated July 31, 2007 is hereby *AFFIRMED* with *MODIFICATION*. Petitioner is ordered to account for respondent's dollar deposits inclusive of interests, subject to its right to deduct from the said deposits his loan obligations amounting to ₱2,300,000.00, plus interest at 22.929% *per annum* until full payment on April 21, 1999; and ₱645,150.00, plus interest at 16.987% *per annum* until full payment on May 10, 1999. After such accounting, petitioner shall restore to respondent whatever excess amounts may have been deducted from such deposits, together with the earned interests.

All other aspects of the assailed decision *STAND*.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

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[31] *Id.* at 641.

SECOND DIVISION

[G.R. No. 180109. July 26, 2010]

PEOPLE OF THE PHILIPPINES, *petitioner, vs.* **JOSEPH "JOJO" V. GREY, FRANCIS B. GREY, and COURT OF APPEALS-CEBU CITY, EIGHTEENTH DIVISION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; ELUCIDATED.— Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also involve the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.

2. ID.; ID.; ID.; ELEMENTS; WHEN PRESENT.— Forum shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. The elements of forum shopping are: (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

3. ID.; ID.; ID.; ID.; *RES JUDICATA*; ELEMENTS.— The elements of *res judicata* are: (a) the former judgment must be final; (b) the court which rendered judgment had jurisdiction over the parties and the subject matter; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter, and cause of action.

4. ID.; CRIMINAL PROCEDURE; PRELIMINARY INQUIRY TO DETERMINE PROBABLE CAUSE FOR ISSUANCE OF WARRANT OF ARREST DISTINGUISHED FROM PRELIMINARY INVESTIGATION PROPER.— It is well to remember that there is a distinction between the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest and the preliminary investigation proper which ascertains whether the offender should be held for trial or be released. The determination of probable cause for purposes of issuing the warrant of arrest is made by the judge. The preliminary investigation proper – whether or not there is reasonable ground to believe that the accused is guilty of the offense charged – is the function of the investigating prosecutor.

5. ID.; ID.; WARRANT OF ARREST; DETERMINATION OF PROBABLE CAUSE; ELUCIDATED.— The duty of the judge to determine probable cause to issue a warrant of arrest is mandated by Article III, Section 2 of the Philippine Constitution: Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized. In *Soliven v. Makasiar*, the Court explained that this constitutional provision does not mandatorily require the judge to personally examine the complainant and her witnesses. Instead, he may opt to personally evaluate the report and supporting documents submitted by the prosecutor or he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses. Thus, in *Soliven*, we said: What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue

a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause. Sound policy dictates this procedure, otherwise judges would by unduly laden with the preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts. What the law requires as *personal determination* on the part of a judge is that he should not rely *solely* on the report of the investigating prosecutor. This means that the judge should consider not only the report of the investigating prosecutor but also the affidavit and the documentary evidence of the parties, the counter-affidavit of the accused and his witnesses, as well as the transcript of stenographic notes taken during the preliminary investigation, if any, submitted to the court by the investigating prosecutor upon the filing of the Information. The Court has also ruled that the personal examination of the complainant and his witnesses is not mandatory and indispensable in the determination of probable cause for the issuance of a warrant of arrest. The necessity arises only when there is an utter failure of the evidence to show the existence of probable cause. Otherwise, the judge may rely on the report of the investigating prosecutor, provided that he likewise evaluates the documentary evidence in support thereof.

6. ID.; ID.; CRIMINAL PROSECUTION CANNOT BE ENJOINED BY INJUNCTION; EXCEPTIONS.— It is an established doctrine that injunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society. However, it is also true that various decisions of this Court have laid down exceptions to this rule, among which are: a. To afford adequate protection to the constitutional rights of the accused; b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions; c. When there is a pre-judicial question which is sub[-]judice; d. When the acts of the officer are without or in excess of authority; e. Where the prosecution is under an invalid law, ordinance or regulation; f. When double jeopardy is clearly apparent; g. Where the court has no jurisdiction over the offense; h. Where there is a case of persecution rather than prosecution;

i. Where the charges are manifestly false and motivated by the lust for vengeance; x x x j. When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied [; and] [k.] Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners.

7. ID.; ID.; ID.; ID.; WHERE POLITICAL MOTIVE IMPELLED THE FILING OF CRIMINAL CHARGES; DISCUSSED.— Indeed, this Court has recognized that, in certain instances, political persecution or political motives may have impelled the filing of criminal charges against certain political rivals. But this Court has also ruled that any allegation that the filing of the charges is politically motivated cannot justify the prohibition of a criminal prosecution **if there is otherwise evidence to support the charges**. x x x To establish political harassment, respondents must prove that the public prosecutor, not just the private complainant, acted in bad faith in prosecuting the case or has lent himself to a scheme that could have no other purpose than to place respondents in contempt and disrepute. It must be shown that the complainant possesses the power and the influence to control the prosecution of cases. Likewise, the allegation that the filing of the complaint was politically motivated does not serve to justify the nullification of the informations where the existence of such motive has not been sufficiently established nor substantial evidence presented in support thereof. x x x Needless to say, a full-blown trial is to be preferred to ferret out the truth. If, as respondents claim, there is no evidence of their culpability, then their petition for bail would easily be granted. Thereafter, the credibility of the prosecution's and the accused's respective evidence may be tested during the trial. It is only then that the guilt or innocence of respondents will be determined. Whether the criminal prosecution was merely a tool for harassment or whether the prosecution's evidence can pass the strict standards set by the law and withstand the exacting scrutiny of the court will all be resolved at the trial of the case.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Cruz Neria & Carpio Law Offices for respondents.

D E C I S I O N

NACHURA, *J.*:

Before this Court is a Petition for Review under Rule 45 of the Rules of Court filed by the People of the Philippines, through the Office of the Solicitor General (OSG), seeking the nullification of the Court of Appeals (CA) (Cebu City-Eighteenth Division) Resolution[1] dated March 13, 2007, Decision[2] dated May 8, 2007, and Resolution[3] dated October 8, 2007, in CA-G.R. SP No. 02558, entitled "*Mayor Joseph 'Jojo' V. Grey and Francis B. Grey v. Hon. Roberto A. Navidad, Presiding Judge of the Regional Trial Court of Calbayog City, Branch 32, and the People of the Philippines*."

On December 11, 2006, an Information for Murder was filed against respondent Joseph Grey, former Mayor of San Jorge, Samar; his son, respondent Francis Grey; and two others for the death of Rolando Diocton, an employee of the San Jorge municipal government, before the Regional Trial Court (RTC), Branch 41, Gandara, Samar. The Information was accompanied by other supporting documents and a motion for the issuance of a warrant of arrest.[4]

Respondents filed a petition for review with the Secretary of Justice. Meanwhile, RTC Branch 41 Presiding Judge Rosario Bandal denied the motion for the issuance of a warrant of arrest. Judge Bandal found the prosecution's evidence to be insufficient to link respondents to the crime charged. She directed the prosecution to present, within five days, additional evidence that would show that accused were the assailants or that they

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

[2] Penned by Associate Justice Francisco P. Acosta, with Executive Justice Arsenio J. Magpale and Associate Justice Agustin S. Dizon, concurring; *id.* at 36-59.

[3] *Rollo*, pp. 60-67.

[4] *Id.* at 5.

conspired, confederated, or helped in the commission of the crime charged.[5]

The prosecution then filed an Omnibus Motion for Reconsideration and a motion for the inhibition of Judge Bandal.[6] The judge inhibited herself but denied the motion for reconsideration.[7]

Thereafter, the provincial prosecutor filed a petition for change of venue before this Court, attaching thereto a letter from the victim's wife expressing fear for her life and that of the other witnesses.[8]

The Secretary of Justice, in a Resolution dated January 4, 2007, dismissed the petition for review and respondents' counter charge of perjury. He found no error to warrant the modification or reversal of the prosecutor's resolution. The Secretary of Justice ruled that the evidence adduced against respondents was sufficient to establish probable cause for the offense charged. Respondents' motion for reconsideration was denied on January 30, 2007.[9]

Subsequently, the prosecution withdrew their motion for change of venue before this Court, citing financial difficulties in bringing witnesses to Manila.[10] Respondents opposed the motion and prayed that all proceedings be suspended until after the May 14, 2007 elections.[11]

However, on February 19, 2007, respondents filed their own petition for change of venue before this Court, alleging that the

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[5] *Id.* at 41.

[6] *Id.* at 5.

[7] *Id.* at 134-136.

[8] *Id.* at 5-6.

[9] *Id.* at 145-146.

[10] *Id.* at 42.

[11] *Id.* at 6.

presiding judge who took over the case, Judge Roberto Navidad, was a pawn in the political persecution being staged against them.[12] In its August 22, 2007 Resolution, this Court denied the petition for lack of merit and directed Judge Navidad to hear the case with dispatch.[13]

Accordingly, Judge Navidad proceeded with the preliminary inquiry on the existence of probable cause, and, in an Order dated February 20, 2007, ruled that the finding of probable cause was supported by the evidence on record. He then issued warrants of arrest against respondents and all but one of their co-accused.[14]

Respondents filed a Petition[15] for *Certiorari* and Prohibition before the CA, alleging that Judge Navidad gravely abused his discretion in issuing the February 20, 2007 Order, and seeking a temporary restraining order (TRO) and/or a writ of preliminary injunction. They alleged that the filing of the murder charges against them on the basis of perjured statements coming from their political opponents' supporters "smacks of political harassment at its foulest form."[16] Respondents pointed out that the criminal complaint was filed barely two months after Joseph Grey declared his intentions to challenge incumbent Congressman Reynaldo S. Uy, a former ally, in the May 2007 congressional elections. Likewise, respondents claimed that one of the witnesses, Urien Moloboco, who executed an affidavit before the Provincial Prosecutor, was the subject of an *Alias* Warrant of Arrest for murder issued by the RTC of Gandara, Samar on June 26, 2006, and, hence, was a fugitive from the law at the time of the filing of the criminal complaint against respondents. Respondents maintain that the fact that Moloboco was not arrested when he

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[12] *Id.* at 7.

[13] *Id.* at 172-173.

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

[15] *Id.* at 178-214.

[16] *Id.* at 181.

executed his affidavit before the prosecutor, spoke of the power and clout of the witness' protectors.[17]

The CA Eighteenth Division issued a TRO on March 13, 2007.[18] After oral arguments, the CA issued a Decision[19] dated May 8, 2007, making the TRO permanent, ordering that warrants of arrest be set aside, and dismissing the criminal case without prejudice.

The CA held that Judge Navidad failed to abide by the constitutional mandate for him to personally determine the existence of probable cause.[20] According to the CA, nowhere in the assailed Order did Judge Navidad state his personal assessment of the evidence before him and the personal justification for his finding of probable cause. It found that the judge extensively quoted from the Joint Resolution of the Provincial Prosecutor and the Resolution of the Secretary of Justice, and then adopted these to conclude that there was sufficient evidence to support the finding of probable cause. The CA held that the Constitution commands the judge to personally determine the existence of probable cause before issuing warrants of arrest.[21]

Moreover, the CA also ruled that the Information was not supported by the allegations in the submitted affidavits.[22] It pointed out that the Information charged respondents as principals by direct participation, but the complaint-affidavit and supporting affidavits uniformly alleged that respondents were not at the scene of the shooting.[23] The CA further found that the allegations in the complaint-affidavit and supporting affidavits were

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[17] *Id.* at 184.

[18] *Id.* at 33-35.

[19] *Id.* at 36-59.

[20] *Id.* at 49-50.

[21] *Id.* at 49-51.

[22] *Id.* at 51.

[23] *Id.* at 51-52.

insufficient to establish probable cause. It said that there was nothing in the affidavits to show acts that would support the prosecution's theory that respondents were also charged as principals by conspiracy.[24]

Petitioner's motion for reconsideration of the CA's May 8, 2007 Decision was denied in a Resolution dated October 8, 2007.[25] Hence, this petition for review.

Petitioner argues that respondents committed forum shopping, which would warrant the outright dismissal of their petition below. Petitioner alleges that respondents' petition for change of venue before this Court and their petition for prohibition before the CA actually involve the same subject matter, parties, and issues – that of enjoining Judge Navidad from proceeding with the trial of the criminal case against them.[26] Moreover, these two proceedings have resulted in conflicting decisions, with this Court resolving to proceed with the case and with the CA enjoining the same.[27]

Petitioner also argues against the CA's ruling that Judge Navidad failed to personally determine the existence of probable cause. It said that although the judge adopted the findings of the prosecutors as to the sufficiency of evidence constituting probable cause, the language of the Order clearly reflects that the judge himself personally examined the records and found that there was probable cause for the issuance of warrants of arrest.[28] Moreover, the judge was correct in finding probable cause based on the sworn statements of the witnesses submitted to the court.[29] Petitioner avers that the CA disregarded the fact that the Information alleged conspiracy.[30] In any case, petitioner asserts

[24] *Id.* at 53.

[25] *Id.* at 60-67.

[26] *Id.* at 10.

[27] *Id.* at 12.

[28] *Id.* at 14.

[29] *Id.* at 16.

[30] *Id.* at 20.

that a perceived defect in the Information is not jurisdictional as the same may be amended anytime before arraignment or with leave of court after arraignment.[31]

Petitioner also claims that respondents had not shown any clear and unmistakable right to the relief they sought. It said that there are more than enough plain, speedy, and adequate remedies available to respondents. Their constitutional rights are amply protected in the enforcement of the warrants of arrest. They can likewise apply for bail or move to quash the allegedly defective Information.[32]

Petitioner also argues that this Court has laid down the rule that criminal prosecution cannot be enjoined, and any exception to this rule must be convincingly established.[33] On the other hand, the comparative injury to the People in permanently enjoining a criminal case is beyond any of respondents' speculative claim of injury.

Thus, petitioner is praying that the CA's May 8, 2007 Decision and October 8, 2007 Resolution be reversed and set aside, and the writ of injunction be dissolved.[34]

In their Comment, respondents assert that the trial court issued its February 20, 2007 Order in gross violation of the Constitution and prevailing jurisprudence on the matter.[35] Respondents claim that the trial court's violation is evident in the "indecent haste" with which it issued the Order and Warrants of Arrest, and in its own admission in the Order itself.[36] Respondents also maintain that the trial court acted whimsically, capriciously, and with grave abuse of discretion when it concluded that there was

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[31] *Id.* at 22.

[32] *Id.*

[33] *Id.* at 24-25.

[34] *Id.* at 29.

[35] *Id.* at 269.

[36] *Id.* at 271.

probable cause to issue warrants of arrest against respondents.[37] Respondents likewise assert that the trial court committed grave abuse of discretion when it reversed the finding of Judge Bandal, who first heard the case.[38]

The petition is impressed with merit.

Initially, we decide the issue of forum shopping raised by petitioner.

Petitioner maintains that respondents committed forum shopping when it filed a petition for change of venue before this Court and a petition for prohibition before the CA.

Forum shopping is an act of a party, against whom an adverse judgment or order has been rendered in one forum, of seeking and possibly getting a favorable opinion in another forum, other than by appeal or special civil action for *certiorari*. It may also involve the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition.[39]

Forum shopping exists where the elements of *litis pendentia* are present, and where a final judgment in one case will amount to *res judicata* in the other. The elements of forum shopping are: (a) identity of parties, or at least such parties as would represent the same interest in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[40]

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[37] *Id.* at 275.

[38] *Id.* at 284.

[39] *Cruz v. Caraos,* G.R. No. 138208, April 23, 2007, 521 SCRA 510, 520-521, citing *Government Service Insurance System v. Bengson Commercial Buildings, Inc.,* 426 Phil. 111, 125 (2002).

[40] *Id.* at 522.

The elements of *res judicita* are: (a) the former judgment must be final; (b) the court which rendered judgment had jurisdiction over the parties and the subject matter; (c) it must be a judgment on the merits; and (d) there must be, between the first and second actions, identity of parties, subject matter, and cause of action.[41]

A reexamination of the two actions in this case, in light of the foregoing jurisprudence, is in order.

In the petition for change of venue filed on February 19, 2007, respondents prayed for the transfer of the criminal case to any court in Metro Manila,[42] alleging that the prosecution was politically motivated and designed to hamper the plan of respondent Joseph Grey to run for a congressional seat in the May 2007 elections.[43] They contended that "it would be extremely pernicious to the interest of justice if trial of this case and (of) the other two cases are held in Samar, especially in the City of Calbayog, where the said (Congressman) Reynaldo Uy is a resident and absolutely wields power."[44] They also asked the Court to hold the proceedings in abeyance until after the May 14, 2007 elections.

In its August 22, 2007 Resolution, the Court denied the petition for transfer of venue for lack of merit. It also directed Judge Navidad to hear the case with dispatch.[45]

On March 5, 2007, while their petition for change of venue was pending before this Court, respondents filed a petition for *certiorari* before the CA. They prayed, first, for the issuance of a TRO and/or a writ of preliminary injunction to prohibit Judge Navidad from proceeding with Criminal Case No. 4916

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[41] *Ayala Land, Inc. v. Valisno*, 381 Phil. 518, 528 (2000).

[42] *Rollo*, p. 169.

[43] *Id.* at 167.

[44] *Id.* at 168.

[45] *Id.* at 172.

and from causing the implementation of the warrants of arrest against respondents; and second, for the Court to set aside Judge Navidad's February 20, 2007 Order and the corresponding warrants he issued.[46] The TRO was granted on March 13, 2007, and the CA Decision making the same injunction permanent and setting aside the warrants of arrest was promulgated on May 8, 2007, a few days before the May 14, 2007 elections.

The CA correctly ruled that respondents were not guilty of forum shopping when they filed the two actions. Respondents raised different issues and sought different reliefs in the two actions, although both were grounded on the same set of facts.

The issue in the petition for change of venue is whether the trial of the case was to be moved to another court in light of respondents' allegations that the same was being used as a tool for their political persecution. On the other hand, the issue in the petition for *certiorari* before the CA was whether Judge Navidad gravely abused his discretion in issuing the February 20, 2007 Order and the warrants for respondents' arrest.

Thus, this Court's Resolution would not have amounted to *res judicata* that would bar the petition for *certiorari* before the CA.

We now resolve the substantive issues.

Respondents, in their petition before the CA, questioned the alleged lack of personal determination of probable cause by Judge Navidad in issuing the warrants for their arrest.

Judge Navidad's Order reads:

> In this separate, independent constitutionally-mandated Inquiry conducted for the purpose of determining the sufficiency of the evidence constituting probable cause to justify the issuance of a Warrant of Arrest, the Court perforce, made a very careful and meticulous and (sic) review **not only of the records but also the evidence adduced by the prosecution**, particularly the sworn

[46] *Id.* at 212.

statements/affidavits of Mario Abella, Uriendo Moloboco and Edgar Pellina.[47]

The language of the Order clearly shows that the judge made his own personal determination of the existence of probable cause by examining not only the prosecutor's report but also his supporting evidence, consisting mainly of the sworn statements of the prosecution's witnesses.

It is well to remember that there is a distinction between the preliminary inquiry which determines probable cause for the issuance of a warrant of arrest and the preliminary investigation proper which ascertains whether the offender should be held for trial or be released. The determination of probable cause for purposes of issuing the warrant of arrest is made by the judge. The preliminary investigation proper – whether or not there is reasonable ground to believe that the accused is guilty of the offense charged – is the function of the investigating prosecutor.[48]

The duty of the judge to determine probable cause to issue a warrant of arrest is mandated by Article III, Section 2 of the Philippine Constitution:

> Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

In *Soliven v. Makasiar*,[49] the Court explained that this constitutional provision does not mandatorily require the judge

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[47] *Id.* at 174-175. (Emphasis supplied.)

[48] *AAA v. Carbonell*, G.R. No. 171465, June 8, 2007, 524 SCRA 496, 509, citing *People v. Inting*, 187 SCRA 788, 792-793 (1990).

[49] G.R. Nos. 82585, 82827, and 83979, November 14, 1988, 167 SCRA 393.

to personally examine the complainant and her witnesses. Instead, he may opt to personally evaluate the report and supporting documents submitted by the prosecutor or he may disregard the prosecutor's report and require the submission of supporting affidavits of witnesses. Thus, in *Soliven*, we said:

> What the Constitution underscores is the exclusive and personal responsibility of the issuing judge to satisfy himself of the existence of probable cause. In satisfying himself of the existence of probable cause for the issuance of a warrant of arrest, the judge is not required to personally examine the complainant and his witnesses. Following established doctrine and procedure, he shall: (1) personally evaluate the report and the supporting documents submitted by the fiscal regarding the existence of probable cause and, on the basis thereof, issue a warrant of arrest; or (2) if on the basis thereof he finds no probable cause, he may disregard the fiscal's report and require the submission of supporting affidavits of witnesses to aid him in arriving at a conclusion as to the existence of probable cause.
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> Sound policy dictates this procedure, otherwise judges would by unduly laden with the preliminary examination and investigation of criminal complaints instead of concentrating on hearing and deciding cases filed before their courts.[50]

What the law requires as *personal determination* on the part of a judge is that he should not rely *solely* on the report of the investigating prosecutor.[51] This means that the judge should consider not only the report of the investigating prosecutor but also the affidavit and the documentary evidence of the parties, the counter-affidavit of the accused and his witnesses, as well as the transcript of stenographic notes taken during the preliminary investigation, if any, submitted to the court by the investigating prosecutor upon the filing of the Information.[52]

The Court has also ruled that the personal examination of the complainant and his witnesses is not mandatory and

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[50] *Id.* at 398.

[51] *AAA v. Carbonell*, *supra* note 48, at 509 .

[52] *Okabe v. Gutierrez*, G.R. No. 150185, May 27, 2004, 429 SCRA 685, 707.

indispensable in the determination of probable cause for the issuance of a warrant of arrest. The necessity arises only when there is an utter failure of the evidence to show the existence of probable cause.[53] Otherwise, the judge may rely on the report of the investigating prosecutor, provided that he likewise evaluates the documentary evidence in support thereof.

Contrary to respondents' claim, Judge Navidad did not gravely abuse his discretion in issuing the same.

A perusal of the assailed Order bears out this fact.

It was only through a review of the proceedings before the prosecutor that could have led Judge Navidad to determine that "the accused were given the widest latitude and ample opportunity to challenge the charge of Murder which resulted, among others, (in) a filing of a counter-charge of Perjury."[54] Likewise, his personal determination revealed no improper motive on the part of the prosecution and no circumstance which would overwhelm the presumption of regularity in the performance of official functions.[55] Thus, he concluded that the previous Order, denying the motion for the issuance of warrants of arrest, was not correct.[56]

These statements sufficiently establish the fact that Judge Navidad complied with the constitutional mandate for personal determination of probable cause before issuing the warrants of arrest.

The CA likewise overlooked a fundamental rule we follow in this jurisdiction. It is an established doctrine that injunction will not lie to enjoin a criminal prosecution because public interest requires that criminal acts be immediately investigated and prosecuted for the protection of society.[57]

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[53] *AAA v. Carbonell*, *supra* note 48, at 509, citing *Webb v. Hon. De Leon*, 317 Phil. 758, 794 (1995).

[54] *Rollo*, p. 175.

[55] *Id.* at 177.

[56] *Id.* at 176.

[57] *Asutilla v. PNB*, 225 Phil. 40, 43 (1986).

However, it is also true that various decisions of this Court have laid down exceptions to this rule, among which are:

a. To afford adequate protection to the constitutional rights of the accused (*Hernandez v. Albano, et al.*, L-19272, January 25, 1967, 19 SCRA 95);

b. When necessary for the orderly administration of justice or to avoid oppression or multiplicity of actions (*Dimayuga, et al. v. Fernandez*, 43 Phil. 304; *Hernandez v. Albano, supra*; *Fortun v. Labang, et al.*, L-38383, May 27, 1981, 104 SCRA 607);

c. When there is a pre-judicial question which is sub[-]judice (*De Leon v. Mabanag*, 70 Phil. 202);

d. When the acts of the officer are without or in excess of authority (*Planas v. Gil*, 67 Phil. 62);

e. Where the prosecution is under an invalid law, ordinance or regulation (*Young v. Rafferty*, 33 Phil. 556; *Yu Cong Eng v. Trinidad*, 47 Phil. 385, 389);

f. When double jeopardy is clearly apparent (*Sangalang v. People and Avendia*, 109 Phil. 1140);

g. Where the court has no jurisdiction over the offense (*Lopez v. City Judge*, L-25795, October 29, 1966, 18 SCRA 616);

h. Where there is a case of persecution rather than prosecution (*Rustia v. Ocampo*, CA-G.R. No. 4760, March 25, 1960);

i. Where the charges are manifestly false and motivated by the lust for vengeance (*Recto v. Castelo*, 18 L.J. [1953], cited in *Rañoa v. Alvendia*, CA-G.R. No. L-30720-R, October 8, 1962; *Cf. Guingona, et al. v. City Fiscal*, 60033, April 4, 1984, 128 SCRA 577); x x x

j. When there is clearly no *prima facie* case against the accused and a motion to quash on that ground has been denied (*Salonga v. Paño, et al.*, 59524, February 18, 1985, 134 SCRA 438)[; and]

[k.] Preliminary injunction has been issued by the Supreme Court to prevent the threatened unlawful arrest of petitioners (*Rodriguez v. Castelo*, L-6374, August 1, 1953).[58]

Respondents insisted that political persecution by their political rivals was the underlying reason for the filing of criminal charges

[58] *Brocka v. Enrile*, G.R. Nos. 69863-65, December 10, 1990, 192 SCRA 183, 188-189, citing Regalado, *Remedial Law Compendium* (1988 ed.), p. 188.

against them, and used this as basis for asking the appellate court to stop the proceedings in the trial court.

Indeed, this Court has recognized that, in certain instances, political persecution or political motives may have impelled the filing of criminal charges against certain political rivals. But this Court has also ruled that any allegation that the filing of the charges is politically motivated cannot justify the prohibition of a criminal prosecution **if there is otherwise evidence to support the charges**.[59]

In this case, the judge, upon his personal examination of the complaint and evidence before him, determined that there was probable cause to issue the warrants of arrest after the provincial prosecution, based on the affidavits presented by complainant and her witnesses, found probable cause to file the criminal Information. This finding of the Provincial Prosecutor was affirmed by the Secretary of Justice.

To establish political harassment, respondents must prove that the public prosecutor, not just the private complainant, acted in bad faith in prosecuting the case or has lent himself to a scheme that could have no other purpose than to place respondents in contempt and disrepute.[60] It must be shown that the complainant possesses the power and the influence to control the prosecution of cases.[61]

Likewise, the allegation that the filing of the complaint was politically motivated does not serve to justify the nullification of the informations where the existence of such motive has not been sufficiently established nor substantial evidence presented in support thereof.[62]

Other than their own self-serving claims, respondents have adduced absolutely no proof of the perceived political persecution being waged by their rivals. Respondents have not shown any

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[59] *Paredes, Jr. v. Hon. Sandiganbayan*, 322 Phil. 709, 732-733 (1996).

[60] *Id.* at 736. (Citations omitted.)

[61] *Id.*

[62] *Socrates v. Sandiganbayan*, 324 Phil. 151, 167 (1996).

evidence of such a grand design. They have not alleged, much less proved, any ill motive or malice that could have impelled the provincial prosecutor, the judge, and even the Secretary of Justice to have respectively ruled in the way each of them did. In short, respondents are holding tenuously only on the hope that this Court will take them at their word and grant the relief they pray for. This Court, however, cannot anchor its ruling on mere allegations.

Needless to say, a full-blown trial is to be preferred to ferret out the truth.[63] If, as respondents claim, there is no evidence of their culpability, then their petition for bail would easily be granted. Thereafter, the credibility of the prosecution's and the accused's respective evidence may be tested during the trial. It is only then that the guilt or innocence of respondents will be determined. Whether the criminal prosecution was merely a tool for harassment or whether the prosecution's evidence can pass the strict standards set by the law and withstand the exacting scrutiny of the court will all be resolved at the trial of the case.

The criminal Information in this case was filed four years ago and trial has yet to begin. The victim's kin, indeed, all the parties, are awaiting its resolution. Any further delay will amount to an injustice.

WHEREFORE, the foregoing premises considered, the Court of Appeals Decision dated May 8, 2007 and Resolution dated October 8, 2007 in CA-G.R. SP No. 02558 are hereby *REVERSED* and *SET ASIDE*, and the Permanent Injunction is hereby *DISSOLVED*. The Order of the Regional Trial Court of Calbayog City, Samar, dated February 20, 2007, is hereby *REINSTATED*. The Regional Trial Court of Calbayog City, Samar, is *DIRECTED* to proceed with hearing, and to decide Criminal Case No. 4916 with dispatch.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

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[63] *AAA v. Carbonell, supra* note 48, at 511, citing *Abugotal v. Judge Tiro*, 160 Phil. 884, 890 (1975).

SECOND DIVISION

[G.R. No. 181178. July 26, 2010]

AMELIA R. OBUSAN, *petitioner, vs.* **PHILIPPINE NATIONAL BANK,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; RETIREMENT; RETIREMENT AGE.— The pertinent law on this matter is Article 287 (on Retirement) of the Labor Code, as amended by Republic Act No. 7641, which took effect on January 7, 1993. x x x [U]nder this provision, the retirement age is primarily determined by the existing agreement or employment contract. Absent such an agreement, the retirement age shall be fixed by law. The law mandates that the compulsory retirement age is at 65 years, while the minimum age for optional retirement is set at 60 years. Moreover, Article 287 of the Labor Code, as amended, applies only to a situation where (1) there is no CBA or other applicable employment contract providing for retirement benefits for an employee; or (2) there is a collective bargaining agreement or other applicable employment contract providing for retirement benefits for an employee, but it is below the requirement set by law. The rationale for the first situation is to prevent the absurd situation where an employee, deserving to receive retirement benefits, is denied them through the nefarious scheme of employers to deprive employees of the benefits due them under existing labor laws. The rationale for the second situation is to prevent private contracts from derogating from the public law. x x x Retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of 65 years are not *per se* repugnant to the constitutional guaranty of security of tenure. By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at 60 years or below, provided that the employees' retirement benefits under any CBA and other agreements shall not be less than those provided therein.

2. ID.; ID.; ID.; RETIREMENT PLANS; ACCEPTANCE BY EMPLOYEES; BUT MANAGEMENT NEED NOT FIRST

CONSULT EMPLOYEE PRIOR TO RETIRING HIM.— [C]ompany retirement plans must not only comply with the standards set by existing labor laws, but they should also be accepted by the employees to be commensurate to their faithful service to the employer within the requisite period. x x x [However,] we already had the occasion to strike down the added requirement that an employer must first consult its employee prior to retiring him, as this requirement unduly constricts the exercise by management of its option to retire the said employee. Due process only requires that notice of the employer's decision to retire an employee be given to the employee.

APPEARANCES OF COUNSEL

Froilan M. Bacungan & Associates for petitioner.
Sycip Salazar Hernandez & Gatmaitan for respondent.

D E C I S I O N

NACHURA, *J.*:

This petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeks to annul and set aside the Decision[2] dated September 21, 2007 and the Resolution[3] dated January 8, 2008 of the Court of Appeals (CA) in CA-G.R. SP No. 96918.

The antecedents that spawned this controversy are as follows—

Back in 1979, respondent Philippine National Bank (PNB) hired petitioner Amelia R. Obusan (Obusan), who eventually became the Manager of the PNB Medical Office. At that time, PNB was a government-owned or controlled corporation, whose retirement program for its employees was administered by the Government Service Insurance System (GSIS), pursuant to the

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[1] *Rollo,* pp. 8-20.

[2] Penned by Associate Justice Sixto C. Marella, Jr., with Associate Justices Amelita G. Tolentino and Lucenito N. Tagle, concurring; *id.* at 21-30.

[3] *Id.* at 31-32.

Revised Government Service Insurance Act of 1977 (Presidential Decree No. 1146).

On May 27, 1996, PNB was privatized. Section 6 of the Revised Charter of the PNB (Executive Order No. 80, December 3, 1986), with respect to the effect of privatization of PNB, provides –

> *Change in Ownership of the Majority of the Voting Equity of the Bank.* – When the ownership of the majority of the issued common voting shares passes to private investors, the stockholders shall cause the adoption and registration with the Securities and Exchange Commission of the appropriate Articles of Incorporation and revised by-laws within three (3) months from such transfer of ownership. Upon the issuance of the certificate of incorporation under the provisions of the Corporation Code, this Charter shall cease to have force and effect, and shall be deemed repealed. Any special privileges granted to the Bank such as the authority to act as official government depository, or restrictions imposed upon the Bank, shall be withdrawn, and the Bank shall thereafter be considered a privately organized bank subject to the laws and regulations generally applicable to private banks. **The bank shall likewise cease to be a government owned or controlled corporation subject to the coverage of service-wide agencies** such as the Commission on Audit and the Civil Service Commission. (Emphasis supplied.)

Consequent to the privatization, all PNB employees, including Obusan, were deemed retired from the government service. The GSIS, in its letter[4] dated February 3, 1997, confirmed Obusan's retirement from the government service, and accordingly paid her retirement gratuity in the net amount of ₱390,633.76. Thereafter, Obusan continued to be an employee of PNB.

Later, the PNB Board of Directors, through Resolution No. 30 dated December 22, 2000, as amended, approved the PNB Regular Retirement Plan[5] (PNB-RRP). Section 1, Article VI of which provides –

> Normal Retirement. The normal retirement date of a Member shall be the day he attains sixty (60) years of age, regardless of length of

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[4] *Id.* at 87.

[5] *Id.* at 56-68.

service or has rendered thirty (30) years of service, regardless of age, whichever of the said conditions comes first. A Member who has reached the normal retirement date shall have to compulsor[il]y retire and shall be entitled to receive the retirement benefits under the Plan.[6]

In a Memorandum[7] dated February 21, 2001, PNB informed its officers and employees of the terms and conditions of the PNB-RRP, along with its implementing guidelines.

Subsequently, the PNB-RRP was registered with the Bureau of Internal Revenue, per its letter[8] dated June 27, 2001. Later, the Philnabank Employees Association, the union of PNB rank-and-file employees, recognized the PNB-RRP in the Collective Bargaining Agreement (CBA) it entered with PNB.[9]

In a Memorandum[10] dated February 11, 2002, PNB informed Obusan that her last day of employment would be on March 3, 2002, as she would reach the mandatory retirement age of 60 years on March 4, 2002. In her counsel's letter[11] dated February 26, 2002, Obusan questioned her compulsory retirement and even threatened to take legal action against PNB for illegal dismissal and unfair labor practice in the form of union busting, Obusan being then the President of the PNB Supervisors and Officers Association.

In a letter[12] dated March 1, 2002, PNB replied to Obusan, explaining that compulsory retirement under the PNB-RRP is

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[6] *Id.* at 61.

[7] *Id.* at. 101-105.

[8] *Id.* at 106-108.

[9] Article XVI of the CBA reads: "The retirement benefits of the employees shall be in accordance with the existing non-contributory Retirement Plan of the Bank," as cited in PNB's Memorandum; *id.* at 133.

[10] *Id.* at 109.

[11] *Id.* at 110.

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

not contrary to law and does not constitute union busting. Dissatisfied with PNB's explanation, Obusan filed before the Labor Arbiter a complaint for illegal dismissal and unfair labor practice, claiming that PNB could not compulsorily retire her at the age of 60 years, with her having a vested right to be retired only at 65 years old pursuant to civil service regulations.

On April 25, 2003, the Labor Arbiter rendered a decision,[13] dismissing Obusan's complaint as he upheld the validity of the PNB-RRP and its provisions on compulsory retirement upon reaching the age of 60 years. The Labor Arbiter found –

> Complainant posits that she has a vested right to be retired at 65 years since this was the retirement age at the time she was hired. However, there is neither jurisprudence nor law which supports this contention. Undisputed is the fact that, when complainant was hired, PNB was still a government owned and controlled corporation. Accordingly, the Revised Government Service Insurance Act [RGSI] of 1977 (Presidential Decree No. 1146), which established that the compulsory retirement age for government employees to be 65 years governs the employment of PNB employees. The PNB then did not have any participation in establishing the compulsory retirement age but the RGSI Act which is the law itself. But the same may apply only as long as PNB remains a government owned and controlled corporation. From the time PNB ceased to be such, it cannot be said that [the] RGSI Act of 1977 still applies. Thus negating the claim of complainant to retire at age 65 under the said law.
>
> When PNB ceased to be a government owned or controlled corporation, the law now applicable to the Bank is the Labor Code which allows PNB to establish its own retirement plan. As such, PNB is empowered to formulate its Regular Retirement Plan provided it is within the bounds of the Labor Code. We find no cogent reason to invalidate the Regular Retirement Plan as it is in accord with the law.
>
> Indeed, this Office cannot see how complainant can assert that her right to be retired at the age of 65 years has been "vested" at the time of her hiring when, in fact, such right can only be vested at the time of her retirement. Necessarily, complainant can only avail a

[13] *Id.* at 33-43.

retirement plan that is in effect at the time of her retirement. In this case, the retirement plan she insists on applying is no longer existent and instead it was replaced by the PNB Regular Retirement Plan which, by its terms, complies with the pertinent provisions of the Labor Code on retirement plans.[14]

Obusan then appealed to the National Labor Relations Commission (NLRC). In a resolution[15] dated May 31, 2004, the NLRC dismissed Obusan's appeal, and affirmed the assailed decision *in toto*. Obusan's motion for reconsideration of this resolution was later denied in an NLRC resolution[16] dated August 28, 2006. The NLRC held –

> Movant invokes the ruling of the Supreme Court in *Razon, Jr. v. NLRC* (185 SCRA 44), where the Supreme Court held:
>
> > "We believe that upon acceptance of employment, a contractual relationship was established giving private respondent an enforceable vested interest in the retirement fund. Verily, the retirement scheme became an integral part of his employment package and the benefits to be derived therefrom constituted as it were a continuing consideration for services rendered, as well as an effective inducement for remaining with the firm."
>
> It is clear that the contractual relationship established between the employer and employee upon the latter's acceptance of employment was an enforceable vested interest *in the retirement fund*. The Supreme Court did not hold that the private respondent has a vested right to his retirement age. x x x.
>
> x x x A vested right or a vested interest may be held to mean some right or interest in *property* that has become fixed or established, and is no longer open to doubt or controversy. Retirement age is not a property. It cannot be also fixed or permanent. Laws, contracts, and collective bargaining agreements may amend or alter the retirement age of an employee. Complainant may have had a vested

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[14] *Id.* at 38-39.

[15] *Id.* at 44-46.

[16] *Id.* at 47-48.

right to the retirement funds under the old retirement plan of the bank, but as held in *Razon*, this right could be withheld upon a clear showing of good and compelling reasons. The privatization of PNB and the consequent severance of its employees from government service is the reason why complainant lost her right to the government retirement plan. These are causes which are persuasive and compelling.[17]

Undaunted, Obusan filed a petition for *certiorari* before the CA, ascribing grave abuse of discretion to the NLRC when it affirmed the decision of the Labor Arbiter. The CA, however, dismissed the petition in its assailed Decision dated September 21, 2007, ratiocinating that the PNB-RRP's lowering the compulsory retirement age to 60 years is not violative of Article 287 of the Labor Code of the Philippines, as amended, despite the issuance of the plan years after Obusan was hired. Obusan's motion for reconsideration of this Decision was subsequently denied by the CA in its Resolution dated January 8, 2008.

Hence, this petition anchored on the argument that PNB cannot unilaterally lower the compulsory retirement age to 60 years without violating Article 287 of the Labor Code and Obusan's alleged right to retire at the age of 65 years.

According to Obusan, the PNB-RRP should only apply to employees hired on and after February 21, 2001, the date of its adoption. She insists that if the lowering of the compulsory retirement age to 60 years under the PNB-RRP was the product of an agreement between PNB and its employees, she would definitely accede to be bound by it. She points out that the questioned provision on retirement age was a unilateral act of PNB, to which she did not give her consent. In her Supplement to Petition for Review on *Certiorari*,[18] Obusan invoked *Jaculbe v. Silliman University*,[19] where this Court held—

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[17] Citations omitted.

[18] *Rollo*, pp. 71-74.

[19] G.R. No. 156934, March 16, 2007, 518 SCRA 445.

Retirement is the result of a bilateral act of the parties, a voluntary agreement between the employer and the employee whereby the latter, after reaching a certain age agrees to sever his or her employment with the former. In *Pantranco North Express, Inc. v. NLRC*, to which both the CA and respondent refer, the imposition of a retirement age below the compulsory age of 65 was deemed acceptable because this was part of the CBA between the employer and the employees. The consent of the employees, as represented by their bargaining unit, to be retired even before the statutory retirement age of 65 was laid out clearly in black and white and was therefore in accord with Article 287.

In this case, neither the CA nor the respondent cited any agreement, collective or otherwise, to justify the latter's imposition of the early retirement age in its retirement plan, opting instead to harp on petitioner's alleged "voluntary" contributions to the plan, which was simply untrue. The truth was that petitioner had no choice but to participate in the plan, given that the only way she could refrain from doing so was to resign or lose her job. It is axiomatic that employer and employee do not stand on equal footing, a situation which often causes an employee to act out of need instead of any genuine acquiescence to the employer. This was clearly just such an instance.

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As already stated, an employer is free to impose a retirement age less than 65 for as long as it has the employee's consent. Stated conversely, employees are free to accept the employer's offer to lower the retirement age if they feel they can get a better deal with the retirement plan presented by the employer. Thus, having terminated petitioner solely on the basis of a provision of a retirement plan which was not freely assented to by her, respondent was guilty of illegal dismissal.[20]

Put differently, Obusan posits that the severance of her employment from PNB constituted illegal dismissal. She claims that the PNB-RRP, which compulsorily retired her at the age of 60 years without her consent, runs afoul of her right to security of tenure as guaranteed by the Constitution. She further argues

[20] *Id.* at 451-452. (Citations omitted.)

that since PNB-RRP cannot be made to apply to her, Article 287 of the Labor Code should prevail, giving her the right to compulsorily retire at the age of 65 years.

We disagree.

The pertinent law on this matter, Article 287 of the Labor Code, as amended by Republic Act No. 7641, which took effect on January 7, 1993, provides –

> ART. 287. *Retirement.* – Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.
>
> In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements: *Provided, however,* That an employee's retirement benefits under any collective bargaining agreement and other agreements shall not be less than those provided herein.
>
> In the absence of a retirement plan or agreement providing for retirement benefits of employees in the establishment, an employee upon reaching the age of sixty (60) years or more, but not beyond sixty-five (65) years which is hereby declared the compulsory retirement age, who has served at least five (5) years in the said establishment, may retire and shall be entitled to retirement pay equivalent to at least one-half (1/2) month salary for every year of service, a fraction of at least six (6) months being considered as one whole year.
>
> Unless the parties provide for broader inclusions, the term one-half (1/2) month salary shall mean fifteen (15) days plus one-twelfth (1/12) of the 13th month pay and the cash equivalent of not more than five (5) days of service incentive leaves.

Undoubtedly, under this provision, the retirement age is primarily determined by the existing agreement or employment contract. Absent such an agreement, the retirement age shall be fixed by law. The above-cited law mandates that the compulsory retirement age is at 65 years, while the minimum age for optional retirement is set at 60 years. Moreover, Article 287 of the Labor Code, as amended, applies only to a situation where (1) there

is no CBA or other applicable employment contract providing for retirement benefits for an employee; or (2) there is a collective bargaining agreement or other applicable employment contract providing for retirement benefits for an employee, but it is below the requirement set by law. The rationale for the first situation is to prevent the absurd situation where an employee, deserving to receive retirement benefits, is denied them through the nefarious scheme of employers to deprive employees of the benefits due them under existing labor laws. The rationale for the second situation is to prevent private contracts from derogating from the public law.[21]

In this case, Obusan was initially hired in 1979 as a government employee, PNB then being a government-owned and controlled corporation. As such, she was governed by civil service laws, and the compulsory retirement age, as imposed by law, was at 65 years. Peculiar to her situation, however, was that the corporate entity that hired her ceased to be government-owned and controlled when it was privatized in 1996. As a result of the privatization of PNB, all of its officers and employees were deemed retired from the government service. Consequently, many of them, Obusan included, received their respective retirement gratuities.

It cannot be said that the PNB-RRP is a retirement plan providing retirement benefits less than what the law requires. In fact, in the computation of the employees' retirement pay, the plan factored what Article 287 requires. Thus the plan provides:

> 3. For service rendered after privatization, a Member, regardless whether or not he received GSIS Retirement Gratuity Benefits, shall be entitled to one hundred twelve (112%) percent of his "Latest Monthly Plan Salary"[22] for

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[21] *Oxales v. United Laboratories, Inc.*, G.R. No. 152991, July 21, 2008, 559 SCRA 26.

[22] Article II, Sec. 1(h) of the PNB-RRP states -

> h. **"Latest Monthly Plan Salary"** shall mean the latest gross monthly salary paid to a Member **excluding** Rice/Sugar/Meal Allowances, Teller's/

> every year of service rendered, a fraction of at least six (6) months being considered as one (1) whole year.
>
> The vesting multiple of one hundred twelve (112%) percent that is applied to the "Latest Monthly Plan Salary" is derived as the sum of fifteen (15) days of the "Latest Daily Plan Salary" plus five (5) days of the service incentive leave (based on Latest Daily Plan Salary) plus one-twelfth (1/12) of the "Latest Monthly Plan Salary." The Daily Plan Salary used is computed as "Latest Monthly Plan Salary" multiplied by thirteen (13) months and divided by two hundred fifty-one (251) days.[23]

Moreover, the PNB-RRP also considered the effects of PNB's privatization, as it also provided for additional benefits to those employees who were not qualified to receive the GSIS Retirement Gratuity Benefits, *viz.* –

> 2. A Member who failed to qualify to receive GSIS Retirement Gratuity Benefits shall be entitled [to] one Month Basic Salary (as of May 26, 1996) for every year of service rendered before privatization.[24]

Retirement plans allowing employers to retire employees who have not yet reached the compulsory retirement age of 65 years are not *per se* repugnant to the constitutional guaranty of security of tenure. By its express language, the Labor Code permits employers and employees to fix the applicable retirement age at 60 years or below, provided that the employees' retirement benefits under any CBA and other agreements shall not be less

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Fieldman's Allowances or allowances of a similar nature, Clothing/Travel allowances, Temporary Detail Allowances, overtime pay, night premium, discretionary funds and/or special allowances (if any) that were granted on case-to-case basis, anniversary/quarterly/year-end bonuses, and/or profit-sharing payments and other fluctuating emoluments/monetary benefits which are not considered as part of or integrated into the regular salary of the Member. (*Rollo*, p. 58.)

[23] Article VIII, Sec. 1(a)(3) of the PNB-RRP; *id.* at 63.

[24] *Id.*

than those provided therein.[25] By this yardstick, the PNB-RRP complies.

However, company retirement plans must not only comply with the standards set by existing labor laws, but they should also be accepted by the employees to be commensurate to their faithful service to the employer within the requisite period.[26]

To our mind, Obusan's invocation of *Jaculbe* on account of her lack of consent to the PNB-RRP, particularly as regards the provision on compulsory retirement age, is rather misplaced.

It is true that her membership in the PNB-RRP was made automatic, to wit –

> Section 1. Membership. Membership in the Plan shall be automatic for all full-time regular and permanent officers and employees of the Bank as of the effectivity date of the Plan. For employees hired after the effectivity of this Plan, their membership shall be effective on "Date Entered Bank."[27]

The records show that the PNB Board of Directors approved the PNB-RRP on December 22, 2000. On February 21, 2001, PNB informed all of its officers and employees about it, complete with its terms and conditions and the guidelines for its implementation. Then, the PNB-RRP was registered with the BIR and, later, was recognized by the Philnabank Employees Association in the CBA it entered with PNB.

With the information properly disseminated to all of PNB's officers and employees, the PNB-RRP was then opened for

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[25] *Jaculbe v. Silliman University*, *supra* note 19.

[26] See *Universal Robina Sugar Milling Corporation (URSUMCO) v. Caballeda*, G.R. No. 156644, July 28, 2008, 560 SCRA 115; *Oxales v. United Laboratories, Inc.*, *supra* note 21; *Jaculbe v. Silliman University*, *supra* note 19; *Philippine Airlines, Inc. v. Airline Pilots Association of the Philippines*, 424 Phil. 356 (2002); *Capili v. National Labor Relations Commission*, 273 Phil. 576 (1997); *Pantranco North Express, Inc. v. NLRC*, 328 Phil. 470 (1996).

[27] Article IV, Sec. 1 of the PNB-RRP; *rollo*, p. 60.

scrutiny. The employees had every opportunity to question the plan if, indeed, it would not be beneficial to the employees, as compared to what was mandated by Article 287 of the Labor Code. Consequently, the union of PNB's rank-and-file employees recognized it as a legally-compliant and reasonable retirement plan by the act of incorporating it in their CBA with PNB.

With respect to Obusan and the PNB Supervisors and Officers Association, of which she was the President when she was compulsorily retired, there is nothing on record to show that they expressed their dissent to the PNB-RRP. This deafening silence eloquently speaks of their lack of disagreement with its provisions. It was only at the time that she was to be compulsorily retired that Obusan questioned the PNB-RRP's provision on compulsory retirement age.

Besides, we already had the occasion to strike down the added requirement that an employer must first consult its employee prior to retiring him, as this requirement unduly constricts the exercise by management of its option to retire the said employee. Due process only requires that notice of the employer's decision to retire an employee be given to the employee.[28]

Finally, it is also worthy to mention that, unlike in *Jaculbe*, the PNB-RRP is solely and exclusively funded by PNB,[29] and no financial burden is imposed on the employees for their retirement benefits.

All told, we hold that the PNB-RRP is a valid exercise of PNB's prerogative to provide a retirement plan for all its employees.

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[28] *Philippine Airlines, Inc. v. Airline Pilots Association of the Philippines*, *supra* note 26.

[29] Article V, Sec. 1 of the PNB-RRP states -

Sec. 1. The Retirement Fund. The funding of the Plan and the payment of the benefits hereunder shall be provided for through the medium of a retirement fund held by a Trustee under and pursuant to a Trust Agreement. **The contributions of the Bank to the fund so created, together with any income, gains or profits, less distributions, expenses, charges or losses, shall constitute the Fund.** (Emphasis supplied; *rollo* p. 60.)

WHEREFORE, the petition is *DENIED*. The assailed Decision dated September 21, 2007 and the Resolution dated January 8, 2008 of the Court of Appeals in CA-G.R. SP No. 96918 are *AFFIRMED*. No costs.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 183027. July 26, 2010]

SPOUSES EDMUNDO and LOURDES SARROSA, *petitioners, vs.* **WILLY O. DIZON,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; RULE MUST BE STRICTLY OBSERVED.— Under Section 3, Rule 46 of the 1997 Rules of Civil Procedure, failure to comply with the requirements stated therein, such as the statement of material dates, is sufficient ground to dismiss the petition. Being an extraordinary remedy, the party who seeks to avail of the special civil action of *certiorari* must strictly observe the rule laid down by law.

2. ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION; NOT PRESENT WHEN JUDGE DENIED THE MOTION TO CONSOLIDATE CASES INVOLVING DIFFERENT QUESTIONS OF FACT AND LAW.— The Court agrees with the finding of the Court of Appeals that the RTC of Parañaque City, Branch 257 did not gravely abuse its discretion in issuing the Order dated June 29, 2007, denying the motion to consolidate LRC Case No. 05-0047 (*Ex-Parte* Petition for Issuance of

Writ of Possession) with Civil Case No. 02-0335 (Breach of Contract, Damages and Accounting). Consolidation becomes only a matter of right when the cases sought to be consolidated involve similar questions of fact and law, provided certain requirements are met. As stated by the Court of Appeals, no such similarities exist between the *Ex-Parte* Petition for Issuance of a Writ of Possession and the civil case for Breach of Contract, Damages, Detailed Accounting. Hence, the RTC had the discretion to deny the consolidation of the two cases.

3. ID.; ID.; FORECLOSURE OF MORTGAGE; RIGHT OF PURCHASER TO POSSESSION OF FORECLOSED PROPERTY BECOMES ABSOLUTE UPON THE EXPIRATION OF THE REDEMPTION PERIOD; ISSUANCE OF WRIT OF POSSESSION THEREFOR BECOMES MINISTERIAL.— The right of the purchaser to the possession of the foreclosed property becomes absolute upon the expiration of the redemption period. The basis of this right to possession is the purchaser's ownership of the property. After the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right and its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function. In this case, petitioners failed to redeem the subject property within one year from the date of registration of the certificate of sale. Hence, respondent consolidated ownership over the subject property and TCT No. 162999 was issued in the name of respondent. Thereafter, respondent filed an *Ex-Parte* Petition for Issuance of a Writ of Possession over the subject property, and it was ministerial upon the RTC of Parañaque City, Branch 257 to issue the writ of possession in favor of respondent.

APPEARANCES OF COUNSEL

Renecio R. Espiritu for petitioners.
Constante V. Brillante, Jr. for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] of the Decision[2] of the Court of Appeals in CA-G.R. SP No. 100730, dated March 27, 2008, and its Resolution[3] dated May 20, 2008, denying the motion for reconsideration of petitioners spouses Edmundo and Lourdes Sarrosa. The Court of Appeals dismissed the petition for *certiorari* filed by petitioners for failure to state material dates and for lack of merit.

The facts are as follows:

On March 31, 2001, petitioners spouses Edmundo and Lourdes Sarrosa obtained a loan from respondent Willy Dizon in the amount of Two Million Pesos (₱2,000,000.00). The loan was secured by a real estate mortgage[4] of petitioners' property located in San Dionisio, Parañaque City, covered by Transfer Certificate of Title (TCT) No. S-92903 (104540).[5]

On June 30, 2001, the loan became due and demandable, but petitioners failed to pay their obligation.

On March 23, 2002, respondent, through counsel, sent petitioners a letter[6] demanding payment of their obligation within five days from receipt thereof; otherwise, the mortgaged property would be foreclosed extrajudicially. Petitioners, however, failed to pay their obligation.

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

[2] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Jose C. Mendoza (now a member of this Court) and Arturo G. Tayag, concurring; *rollo*, pp. 8-19.

[3] *Id.* at 20.

[4] Annex "F", CA *rollo*, pp. 78-80.

[5] Exhibit "H", records, Vol. II, pp. 9-10.

[6] Exhibit "I-8", *id.* at 20.

Hence, on July 17, 2002, respondent filed a Petition to Sell in Extra-judicial Foreclosure of Mortgage under Act 3135, as amended, with the Office of the Clerk of Court and *Ex-Officio* Sheriff, Regional Trial Court, Parañaque City.

On August 16, 2002, petitioners filed with the RTC of Parañaque City a civil case for Breach of Contract, Damages, Detailed Accounting, with Temporary Restraining Order (TRO)/Injunction,[7] praying for the issuance of a TRO/injunction to restrain respondent from proceeding with the scheduled extrajudicial foreclosure of the mortgaged property. The case was docketed as Civil Case No. 02-0335.

On October 15, 2003, the public auction proceeded as scheduled. The mortgaged property was sold to respondent as the highest bidder, and a certificate of sale[8] was issued in favor of respondent, who registered the same with the Register of Deeds of Parañaque City.

Petitioners failed to redeem the property within the one-year period provided under Section 28, Rule 39 of the Rules of Court. Hence, respondent consolidated ownership over the subject property. Thereafter, the Office of the Register of Deeds of Parañaque City cancelled TCT No. S-92903 (104540) in the name of petitioners, and a new title, TCT No. 162999,[9] covering the subject property, was issued in the name of respondent.

On March 14, 2005, respondent, through counsel, sent petitioners a letter[10] demanding that they vacate the subject property within five days from receipt thereof, since respondent was already the registered owner of the property. Petitioners did not heed the demand.

On April 26, 2005, respondent filed with the RTC of Parañaque City an *Ex-Parte* Petition for the Issuance of a Writ of Possession[11] over the subject property, docketed as LRC Case No. 05-0047.

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[7] CA *rollo*, pp. 119-133.

[8] Exhibit "M", records, vol. II, pp. 26-27.

[9] Exhibit "F", *id.* at 5.

[10] Exhibit "O", *id.* at 29.

[11] CA *rollo*, pp. 216-220.

On June 29, 2007, the RTC of Parañaque City, Branch 257 issued an Order[12] in LRC Case No. 05-0047, ruling that the matter of consolidation of LRC Case No. 05-0047 (*Ex-Parte* Petition for the Issuance of a Writ of Possession) with Civil Case No. 02-0335 (Breach of Contract, Damages, Detailed Accounting, with TRO/Injunction) was procedurally improper. The RTC directed the parties to file their respective memoranda within 30 days, and stated that the case would be considered submitted for decision after the expiration of the period.

On August 22, 2007, the RTC of Parañaque City, Branch 257 rendered a Decision[13] in LRC Case No. 05-0047, granting the issuance of a writ of possession in favor of respondent. The dispositive portion of the Decision reads:

> WHEREFORE, let a Writ of Possession issue in favor of petitioner Willy O. Dizon, ordering the spouses Edmundo G. Sarrosa and Lourdes Z. Sarrosa and all occupants, tenants and other persons claiming rights under them to vacate the premises and place petitioner in possession of the property and all its improvements covered by Transfer Certificate of Title No. 162999 of the Register of Deeds of Parañaque City.
>
> IT IS SO ORDERED.[14]

The RTC held that respondent is entitled to a writ of possession based on the rule that after the redemption period has expired, the purchaser of the foreclosed property has the right to be placed in possession thereof.[15] Possession of the property becomes an absolute right of the purchaser as owner; and, upon proper application and proof of title, the issuance of a writ of possession in his favor becomes a ministerial duty of the court.[16]

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[12] *Rollo*, pp. 160-161.

[13] *Id.* at 163-166.

[14] *Id.* at 166.

[15] *United Coconut Planters Bank v. Reyes*, G.R. No. 95095, February 7, 1991, 193 SCRA 756, 763.

[16] *F. David Enterprises v. Insular Bank of Asia and America*, G.R. No. 78714, November 21, 1990, 191 SCRA 516, 523.

Petitioners filed with the Court of Appeals a special civil action for *certiorari* and prohibition,[17] alleging that the RTC Judge of Parañaque City, Branch 257 acted with grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Decision dated August 22, 2007; and there is no appeal, or any plain, speedy and adequate remedy in the ordinary course of law to prevent further irreparable damage and injury to petitioners.

The Court of Appeals found that in the arguments and prayer of the petition, petitioners also sought to annul the RTC Order dated June 29, 2007, which denied petitioner's attempt to consolidate LRC Case No. 05-0047 with Civil Case No. 02-0335.

Petitioners prayed that judgment be rendered annulling the RTC Order dated June 29, 2007 and the RTC Decision dated August 22, 2007, and restraining the Clerk of Court *Ex-Officio* Sheriff of the RTC of Parañaque City from implementing the writ of possession issued in the Decision dated August 22, 2007 until further orders from the Court of appeals.

In a Decision dated March 27, 2008, the Court of Appeals dismissed the petition for failure of petitioners to state material dates and for lack of merit.[18]

The Court of Appeals stated that petitioners failed to state when they received the RTC Order dated June 29, 2007; hence, it cannot be determined whether the petition was filed on time. Under Section 3, Rule 46 of the Rules on Civil Procedure, failure to comply with such requirement is sufficient ground for the dismissal of the petition.

The Court of Appeals also stated that even if it were to take cognizance of the petition, it found that the RTC Judge of Parañaque City, Branch 257 did not gravely abuse his discretion in denying petitioners' prayer that LRC Case No. 05-0047 and

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[17] Under Rule 46, in relation to Rule 65, of the Rules of Court.

[18] *Rollo*, p. 19.

Civil Case No. 02-0335 be consolidated, because consolidation is a matter of discretion of the court.

Moreover, the Court of Appeals declared that no grave abuse of discretion may be attributed to the RTC Judge in granting the writ of possession in favor of respondent. It held, thus:

> x x x Verily, it is settled that the buyer in a foreclosure sale becomes the absolute owner of the property purchased if it is not redeemed during the period of one year after the registration of sale. As such, he is entitled to the possession of the property and can demand it any time following the consolidation of ownership in his name and the issuance of a new transfer certificate of title. Possession of the land then becomes an absolute right of the purchaser as confirmed owner and upon proper application and proof of title, the issuance of the writ of possession becomes a ministerial duty of the court. If the grant of a writ of possession becomes ministerial at this point, there is in fact and in law, hardly any discretion left to the court but to issue the same upon the consolidation of title by the herein private respondent. x x x[19]

Petitioners' motion for reconsideration was denied by the Court of Appeals in a Resolution[20] dated May 20, 2008.

Hence, petitioners filed this petition for review on *certiorari*[21] raising the following issues:

1. THE HON. COURT OF APPEALS x x x COMMITTED SERIOUS ERRORS OF LAW IN PRECIPITATELY DENYING PETITIONERS' [PETITION FOR] C*ERTIORARI*/PROHIBITION SANS BASIS IN LAW AND JURISPRUDENCE.

2. THE HON. COURT OF APPEALS x x x COMMITTED SERIOUS ERRORS OF LAW IN PRECIPITATELY IGNORING EXISTING LAW AND JURISPRUDENCE IN DENYING [THEIR] PETITION.[22]

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[19] *Id.* at 17-18.

[20] *Id.* at 20.

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

[22] *Rollo*, p. 27.

Petitioners contend that the Court of Appeals erred in dismissing their petition for *certiorari* on the technical ground of failure to state the date when petitioners received the RTC Order dated June 29, 2007.

The contention lacks merit.

In their petition, petitioners prayed for the annulment of the Order dated June 29, 2007 and the Decision dated August 22, 2007 of the RTC of Parañaque City, Branch 257 in LRC Case No. 05-0047. However, the petition failed to state when petitioners received the RTC Order dated June 29, 2007. Hence, the Court of Appeals could not determine whether the petition for *certiorari* was filed on time. Under Section 3, Rule 46 of the 1997 Rules of Civil Procedure, failure to comply with the requirements stated therein, such as the statement of material dates, is sufficient ground to dismiss the petition.[23] Being an extraordinary remedy, the party who seeks to avail of the special civil action of *certiorari* must strictly observe the rule laid down by law.[24]

Moreover, the Court of Appeals stated that even if it took cognizance of the petition, it found that the RTC of Parañaque City, Branch 257 did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Order dated June 29, 2007 and the Decision dated August 22, 2007.

Petitioners' allegation of grave abuse of discretion by the RTC of Parañaque City, Branch 257 implies such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction or, in other words, the exercise of power in an arbitrary manner by reason of passion, prejudice or personal hostility, and it must be so patent or gross as to amount to an evasion of a positive duty or to a virtual refusal to perform the duty enjoined or to act at all in contemplation of law.[25]

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[23] *Tagle v. Equitable PCI Bank*, G.R. No. 172299, April 22, 2008, 552 SCRA 424, 444.

[24] *Balayan v. Acorda*, G.R. No. 153537, May 5, 2006, 489 SCRA 637, 643.

[25] *Sangcopan v. Commission on Elections*, G.R. No. 170216, March 12, 2008, 548 SCRA 148, 158-159.

The Court agrees with the finding of the Court of Appeals that the RTC of Parañaque City, Branch 257 did not gravely abuse its discretion in issuing the Order dated June 29, 2007, denying the motion to consolidate LRC Case No. 05-0047 (*Ex-Parte* Petition for Issuance of Writ of Possession) with Civil Case No. 02-0335 (Breach of Contract, Damages and Accounting). Consolidation becomes only a matter of right when the cases sought to be consolidated involve similar questions of fact and law, provided certain requirements are met.[26] As stated by the Court of Appeals, no such similarities exist between the *Ex-Parte* Petition for Issuance of a Writ of Possession and the civil case for Breach of Contract, Damages and Accounting. Hence, the RTC had the discretion to deny the consolidation of the two cases.

In addition, the Court of Appeals did not err in finding that the RTC of Parañaque City, Branch 257 did not commit grave abuse of discretion amounting to lack or excess of jurisdiction in issuing a writ of possession in favor of respondent in its Decision dated August 22, 2007.

The right of the purchaser to the possession of the foreclosed property becomes absolute upon the expiration of the redemption period.[27] The basis of this right to possession is the purchaser's ownership of the property.[28] After the consolidation of title in the buyer's name for failure of the mortgagor to redeem, the writ of possession becomes a matter of right and its issuance to a purchaser in an extrajudicial foreclosure is merely a ministerial function.[29]

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[26] *Republic of the Philippines v. Court of Appeals*, 451 Phil. 497, 505 (2003).

[27] *Motos v. Real Bank (A Thrift Bank), Inc*., G.R. No. 171386, July 17, 2009, 593 SCRA 216, 225-226.

[28] *Id*.

[29] *Metropolitan Bank & Trust Company v. Manfred Jacob De Koning*, G.R. No. 157867, December 15, 2009.

In this case, petitioners failed to redeem the subject property within one year from the date of registration of the certificate of sale.[30] Hence, respondent consolidated ownership over the subject property and TCT No. 162999[31] was issued in the name of respondent. Thereafter, respondent filed an *Ex-Parte* Petition for Issuance of a Writ of Possession over the subject property, and it was ministerial upon the RTC of Parañaque City, Branch 257 to issue the writ of possession in favor of respondent.

Hence, it is clear that the RTC of Parañaque City, Branch 257 did not gravely abuse its discretion in issuing the writ of possession, considering that it was the ministerial duty of the RTC to issue the writ of possession in favor of respondent, who had consolidated ownership over the subject property after the redemption period expired.

WHEREFORE, the petition is *DENIED*. The Court of Appeals' Decision dated March 27, 2008 in CA-G.R. SP No. 100730, and its Resolution dated May 20, 2008 are hereby *AFFIRMED*.

Costs against petitioners.

SO ORDERED.

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

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[30] Rules of Court, Rule 39, Sec. 28.

[31] *Supra* note 10.

[*] Designated as an additional member in lieu of Associate Justice Jose Catral Mendoza per raffle dated July 7, 2010.

FIRST DIVISION

[G.R. No. 183133. July 26, 2010]

BALGAMELO CABILING MA, FELIX CABILING MA, JR., and VALERIANO CABILING MA, *petitioners, vs.* **COMMISSIONER ALIPIO F. FERNANDEZ, JR., ASSOCIATE COMMISSIONER ARTHEL B. CARONOÑGAN, ASSOCIATE COMMISSIONER JOSE DL. CABOCHAN, ASSOCIATE COMMISSIONER TEODORO B. DELARMENTE AND ASSOCIATE COMMISSIONER FRANKLIN Z. LITTAUA, in their capacities as Chairman and Members of the Board of Commissioners (Bureau of Immigration), and MAT G. CATRAL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; 1935 CONSTITUTION; CITIZENS OF THE PHILIPPINES; THOSE WHOSE MOTHERS ARE FILIPINOS AND ELECT PHILIPPINE CITIZENSHIP UPON AGE OF MAJORITY; MANNER OF ELECTING PHILIPPINE CITIZENSHIP UNDER COMMONWEALTH ACT NO. 625.— The 1935 Constitution declares as citizens of the Philippines those whose mothers are citizens of the Philippines and elect Philippine citizenship upon reaching the age of majority. The mandate states: Section 1. The following are citizens of the Philippines: (1) x x x; x x x (4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship. In 1941, Commonwealth Act No. 625 was enacted. It laid down the manner of electing Philippine citizenship, to wit: Section 1. The option to elect Philippine citizenship in accordance with subsection (4), Section 1, Article IV of the Constitution shall be expressed in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines. The statutory formalities

of electing Philippine citizenship are: (1) a statement of election under oath; (2) an oath of allegiance to the Constitution and Government of the Philippines; and (3) registration of the statement of election and of the oath with the nearest civil registry.

2. ID.; ID.; ID.; ID.; ID.; ID.; PERIOD OF ELECTING CITIZENSHIP UPON REACHING THE AGE OF MAJORITY; DISCUSSED.— In *Re:Application for Admission to the Philippine Bar, Vicente D. Ching*, we determined the meaning of the period of election described by phrase "upon reaching the age of majority." Our references were the Civil Code of the Philippines, the opinions of the Secretary of Justice, and the case of *Cueco v. Secretary of Justice*. We pronounced: x x x [T]he 1935 Constitution and C.A. No. 625 did not prescribe a time period within which the election of Philippine citizenship should be made. The 1935 Charter only provides that the election should be made "upon reaching the age of majority." The age of majority then commenced upon reaching twenty-one (21) years. In the opinions of the Secretary of Justice on cases involving the validity of election of Philippine citizenship, this dilemma was resolved by basing the time period on the decisions of this Court prior to the effectivity of the 1935 Constitution. In these decisions, the proper period for electing Philippine citizenship was, in turn, based on the pronouncements of the Department of State of the United States Government to the effect that the election should be made within a reasonable time after attaining the age of majority. The phrase "reasonable time" has been interpreted to mean that the elections should be made within three (3) years from reaching the age of majority. However, we held in *Cue[n]co vs. Secretary of Justice*, that the three (3) year period is not an inflexible rule. We said: It is true that this clause has been construed to mean a reasonable time after reaching the age of majority, and that the Secretary of Justice has ruled that three (3) years is the reasonable time to elect Philippine citizenship under the constitutional provision adverted to above, which period may be extended under certain circumstances, as when the person concerned has always considered himself a Filipino. However, we cautioned in *Cue[n]co* that the extension of the option to elect Philippine citizenship is not indefinite. Regardless of the foregoing, petitioner was born on February 16, 1923. He became of age

on February 16, 1944. His election of citizenship was made on May 15, 1951, when he was over twenty-eight (28) years of age, or over seven (7) years after he had reached the age of majority. It is clear that said election has not been made "upon reaching the age of majority.

3. ID.; ID.; ID.; ID.; ID.; ID.; ID.; WHERE REGISTRATION OF DOCUMENTS OF CITIZENSHIP ELECTION WITH THE CIVIL REGISTRY THAT WAS BELATEDLY DONE; RIGHT TO ELECT PHILIPPINE CITIZENSHIP NOT LOST AND SHOULD BE ALLOWED TO COMPLETE THE STATUTORY REQUIREMENTS FOR SUCH DECISION.— Petitioners [in case at bar] complied with the first and second requirements upon reaching the age of majority. It was only the registration of the documents of election with the civil registry that was belatedly done. We rule that under the facts peculiar to the petitioners, the right to elect Philippine citizenship has not been lost and they should be allowed to complete the statutory requirements for such election. Such conclusion is in line with our decisions in *In Re:Florencio Mallare, Co v. Electoral Tribunal of the House of Representatives*, and *Re:Application for Admission to the Philippine Bar, Vicente D. Ching*. x x x What we now say is that where, as in petitioners' case, the election of citizenship has in fact been done and documented within the constitutional and statutory timeframe, the registration of the documents of election beyond the frame should be allowed if in the meanwhile positive acts of citizenship have publicly, consistently, and continuously been done. The actual exercise of Philippine citizenship, for over half a century by the herein petitioners, is actual notice to the Philippine public which is equivalent to formal registration of the election of Philippine citizenship.

4. ID.; ID.; ID.; ID.; ID.; ID.; REGISTRATION; PURPOSE.— For what purpose is registration? In *Pascua v. Court of Appeals*, we elucidated the principles of civil law on registration: To register is to record or annotate. American and Spanish authorities are unanimous on the meaning of the term "to register" as "to enter in a register; to record formally and distinctly; to enroll; to enter in a list." In general, registration refers to any entry made in the books of the registry, including both registration in its ordinary and strict sense, and cancellation, annotation, and even the marginal notes. In strict acceptation,

it pertains to the entry made in the registry which records solemnly and permanently the right of ownership and other real rights. Simply stated, registration is made for the purpose of **notification**. Actual knowledge may even have the effect of registration as to the person who has knowledge thereof. Thus, "[i]ts purpose is to give notice thereof to all persons (and it) operates as a notice of the deed, contract, or instrument to others." As pertinent is the holding that registration "neither adds to its validity nor converts an invalid instrument into a valid one between the parties." It lays emphasis on the validity of an unregistered document. x x x Registration is the confirmation of the existence of a fact. In the instant case, registration is the confirmation of election as such election. It is not the registration of the act of election, although a valid requirement under Commonwealth Act No. 625, that will confer Philippine citizenship on the petitioners. It is only a means of confirming the fact that citizenship has been claimed.

5. ID.; ID.; CITIZENS OF THE PHILIPPINES; THOSE WHOSE PARENTS ARE FILIPINOS AND ELECT PHILIPPINE CITIZENSHIP UPON AGE OF MAJORITY IN THE 1935 CONSTITUTION ARE AUTOMATICALLY FILIPINOS UNDER THE 1973 CONSTITUTION, FURTHER CLASSIFIED AS NATURAL-BORN CITIZENS UNDER THE 1987 CONSTITUTION.— While the 1935 Constitution requires that children of Filipino mothers elect Philippine citizenship upon reaching their age of majority, upon the effectivity of the 1973 Constitution, they automatically become Filipinos and need not elect Philippine citizenship upon reaching the age of majority. The 1973 provision reads: Section 1. The following are citizens of the Philippines: (1) x x x. (2) Those whose fathers and mothers are citizens of the Philippines. Better than the relaxation of the requirement, the 1987 Constitution now classifies them as natural-born citizens upon election of Philippine citizenship. Thus, Sec. 2, Article IV thereof provides: *Section 2.* Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. **Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof shall be deemed natural-born citizens.**

APPEARANCES OF COUNSEL

Hernandez & Surtida Attorney's-at Law for petitioners.

D E C I S I O N

PEREZ, ***J.*:**

Should children born under the 1935 Constitution of a Filipino mother and an alien father, who executed an affidavit of election of Philippine citizenship and took their oath of allegiance to the government upon reaching the age of majority, but who failed to immediately file the documents of election with the nearest civil registry, be considered foreign nationals subject to deportation as undocumented aliens for failure to obtain alien certificates of registration?

Positioned upon the facts of this case, the question is translated into the inquiry whether or not the omission negates their rights to Filipino citizenship as children of a Filipino mother, and erase the years lived and spent as Filipinos.

The resolution of these questions would significantly mark a difference in the lives of herein petitioners.

The Facts

Balgamelo Cabiling Ma (Balgamelo), Felix Cabiling Ma, Jr. (Felix, Jr.), Valeriano Cabiling Ma (Valeriano), Lechi Ann Ma (Lechi Ann), Arceli Ma (Arceli), Nicolas Ma (Nicolas), and Isidro Ma (Isidro) are the children of Felix (Yao Kong) Ma,[1] a Taiwanese, and Dolores Sillona Cabiling, a Filipina.[2]

Records reveal that petitioners Felix, Jr., Balgamelo and Valeriano were all born under aegis of the 1935 Philippine Constitution in the years 1948, 1951, and 1957, respectively.[3]

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[1] Deceased. CA *rollo,* p. 70.

[2] *Rollo,* p. 18.

[3] CA *rollo,* pp. 56, 61, and 66.

They were all raised in the Philippines and have resided in this country for almost sixty (60) years; they spent their whole lives, studied and received their primary and secondary education in the country; they do not speak nor understand the Chinese language, have not set foot in Taiwan, and do not know any relative of their father; they have not even traveled abroad; and they have already raised their respective families in the Philippines.[4]

During their age of minority, they secured from the Bureau of Immigration their Alien Certificates of Registration (ACRs).[5]

Immediately upon reaching the age of twenty-one, they claimed Philippine citizenship in accordance with Section 1(4), Article IV, of the 1935 Constitution, which provides that "(t)hose whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship" are citizens of the Philippines. Thus, on 15 August 1969, Felix, Jr. executed his affidavit of election of Philippine citizenship and took his oath of allegiance before then Judge Jose L. Gonzalez, Municipal Judge, Surigao, Surigao del Norte.[6] On 14 January 1972, Balgamelo did the same before Atty. Patrocinio C. Filoteo, Notary Public, Surigao City, Surigao del Norte.[7] In 1978, Valeriano took his oath of allegiance before then Judge Salvador C. Sering, City Court of Surigao City, the fact of which the latter attested to in his Affidavit of 7 March 2005.[8]

Having taken their oath of allegiance as Philippine citizens, petitioners, however, failed to have the necessary documents registered in the civil registry as required under Section 1 of Commonwealth Act No. 625 *(An Act Providing the Manner in which the Option to Elect Philippine Citizenship shall be*

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[4] *Rollo*, p. 41.

[5] *CA rollo*, pp. 99-101.

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

[7] *Id.* at 62-64.

[8] *Id.* at 71.

Declared by a Person whose Mother is a Filipino Citizen). It was only on 27 July 2005 or more than thirty (30) years after they elected Philippine citizenship that Balgamelo and Felix, Jr. did so.[9] On the other hand, there is no showing that Valeriano complied with the registration requirement.

Individual certifications[10] all dated 3 January 2005 issued by the Office of the City Election Officer, Commission on Elections, Surigao City, show that all of them are registered voters of *Barangay* Washington, Precinct No. 0015A since June 1997, and that records on previous registrations are no longer available because of the mandatory general registration every ten (10) years. Moreover, aside from exercising their right of suffrage, Balgamelo is one of the incumbent *Barangay Kagawads* in *Barangay* Washington, Surigao City.[11]

Records further reveal that Lechi Ann and Arceli were born also in Surigao City in 1953[12] and 1959,[13] respectively. The Office of the City Civil Registrar issued a Certification to the effect that the documents showing that Arceli elected Philippine citizenship on 27 January 1986 were registered in its Office on 4 February 1986. However, no other supporting documents appear to show that Lechi Ann initially obtained an ACR nor that she subsequently elected Philippine citizenship upon reaching the age of majority. Likewise, no document exists that will provide information on the citizenship of Nicolas and Isidro.

The Complaint

On 16 February 2004, the Bureau of Immigration received the Complaint-Affidavit[14] of a certain Mat G. Catral (Mr. Catral),

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[9] *Rollo,* pp. 85-86.

[10] *CA rollo,* pp. 72 and 76.

[11] *Rollo,* p. 220.

[12] *Id.* at 226.

[13] *Id.* at 119.

[14] CA *rollo,* back of pp. 37-38.

alleging that Felix (Yao Kong) Ma and his seven (7) children are undesirable and overstaying aliens. Mr. Catral, however, did not participate in the proceedings, and the Ma family could not but believe that the complaint against them was politically motivated because they strongly supported a candidate in Surigao City in the 2004 National and Local Elections.[15]

On 9 November 2004, the Legal Department of the Bureau of Immigration charged them for violation of Sections 37(a)(7)[16] and 45(e)[17] of Commonwealth Act No. 613, otherwise known as the *Philippine Immigration Act of 1940,* as amended. The Charge Sheet[18] docketed as BSI-D.C. No. AFF-04-574 (OC-STF-04-09/23-1416) reads, in part:

> That Respondents x x x, all Chinese nationals, failed and continuously failed to present any valid document to show their respective status in the Philippines. They likewise failed to produce documents to show their election of Philippines (sic) citizenship, hence, undocumented and overstaying foreign nationals in the country.
>
> That respondents, being aliens, misrepresent themselves as Philippine citizens in order to evade the requirements of the immigration laws.

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[15] *Rollo*, p. 42.

[16] Sec. 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien:

(1) x x x x x x x x x

x x x x x x x x x

(7) Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a non-immigrant.

[17] Sec. 45. Any individual who:

(a) x x x x x x x x x

x x x x x x x x x

(e) Being an alien shall, for any fraudulent purpose, represent himself to be a Philippine citizen in order to evade any requirement of the immigration laws.

[18] CA *rollo*, pp. 39-40.

Ruling of the Board of Commissioners, Bureau of Immigration

After Felix Ma and his seven (7) children were afforded the opportunity to refute the allegations, the Board of Commissioners (Board) of the Bureau of Immigration (BI), composed of the public respondents, rendered a Judgment dated 2 February 2005 finding that Felix Ma and his children violated Commonwealth Act No. 613, Sections 37(a)(7) and 45(e) in relation to BI Memorandum Order Nos. ADD-01-031 and ADD-01-035 dated 6 and 22 August 2001, respectively.[19]

The Board ruled that since they elected Philippine citizenship after the enactment of Commonwealth Act No. 625, which was approved on 7 June 1941, they were governed by the following rules and regulations:

1. Section 1 of Commonwealth Act No. 625, providing that the election of Philippine citizenship embodied in a statement sworn before any officer authorized to administer oaths and the oath of allegiance shall be filed with the nearest civil registry;[20] and Commission of Immigration and Deportation (CID, now Bureau of Immigration [BI]) Circular dated 12 April 1954,[21] detailing the procedural requirements in the registration of the election of Philippine citizenship.

2. Memorandum Order dated 18 August 1956[22] of the CID, requiring the filing of a petition for the cancellation of their alien certificate of registration with the CID, in view of their election of Philippine citizenship;

3. Department of Justice (DOJ) Opinion No. 182, 19 August 1982; and DOJ Guidelines, 27 March 1985, requiring that the

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[19] *Id.* at 29-33.

[20] *Id.* at 31.

[21] Ronaldo P. Ledesma, *An Outline of Philippine Immigration and Citizenship Laws,* 1999, Rex Printing Company, Inc., p. 360.

[22] CA *rollo,* p. 31.

records of the proceedings be forwarded to the Ministry (now the Department) of Justice for final determination and review.[23]

As regards the documentation of aliens in the Philippines, Administrative Order No. 1-93 of the Bureau of Immigration[24] requires that ACR, E-series, be issued to foreign nationals who apply for initial registration, finger printing and issuance of an ACR in accordance with the Alien Registration Act of 1950.[25] According to public respondents, any foreign national found in possession of an ACR other than the E-series shall be considered improperly documented aliens and may be proceeded against in accordance with the Immigration Act of 1940 or the Alien Registration Act of 1950, as amended.[26]

Supposedly for failure to comply with the procedure to prove a valid claim to Philippine citizenship *via* election proceedings, public respondents concluded that Felix, Jr. Balgamelo, Arceli, Valeriano and Lechi Ann are **undocumented and/or improperly documented aliens.**[27]

Nicolas and Isidro, on the other hand, did not submit any document to support their claim that they are Philippine citizens. Neither did they present any evidence to show that they are properly documented aliens. For these reasons, public respondents likewise deemed them **undocumented and/or improperly documented aliens.**[28]

The dispositive portion[29] of the Judgment of 2 February 2005 reads:

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[23] *Id.*

[24] *Id.* at 32.

[25] The Bureau of Immigration Official Website, www.immigration.gov.ph.

[26] CA *rollo,* p. 32.

[27] *Id.*

[28] *Id.*

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

1. Subject to the submission of appropriate clearances, **summary deportation** of Felix (Yao Kong) Ma, Felix Ma, Jr., Balgamelo Ma, Valeriano Ma, Lechi Ann Ma, Nicolas Ma, Arceli Ma and Isidro Ma, Taiwanese [Chinese], under C.A. No. 613, Sections 37(a)(7), 45(e) and 38 in relation to BI M.O. Nos. ADD-01-031 and ADD-01-035 dated 6 and 22 August 2001, respectively;

2. **Issuance of a warrant of deportation** against Felix (Yao Kong) Ma, Felix Ma, Jr., Balgamelo Ma, Valeriano Ma, Lechi Ann Ma, Nicolas Ma, Arceli Ma and Isidro Ma under C.A. No. 613, Section 37(a);

3. **Inclusion of the names** of Felix (Yao Kong) Ma, Felix Ma, Jr., Balgamelo Ma, Valeriano Ma, Lechi Ann Ma, Nicolas Ma, Arceli Ma and Isidro Ma **in the Immigration Blacklist**; and

4. **Exclusion from the Philippines** of Felix (Yao Kong) Ma, Felix Ma, Jr., Balgamelo Ma, Valeriano Ma, Lechi Ann Ma, Nicolas Ma, Arceli Ma and Isidro Ma under C.A. No. 613, Section 29(a)(15). *(Emphasis supplied.)*

In its Resolution[30] of 8 April 2005, public respondents partially reconsidered their Judgment of 2 February 2005. They were convinced that Arceli is an immigrant under Commonwealth Act No. 613, Section 13(g).[31] However, they denied the Motion for Reconsideration with respect to Felix Ma and the rest of his children.[32]

Ruling of the Court of Appeals

On 3 May 2005, only Balgamelo, Felix, Jr., and Valeriano filed the *Petition for Certiorari* under Rule 65 of the 1997 Rules of Civil Procedure before the Court of Appeals, which was docketed as CA-G.R. SP No. 89532. They sought the nullification of the issuances of the public respondents, to wit:

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[30] *Id.* at 34-37.

[31] *Id.* at 35.

[32] *Id.*

(1) the Judgment dated 2 February 2005, ordering the summary deportation of the petitioners, issuance of a warrant of deportation against them, inclusion of their names in the Immigration Blacklist, and exclusion of the petitioners from the Philippines; and (2) the Resolution dated 8 April 2005, denying the petitioners' Motion for Reconsideration.

On 29 August 2007, the Court of Appeals dismissed the petition[33] after finding that the petitioners "failed to comply with the exacting standards of the law providing for the procedure and conditions for their continued stay in the Philippines either as aliens or as its nationals."[34]

On 29 May 2008, it issued a Resolution[35] denying the petitioners' Motion for Reconsideration dated 20 September 2007.

To reiterate, a person's continued and uninterrupted *stay in the Philippines, his being a registered voter or an elected public official cannot vest in him Philippine citizenship as the law specifically lays down the requirements for acquisition of Philippine citizenship by election*. The prescribed procedure in electing Philippine citizenship is certainly not a tedious and painstaking process. All that is required of the elector is to execute an affidavit of election of Philippine citizenship and, thereafter, file the same with the nearest civil registry. The constitutional mandate concerning citizenship must be adhered to strictly. Philippine citizenship can never be treated like a commodity that can be claimed when needed and suppressed when convenient. One who is privileged to elect Philippine citizenship has only an inchoate right to such citizenship. As such, he should avail of the right with fervor, enthusiasm and promptitude.[36]

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[33] Penned by Associate Justice Josefina Guevara-Salonga with Associate Justices Mariano C. del Castillo (now a member of this Court) and Fernanda Lampas-Peralta, concurring. *Rollo*, pp. 10-23.

[34] *Id.* at 22.

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

[36] *Id.*

Our Ruling

The 1935 Constitution declares as citizens of the Philippines those whose mothers are citizens of the Philippines and elect Philippine citizenship upon reaching the age of majority. The mandate states:

Section 1. The following are citizens of the Philippines:

(1) x x x;

x x x x x x x x x

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.[37]

In 1941, Commonwealth Act No. 625 was enacted. It laid down the manner of electing Philippine citizenship, to wit:

Section 1. The option to elect Philippine citizenship in accordance with subsection (4), Section 1, Article IV, of the Constitution shall be expressed in a statement to be signed and sworn to by the party concerned before any officer authorized to administer oaths, and shall be filed with the nearest civil registry. The said party shall accompany the aforesaid statement with the oath of allegiance to the Constitution and the Government of the Philippines.

The statutory formalities of electing Philippine citizenship are: (1) a statement of election under oath; (2) an oath of allegiance to the Constitution and Government of the Philippines; and (3) registration of the statement of election and of the oath with the nearest civil registry.

In *Re:Application for Admission to the Philippine Bar, Vicente D. Ching*,[38] we determined the meaning of the period of election described by phrase "upon reaching the age of majority." Our references were the Civil Code of the Philippines, the opinions of the Secretary of Justice, and the case of *Cueco v. Secretary of Justice*.[39] We pronounced:

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[37] Section 1(4), Article IV, 1935 Philippine Constitution.

[38] 374 Phil. 342, 354 (1999).

[39] 115 Phil. 90 (1962).

x x x [T]he 1935 Constitution and C.A. No. 625 did not prescribe a time period within which the election of Philippine citizenship should be made. The 1935 Charter only provides that the election should be made "upon reaching the age of majority." The age of majority then commenced upon reaching twenty-one (21) years.[40] In the opinions of the Secretary of Justice on cases involving the validity of election of Philippine citizenship, this dilemma was resolved by basing the time period on the decisions of this Court prior to the effectivity of the 1935 Constitution. In these decisions, the proper period for electing Philippine citizenship was, in turn, based on the pronouncements of the Department of State of the United States Government to the effect that the election should be made within a reasonable time after attaining the age of majority.[41] The phrase "reasonable time" has been interpreted to mean that the elections should be made within three (3) years from reaching the age of majority.[42] However, we held in *Cue[n]co vs. Secretary of Justice*,[43] that the three (3) year period is not an inflexible rule. We said:

> It is true that this clause has been construed to mean a reasonable time after reaching the age of majority, and that the Secretary of Justice has ruled that three (3) years is the reasonable time to elect Philippine citizenship under the constitutional provision adverted to above, which period may be extended under certain circumstances, as when the person concerned has always considered himself a Filipino.

However, we cautioned in *Cue[n]co* that the extension of the option to elect Philippine citizenship is not indefinite.

> Regardless of the foregoing, petitioner was born on February 16, 1923. He became of age on February 16, 1944. His election of citizenship was made on May 15, 1951, when he was over twenty-eight (28) years of age, or over seven (7)

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[40] *Re: Application for Admission to the Philippine Bar, Vicente D. Ching, supra* note 38 at 350 citing Art. 402, Civil Code.

[41] *Id.*

[42] *Id.*

[43] *Id.* citing *Cueco, supra* note 39.

years after he had reached the age of majority. It is clear that said election has not been made "upon reaching the age of majority.[44]

We reiterated the above ruling in *Go, Sr. v. Ramos,*[45] a case in which we adopted the findings of the appellate court that the father of the petitioner, whose citizenship was in question, failed to elect Philippine citizenship within the reasonable period of three (3) years upon reaching the age of majority; and that "the belated submission to the local civil registry of the affidavit of election and oath of allegiance x x x was defective because the affidavit of election was executed after the oath of allegiance, and the delay of several years before their filing with the proper office was not satisfactorily explained."[46]

In both cases, we ruled against the petitioners because they belatedly complied with all the requirements. The acts of election and their registration with the nearest civil registry were all done beyond the reasonable period of three years upon reaching the age of majority.

The instant case presents a different factual setting. Petitioners complied with the first and second requirements upon reaching the age of majority. It was only the registration of the documents of election with the civil registry that was belatedly done.

We rule that under the facts peculiar to the petitioners, the right to elect Philippine citizenship has not been lost and they should be allowed to complete the statutory requirements for such election.

Such conclusion, contrary to the finding of the Court of Appeals, is in line with our decisions in *In Re:Florencio Mallare*,[47] *Co v. Electoral Tribunal of the House of Representatives*,[48]

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[44] *Id.*

[45] G.R. No. 167569, 4 September 2009, 598 SCRA 266.

[46] *Id.* at 280.

[47] 158 Phil. 50 (1974).

[48] G.R. Nos. 92191-92, 30 July 1991, 199 SCRA 692.

and *Re:Application for Admission to the Philippine Bar, Vicente D. Ching*.[49]

In *Mallare,* Esteban's exercise of the right of suffrage when he came of age was deemed to be a positive act of election of Philippine citizenship.[50] The Court of Appeals, however, said that the case cannot support herein petitioners' cause, pointing out that, unlike petitioner, Esteban is a natural child of a Filipina, hence, no other act would be necessary to confer on him the rights and privileges of a Filipino citizen,[51] and that Esteban was born in 1929[52] prior to the adoption of the 1935 Constitution and the enactment of Commonwealth Act No. 625.[53]

In the *Co* case, Jose Ong, Jr. did more than exercise his right of suffrage, as he established his life here in the Philippines.[54] Again, such circumstance, while similar to that of herein petitioners', was not appreciated because it was ruled that any election of Philippine citizenship on the part of Ong would have resulted in absurdity, because the law itself had already elected Philippine citizenship for him[55] as, apparently, while he was still a minor, a certificate of naturalization was issued to his father.[56]

In *Ching*, it may be recalled that we denied his application for admission to the Philippine Bar because, in his case, all the requirements, to wit: (1) a statement of election under oath; (2) an oath of allegiance to the Constitution and Government of

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[49] *Supra* note 38.

[50] *In Re: Florencio Mallare, supra* note 47 at 58.

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

[52] *Id.* at 53.

[53] *Rollo,* p. 20.

[54] *Co v. Electoral Tribunal of the House of Representatives, supra* note 48 at 708.

[55] *Id.* at 709.

[56] *Id.*

the Philippines; and (3) registration of the statement of election and of the oath with the nearest civil registry were complied with only fourteen (14) years after he reached the age of majority. Ching offered no reason for the late election of Philippine citizenship.[57]

In all, the Court of Appeals found the petitioners' argument of good faith and "informal election" unacceptable and held:

> Their reliance in the ruling contained in *Re:Application for Admission to the Philippine Bar, Vicente D. Ching*, [which was decided on 1 October 1999], is obviously flawed. It bears emphasis that the Supreme Court, in said case, did not adopt the doctrine laid down in *In Re: Florencio Mallare.* On the contrary, the Supreme Court was emphatic in pronouncing that "the special circumstances invoked by Ching, *i.e.*, his continuous and uninterrupted stay in the Philippines and his being a certified public accountant, a registered voter and a former elected public official, cannot vest in him Philippine citizenship as the law specifically lays down the requirements for acquisition of Philippine citizenship by election.[58]

We are not prepared to state that the mere exercise of suffrage, being elected public official, continuous and uninterrupted stay in the Philippines, and other similar acts showing exercise of Philippine citizenship can take the place of election of citizenship. What we now say is that where, as in petitioners' case, the election of citizenship has in fact been done and documented within the constitutional and statutory timeframe, the registration of the documents of election beyond the frame should be allowed if in the meanwhile positive acts of citizenship have publicly, consistently, and continuously been done. The actual exercise of Philippine citizenship, for over half a century by the herein petitioners, is actual notice to the Philippine public which is equivalent to formal registration of the election of Philippine citizenship.

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[57] *Supra* note 38 at 354.

[58] *Rollo,* pp. 19-20.

For what purpose is registration?

In *Pascua v. Court of Appeals*,[59] we elucidated the principles of civil law on registration:

To register is to record or annotate. American and Spanish authorities are unanimous on the meaning of the term "to register" as "to enter in a register; to record formally and distinctly; to enroll; to enter in a list."[60] In general, registration refers to any entry made in the books of the registry, including both registration in its ordinary and strict sense, and cancellation, annotation, and even the marginal notes. In strict acceptation, it pertains to the entry made in the registry which records solemnly and permanently the right of ownership and other real rights.[61] Simply stated, registration is made for the purpose of **notification**.[62]

Actual knowledge may even have the effect of registration as to the person who has knowledge thereof. Thus, "[i]ts purpose is to give notice thereof to all persons (and it) operates as a notice of the deed, contract, or instrument to others."[63] As pertinent is the holding that registration "neither adds to its validity nor converts an invalid instrument into a valid one between the parties."[64] It lays emphasis on the validity of an unregistered document.

Comparable jurisprudence may be consulted.

In a contract of partnership, we said that the purpose of registration is to give notice to third parties; that failure to register the contract does not affect the liability of the partnership and

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[59] 401 Phil. 350, 366-367 (2000).

[60] *Id.* citing *Po Sun Tun v. Prize and Provincial Government of Leyte*, 54 Phil. 192, 195 (1929).

[61] *Id.*

[62] *Id.* citing *Paras, Civil Code of the Philippines,* Vol. II, 1989 ed., p. 653 citing *Bautista v. Dy Bun Chin,* 49 *Official Gazette* 179, 183 (1952).

[63] *Id.*

[64] *Id.*

of the partners to third persons; and that neither does such failure affect the partnership's juridical personality.[65] An unregistered contract of partnership is valid as among the partners, so long as it has the essential requisites, because the main purpose of registration is to give notice to third parties, and it can be assumed that the members themselves knew of the contents of their contract.[66] The non-registration of a deed of donation does not also affect its validity. Registration is not a requirement for the validity of the contract as between the parties, for the effect of registration serves chiefly to bind third persons.[67]

Likewise relevant is the pronouncement that registration is not a mode of acquiring a right. In an analogous case involving an unrecorded deed of sale, we reiterated the settled rule that registration is not a mode of acquiring ownership.

> Registration does not confer ownership. It is not a mode of acquiring dominion, but only a means of confirming the fact of its existence with notice to the world at large.[68]

Registration, then, is the confirmation of the existence of a fact. In the instant case, registration is the confirmation of election as such election. It is not the registration of the act of election, although a valid requirement under Commonwealth Act No. 625, that will confer Philippine citizenship on the petitioners. It is only a means of confirming the fact that citizenship has been claimed.

Indeed, we even allow the late registration of the fact of birth and of marriage.[69] Thus, has it been admitted through

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[65] *Angeles v. The Hon. Secretary of Justice,* G.R. No. 142612, 29 July 2005, 465 SCRA 106, 115.

[66] *Sunga-Chan v. Chua,* 415 Phil. 477, 491 (2001).

[67] *Gutierrez v. Mendoza-Plaza,* G.R. No. 185477, 4 December 2009, 607 SCRA 807, 817.

[68] *Bollozos v. Yu Tieng Su,* 239 Phil. 475, 485 (1987) citing *Bautista v. Dy Bun Chin, supra* note 62.

[69] *Delayed Registration – Birth, Death, and Marriage* x x x. http://www.census.gov.ph/data/civilreg/delayedreg_primer.html.

existing rules that the late registration of the fact of birth of a child does not erase the fact of birth. Also, the fact of marriage cannot be declared void solely because of the failure to have the marriage certificate registered with the designated government agency.

Notably, the petitioners timely took their oath of allegiance to the Philippines. This was a serious undertaking. It was commitment and fidelity to the state coupled with a pledge "to renounce absolutely and forever all allegiance" to any other state. This was unqualified acceptance of their identity as a Filipino and the complete disavowal of any other nationality.

Petitioners have passed decades of their lives in the Philippines as Filipinos. Their present status having been formed by their past, petitioners can no longer have any national identity except that which they chose upon reaching the age of reason.

Corollary to this fact, we cannot agree with the view of the Court of Appeals that since the ACR presented by the petitioners are no longer valid on account of the new requirement to present an E-series ACR, they are deemed not properly documented.[70] On the contrary, petitioners should not be expected to secure E-series ACR because it would be inconsistent with the election of citizenship and its constructive registration through their acts made public, among others, their exercise of suffrage, election as public official, and continued and uninterrupted stay in the Philippines since birth. The failure to register as aliens is, obviously, consistent with petitioners' election of Philippine citizenship.

The leanings towards recognition of the citizenship of children of Filipino mothers have been indicated not alone by the jurisprudence that liberalized the requirement on time of election, and recognized positive acts of Philippine citizenship.

The favor that is given to such children is likewise evident in the evolution of the constitutional provision on Philippine citizenship.

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[70] *Rollo,* pp. 21-22.

Thus, while the 1935 Constitution requires that children of Filipino mothers elect Philippine citizenship upon reaching their age of majority,[71] upon the effectivity of the 1973 Constitution, they automatically become Filipinos[72] and need not elect Philippine citizenship upon reaching the age of majority. The 1973 provision reads:

> Section 1. The following are citizens of the Philippines:
>
> (1) x x x x x x x x x.
>
> (2) Those whose fathers and mothers are citizens of the Philippines.[73]

Better than the relaxation of the requirement, the 1987 Constitution now classifies them as natural-born citizens upon election of Philippine citizenship. Thus, Sec. 2, Article IV thereof provides:

> *Section 2.* Natural-born citizens are those who are citizens of the Philippines from birth without having to perform any act to acquire or perfect their Philippine citizenship. **Those who elect Philippine citizenship in accordance with paragraph (3), Section 1 hereof**[74] **shall be deemed natural-born citizens.** *(Emphasis supplied.)*

The constitutional *bias* is reflected in the deliberations of the 1986 Constitutional Commission.

> MR. CONCEPCION. x x x.
>
> x x x x x x x x x

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[71] Section 1(4), Article IV, 1935 Philippine Constitution.

[72] Records of the 1986 Constitutional Commission, Volume 1, p. 185.

[73] Article IV, 1973 Constitution of the Philippines.

[74] *Section 1.* The following are citizens of the Philippines:

(1) x x x x x x x x x;

x x x x x x x x x

(3) Those born before January 17, 1973, of Filipino mothers, who elect Philippine citizenship upon reaching the age of majority.

x x x As regards those born of Filipino mothers, the 1935 Constitution merely gave them the option to choose Philippine citizenship upon reaching the age of majority, even, apparently, if the father were an alien or unknown. Upon the other hand, under the 1973 Constitution, children of mixed marriages involving an alien father and a Filipino mother are Filipino citizens, thus liberalizing the counterpart provision in the 1935 Constitution by dispensing with the need to make a declaration of intention upon reaching the age of majority. I understand that the committee would further liberalize this provision of the 1935 Constitution. The Committee seemingly proposes to further liberalize the policy of the 1935 Constitution by making those who became citizens of the Philippines through a declaration of intention to choose their mother's citizenship upon reaching the majority age by declaring that such children are natural-born citizens of the Philippines.[75]

x x x x x x x x x

xxx Why does the draft resolution adopt the provision of the 1973 Constitution and not that of the 1935? [76]

x x x x x x x x x

FR. BERNAS. x x x Precisely, the reason behind the modification of the 1935 rule on citizenship was a recognition of the fact that it reflected a certain male chauvinism, and it was for the purpose of remedying that this proposed provision was put in. The idea was that we should not penalize the mother of a child simply because she fell in love with a foreigner. Now, the question on what citizenship the child would prefer arises. We really have no way of guessing the preference of the infant. But if we recognize the right of the child to choose, then let him choose when he reaches the age of majority. I think dual citizenship is just a reality imposed on us because we have no control of the laws on citizenship of other countries. We recognize a child of a Filipino mother. But whether or not she is considered a citizen of another country is something completely beyond our control. But certainly it is within the jurisdiction of the Philippine government to require that [at] a certain point, a child be

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[75] Records of the 1986 Constitutional Commission, Volume 1, 23 June 1986, p. 202.

[76] *Id*.

made to choose. But I do not think we should penalize the child before he is even able to choose. I would, therefore, support the retention of the modification made in 1973 of the male chauvinistic rule of the 1935 Constitution.[77]

x x x x x x x x x

MR. REGALADO. With respect to a child who became a Filipino citizen by election, which the Committee is now planning to consider a natural-born citizen, he will be so the moment he opts for Philippine citizenship. Did the Committee take into account the fact that at the time of birth, all he had was just an inchoate right to choose Philippine citizenship, and yet, by subsequently choosing Philippine citizenship, it would appear that his choice retroacted to the date of his birth so much so that under the Gentleman's proposed amendment, he would be a natural-born citizen?[78]

FR. BERNAS. But the difference between him and the natural-born who lost his status is that the natural-born who lost his status, lost it voluntarily; whereas, this individual in the situation contemplated in Section 1, paragraph 3 never had the chance to choose.[79]

x x x x x x x x x

[on the period within which to elect Philippine citizenship]

MR. RODRIGO. [T]his provision becomes very, very important because his election of Philippine citizenship makes him not only a Filipino citizen but a natural-born Filipino citizen, entitling him to run for Congress, to be a Justice of the Supreme Court x x x.[80]

We are guided by this evolvement from *election of Philippine citizenship upon reaching the age of majority* under the 1935 Philippine Constitution to *dispensing with the election requirement* under the 1973 Philippine Constitution to *express classification of these children as natural-born citizens* under

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[77] *Id.* at 203.

[78] *Id.* at 206.

[79] *Id.*

[80] Records of the 1986 Constitutional Commission, Volume 1, 25 June 1986, p. 231.

the 1987 Constitution towards the conclusion that the omission of the 1941 statutory requirement of registration of the documents of election should not result in the obliteration of the right to Philippine citizenship.

Having a Filipino mother is permanent. It is the basis of the right of the petitioners to elect Philippine citizenship. Petitioners elected Philippine citizenship in form and substance. The failure to register the election in the civil registry should not defeat the election and resultingly negate the permanent fact that they have a Filipino mother. The lacking requirements may still be complied with subject to the imposition of appropriate administrative penalties, if any. The documents they submitted supporting their allegations that they have already registered with the civil registry, although belatedly, should be examined for validation purposes by the appropriate agency, in this case, the Bureau of Immigration. Other requirements embodied in the administrative orders and other issuances of the Bureau of Immigration and the Department of Justice shall be complied with within a reasonable time.

WHEREFORE, the Decision dated 29 August 2007, and the Resolution dated 29 May 2008 of the Court of Appeals in CA-G.R. SP No. 89532 affirming the Judgment dated 2 February 2005, and the Resolution dated 8 April 2005 of the Bureau of Immigration in BSI-D.C. No. AFF-04-574 OC-STF-04-09/23-1416 are hereby *SET ASIDE* with respect to petitioners Balgamelo Cabiling Ma, Felix Cabiling Ma, Jr., and Valeriano Cabiling Ma. Petitioners are given ninety (90) days from notice within which to *COMPLY* with the requirements of the Bureau of Immigration embodied in its Judgment of 2 February 2005. The Bureau of Immigration shall *ENSURE* that all requirements, including the payment of their financial obligations to the state, if any, have been complied with subject to the imposition of appropriate administrative fines; *REVIEW* the documents submitted by the petitioners; and *ACT* thereon in accordance with the decision of this Court.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 186466. July 26, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **CHRISTOPHER DESUYO *y* BUEN,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CONSPIRACY; WHEN IT EXISTS.— Desuyo was accused of conspiracy in the illegal sale and illegal possession of a dangerous drug. Conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it. As a rule, conspiracy must be proved as convincingly and indubitably as the crime itself. It is not, however, necessary that conspiracy be proved by direct evidence of a prior agreement to commit the crime.

2. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF REGULATED OR PROHIBITED DRUGS; ELEMENTS.— To recall the principles, conviction is proper in prosecutions involving ***illegal sale*** of regulated or prohibited drugs if the following elements are present: (1) the identity of the buyer and the seller, the object, and the consideration; and (2) the

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[*] Per raffle dated 5 October 2009, Associate Justice Antonio Eduardo B. Nachura is designated as additional member in place of Associate Justice Mariano C. del Castillo.

delivery of the thing sold and the payment therefor. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug. We reiterate the meaning of the term *corpus delicti* which is the actual commission by someone of the particular crime charged.

3. ID.; ID.; ILLEGAL POSSESSION OF REGULATED OR PROHIBITED DRUGS; ELEMENTS.— For ***illegal possession*** of regulated or prohibited drugs, the prosecution must establish the following elements: (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 drug.

4. REMEDIAL LAW; EVIDENCE; CONSPIRACY; DIRECT EVIDENCE IS NOT ESSENTIAL IN PROVING CONSPIRACY.— While there is no showing of direct evidence that accused-appellant agreed with De Hitta to commit the crime, their acts and the attendant circumstances surrounding the commission of the crime disclose a common design that would make all of them co-principals in the crime committed. As already cited direct evidence is not essential in proving conspiracy. The contemporaneous acts of Desuyo with De Hitta all point to a unity of acts and a common design making Desuyo a co-principal.

5. ID.; ID.; CREDIBILITY OF WITNESSES; ABSENT PALPABLE ERROR OR GRAVE ABUSE OF DISCRETION, THE TRIAL COURT'S EVALUATION THEREOF WILL NOT BE DISTURBED ON APPEAL.— In weighing the testimonies of the prosecution witnesses *vis-à-vis* those of the defense, the trial court gave more credence to the version of the prosecution. We find no reason to disagree. Well-settled is the rule that in the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal. Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conduct the "buy-bust" operation and appellate courts, upon established precedents and of necessity, rely on the assessment of the credibility of witnesses by the trial courts which have the unique opportunity, unavailable to the appellate courts, to observe the witnesses and to note their demeanor, conduct, and attitude under direct

and cross-examination. Incidentally, the issues raised by the defense mention a certain PO2 Molina. Notably, however, there is nothing in the records to indicate the participation of any PO2 Molina.

6. ID.; ID.; ID.; AFFIRMATIVE TESTIMONY IS FAR STRONGER THAN NEGATIVE TESTIMONY, ESPECIALLY SO WHEN IT COMES FROM THE MOUTH OF A CREDIBLE WITNESS.— The testimony of Medina, the tricycle driver, is negative testimony which proves nothing more than that he did not see any untoward incident occur inside Manoy's restaurant at the time and date of the buy-bust operation. Between the categorical statements of the prosecution witness, on one hand, and the bare denial of accused-appellant, the former must prevail. It is a well-settled rule that affirmative testimony is far stronger than negative testimony, especially so when it comes from the mouth of a credible witness. Medina's negative testimony is in fact contradictory to the purported version of Desuyo who admits that an incident did occur that evening in the vicinity of Manoy's. Even the testimony of Dionela, another Tricycle driver who testified for the defense, does not negate that the incident inside Manny's was a buy-bust operation.

7. ID.; ID.; DEFENSES OF DENIAL AND FRAME-UP; VIEWED WITH DISFAVOR FOR THEY CAN EASILY BE CONCOCTED.— Accused-appellant's twin defenses of denial and frame-up, as in the case of his co-accused, hold little weight *vis-à-vis* the strong evidence gathered by the prosecution in proving his complicity to the offenses. Frame-up, like denial, is viewed by this Court with disfavor for it can easily be concocted. The Court also takes into consideration the failure of the defense to prove any ill motive or odious intent on the part of the police operatives to impute such a serious crime that would put in jeopardy the life and liberty of an innocent person, such as the one imputed against Desuyo. His allegations that he was beaten up is belied by the absence of proof to that effect. Desuyo did not present any medical record that he was physically abused.

8. CRIMINAL LAW; COMPREHENSIVE DANGEROUS ACT OF 2002 (R.A. NO. 9165); PROCEDURE FOR THE CUSTODY AND DISPOSITION OF CONFISCATED, SEIZED AND/OR SURRENDERED DANGEROUS DRUGS; FAILURE TO COMPLY WITH THE REQUIREMENTS

WILL NOT RENDER THE SEIZURE OF THE PROHIBITED DRUGS INVALID; CONDITIONS.— [D]esuyo protests that the procedure for the custody and disposition of confiscated, seized and/or surrendered dangerous drugs, under Section 21 (a), paragraph 1 of Article II of Republic Act No. 9165, was not complied with to the letter of the law. Non-compliance, he argues, makes the *shabu* allegedly retrieved from him inadmissible in evidence. This Court has held in recent cases, *i.e. People v. Agulay*, *People v. Pringas*, and in the more recent case of *People v. Quebral,* failure to comply strictly with those requirements will not render the seizure of the prohibited drugs invalid for so long as the *integrity* and *evidentiary value* of the confiscated items are properly preserved by the apprehending officers. Noteworthy as well is the proviso in the particular section of the Implementing Rules which states that '*non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.*' The evident purpose of the procedure provided for 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 of or innocence of the accused. The body of evidence adduced by the parties supports the conclusion that the integrity and evidentiary value of the seized evidence were preserved and safeguarded through an unbroken chain of custody established by the prosecution – from the arresting officer, to the investigating officer, and then to the forensic chemist.

9. ID.; ID.; ID.; FAILURE TO RAISE DURING TRIAL ANY OBJECTION AND QUESTION ON THE INTEGRITY OF THE *SHABU* ALLEGEDLY SEIZED FROM THE ACCUSED IS FATAL.— [T]he defense raised its objection and questioned the integrity of the *shabu* allegedly seized from him only on appeal. Failure to raise this issue during trial is fatal to the case of the defense, as this Court had succinctly explained in *People v. Sta. Maria*: The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping

of the items seized from him. Indeed, the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.

10. ID.; ID.; ILLEGAL SALE AND POSSESSION OF *SHABU*; PROPER 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. 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.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Accused-appellant Christopher Desuyo *y* Buen (Desuyo) is before Us on appeal from the Decision[1] of the Court of Appeals

[1] Penned by Associate Justice Japar B. Dimaampao, with the concurrence of Associate Justices Amelita G. Tolentino and Sixto C. Marella, Jr., *CA rollo*, pp. 117-131.

in CA-G.R. HC No. 02561 dated 29 August 2008, which affirmed his conviction[2] by the Regional Trial Court (RTC) of Sorsogon, Sorsogon, Branch 52 together with co-accused Santos De Hitta (De Hitta), for the crimes of illegal sale and illegal possession of *shabu*, a dangerous drug, in violation of Sections 5 and 11, Article II, of Republic Act No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.[3]

The facts:

Accused-appellant Desuyo was arrested together with co-accused De Hitta in the evening of 13 May 2003 by the operatives of the Criminal Investigation and Detection Group

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[2] Penned by Judge Raul E. De Leon, *Id.* pp. 29-32.

[3] **Section 5.** *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions. 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.

(CIDG) in Sorsogon City in the course of a buy-bust operation. They were subsequently charged by the City Prosecutor under two separate Informations filed on 15 May 2003 with the RTC for illegal sale and illegal possession of *shabu*, a dangerous drug.

The two (2) cases were raffled to Branch 52 of the RTC of Sorsogon, Sorsogon. Docketed as Criminal Cases Nos. 2003-5923 and 2003-5924, the charge sheet accused De Hitta and Desuyo of committing the following acts:

Criminal Case No. 2003-5923

That on or about 10:30 o'clock in the evening of May 13, 2003 in front of Manoy's Restaurant, Rizal St., City of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together and mutually helping one another, did then and there willfully, unlawfully and feloniously have in their possession, custody and control, one (1) plastic sachet of "Methamphetamine Hydrochloride" locally known as "*shabu*," with an aggregate weight of 0.0195 gram, without any legal authority to possess and have the same in their custody.[4]

Criminal Case No. 2003-5924

That on or about 10:30 o'clock in the evening of May 13, 2003 in front of Manoy's Restaurant, Rizal St., City of Sorsogon, Philippines, and within the jurisdiction of this Honorable Court, the said accused, conspiring together and mutually helping one another, did then and there willfully, unlawfully and feloniously sell, deliver and convey, to a poseur-buyer, one (1) plastic sachet of "Methampetamine Hydrochloride" locally known as "*shabu*" with an aggregate weight of 0.0158 grams, without any legal authority to sell and deliver the same.[5]

When arraigned, accused-appellant Desuyo and his co-accused De Hitta, assisted by counsel, pleaded not guilty in the two cases.[6] Pre-trial proceedings having been terminated, trial on the merits followed.

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[4] Records, Vol. 1, p. 1.

[5] Records, Vol. 2, p. 1.

[6] Records, Vol. 1, p. 16.

In the ensuing trial, the prosecution presented as witnesses: (1) SPO4 Dante Macadangdang (team leader of the buy-bust operation); (2) PO2 Humberto A. Bolaqueña, Jr. (buy-bust team member); (3) SPO2 Santos G. Garbin (PDEA team leader); and (4) P/Insp. Cirox Omero (forensic chemist).

SPO4 Dante Macadangdang testified that he was the team leader of the CIDG team which conducted the buy-bust operation against Desuyo and De Hitta, narrating the sequence of events that evening as follows:

At around 10:00 o'clock in the evening of 13 May 2003, SPO4 Macadangdang conducted a briefing with his buy-bust team composed of the civilian informant, PO1 Bolaqueña, SPO4 Macadangdang, and SPO2 Santos Garbin of the PDEA. According to him, they received confidential information about drug transactions being done at the vicinity of Manoy's Restaurant along Magsaysay Street in Sorsogon City involving the security guard of said establishment.

He designated PO2 Bolaqueña as poseur-buyer and gave the latter two (2) pieces of ₱100.00 bills for the operation. At around 10:30 o'clock in the evening, the team proceeded to the target area. PO2 Bolaqueña, together with the informant, went to Manoy's restaurant. SPO4 Macadangdang and SPO2 Garbin stayed at the adjacent area, about five to six meters away and waited for the pre-arranged signal of PO2 Bolaqueña – the taking-off of his cap signifying that the transaction has been consummated. Upon the signal of PO2 Bolaqueña, the team approached him and arrested Desuyo and Santos De Hitta, who were both identified by SPO4 Macadangdang in court. The two accused-appellants were taken to the CIDG Office. A plastic sachet of *shabu*, a fan knife and other paraphernalia were recovered from De Hitta.

PO2 Humberto A. Bolaqueña, Jr., 28 years old, and a PNP Member of CIDG Albay testified on the police operations leading to the apprehension of accused-appellants.

According to the witness, he acted as poseur-buyer. The buy-bust operation was upon confidential information relayed

by a civilian agent, that Desuyo and De Hitta were known peddlers of *shabu* plying the area of Manoy Fastfood located along Rizal Street in Sorsogon City. The police surveilled the area for two weeks and confirmed the report of the informant. Thereafter, a buy-bust team of police operatives was formed composed of SPO4 Dante Macadangdang, PO3 Bautista, PO2 Bolaqueña, a civilian agent, and a representative from PDEA. PO2 Bolaqueña was designated as poseur-buyer by SPO4 Macadangdang, who handed the former two (2) One Hundred Peso bills to be used in purchasing *shabu* during the operation. For identification purposes, PO2 Bolaqueña affixed his initials, HAB, on the bills.

At around 10:30 o'clock in the evening of 13 May 2003, the police operatives went to the location with the civilian informant. On reaching the place, PO2 Bolaqueña and the informant approached De Hitta while the other members of the team positioned themselves at the vicinity of the target area waiting for PO2 Bolaqueña's pre-arranged signal, the taking-off of his cap.

The civilian agent introduced PO2 Bolaqueña to de Hitta as a buyer of *shabu*. De Hitta then inquired how much PO2 Bolaqueña would like to purchase, to which the police officer replied, "₱200.00 worth of *shabu*." Thereafter De Hitta asked them to wait. De Hitta went inside the gate of the building where Manoy's Fastfood was located and approached accused-appellant Desuyo, a security guard at the establishment, who was standing in front of the restaurant. Several minutes passed before De Hitta returned, accompanied by Desuyo who had a sachet of *shabu* with him. Thereupon, PO2 Bolaqueña handed the two (2) marked One Hundred Peso bills to De Hitta. Desuyo then handed over the sachet of *shabu* to PO2 Bolaqueña.

After Desuyo handed the sachet of *shabu* to PO2 Bolaqueña, the latter removed his cap as a pre-arranged signal to signify to the buy-bust team that the transaction had been consummated and the team members rushed towards where they were. Upon a body search of the two (2) accused, one (1) sachet of *shabu*, several empty plastic sachets, rolled aluminum foil and a fan knife were retrieved from De Hitta.

The ₱200.00 buy-bust money, a disposable lighter, aluminum foil, as well as an empty plastic sachet were recovered from Desuyo. The sachet bought from Desuyo was marked HAB1, while the one taken from De Hitta was marked HAB2.

SPO2 Santos G. Garbin, 45 years old, a member of the PNP and Team Leader of PDEA Sorsogon Special Enforcement Team confirmed that the buy-bust operation conducted by the CIDG on 13 May 2003 against De Hitta and Desuyo, whom he both identified in court, was coordinated with the PDEA. According to SPO2 Garbin, he acted as perimeter security in the operation. He and SPO4 Macadangdang were posted at the former Shell Gasoline Station in front of Manoy's Restaurant in Sorsogon City and waited for PO2 Bolaqueña's pre-arranged signal. SPO4 Macadangdang went closer to the area where the buy-bust was conducted but he stayed at his post in order to secure the area. He further testified that the two (2) suspects were apprehended and brought to the CIDG Office.

Finally, P/Insp. Cirox Omero, forensic chemist of the PNP Regional Crime Laboratory Office, testified that on 14 May 2003, he conducted a laboratory examination on two (2) specimens marked A (HAB1) and B (HAB2), which yielded the following results as reported in Chemistry Report No. D-178-2003[7] indicating the following:

SPECIMEN SUBMITTED:

Two (2) heat sealed transparent plastic sachets, each containing white crystalline substance having the following markings and recorded net weights:

A (HAB1) = 0.0158 gram B (HAB2) = 0.0195 gram

FINDINGS:

Specimen A and B contain Methamphetamine Hydrochloride, a dangerous drug.[8]

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[7] Exhibit "C", Records, p. 1.

[8] Exhibit "C", Records, p. 6.

Specimen A consisted of 0.0158 gram of methamphetamine hydrochloride.

Specimen B contained 0.0195 gram of methamphetamine hydrochloride.

The defense had an entirely different version, presenting the following witnesses in court: (1) accused-appellant Christopher Desuyo; (2) co-accused Santos De Hitta; (3) Alwin Medina; and (4) Edmund Dionela.

Accused-appellant Desuyo and De Hitta denied the charges. Testifying before the trial court, Desuyo explained that he is a security guard at Manoy's Restaurant. On the night of 13 May 2003, he witnessed an altercation involving several men inside said establishment. Upon seeing the commotion, he went inside to check out what was happening and saw three (3) men forcing somebody (later on determined to be De Hitta) to go out with them. Desuyo confronted the three (3) men but one of them pointed a .45 caliber gun on him and forced him to go out of the restaurant. They were taken to Talisay, Sorsogon City where he was made to strip to determine if he had *shabu* hidden. No *shabu* was found on his person. The men who took them did not reveal that they were under arrest nor did they identify themselves as police officers. The men were not in uniform. It was only the next morning that they came to know that the three (3) men were police officers. Desuyo denied knowing De Hitta prior to the arrest and said he never had any transaction with De Hitta.

Corroborating the testimony of Desuyo, De Hitta was put on the witness stand. According to him, he went to Manoy's Restaurant on 13 May 2003 at around 10:30 o'clock in the evening to get water from the jug placed inside the restaurant. He went there after visiting his grandmother. After drinking a glass of water, he then went inside the comfort room and urinated. While inside the comfort room, a man with curly hair and light complexion, later on identified to be PO2 Bolaqueña, arrested him.

The man held him by the back of his shoulder and said: 'what are you throwing there, *shabu*?' and the man pulled him out of the rest room. The man was alone, did not identify himself, and offered no explanation as to why he was being arrested. He and Desuyo were taken to the CIDG office and escorted to a room where they were made to strip off all their clothes and the person who arrested them told them, 'You remove your clothes because you might be hiding *shabu* in your body.' Nothing was found on his person except for a fan knife which was confiscated but no receipt was issued for it. He further narrated that the police officer who searched him boxed him five (5) times on his stomach.

De Hitta, however admitted that three (3) months prior to the incident he was already aware that Desuyo was a security guard at Manoy's Restaurant as he had gone to Manoy's Restaurant to drink water for about seven (7) times during that three-month period.

When asked, De Hitta admitted that apart from this case, he has another case for Serious Physical Injuries pending before the MTC of Sorsogon, and a prior conviction for violation of Batas Pambansa No. 6 because he was caught in possession of a Batangas Knife.

Alwin Medina, a tricycle driver, testified he was at his usual parking place in front of the LBC Office waiting for passengers at around 10:00 to 11:00 o'clock in the evening of 13 May 2003. According to Medina, he knows Desuyo because he had talked to him on several occasions while waiting for passengers in the said place.

At around that time, Medina saw Desuyo standing beside tables and chairs outside Manoy's Restaurant. When he left at around 11:00 o'clock in the evening, Desuyo was still there, and no untoward incident involving the latter happened that night. Neither did he see De Hitta that night. The next day, he found out from other tricycle drivers that Desuyo was arrested the previous night.

Edmund Dionela, 34 years old, also a tricycle driver, testified that between 9:00 to 10:00 o'clock in the evening of 13 May 2003, his tricycle was parked at Manoy's Restaurant while he was waiting for passengers to ride his tricycle when an unusual incident happened. At around 10:30 o'clock in the evening, he saw two (2) male persons enter the restaurant and forcibly take a man whom he identified as De Hitta. As this was taking place, he saw Desuyo, who was standing at the corner, go towards the direction of De Hitta, but was accosted by another man and forcibly taken away. The man pointed a .45 caliber gun at Desuyo.

On 17 April 2006, the trial court rendered Judgment in Criminal Cases Nos. 2003-5923 and 2003-5924 finding Desuyo and De Hitta guilty beyond reasonable doubt of drug pushing and drug possession, *viz.*:

> WHEREFORE, premises considered, finding accused SANTOS De HITTA and CHRISTOPHER DESUYO *y* BUEN GUILTY beyond reasonable doubt of the crimes charged against them in the two (2) separate Information, accused SANTOS De HITTA and CHRISTOPER DESUYO *y* BUEN are hereby sentenced to suffer the following penalties to wit:
>
> (1) In Criminal Case No. 2003-5923, for both accused to suffer an imprisonment of TWELVE (12) YEARS AND ONE (1) DAY TO FIFTEEN (15) YEARS AND A FINE OF ₱300,000.00 and to pay the costs; and
>
> (2) In Criminal Case No. 2003-5924, for both accused to suffer the penalty of LIFE IMPRISONMENT and a fine of ₱500,000.00, and to pay the costs.
>
> Accused, SANTOS De HITTA and CHRISTOPHER DESUYO *y* BUEN shall serve their sentence one after the other or in succession.
>
> The *shabu* recovered is hereby ordered forfeited in favor of the government and the Branch Clerk of Court is hereby directed to turn over the same to the PDEA for proper disposal without further delay and that the ₱200.00 bills be returned to the head of the CIDG based in this City.[9]

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[9] CA *rollo*, p. 29.

Only Desuyo interposed an appeal with the Court of Appeals.

Brushing aside the alleged inconsistencies in the testimonies of the defense witnesses as cited by the defense and sustaining the trial court's finding of conspiracy, the appellate court, in its Decision dated 29 August 2008, confirmed the presence of all elements of the two (2) separate crimes of illegal sale and illegal possession of dangerous drugs, with the evidence establishing the culpability of Desuyo and De Hitta, to wit:

> WHEREFORE, the assailed Decision dated 17 April 2006 of the Regional Trial Court, Fifth Judicial Region, Sorsogon City, Branch 52, in Criminal Case Nos. 2003-5923 and 2003-5924 is hereby AFFIRMED.[10]

Accused-appellant Desuyo is now before this Court assailing the Decision rendered by the Court of Appeals on the following assignment of errors:

I.

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT CONSPIRACY BETWEEN THE TWO (2) ACCUSED WAS PROVEN BEYOND REASONABLE DOUBT NOTWITHSTANDING THE GLARING INCONSISTENCIES AND IMPROBABILITIES IN THE PROSECUTION'S TESTIMONIAL EVIDENCE

II.

THE TRIAL COURT GRAVELY ERRED IN PRONOUNCING THE GUILT OF THE ACCUSED NOTWITHSTANDING THE FAILURE OF THE PROSECUTION TO PRESERVE THE INTEGRITY AND EVIDENTIARY VALUE OF THE DANGEROUS DRUG AND PARAPHERNALIA ALLEGEDLY FOUND IN THE POSSESSION OF THE ACCUSED.

IV.

THE TRIAL COURT GRAVELY ERRED IN RELYING ON THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES, THUS GIVING CREDENCE TO THE

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

TESTIMONY OF PO2 ROBIN MOLINA WHEN THE SAID PRESUMPTION HAD BEEN OVERTURNED BY THE ARRESTING OFFICERS' NON-COMPLIANCE WITH THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER R.A. 9165.

Praying for his acquittal, Desuyo asserts that his guilt of the crimes charged has not been established and proven beyond reasonable doubt. He argues, albeit for the first time on appeal, that the evidence adduced by the prosecution failed to show compliance with the requirements of law for handling seized evidence under Republic Act No. 9165.

After a meticulous examination of the records, the Court finds that the appeal must fail.

Desuyo was accused of conspiracy in the illegal sale and illegal possession of a dangerous drug. Conspiracy exists when two (2) or more persons come to an agreement concerning the commission of a felony and decide to commit it.[11] As a rule, conspiracy must be proved as convincingly and indubitably as the crime itself. It is not, however, necessary that conspiracy be proved by direct evidence of a prior agreement to commit the crime.

To recall the principles, conviction is proper in prosecutions involving ***illegal sale*** of regulated or prohibited drugs if the following elements are present: (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.[12] What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited or regulated drug.[13] We reiterate the meaning of the term *corpus delicti*

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[11] *People v. Bryan Ferdinand Dy, et al.*, 425 Phil. 608, 642 (2002); *People v. Obillo*, 411 Phil. 139, 153 (2001).

[12] *People v. Partoza*, G.R. No. 182418, 8 May 2009, 587 SCRA 809, 816.

[13] *People v. Rivera*, G.R. No. 182347, 17 October 2008, 569 SCRA 879, 893.

which is the actual commission by someone of the particular crime charged.[14]

For ***illegal possession*** of regulated or prohibited drugs, the prosecution must establish the following elements: (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 drug.[15]

Based on the foregoing, this Court finds that the collective testimonies of the witnesses as well as the other physical evidence proffered by the prosecution irrevocably support a conclusion that on the night of 13 May 2003, a buy-bust operation took place in the vicinity of Manoy's Restaurant in Sorsogon where accused-appellant Desuyo and his co-accused De Hitta were caught selling and possessing *shabu*, a dangerous drug, in patent violation of the Comprehensive Dangerous Drugs Act of 2002.

A close look at the sequence of events narrated by the prosecution witnesses indicates that the sale of the prohibited drug in fact took place, with the sale being adequately established. Accused-appellant Desuyo was definitely identified by PO2 Bolaquena as the one who physically handed the sachet of *shabu* to the poseur-buyer during the buy-bust operation, determining thereby that he conspired with co-accused De Hitta in the illegal activity. The seized items, proven positive to be *shabu*, were properly identified and presented before the court.

As testified by the poseur-buyer PO2 Bolaqueña, De Hitta received the ₱200.00 payment for the *shabu*, while accused-appellant Desuyo was the one who delivered and physically handed over the sachet of *shabu* to PO2 Bolaqueña. That act at that very moment is the *corpus delicti* of the offense. Upon frisking of co-accused De Hitta, which is incidental to a lawful arrest, another sachet of *shabu* was retrieved from the

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[14] *People v. Taboga*, G.R. Nos. 144086-7, 426 Phil. 908, 922 (2002).

[15] *People v. Lagman*, G.R. No. 168695, 8 December 2005, 573 SCRA 224, 232-233.

latter. PO2 Bolaqueña's account, particularly on the fact of sale and retrieval of *shabu*, were corroborated by SPO4 Macadangdang.

While there is no showing of direct evidence that accused-appellant agreed with De Hitta to commit the crime, their acts and the attendant circumstances surrounding the commission of the crime disclose a common design that would make all of them co-principals in the crime committed. As already cited direct evidence is not essential in proving conspiracy.[16] The contemporaneous acts of Desuyo with De Hitta all point to a unity of acts and a common design making Desuyo a co-principal.

In weighing the testimonies of the prosecution witnesses *vis-à-vis* those of the defense, the trial court gave more credence to the version of the prosecution. We find no reason to disagree. Well-settled is the rule that in the absence of palpable error or grave abuse of discretion on the part of the trial judge, the trial court's evaluation of the credibility of witnesses will not be disturbed on appeal.[17] Prosecutions involving illegal drugs depend largely on the credibility of the police officers who conduct the "buy-bust" operation and appellate courts, upon established precedents and of necessity, rely on the assessment of the credibility of witnesses by the trial courts which have the unique opportunity, unavailable to the appellate courts, to observe the witnesses and to note their demeanor, conduct, and attitude under direct and cross-examination. Incidentally, the issues raised by the defense mention a certain PO2 Molina. Notably, however, there is nothing in the records to indicate the participation of any PO2 Molina.

The testimony of Medina, the tricycle driver, is negative testimony which proves nothing more than that he did not see any untoward incident occur inside Manoy's restaurant at the

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[16] *Fernan, et al. v. People*, G.R. No. 145927, 24 August 2007, 531 SCRA 1, 47.

[17] *People v. Remerata*, 449 Phil. 813, 822 (2003).

time and date of the buy-bust operation. Between the categorical statements of the prosecution witness, on one hand, and the bare denial of accused-appellant, the former must prevail. It is a well-settled rule that affirmative testimony is far stronger than negative testimony, especially so when it comes from the mouth of a credible witness.[18] Medina's negative testimony is in fact contradictory to the purported version of Desuyo who admits that an incident did occur that evening in the vicinity of Manoy's. Even the testimony of Dionela, another Tricycle driver who testified for the defense, does not negate that the incident inside Manny's was a buy-bust operation.

Accused-appellant's twin defenses of denial and frame-up, as in the case of his co-accused, hold little weight *vis-à-vis* the strong evidence gathered by the prosecution in proving his complicity to the offenses. Frame-up, like denial, is viewed by this Court with disfavor for it can easily be concocted.[19] The Court also takes into consideration the failure of the defense to prove any ill motive or odious intent on the part of the police operatives to impute such a serious crime that would put in jeopardy the life and liberty of an innocent person, such as the one imputed against Desuyo. His allegations that he was beaten up is belied by the absence of proof to that effect. Desuyo did not present any medical record that he was physically abused.

Finally, Desuyo protests that the procedure for the custody and disposition of confiscated, seized and/or surrendered dangerous drugs, under Section 21 (a), paragraph 1 of Article II of Republic Act No. 9165,[20] was not complied with to the letter of the law.

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[18] *People v. Manchu*, G.R. No. 181901, 28 November 2008, 572 SCRA 752, 764.

[19] *Chang v. People*, G.R. No. 177237, 17 October 2008, 569 SCRA, 711, 733.

[20] Section 21 (a) paragraph 1, Article II, Republic Act No. 9165:

(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

Non-compliance, he argues, makes the *shabu* allegedly retrieved from him inadmissible in evidence.

But, as this Court has held in recent cases, *i.e. People v. Agulay*,[21] *People v. Pringas*,[22] and in the more recent case of *People v. Quebral*,[23] failure to comply strictly with those requirements will not render the seizure of the prohibited drugs invalid for so long as the *integrity* and *evidentiary value* of the confiscated items are properly preserved by the apprehending officers. Noteworthy as well is the proviso in the particular section of the Implementing Rules which states that '*non-compliance with the stipulated procedure, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items, for as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officers.*' The evident purpose of the procedure provided for is the preservation of the integrity and evidentiary value of the seized items, as the same would be

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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;

Section 21 (a), Article II of the Implementing Rules and Regulations of Republic Act No. 9165, which implements said provision, reads:

(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 officers/team, shall not render void and invalid such seizures of and custody over said items.

[21] G.R. No. 181747, 26 September 2008, 566 SCRA 571.

[22] G.R. No. 175928, 31 August 2007, 531 SCRA 828.

[23] G.R. No. 185379, 27 November 2009, 606 SCRA 247, 256-257.

utilized in the determination of the guilt of or innocence of the accused.

The body of evidence adduced by the parties supports the conclusion that the integrity and evidentiary value of the seized evidence were preserved and safeguarded through an unbroken chain of custody established by the prosecution – from the arresting officer, to the investigating officer, and then to the forensic chemist. At the time of arrest, the seized items consisting of the two (2) plastic sachets containing white crystalline substance suspected to be *shabu* were segregated and individually marked as "HAB1" and HAB2," corresponding to PO2 Humberto Bolaqueña, Jr.'s initials.[24] The marked sachets were immediately forwarded to the PNP Crime Laboratory for examination.[25] The request for laboratory examination and transfer of the confiscated sachets to the PNP crime laboratory was prepared by SPO4 Macadangdang.[26] Upon chemical analysis, Police Inspector Cirox Omero found the specimens positive for Methamphetamine Hydrochloride, otherwise known as *shabu*, a dangerous drug.[27] Specimen A (marked as HAB1) contained 0.0158 grams of *shabu*, while Specimen B (marked as HAB2) contained 0.0195 grams of *shabu*.

Parenthetically, the defense raised its objection and questioned the integrity of the *shabu* allegedly seized from him only on appeal. Failure to raise this issue during trial is fatal to the case of the defense, as this Court had succinctly explained in *People v. Sta. Maria*:

> The law excuses non-compliance under justifiable grounds. However, whatever justifiable grounds may excuse the police officers involved in the buy-bust operation in this case from complying with Section 21 will remain unknown, because appellant did not question during trial the safekeeping of the items seized from him. Indeed,

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[24] TSN, December 2, 2005.

[25] TSN, December 2, 2003, pp. 24-25.

[26] Chemistry Report No. P. 178, 2003, Vol. 1.

[27] Chemistry Report No. p. 178, 2003, Vol. 1.

the police officers' alleged violations of Sections 21 and 86 of Republic Act No. 9165 were not raised before the trial court but were instead raised for the first time on appeal. In no instance did appellant least intimate at the trial court that there were lapses in the safekeeping of seized items that affected their integrity and evidentiary value. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of objection. Without such objection he cannot raise the question for the first time on appeal.[28]

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. 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. 02561 dated 29 August 2008 which affirmed the decision of the Regional Trial Court of Sorsogon, Sorsogon, Branch 52, convicting accused-appellant ***CHRISTOPHER DESUYO y BUEN*** of Violation of Sections 5, Article II, Republic Act No. 9165 in Criminal Case No. 2003-5924, and for Violation of Section 11, Article II, Republic Act No. 9165 in Criminal Case No. 2003-5923 is hereby *AFFIRMED*. No costs.

SO ORDERED.

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

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[28] *People v. Sta. Maria*, G.R. No. 171019, 23 February 2007, 516 SCRA 621, 633-634.

FIRST DIVISION

[G.R. No. 188130. July 26, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARY LOU OMICTIN *y* SINGCO,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; THE SUPREME COURT WILL NOT DELVE ONCE MORE INTO THE FACTUAL FINDINGS OF THE TRIAL COURT AS AFFIRMED BY THE APPELLATE COURT; EXCEPTIONS; NOT PRESENT.— An examination of the issues raised by Omictin in her Brief would readily reveal that the same are all factual issues. Subject to well-defined exceptions, the Court, not being a trier of facts, will not delve once more into the factual findings of the trial court as affirmed by the appellate court. The Court, in *Dueñas v. Guce-Africa*, has articulated the rule as follows: We will not review, much less reverse, the factual findings of the Court of Appeals especially where, as in this case, such findings coincide with those of the trial court, since we are not a trier of facts. **The established rule is that the factual findings of the Court of Appeals affirming those of the RTC are conclusive and binding on us.** We are not wont to review them, save under exceptional circumstances as: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) 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; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; **(7) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion;** and (8) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. None of the foregoing exceptions is present in the instant case. We thus perceive no reason to disturb the findings of fact and conclusions of law arrived at by the courts *a quo*.

2. ID.; EVIDENCE; SELF-SERVING EVIDENCE; CONCEPT OF; EXPLAINED; CASE AT BAR.— [T]he testimony of Ambrosio cannot be considered as self-serving evidence. The phrase "self-serving evidence" is a concept which has awell-defined judicial meaning. *Hernandez v. Court of Appeals* clarified what self-serving evidence is and what it is not, thus: The common objection known as "self-serving" is not correct because almost all testimonies are self-serving. The proper basis for objection is "hearsay". Petitioner fails to take into account the distinction between self-serving statements and testimonies made in court. Self-serving statements are those made by a party out of court advocating his own interest; they do not include a party's testimony as a witness in court.Self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony. This cannot be said of a party's testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination. This principle was reiterated in the more recent *People v. Villarama*, where the Court ruled, "x x x [A] self-serving declaration is one that is made by a party, out of court and in his favor. It does not include the testimony he gives as a witness in court." Assayed against the foregoing standards, Ambrosio's testimony is not self-serving and is admissible in evidence.

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 November 25, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02793,

[1] *Rollo* pp. 2-32. Penned by Associate Justice Jose L. Sabio, Jr. and concurred in by Associate Justices Jose C. Reyes, Jr. and Myrna Dimaranan Vidal.

entitled *People of the Philippines v. Mary Lou Omictin y Singco*. The CA Decision affirmed the Decision[2] dated May 3, 2007 of the Regional Trial Court (RTC), Branch 104 in Quezon City, finding accused-appellant Mary Lou Omictin guilty of violating Section 6, in relation to Sec. 7(b), of Republic Act No. (RA) 8042 or the *Migrant Workers and Overseas Filipinos Act of 1995*. Specifically, accused-appellant was charged with and adjudged guilty of illegal recruitment in large scale and three (3) counts of Estafa.

The Facts

Primo Arvin Guevarra, one of the private complainants, arrived home sometime in September 2003 after his employment contract in Libya expired. In January 2004, he contacted a college classmate, Rebecca Joy Roque, who previously informed him that she knew of a recruiter for overseas employment. Roque thus set up a meeting between him and the recruiter, who turned out to be accused-appellant Omictin.[3]

Omictin met Guevarra along with Anthony Ambrosio and Elisa Dotimas.[4] In that meeting, the three agreed to pay Omictin PhP 40,000 each for their deployment in London as caregivers. All three each gave Omictin, there and then, PhP 10,000 as initial payment. Omictin assured them that they would leave for London within 60 to 90 days.[5]

For such deployment, Guevarra had a medical examination, during which occasion he paid Omictin an additional PhP 10,000. Later, Guevarra completed his placement payment by giving Omictin the balance of PhP 20,000. Upon said payment, Omictin informed Guevarra that she would schedule an orientation and contract signing at a later date. However, the promised orientation

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[2] CA *rollo*, pp. 14-18.

[3] *Rollo*, p. 7.

[4] Also referred to by accused-appellant Omictin as "Dotenes" in her pleadings.

[5] *Rollo*, p. 8.

and contract signing never took place. Sometime in February 2004, Guevarra was able to meet with Omictin, who promised to return his money during the first week of March. Like the earlier promises, the promise to reimburse remained unfulfilled.[6]

Another private complainant, Veronica Caponpon, was assured of employment in New Zealand as an apple picker, for which she was required by Omictin to pay PhP 20,000 as placement fee for the deployment. Caponpon initially paid Omictin PhP 10,000 and was then promised by the latter that she would leave for New Zealand within two months provided that she complies with all the requirements for deployment.[7] On April 22, 2003, Caponpon submitted her resumé to Omictin and paid the amount of PhP 8,000. The remaining PhP 2,000 was paid on April 27, 2003. For all her efforts and the repeated promises of Omictin, Caponpon still was not able to leave for New Zealand.[8]

Roy Fernandez Mago, another private complainant, was promised employment abroad as a caregiver within three months from payment of a placement fee of PhP 40,000 and submission of the required documents. Mago paid the total placement fee and submitted the required documents. However, the promised overseas employment remained unfulfilled.[9]

For PhP 40,000, Omictin undertook to send private complainant Anthony Ambrosio overseas for employment within three to four months. Ambrosio was only able to pay the amount of PhP 16,000. The promised employment never materialized.[10]

On March 8, 2004, all four private complainants filed complaints against Omictin with the National Bureau of Investigation (NBI) for Illegal Recruitment and Estafa. Before Joffrey Dela Merced,

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

[7] *Id.* at 9.

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

[9] *Id.* at 10.

[10] *Id.* at 12.

the Supervising Agent of the Bureau's Counter-Intelligence Division, Mago related that, the previous day, he was able to contact Omictin, who required him to pay an additional PhP 60,000 for his deployment abroad. The designated place for the payment was McDonald's Restaurant at the corner of EDSA and Quezon Avenue. Thus, the NBI prepared an entrapment operation to arrest Omictin and provided Mago with PhP 60,000 marked money.[11]

On March 9, 2004, the entrapment operation was set in motion. After receiving the marked money, Omictin was arrested by the accompanying NBI agents.[12]

As a result, separate informations were filed before the Quezon City RTC charging Omictin with illegal recruitment in large scale and estafa, docketed as Criminal Case Nos. Q-04-125442 to 45. The informations read:

Crim. Case No. Q-04-125442

That on or about the 9th day of March 2004, in Quezon City, Philippines, the said accused, without any authority of law, did then and there willfully, unlawfully, and feloniously for a fee, enlist, recruit, and promise overseas employment to the following persons, to wit: PRIMO ARVIN S. GUEVARRA, ANTHONY P. AMBROSIO, ROY FERNANDEZ MAGNO and VERONICA G. CAPONPON, without first securing the required license from the Department of Labor and Employment, in violation of said law.

That the above-described crime is committed in large scale, as the same was perpetrated against four (4) persons individually or as a group as penalized under Migrant Workers and Overseas Filipino Act of 1995.

Crim. Case Nos. Q-04-125443-45

That on or about the period comprised from January to March 2004, in Quezon City, Philippines, the said accused did then and there willfully, unlawfully, and feloniously defraud [Roy Fernandez

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[11] *Id.* at 11.

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

Magno, Anthony P. Ambrosio, Primo Arvin S. Guevarra, respectively] in the following manner, to wit: the said accused, by means of false manifestations and fraudulent representation which she made to said complainant[s] to the effect that she had the power and capacity to recruit and employ the said complainant[s] in U.K. London as caregiver[s] and could facilitate the processing of the pertinent papers if given the necessary amount to meet the requirements thereof, and by means of other similar deceits, induced and succeeded in inducing said [complainants] to give and deliver, as in fact, gave and delivered to said accused the amount[s] of [PhP 40,000, PhP 16,000, PhP 40,000, respectively] x x x, on the strength of said manifestations and representations, said accused well knowing that the same were false and fraudulent and were made to solely [obtain], as in fact she did obtain the amount[s] of [PhP 40,000, PhP 16,000, PhP 40,000, respectively], which amount[s] once in possession, with intent to defraud [said complainants] willfully, unlawfully and feloniously misappropriated, misapplied and converted to her own personal use and benefit, to the damage and prejudice of said [complainants] in the aforesaid amount[s] of [PhP 40,000, PhP 16,000, PhP 40,000, respectively] x x x.[13]

During trial, Omictin gave the following version of the facts: She claimed that she was merely asked by the private complainants to help them in the processing of their visas for the United Kingdom and other papers for possible employment in London. They agreed in their preliminary meeting to pay her PhP 40,000 each for the processing fees. A week after, she averred that Dotimas issued a check for PhP 106,000 as the initial payment for the processing fees of all four private complainants. Then, on January 31, 2004, Mago and Guevarra paid her their respective balances for the processing fees, but both later backed out from the placement agreement. She thus promised Mago and Guevarra that they would be reimbursed. On March 9, 2004, she met with Mago at McDonald's Restaurant at the corner of EDSA and Quezon Ave. to discuss the possibility of changing his United Kingdom visa application to a United States visa application. For such purpose, she asked from Mago the amount of

[13] *Id.* at 4-7.

PhP 60,000. After Mago paid her the money, she was arrested by the NBI agents.[14]

On May 3, 2007, the RTC rendered a Decision finding Omictin guilty as charged, the dispositive portion reading:

WHEREFORE, judgment is hereby rendered as follows:

(1) In Criminal Case No. 04-125442, the Court finds accused MARY LOU OMICTIN guilty beyond reasonable doubt as principal of ILLEGAL RECRUITMENT IN LARGE SCALE defined and penalized in Section 6 in relation to Section 7(b) of Republic Act No. 8042, and sentences her to life imprisonment and a fine of One Million Pesos.

(2) In Criminal Case No. 04-125443, the Court finds accused MARY LOU OMICTIN guilty beyond reasonable doubt as principal of the crime of ESTAFA, defined and penalized in Article 315, paragraph 2 (a) of the Revised Penal Code, and sentences her to an indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of *prision correccional* as minimum to seven (7) years of *prision mayor* as maximum, and to indemnify complainant Roy Fernandez Mago in the amount of Forty Thousand (₱40,000.00) Pesos.

(3) In Criminal Case No. 04-125444, the Court finds accused MARY LOU OMICTIN guilty beyond reasonable doubt as principal of the crime of estafa defined and penalized in Article 315, paragraph 2 (a) of the Revised Penal Code, and sentences her to an indeterminate penalty of two (2) years, eleven (11) months and eleven days of *prision correccional* as minimum to six (6) years, eight (8) months and twenty (20) days of *prision mayor* as maximum, and to indemnify complainant Anthony Ambrosio in the amount of Sixteen Thousand (₱16,000.00) Pesos.

(4) In Criminal Case No. 04-125445, the Court finds accused MARY LOU OMICTIN guilty beyond reasonable doubt as principal of the crime of ESTAFA, defined and penalized in Article 315, paragraph 2 (a) of the Revised Penal Code, and sentences her to an indeterminate penalty of two (2) years, eleven (11) months and eleven (11) days of *prision correccional* as minimum to seven (7) years of

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[14] *Id.* at 13-14.

prision mayor as maximum, and to indemnify complainant Arvin Guevarra in the amount of Forty Thousand (₱40,000.00) Pesos.

SO ORDERED.[15]

Aggrieved, Omictin appealed[16] to the CA, raising in her Brief for the Accused-Appellant,[17] the following issues:

(1) Primo Guevarra was not the one who paid the accused, but Elisa Dotenes,[18] who issued a check in favor of accused-appellant in behalf of Guevarra. Thus, without the supporting testimony of Dotenes who was not presented by the prosecution, Guevarra's testimony is unsubstantiated and hearsay;[19] and

(2) As to private complainant Ambrosio, there was no receipt presented to show payment to accused-appellant, rendering his testimony uncorroborated and self-serving.[20]

Eventually, the CA rendered the assailed decision, the dispositive portion of which states:

WHEREFORE, in light of the [foregoing] disquisitions, the decision of the Regional Trial Court of Quezon City, Branch 104, in Criminal Case Nos. Q-04-125442, Q-04-125443, Q-04-125444, and Q-04-125445, finding appellant Mary Lou Omictin, guilty beyond reasonable doubt of the crimes charged, is hereby AFFIRMED *in toto*.

SO ORDERED.[21]

Hence, we have this appeal.

Through a Manifestation (In lieu of Supplemental Brief)[22] dated October 12, 2009, Omictin repleads and adopts all the defenses

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[15] CA *rollo*, pp. 60-61.

[16] *Id.* at 64.

[17] *Id.* at 80-94.

[18] Referred to as "Dotimas" by the courts *a quo*.

[19] CA *rollo*, pp. 90-91.

[20] *Id.* at 91.

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

[22] *Id.* at 46-48.

and arguments raised in her Brief for the Accused-Appellant[23] dated January 22, 2008.

The Ruling of the Court

The appeal is without merit.

An examination of the issues raised by Omictin in her Brief would readily reveal that the same are all factual issues. Subject to well-defined exceptions, the Court, not being a trier of facts, will not delve once more into the factual findings of the trial court as affirmed by the appellate court. The Court, in *Dueñas v. Guce-Africa*,[24] has articulated the rule as follows:

> We will not review, much less reverse, the factual findings of the Court of Appeals especially where, as in this case, such findings coincide with those of the trial court, since we are not a trier of facts. **The established rule is that the factual findings of the Court of Appeals affirming those of the RTC are conclusive and binding on us.** We are not wont to review them, save under exceptional circumstances as: (1) when the inference made is manifestly mistaken, absurd or impossible; (2) when there is grave abuse of discretion; (3) when the findings are grounded entirely on speculations, surmises or conjectures; (4) when the judgment of the Court of Appeals is based on misapprehension of facts; (5) 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; (6) when the findings of fact are conclusions without citation of specific evidence on which they are based; **(7) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties and which, if properly considered, would justify a different conclusion;** and (8) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. (Emphasis supplied.)

None of the foregoing exceptions is present in the instant case. We thus perceive no reason to disturb the findings of fact and conclusions of law arrived at by the courts *a quo*.

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

[24] G.R. No. 165679, October 5, 2009, 603 SCRA 11, 20-21.

Omictin, however, maintains that the trial and appellate courts overlooked certain facts, which, if considered, would lead to her acquittal. Omictin asserts in her brief the following:

> The testimony of Primo Guevarra undoubtedly shows that he was not the one who paid the accused-appellant. His testimony, to the effect that the check, issued by a certain Elisa Dotenes, was paid by the bank, clearly falls within the rules proscribing the admission of hearsay evidence. It bears stressing that the failure of the prosecution to present Elisa Dotenes renders the testimony of witness Guevarra as unsubstantiated and hearsay.
>
> Another prosecution witness, Mr. Anthony Ambrosio, testified that he gave the accused-appellant the amount of sixteen thousand (16,000.00) pesos, representing initial payment in consideration of the work abroad. It is borne on record however, that Anthony's testimony was unsubstantiated by any proof that he made such payment, *i.e.*, receipts.
>
> A perusal of the records will show that Anthony's testimony that he was divested of said amount, through the misrepresentation of the accused-appellant, amounts to nothing but a mere uncorroborated and self-serving allegation.
>
> Surely, mere allegation, without proof, is not enough to prove the guilt of the accused beyond reasonable doubt.
>
> It is submitted that the trial court should have first considered these testimonies before rendering a judgment of conviction.[25]

These contentions are erroneous.

First, the testimony of Ambrosio cannot be considered as self-serving evidence. The phrase "self-serving evidence" is a concept which has a well-defined judicial meaning. *Hernandez v. Court of Appeals*[26] clarified what self-serving evidence is and what it is not, thus:

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[25] CA *rollo*, pp. 91-92.

[26] G.R. No. 104874, December 14, 1993, 228 SCRA 429, 436.

The common objection known as "self-serving" is not correct because almost all testimonies are self-serving. The proper basis for objection is "hearsay" (Wenke, Making and Meeting Objections, 69).

Petitioner fails to take into account the distinction between self-serving statements and testimonies made in court. Self-serving statements are those made by a party out of court advocating his own interest; they do not include a party's testimony as a witness in court (*National Development Co. v. Workmen's Compensation Commission*, 19 SCRA 861 [1967]).

Self-serving statements are inadmissible because the adverse party is not given the opportunity for cross-examination, and their admission would encourage fabrication of testimony. This cannot be said of a party's testimony in court made under oath, with full opportunity on the part of the opposing party for cross-examination.

This principle was reiterated in the more recent *People v. Villarama*,[27] where the Court ruled, "x x x [A] self-serving declaration is one that is made by a party, out of court and in his favor. It does not include the testimony he gives as a witness in court." Assayed against the foregoing standards, Ambrosio's testimony is not self-serving and is admissible in evidence.

We can hypothetically assume, as a second consideration, that the testimonies of Guevarra and Ambrosio are unsubstantiated and self-serving. Still, the unsubstantiated and self-serving nature of said testimonies would not carry the day for Omictin, since she admitted, during trial, the substance of their testimonies. Omictin testified thus before the RTC:

Q So how much did each of the four complainants paid (*sic*) you for the processing of their visa?
A Arvin [Guevarra] and Roy [Mago], ₱40,000.00 each.

Q How about this Anthony Ambrosio?
A ₱16,000.00[28]

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[27] G.R. No. 139211, February 12, 2003, 397 SCRA 306, 319.

[28] CA *rollo*, p. 116.

Through her testimony, Omictin admitted and established the fact that she was paid by Guevarra the amount of PhP 40,000 and Ambrosio the amount of PhP 16,000.

In all, we find no compelling reason to disturb the findings and core disposition of the CA, confirmatory of that of the trial court.

WHEREFORE, the petition is *DENIED* for lack of merit. Accordingly, the November 25, 2009 CA Decision in CA-G.R. CR-H.C. No. 02793 is hereby *AFFIRMED **IN TOTO***.

No costs.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 188949. July 26, 2010]

CENTRAL AZUCARERA DE TARLAC, *petitioner, vs.* **CENTRAL AZUCARERA DE TARLAC LABOR UNION-NLU,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; WAGES; PRESIDENTIAL DECREE NO. 851; MANDATED THE 13TH MONTH PAY; CONSTRUED.— The 13th-month pay mandated by Presidential Decree (P.D.) No. 851 represents an additional income based on wage but not part of the wage. It is equivalent to one-twelfth (1/12) of the total basic salary earned by an employee within a calendar year. All rank-and-file employees, regardless of their designation or employment status and

irrespective of the method by which their wages are paid, are entitled to this benefit, provided that they have worked for at least one month during the calendar year. If the employee worked for only a portion of the year, the 13th-month pay is computed pro rata.

2. ID.; ID.; ID.; 13TH MONTH PAY AND BASIC SALARY, DEFINED.— The Rules and Regulations Implementing P.D. No. 851, promulgated on December 22, 1975, defines 13th-month pay and basic salary as follows: Sec. 2. *Definition of certain terms.* - As used in this issuance: (a) *"Thirteenth-month pay"* shall mean one twelfth (1/12) of the basic salary of an employee within a calendar year; (b) *"Basic salary"* shall include all remunerations or earnings paid by an employer to an employee for services rendered but may not include cost-of-living allowances granted pursuant to Presidential Decree No. 525 or Letter of Instructions No. 174, profit-sharing payments, and all allowances and monetary benefits which are not considered or integrated as part of the regular or basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975. On January 16, 1976, the Supplementary Rules and Regulations Implementing P.D. No. 851 was issued. The Supplementary Rules clarifies that overtime pay, earnings, and other remuneration that are not part of the basic salary shall not be included in the computation of the 13th-month pay. On November 16, 1987, the Revised Guidelines on the Implementation of the 13th-Month Pay Law was issued. Significantly, under this Revised Guidelines, it was specifically stated that the minimum 13th-month pay required by law shall not be less than one-twelfth (1/12) of the total basic salary earned by an employee within a calendar year. Furthermore, the term "basic salary" of an employee for the purpose of computing the 13th-month pay was interpreted to include all remuneration or earnings paid by the employer for services rendered, but does not include allowances and monetary benefits which are not integrated as part of the regular or basic salary, such as the cash equivalent of unused vacation and sick leave credits, overtime, premium, night differential and holiday pay, and cost-of-living allowances. However, these salary-related benefits should be included as part of the basic salary in the computation of the 13th-month pay if, by individual or collective agreement, company practice or policy, the same are treated as part of the basic salary of the employees.

3. ID.; ID.; NON-DIMINUTION RULE; WHEN APPLICABLE.— Article 100 of the Labor Code, otherwise known as the Non-Diminution Rule, mandates that benefits given to employees cannot be taken back or reduced unilaterally by the employer because the benefit has become part of the employment contract, written or unwritten. The rule against diminution of benefits applies if it is shown that the grant of the benefit is based on an express policy or has ripened into a practice over a long period of time and that the practice is consistent and deliberate. Nevertheless, the rule will not apply if the practice is due to error in the construction or application of a doubtful or difficult question of law. But even in cases of error, it should be shown that the correction is done soon after discovery of the error.

4. ID.; ID.; EXEMPTION FROM THE 13TH MONTH PAY; WHEN ALLOWED.— Furthermore, petitioner cannot use the argument that it is suffering from financial losses to claim exemption from the coverage of the law on 13th-month pay, or to spare it from its erroneous unilateral computation of the 13th-month pay of its employees. Under Section 7 of the Rules and Regulations Implementing P.D. No. 851, distressed employers shall qualify for exemption from the requirement of the Decree only upon prior authorization by the Secretary of Labor. In this case, no such prior authorization has been obtained by petitioner; thus, it is not entitled to claim such exemption.

APPEARANCES OF COUNSEL

Inocentes De Leon Leogardo Atienza Magnaye & Azucena Law Offices for petitioner.
Dolendo & Associates for respondent.

D E C I S I O N

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated

[1] Penned by Associate Justice Josefina Guevara-Salonga, with Associate Justices Arcangelita M. Romilla-Lontok and Romeo F. Barza, concurring; *rollo*, pp. 32-42.

May 28, 2009, and the Resolution[2] dated July 28, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 106657.

The factual antecedents of the case are as follows:

Petitioner is a domestic corporation engaged in the business of sugar manufacturing, while respondent is a legitimate labor organization which serves as the exclusive bargaining representative of petitioner's rank-and-file employees. The controversy stems from the interpretation of the term "basic pay," essential in the computation of the 13th-month pay.

The facts of this case are not in dispute. In compliance with Presidential Decree (P.D.) No. 851, petitioner granted its employees the mandatory thirteenth (13th) - month pay since 1975. The formula used by petitioner in computing the 13th-month pay was: Total Basic Annual Salary divided by twelve (12). Included in petitioner's computation of the Total Basic Annual Salary were the following: basic monthly salary; first eight (8) hours overtime pay on Sunday and legal/special holiday; night premium pay; and vacation and sick leaves for each year. Throughout the years, petitioner used this computation until 2006.[3]

On November 6, 2004, respondent staged a strike. During the pendency of the strike, petitioner declared a temporary cessation of operations. In December 2005, all the striking union members were allowed to return to work. Subsequently, petitioner declared another temporary cessation of operations for the months of April and May 2006. The suspension of operation was lifted on June 2006, but the rank-and-file employees were allowed to report for work on a fifteen (15) day-per-month rotation basis that lasted until September 2006. In December 2006, petitioner gave the employees their 13th-month pay based on the employee's total earnings during the year divided by 12.[4]

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[2] *Id.* at 44-47.

[3] *Id.* at 33.

[4] *Id.* at 34.

Respondent objected to this computation. It averred that petitioner did not adhere to the usual computation of the 13th-month pay. It claimed that the divisor should have been eight (8) instead of 12, because the employees worked for only 8 months in 2006. It likewise asserted that petitioner did not observe the company practice of giving its employees the guaranteed amount equivalent to their one month pay, in instances where the computed 13th-month pay was less than their basic monthly pay.[5]

Petitioner and respondent tried to thresh out their differences in accordance with the grievance procedure as provided in their collective bargaining agreement. During the grievance meeting, the representative of petitioner explained that the change in the computation of the 13th-month pay was intended to rectify an error in the computation, particularly the concept of basic pay which should have included only the basic monthly pay of the employees.[6]

For failure of the parties to arrive at a settlement, respondent applied for preventive mediation before the National Conciliation and Mediation Board. However, despite four (4) conciliatory meetings, the parties still failed to settle the dispute. On March 29, 2007, respondent filed a complaint against petitioner for money claims based on the alleged diminution of benefits/erroneous computation of 13th-month pay before the Regional Arbitration Branch of the National Labor Relations Commission (NLRC).[7]

On October 31, 2007, the Labor Arbiter rendered a Decision[8] dismissing the complaint and declaring that the petitioner had the right to rectify the error in the computation of the 13th-month pay of its employees.[9] The *fallo* of the Decision reads:

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[5] *Id.* at 34; 74.

[6] *Id.* at 34.

[7] *Id.* at 34-35.

[8] Penned by Labor Arbiter Mariano L. Bactin; *id.* at 51-64.

[9] *Id.* at 35.

WHEREFORE, **premises considered, the complaint filed by the complainants against the respondents should be DISMISSED with prejudice for utter lack of merit.**

SO ORDERED.[10]

Respondents filed an appeal. On August 14, 2008, the NLRC rendered a Decision[11] reversing the Labor Arbiter. The dispositive portion of the Decision reads:

WHEREFORE, the decision appealed is reversed and set aside and respondent-appellee Central Azucarera de Tarlac is hereby ordered to adhere to its established practice of granting 13th[-] month pay on the basis of gross annual basic which includes basic pay, premium pay for work in rest days and special holidays, night shift differential and paid vacation and sick leaves for each year.

Additionally, respondent-appellee is ordered to observe the guaranteed one[-]month pay by way of 13th month pay.

SO ORDERED.[12]

Petitioner filed a motion for reconsideration. However, the same was denied in a Resolution dated November 27, 2008. Petitioner then filed a petition for *certiorari* under Rule 65 of the Rules of Court before the CA.[13]

On May 28, 2009, the CA rendered a Decision[14] dismissing the petition, and affirming the decision and resolution of the NLRC, *viz*.:

WHEREFORE, the foregoing considered, the petition is hereby **DISMISSED** and the assailed August 14, 2008 Decision and

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[10] *Id.* at 64.

[11] Penned by Commissioner Isabel G. Panganiban-Ortiguerra, with Presiding Commissioner Benedicto R. Palacol and Nieves Vivar-de Castro, concurring; *id.* at 72-87.

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

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

[14] *Supra* note 1.

November 27, 2008 Resolution of the NLRC, are hereby **AFFIRMED**. No costs.

SO ORDERED.[15]

Aggrieved, petitioner filed the instant petition, alleging that the CA committed a reversible error in affirming the Decision of the NLRC, and praying that the Decision of the Labor Arbiter be reinstated.

The petition is denied for lack of merit.

The 13th-month pay mandated by Presidential Decree (P.D.) No. 851 represents an additional income based on wage but not part of the wage. It is equivalent to one-twelfth (1/12) of the total basic salary earned by an employee within a calendar year. All rank-and-file employees, regardless of their designation or employment status and irrespective of the method by which their wages are paid, are entitled to this benefit, provided that they have worked for at least one month during the calendar year. If the employee worked for only a portion of the year, the 13th-month pay is computed pro rata.[16]

Petitioner argues that there was an error in the computation of the 13th-month pay of its employees as a result of its mistake in implementing P.D. No. 851, an error that was discovered by the management only when respondent raised a question concerning the computation of the employees' 13th-month pay for 2006. Admittedly, it was an error that was repeatedly committed for almost thirty (30) years. Petitioner insists that the length of time during which an employer has performed a certain act beneficial to the employees, does not prove that such an act was not done in error. It maintains that for the claim of mistake to be negated, there must be a clear showing that the employer had freely, voluntarily, and continuously performed the act, knowing that he is under no obligation to do

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[15] *Rollo*, p. 42.

[16] Azucena, Jr., Cesario Alvero, *Everyone's Labor Code*, 2001 edition, p. 79.

so. Petitioner asserts that such voluntariness was absent in this case.[17]

The Rules and Regulations Implementing P.D. No. 851, promulgated on December 22, 1975, defines 13th-month pay and basic salary as follows:

Sec. 2. *Definition of certain terms.* - As used in this issuance:

(a) "Thirteenth-month pay" shall mean one twelfth (1/12) of the basic salary of an employee within a calendar year;

(b) *"Basic salary"* shall include all remunerations or earnings paid by an employer to an employee for services rendered but may not include cost-of-living allowances granted pursuant to Presidential Decree No. 525 or Letter of Instructions No. 174, profit-sharing payments, and all allowances and monetary benefits which are not considered or integrated as part of the regular or basic salary of the employee at the time of the promulgation of the Decree on December 16, 1975.

On January 16, 1976, the Supplementary Rules and Regulations Implementing P.D. No. 851 was issued. The Supplementary Rules clarifies that overtime pay, earnings, and other remuneration that are not part of the basic salary shall not be included in the computation of the 13th-month pay.

On November 16, 1987, the Revised Guidelines on the Implementation of the 13th-Month Pay Law was issued. Significantly, under this Revised Guidelines, it was specifically stated that the minimum 13th-month pay required by law shall not be less than one-twelfth (1/12) of the total basic salary earned by an employee within a calendar year.

Furthermore, the term "basic salary" of an employee for the purpose of computing the 13th-month pay was interpreted to include all remuneration or earnings paid by the employer for services rendered, but does not include allowances and monetary benefits which are not integrated as part of the regular or basic salary, such as the cash equivalent of unused vacation and sick

[17] *Rollo,* pp. 22-24.

leave credits, overtime, premium, night differential and holiday pay, and cost-of-living allowances. However, these salary-related benefits should be included as part of the basic salary in the computation of the 13th-month pay if, by individual or collective agreement, company practice or policy, the same are treated as part of the basic salary of the employees.

Based on the foregoing, it is clear that there could have no erroneous interpretation or application of what is included in the term "basic salary" for purposes of computing the 13th-month pay of employees. From the inception of P.D. No. 851 on December 16, 1975, clear-cut administrative guidelines have been issued to insure uniformity in the interpretation, application, and enforcement of the provisions of P.D. No. 851 and its implementing regulations.

As correctly ruled by the CA, the practice of petitioner in giving 13th-month pay based on the employees' gross annual earnings which included the basic monthly salary, premium pay for work on rest days and special holidays, night shift differential pay and holiday pay continued for almost thirty (30) years and has ripened into a company policy or practice which cannot be unilaterally withdrawn.

Article 100 of the Labor Code, otherwise known as the Non-Diminution Rule, mandates that benefits given to employees cannot be taken back or reduced unilaterally by the employer because the benefit has become part of the employment contract, written or unwritten.[18] The rule against diminution of benefits applies if it is shown that the grant of the benefit is based on an express policy or has ripened into a practice over a long period of time and that the practice is consistent and deliberate. Nevertheless, the rule will not apply if the practice is due to error in the construction or application of a doubtful or difficult question of law. But even in cases of error, it should be shown that the correction is done soon after discovery of the error.[19]

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[18] *Philippine Airlines, Inc. v. NLRC,* 328 Phil. 826 (1996).

[19] *Supra* note 16, at 78.

The argument of petitioner that the grant of the benefit was not voluntary and was due to error in the interpretation of what is included in the basic salary deserves scant consideration. No doubtful or difficult question of law is involved in this case. The guidelines set by the law are not difficult to decipher. The voluntariness of the grant of the benefit was manifested by the number of years the employer had paid the benefit to its employees. Petitioner only changed the formula in the computation of the 13th-month pay after almost 30 years and only after the dispute between the management and employees erupted. This act of petitioner in changing the formula at this time cannot be sanctioned, as it indicates a badge of bad faith.

Furthermore, petitioner cannot use the argument that it is suffering from financial losses to claim exemption from the coverage of the law on 13th-month pay, or to spare it from its erroneous unilateral computation of the 13th-month pay of its employees. Under Section 7 of the Rules and Regulations Implementing P.D. No. 851, distressed employers shall qualify for exemption from the requirement of the Decree only upon prior authorization by the Secretary of Labor.[20] In this case, no such prior authorization has been obtained by petitioner; thus, it is not entitled to claim such exemption.

WHEREFORE, the Decision dated May 28, 2009 and the Resolution dated July 28, 2009 of the Court of Appeals in CA-G.R. SP No. 106657 are hereby *AFFIRMED*. Costs against petitioner.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.*, concur.

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[20] See *Dentech Manufacturing Corporation v. NLRC*, 254 Phil. 603 (1989).

FIRST DIVISION

[G.R. No. 189278. July 26, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ELIZABETH MARCELINO *y* REYES,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; WARRANTLESS ARREST; WHEN JUSTIFIED.— In *People v. Villamin*, involving an accused arrested after he sold drugs during a buy-bust operation, the Court ruled that it was a circumstance where a warrantless arrest is justified under Rule 113, Sec. 5(a) of the Rules of Court. The same ruling applies to the instant case. When carried out with due regard for constitutional and legal safeguards, it is a judicially sanctioned method of apprehending those involved in illegal drug activities. It is a valid form of entrapment, as the idea to commit a crime comes not from the police officers but from the accused himself. The accused is caught in the act and must be apprehended on the spot. From the very nature of a buy-bust operation, the absence of a warrant does not make the arrest illegal.

2. ID.; ID.; SEARCH AND SEIZURE; SEIZURE MADE BY THE BUY-BUST TEAM FALLS UNDER A SEARCH INCIDENTAL TO A LAWFUL ARREST.— The illegal drug seized was not the "fruit of the poisonous tree" as the defense would like this Court to believe. The seizure made by the buy-bust team falls under a search incidental to a lawful arrest under Rule 126, Sec. 13 of the Rules of Court, which pertinently provides: A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant. Since the buy-bust operation was established as legitimate, it follows that the search was also valid, and a warrant was likewise not needed to conduct it.

3. ID.; EVIDENCE; FAILURE TO SUBMIT THE REQUIRED PHYSICAL INVENTORY AND PHOTOGRAPH OF THE EVIDENCE CONFISCATED WILL NOT RESULT IN THE

ACQUITTAL OF THE ACCUSED.— The prosecution's failure to submit in evidence the required physical inventory and photograph of the evidence confiscated will not result in accused-appellant's acquittal of the crimes charged. Non-compliance with the provisions of RA 9165 on the custody and disposition of dangerous drugs is not necessarily fatal to the prosecution's case. Neither will it render the arrest of an accused illegal nor the items seized from her inadmissible.

4. CRIMINAL LAW; VIOLATIONS OF DANGEROUS DRUGS ACT; AS A RULE, CREDENCE IS GIVEN TO POLICE OFFICERS WHO ARE PRESUMED TO HAVE PERFORMED THEIR DUTIES IN A REGULAR MANNER.— It is a settled rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. Accused-appellant failed to overcome this presumption by showing clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive.

5. ID.; ID.; PENALTY FOR SALE OF ILLEGAL DRUGS.— The penalty for sale of illegal drugs under RA 9165 is the following: 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.

APPEARANCES OF COUNSEL

The Solicitor General for respondent.
Public Attorney's Office for accused-appellant.

D E C I S I O N

VELASCO, JR., *J.*:

This is an appeal from the June 29, 2009 Decision of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 03153 entitled *People of the Philippines v. Elizabeth Marcelino y Reyes*, which affirmed the Decision in Criminal Case Nos. 3048-M-2002 and 3049-M-2002 of the Regional Trial Court (RTC), Branch 76 in Malolos City, Bulacan. The RTC found accused-appellant Elizabeth Marcelino guilty of violating Sections 5 and 11 of Republic Act No. (RA) 9165 or the *Comprehensive Dangerous Drugs Act of 2002*.

The Facts

Two Informations charged accused-appellant as follows:

Criminal Case No. 3048-M-2002

That on or about the 31st day of October, 2002, in the Municipality of Balagtas, Province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously sell, trade, deliver, give away, dispatch in transit and transport [a] dangerous drug consisting of one (1) [heat-sealed] transparent plastic sachet of Methylamphetamine hydrochloride (*shabu*) weighing 0.494 gram.[1]

Criminal Case No. 3049-M-2002

That on or about the 31st day of October, 2002, in the Municipality of Balagtas, Province of Bulacan, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, without authority of law and legal justification, did then and there willfully, unlawfully and feloniously have in her possession and control [a] dangerous drug consisting of one (1) heat-sealed transparent plastic sachet of Methylamphetamine hydrochloride (*shabu*) weighing 3.296 [grams].[2]

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[1] *Rollo*, p. 3.

[2] *Id.*

During her arraignment, accused-appellant pleaded not guilty to both charges.

The defense agreed to the following stipulations[3] during the pre-trial:

1) the qualification and competence of Forensic Analyst Amilyn Flores-Maclid as an expert witness;

2) the existence of the request for laboratory examination signed by Police Senior Inspector Arthur Felix Asis and received by the Bulacan Provincial Crime Laboratory on November 1, 2002; and

3) the existence of Chemistry Report No. D-628-02 signed by Forensic Analyst Amilyn Flores-Maclid including the specimens examined by said Forensic Analyst attached to the Chemistry Report contained in a brown envelope with marking D-628-02-AFM consisting of two (2) heat-sealed transparent plastic sachets each containing white crystalline substance with markings and recorded net weights A(MDC-1)-0.494 gm. and B(MDC-2)-3.296 gms., respectively.

Version of the Prosecution

At the trial, the prosecution presented SPO1 Marciano Dela Cruz[4] as its sole witness.

SPO1 Dela Cruz, a police officer stationed at the Balagtas Police Station in Bulacan, was part of a team that conducted a test-buy on October 30, 2002 to verify a report of accused-appellant Elizabeth engaging in illegal drug activities.[5]

When the test-buy confirmed that Elizabeth was indeed selling illegal drugs, a team was formed to conduct a buy-bust operation. SPO1 Dela Cruz was designated as poseur-buyer. He placed his initials "MDC" on a five hundred peso bill to be used as boodle money.[6]

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[3] *Id.* at 4.

[4] Also referred to as "SPO4 De La Cruz" in the CA Decision.

[5] CA *rollo*, p. 54.

[6] *Id.*

On October 31, 2002, the buy-bust team headed for P. Castro St. Burol 1st, Balagtas, Bulacan at around half past seven in the evening. SPO1 Dela Cruz and his asset went to meet Elizabeth and asked to buy *shabu* worth five hundred pesos (PhP 500). Once Elizabeth had handed the *shabu* to SPO1 Dela Cruz, he gave the pre-arranged signal, prompting SPO3 Felix Dela Cruz to approach them. SPO3 Dela Cruz recovered the marked PhP 500 bill and another sachet of suspected *shabu* from Elizabeth. She was then apprised of her constitutional rights. SPO1 Dela Cruz subsequently marked the sachet that was sold to him as "MDC-1" and the sachet found on the person of Elizabeth as "MDC-2."[7]

A request was later submitted to the crime laboratory for a laboratory examination of the seized substances.[8] Chemistry Report No. D-628-2002 confirmed that the subject drugs were positive for *shabu*.[9]

Version of the Defense

The defense offered the testimonies of Elizabeth and tricycle driver Rodrigo Laviña, a neighbor.

In her defense, Elizabeth claimed that on October 31, 2002, she was at her home at P. Castro St., Burol 1st, Balagtas, Batangas with her grandson and her sister, Consuelo Reyes, when they suddenly heard a knock at the door. When Consuelo answered the door, three men suddenly entered the house and announced that they were police officers. [10]

Elizabeth recalled that the police officers who arrested her at her home were not the same ones that the prosecution presented as members of the buy-bust operation. She also claimed that when she got to the police station, a woman named Mila Trias

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

[8] *Id.*

[9] *Id.* at 56.

[10] *Id.*

told her, "*Ngayon nakikilala mo na kung sinong kinalaban mo.*" According to Elizabeth, she had a quarrel with Mila because she suspected Mila was having an affair with her husband.[11]

To corroborate Elizabeth's story, Laviña testified that on October 31, 2002, at about 7:35 in the evening, he was parked outside the house of Elizabeth. He was waiting for passengers when, suddenly, two "owner-type" jeeps arrived carrying two passengers each. The passengers were all male and dressed in civilian clothes. All headed towards Elizabeth's house. Elizabeth opened the door and the men entered the house, with the door closing behind them. From the outside, Laviña heard Elizabeth shouting as to why the men were searching her house. He approached the house and heard commotion inside. He heard sounds of objects falling. Later, he saw the men coming out of the house and boarding Elizabeth into one of their vehicles.[12]

The Ruling of the Trial Court

On January 21, 2008, the RTC found Elizabeth guilty of the crimes charged based on what it found to be the credible testimony of SPO1 Dela Cruz. In Criminal Case No. 3048-M-2002 (illegal sale of drugs), the trial court found that all the elements of the crime were established by the prosecution with moral certainty. In Criminal Case No. 3049-M-2002 (illegal possession of dangerous drugs), the trial court ruled that the search conducted on Elizabeth was valid under the rule on search incidental to a lawful arrest.

The dispositive portion of the RTC Decision[13] reads:

WHEREFORE, finding the accused GUILTY beyond reasonable doubt, accused ELIZABETH MARCELINO y REYES is hereby CONVICTED:

[A] in Criminal Case No. 3048-M-2002, which charges accused with sale of [a] dangerous drug consisting of one (1) heat-sealed

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[11] *Id.*

[12] *Id.* at 56-57.

[13] *Id.* at 118-119. Penned by Judge Albert R. Fonacier.

transparent plastic sachet of methylamphetamine hydrochloride commonly known as shabu, weighing 0.494 gram and a dangerous drug, in violation of Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and is SENTENCED to suffer LIFE IMPRISONMENT, and to pay the FINE of Five Hundred Thousand Pesos (₱500,000.00);

[B] in Criminal Case No. 3049-M-2002 which charges accused for possession and control of dangerous drug consisting of one (1) heat sealed transparent plastic sachet of methylamphetamine hydrochloride commonly known as shabu, weighing 3.296 grams and a dangerous drug, in violation of Section 11, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," and is SENTENCED to suffer the imprisonment of, applying the Indeterminate Sentence Law, TWELVE (12) YEARS AND ONE DAY, AS THE MINIMUM TERM, TO THIRTEEN (13) YEARS, AS THE MAXIMUM TERM, and to pay the FINE of Three Hundred Thousand Pesos (₱300,000.00) x x x.

The Ruling of the Appellate Court

Dissatisfied with the RTC's Decision, Elizabeth appealed to the CA, arguing that the evidence presented against her was inadmissible, since it was acquired during her unlawful arrest. She likewise insisted that her guilt was not proved beyond reasonable doubt.

The CA in its Decision[14] affirmed the appealed RTC Decision. The appellate court ruled that Elizabeth was estopped from questioning the legality of her arrest, as it was being raised for the first time on appeal. It held that even the police officers had minor lapses in complying with Sec. 21, Art. II of RA 9165, there was still no doubt that the *shabu* presented during the trial was the same substance retrieved from her.

Aggrieved, Elizabeth filed a Notice of Appeal from the CA Decision.

On December 2, 2009, this Court notified the parties that they may submit their supplemental briefs. The People,

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[14] *Rollo*, p. 14. Penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Jose L. Sabio, Jr. and Vicente S.E. Veloso.

represented by the Office of the Solicitor General (OSG), manifested that it was dispensing with the filing of a Supplemental Brief.

The Issues

I

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT A SEARCH WARRANT WAS NOT NECESSARY

II

WHETHER THE COURT OF APPEALS ERRED IN RULING THAT THE INTEGRITY AND IDENTITY OF THE *SHABU* WAS PRESERVED

The Ruling of this Court

Accused-appellant Elizabeth reiterates that two test-buys were conducted before the actual buy-bust operation was launched. She thus contends that after the two test-buys, the police officers certainly had sufficient time to secure both a search warrant and a warrant of arrest but failed to do so. She argues that a buy-bust operation should never be used as a cover for an illegal warrantless search and arrest.

She also imputes grave doubts on whether SPO1 Dela Cruz observed the requirements of RA 9165 on inventory and photographing of the illegal substance, arguing that said police officer did not state where and when he marked the sachets of *shabu*.

The OSG, on the other hand, argues that no search warrant and warrant of arrest were needed, a buy-bust operation being recognized as a valid form of entrapment. Citing jurisprudence, the OSG claims that it is ridiculous for the buy-bust team to first obtain a search warrant when a crime is committed before their eyes.

As to the other contention of Elizabeth, the OSG refutes this by saying that the identity of the seized substance was adequately established by the prosecution, as this was properly marked

and its paper trail ascertained, from the request for laboratory examination to the physical science report on the illegal substance and the actual presentation in court.

We affirm Elizabeth's conviction.

The appellate court correctly ruled that Elizabeth cannot question her arrest for the first time on appeal. And even if we were to allow her to raise such issue, her appeal must still fail.

Search warrant and warrant of arrest not needed

In *People v. Villamin*,[15] involving an accused arrested after he sold drugs during a buy-bust operation, the Court ruled that it was a circumstance where a warrantless arrest is justified under Rule 113, Sec. 5(a) of the Rules of Court.[16] The same ruling applies to the instant case. When carried out with due regard for constitutional and legal safeguards, it is a judicially sanctioned method of apprehending those involved in illegal drug activities. It is a valid form of entrapment, as the idea to commit a crime comes not from the police officers but from the accused himself. The accused is caught in the act and must be apprehended on the spot. From the very nature of a buy-bust operation, the absence of a warrant does not make the arrest illegal.[17]

The illegal drug seized was not the "fruit of the poisonous tree" as the defense would like this Court to believe. The seizure made by the buy-bust team falls under a search incidental to a lawful arrest under Rule 126, Sec. 13 of the Rules of Court, which pertinently provides:

A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

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[15] G.R. No. 175590, February 9, 2010.

[16] SEC. 5. *Arrest without warrant; when lawful*. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

[17] *People v. Villamin, supra* note 15.

Since the buy-bust operation was established as legitimate, it follows that the search was also valid, and a warrant was likewise not needed to conduct it.

Chain of custody

The prosecution's failure to submit in evidence the required physical inventory and photograph of the evidence confiscated will not result in accused-appellant's acquittal of the crimes charged. Non-compliance with the provisions of RA 9165 on the custody and disposition of dangerous drugs is not necessarily fatal to the prosecution's case. Neither will it render the arrest of an accused illegal nor the items seized from her inadmissible.[18]

We discussed in *People v. Pagkalinawan*[19] both what the law provides and the level of compliance it requires:

Sec. 21 of the Implementing Rules and Regulations of RA 9165 provides:

SECTION 21. ***Custody and Disposition of Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment.*** – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

(a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; ***Provided,*** **that the physical inventory and photograph shall be conducted at the place where the search**

[18] *People v. Alberto*, G.R. No. 179717, February 5, 2010.

[19] G.R. No. 184805, March 3, 2010; citations omitted.

warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; ***Provided, further,*** **that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items**. x x x (Emphasis supplied.)

As can be gleaned from the language of Sec. 21 of the Implementing Rules, it is clear that the failure of the law enforcers to comply strictly with it is not fatal. It does not render appellant's arrest illegal nor the evidence adduced against him inadmissible. 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."

Here, the chain of custody was established through the following links: (1) SPO1 Dela Cruz marked the seized sachet with "MDC-1" for the sachet that was the subject of the buy-bust, and "MDC-2" for the sachet found on accused-appellant's person; (2) a request for laboratory examination of the seized items "MDC-1" and "MDC-2" was signed by Police Senior Inspector Arthur Felix Asis; (3) the request and the marked items seized were received by the Bulacan Provincial Crime Laboratory; (4) Chemistry Report No. D-628-02 confirmed that the marked items seized from accused-appellant were *shabu*; and (5) the marked items were offered in evidence as Exhibits "C-1" and "C-2".

As there is no proof to support the claim that the integrity and the evidentiary value of the seized *shabu* have been compromised at some stage, we find no reason to overturn the finding of the trial court that what were seized from Elizabeth were the same illegal drugs presented in the trial court. As it is, there was substantial compliance with the requirements under RA 9165, and the prosecution adequately established that there was an unbroken chain of custody over the *shabu* seized from Elizabeth.

Also working against Elizabeth's cause is the presumption of regularity accorded those involved in the buy-bust operation. It is a settled rule that in cases involving violations of the Dangerous Drugs Act, credence is given to prosecution witnesses who are police officers, for they are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[20] Accused-appellant failed to overcome this presumption by showing clear and convincing evidence that the police officers did not properly perform their duty or that they were inspired by an improper motive.[21]

Penalty Imposed

Criminal Case No. 3048-M-2002 (illegal sale of drugs)

The penalty for sale of illegal drugs under RA 9165 is the following:

SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

Criminal Case No. 3049-M-2002

RA 9165 penalizes possession of dangerous drugs as follows:

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

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[20] *People v. Fabian*, G.R. No. 181040, March 15, 2010.

[21] *People v. Concepcion*, G.R. No. 178876, June 27, 2008, 556 SCRA 421, 444.

possess any dangerous drug in the following quantities, regardless of the degree of purity thereof:

x x x x x x x x x

(5) 50 grams or more of methamphetamine hydrochloride or "*shabu*"; otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated as follows:

x x x x x x x x x

3) Imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three hundred thousand pesos (₱300,000.00) to Four hundred thousand pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of opium, morphine, heroin, cocaine or cocaine hydrochloride, marijuana resin or marijuana resin oil, methamphetamine hydrochloride or "*shabu*", or other dangerous drugs such as, but not limited to, MDMA or "ecstasy," PMA, TMA, LSD, GHB, and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements; or less than three hundred (300) grams of marijuana.

Finding the sentence handed by the lower court in both criminal cases to be within the range provided under RA 9165, we affirm accused-appellant Elizabeth's sentence for both charges.

WHEREFORE, the appeal is *DENIED*. The Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 03153 finding accused-appellant guilty of violation of Secs. 5 and 11 of Article II, RA 9165 is *AFFIRMED **IN TOTO***.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 190448. July 26, 2010]

FEDERICO D. TOMAS, *petitioner, vs.* **ANN G. SANTOS,** *respondent.*

SYLLABUS

REMEDIAL LAW; RULES OF COURT; TECHNICALITY AND PROCEDURAL IMPERFECTION SHOULD NOT SERVE AS BASES OF DECISIONS.— The Court is fully aware that procedural rules are not to be simply disregarded as they insure an orderly and speedy administration of justice. However, it is equally true that courts are not enslaved by technicalities, and they have the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to an opportunity to be heard. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should, thus, not serve as bases of decisions. In that way, the ends of justice would be served. Furthermore, inasmuch as this petition raises both questions of fact and law which the Court of Appeals may properly take cognizance of under Rule 41 of the Rules of Court, we deem it necessary to reinstate Tomas' appeal, notwithstanding its improper title. This has assumed a greater measure of necessity because of the allegation of Tomas that he is legally married to Santos, a fact not resolved by the RTC but which may be significant in resolving the question of ownership of the real property subject of the controversy.

APPEARANCES OF COUNSEL

Arwin Juco Sinaguinan for petitioner.
Edgar A. Pacis for respondent.

RESOLUTION

NACHURA, *J.*:

This is a petition[1] for review on *certiorari* under Rule 45 of the Rules of Court assailing the Resolutions of the Court of Appeals dated July 29, 2009 and November 26, 2009, respectively, in CA-G.R. SP No. 109646.

The case arose from a complaint[2] for reconveyance of title, declaration of nullity of assignment and deed of sale, breach of contract, and damages filed by respondent Ann G. Santos (Santos) against petitioners Federico D. Tomas (Tomas), Del-Nacia Corporation (Del-Nacia) and Lydia L. Geraldez (Geraldez), then President of Del-Nacia. Subject of the complaint was a real property of 367 square meters, located in Del Nacia Ville, Sauyo Road, Novaliches, Quezon City. At the time of the filing of the complaint, the property was covered by Transfer Certificate of Title (TCT) No. 81965 in the name of Tomas.

Del Nacia and Tomas[3] filed their respective answers. However, upon motion[4] of Santos, the Regional Trial Court (RTC) of Quezon City, in its Order[5] dated August 29, 1997, declared Tomas in default and dismissed his counterclaim on the ground that his answer lacked a certification of non-forum shopping, proof of service, and an explanation why personal service was not resorted to in furnishing a copy of his answer to Santos.

Tomas filed a motion[6] to lift order of default and to admit amended answer with counterclaim.[7] The RTC denied this motion in its Order[8] dated November 6, 1997.

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[1] *Rollo,* pp. 3-20.

[2] *Id.* at 74-90.

[3] *Id.* at 91-96.

[4] *Id.* at 97-100.

[5] *Id.* at 101.

[6] *Id.* at 102-103.

[7] *Id.* at 113-119.

[8] *Id.* at 120.

Tomas filed a motion for reconsideration[9] of the November 6, 1997 Order. However, the RTC denied the same.[10]

Trial ensued, with Tomas testifying as a witness. Thereafter, the RTC rendered its Decision[11] dated June 23, 2009 in favor of Santos.

Tomas received a copy of the Decision on July 9, 2009. Aggrieved, Tomas filed a Notice of Appeal[12] and paid the necessary fee[13] on July 21, 2009. Tomas furnished copies of his Notice of Appeal to Del-Nacia and Santos. Their respective counsel received them accordingly.[14]

On July 22, 2009, Tomas filed his appeal with the Court of Appeals which he denominated "Petition for Review."[15] It was entitled *Federico D. Tomas v. The Honorable Regional Trial Court – National Capital Judicial Region – Branch 223, Quezon City and Ann G. Santos*, and was docketed as CA-G.R. SP No. 109646.

In a Resolution[16] dated July 29, 2009, the Court of Appeals dismissed the "Petition for Review" on the following grounds: (1) it was an inappropriate remedy because it should have been merely an ordinary appeal; (2) there was no certificate of non-forum shopping appended to the pleading; and (3) it was not accompanied by copies of relevant pleadings and other material portions of the records to support its allegations.

Tomas moved to reconsider this July 29, 2009 Resolution.[17] In his motion, Tomas argued that the Court of Appeals should

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[9] *Id.* at 121-125.

[10] *Id.* at 126.

[11] *Id.* at 39-55.

[12] *Id.* at 21-22.

[13] *Id.* at 23.

[14] *Id.* at 71.

[15] *Id.* at 24-38.

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

[17] *Id.* at 61-68.

not have dismissed his appeal merely on technical grounds, more particularly because he timely filed his Notice of Appeal, paid the corresponding fee, and furnished copies thereof to Del-Nacia and Santos. He also posited that he did not attach the pleadings cited by the Court of Appeals to the "Petition for Review," considering that the entire records of the case would nevertheless be transmitted to it. He prayed that the Court of Appeals pass upon the merits of his case, and he also appended to the motion the required certification of non-forum shopping and the documents pertinent to the controversy.

In the Resolution[18] dated November 26, 2009, the Court of Appeals denied Tomas' motion for reconsideration, disposing as follows –

> While he has rectified two of the noted defects, petitioner still insists on the correctness of the instant recourse. We have already exhaustively discussed why the present recourse is erroneous and why it should be summarily dismissed. We no longer find any reason to go into great detail in discussing the matter a second time around.[19]

Hence, this petition anchored both on procedural and substantial grounds, *i.e.* assailing the outright dismissal of the appeal by the Court of Appeals, as well as the judgment of the RTC on the merits of the case.

It bears mentioning that Tomas, except for his testimony before the RTC as a witness of Del-Nacia, was not able to present his own defense in full, considering that the RTC declared him in default and dismissed his counterclaim by reason of procedural infirmities.

With the RTC deciding against him, Tomas would necessarily resort to an appeal to the Court of Appeals. Accordingly, Tomas filed his Notice of Appeal and correspondingly paid the required fees on July 21, 2009, or 12 days from July 9, 2009, the date of his receipt of a copy of the RTC Decision. The following

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[18] *Id.* at 136-137.

[19] *Id.* at 136.

day, July 22, 2009, Tomas filed his appellate pleading with the Court of Appeals, but it was mistakenly entitled "Petition for Review." Because of this improper title, his appeal was docketed not as an ordinary appeal but as a special civil action for *certiorari* docketed as CA-G.R. SP No. 109646. However, a perusal of the allegations in his "Petition for Review" would readily show that what was filed was actually an ordinary appeal from the RTC Decision. There was no allegation whatsoever of grave abuse of discretion amounting to lack or excess of jurisdiction on the part of the RTC, but rather merely a recitation of what Tomas perceived as a reversible error committed by the RTC based on the issues raised and the discussions made in his appeal.

It is true that the Court of Appeals dismissed Tomas' "Petition for Review" on three grounds, namely: improper remedy, lack of certification on non-forum shopping, and failure to append important documents in support of his allegations. It is, however, observed that the Court of Appeals, after considering Tomas' motion for reconsideration of the July 29, 2009 Resolution, ruled in its November 26, 2009 Resolution that Tomas was able to rectify two of the defects of his "Petition for Review"; but maintained that the same was still an inappropriate remedy and, thus, denied the motion. To our mind, if the Court of Appeals accepted the rectification of these two procedural defects after Tomas moved to reconsider the July 29, 2009 Resolution, it should have also treated the "Petition for Review" as an ordinary appeal from the RTC Decision, especially considering that the required Notice of Appeal and the appellate pleading were timely filed. The allegations of the pleading prevail over its title in determining the character of the action taken. The nature of the issues to be raised on appeal can be gleaned from appellant's notice of appeal filed with the trial court and in appellant's brief in the appellate court.[20]

The Court is fully aware that procedural rules are not to be simply disregarded as they insure an orderly and speedy

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[20] *Macababbad, Jr. v. Masirag,* G.R. No. 161237, January 14, 2009, 576 SCRA 70, 82.

administration of justice. However, it is equally true that courts are not enslaved by technicalities, and they have the prerogative to relax compliance with procedural rules of even the most mandatory character, mindful of the duty to reconcile both the need to speedily put an end to litigation and the parties' right to an opportunity to be heard. This is in line with the time-honored principle that cases should be decided only after giving all parties the chance to argue their causes and defenses. Technicality and procedural imperfection should, thus, not serve as bases of decisions. In that way, the ends of justice would be served.[21]

Furthermore, inasmuch as this petition raises both questions of fact and law which the Court of Appeals may properly take cognizance of under Rule 41 of the Rules of Court, we deem it necessary to reinstate Tomas' appeal, notwithstanding its improper title. This has assumed a greater measure of necessity because of the allegation of Tomas that he is legally married to Santos, a fact not resolved by the RTC but which may be significant in resolving the question of ownership of the real property subject of the controversy.

WHEREFORE, the assailed Resolutions dated July 29, 2009 and November 26, 2009 of the Court of Appeals in CA-G.R. SP No. 109646 are *REVERSED* and *SET ASIDE*. The appeal of Federico D. Tomas before the Court of Appeals is *REINSTATED*. No costs.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

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[21] *Bank of the Philippine Islands v. Dando,* G.R. No. 177456, September 4, 2009, 598 SCRA 378, 386-387.

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Concept — By forum shopping, a party initiates two or more actions in separate tribunals, grounded on the same cause, hoping that one or the other tribunal would favorably dispose of the matter. (People vs. Grey, G.R. No. 180109, July 26, 2010) p. 535

(SM Systems Corp. *vs*. Camerino, G.R. No. 178591, July 26, 2010) p. 495

— The elements of forum shopping are: (1) identity of parties, or at least such parties as would represent the same interest in both actions; (2) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (3) identity of the two preceding particulars such that any judgment rendered in the other action will, regardless of which party is successful, amount to res judicata in the action under consideration. (People *vs*. Grey, G.R. No. 180109, July 26, 2010) p. 535

(St. Catherine Realty Corp. *vs*. Pineda, G.R. No. 171525, July 23, 2010) p. 279

Rule against forum shopping — Applies only to judicial proceedings and not to administrative cases. (Office of the Ombudsman *vs*. Rodriguez, G.R. No. 172700, July 23, 2010) p. 312

— To determine whether a party violated the rule, the most important question to ask is whether the elements of litis pendentia are present or whether a final judgment in one case will result to res judicata in another. (People *vs*. Grey, G.R. No. 180109, July 26, 2010) p. 535

(SM Systems Corp. *vs*. Camerino, G.R. No. 178591, July 26, 2010) p. 495

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Annulment of award — Protest on the decision of the Bids and Awards Committee (BAC) is required; effect of non-compliance. (Land Registration Authority *vs.* Lanting Security and Watchman Agency, G.R. No. 181735, July 20, 2010) p. 172

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INTERESTS

Interest on loan or forbearance of money — Six percent (6%) interest may be imposed. (Hung *vs.* BPI Card Finance Corp., G.R. No. 182398, July 20, 2010) p. 179

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Bias and partiality — Imposable penalty. (Atty. Bernas *vs.* Judge Reyes, A.M. No. MTJ-09-1728, July 21, 2010) p. 202

Blatant display of disobedience to lawful directives of the court — Committed in case of failure to comply with the court's directive to file a comment to the complaint against him/her. (Atty. Bernas *vs.* Judge Reyes, A.M. No. MTJ-09-1728, July 21, 2010) p. 202

— Imposable penalty. *(Id.)*

Conduct of — All members of the bench are enjoined to behave at all times as to promote public confidence in the integrity and impartiality of the judiciary. (Atty. Bernas *vs.* Judge Reyes, A.M. No. MTJ-09-1728, July 21, 2010) p. 202

Duties — Judges must not only render just, correct, and impartial decisions, but must also do so in a manner free from any suspicion as to their fairness, impartiality and integrity. (Atty. Bernas *vs.* Judge Reyes, A.M. No. MTJ-09-1728, July 21, 2010) p. 202

JUDGMENTS

Execution of — Generally not appealable; exceptions. (PAGCOR *vs*. Aumentado, Jr., G.R. No. 173634, July 22, 2010) p. 255

Validity of — Technicality and procedural imperfection should not serve as bases of decision. (Tomas *vs*. Santos, G.R. No. 190448, July 26, 2010) p. 656

JUDICIAL REVIEW

Power of — There is necessity to resolve the case despite the issues having become moot if such issues are capable of repetition yet evading review. (Atty. Montaño *vs*. Atty. Verceles, G.R. No. 168583, July 26, 2010) p. 418

LABOR RELATIONS

Certification election — Petition to annul an election with the Bureau of Labor Relations, not prematurely filed when the parties exhausted all remedies within the union. (Atty. Montaño *vs*. Atty. Verceles, G.R. No. 168583, July 26, 2010) p. 418

Preventive suspension — Justified where the employee's continued employment poses a serious and imminent threat to the life and property of the employer or of the employee's co-workers. (Artificio *vs*. NLRC, G.R. No. 172988, July 26, 2010) p. 449

LABOR UNIONS

Election of officers — Functions of the Committee under the Rules Implementing the Labor Code, explained. (Atty. Montaño *vs*. Atty. Verceles, G.R. No. 168583, July 26, 2010) p. 418

LEASE

Reimbursement of useful improvement and retention of the premises until reimbursement is made — Do not apply where one's only interest is that of a lessee under a rental contract. (Mores *vs*. Yu-go, G.R. No. 172292, July 23, 2010) p. 304

— Lessee's right of removal of the useful improvements on the leased property when the lessor failed to offer to pay one-half of the value of the improvements is upheld. *(Id.)*

LITIS PENDENTIA

Concept — Does not require a literal identity of the parties; identity of interests represented is sufficient. (St. Catherine Realty Corp. *vs*. Pineda, G.R. No. 171525, July 23, 2010) p. 279

LOANS

Imposition of interest — Computation of proper interest payments must be based on the dates of receipt of written notice. (SolidBank Corp. *vs*. Permanent Homes, Inc., G.R. No. 171925, July 23, 2010) p. 289

— Must be agreed upon by the parties and should be in writing. (St. Catherine Realty Corp. *vs*. Pineda, G.R. No. 171525, July 23, 2010) p. 279

— The repeal of the Usury Law does not give the lender an unbridled license to impose increased interest rates. (SolidBank Corp. *vs*. Permanent Homes, Inc., G.R. No. 171925, July 23, 2010) p. 289

Interest rate repricing — When considered valid. (SolidBank Corp. *vs*. Permanent Homes, Inc., G.R. No. 171925, July 23, 2010) p. 289

LOCAL GOVERNMENT CODE (R.A. NO. 7160)

Sangguniang Bayan — Possesses no power to remove an elective barangay official. (Office of the Ombudsman *vs*. Rodriguez, G.R. No. 172700, July 23, 2010) p. 312

MORTGAGES

Blanket mortgage law — Elucidated. (Banate *vs*. Phil. Countryside Rural Bank [Liloan, Cebu], Inc., G.R. No. 163825, July 13, 2010) p. 35

MOTION FOR RECONSIDERATION

Grounds — New issues cannot be raised for the first time. (Atty. Montaño *vs*. Atty. Verceles, G.R. No. 168583, July 26, 2010) p. 418

MOTION TO QUASH

Double jeopardy as a ground — The following requisites must concur: (1) there is a complaint or information or other formal charge sufficient in form and substance to sustain a conviction; (2) the same is filed before a court of competent jurisdiction; (3) there is a valid arraignment or plea to the charges; and (4) the accused is convicted or acquitted or the case is otherwise dismissed or terminated without his express consent. (People *vs*. Tan, G.R. No. 167526, July 26, 2010) p. 402

— Fundamental philosophy behind the Constitutional proscription against double jeopardy. *(Id.)*

— The only instance when it will not attach is when the trial court acted with grave abuse of discretion. *(Id.)*

MURDER

Commission of — Civil liabilities of accused, cited. (People *vs*. Rollan, G.R. No. 175835, July 13, 2010) p. 69

NATIONAL ELECTRIFICATION ADMINISTRATION

Disciplinary authority of — Elucidated. (Engr. Besana *vs*. Mayor, G.R. No. 153837, July 21, 2010) p. 216

OBLIGATIONS

Effect of — A party is liable under its contract with another where it failed to comply with its obligation thereunder due to the gross negligence of those employed by it. (Bormaheco Inc. *vs*. Malayan Insurance Co., Inc., G.R. No. 156599, July 26, 2010) p. 322

Reciprocal obligations — Fulfillment of the parties' respective obligations should be simultaneous. (Solar Harvest, Inc. *vs*. Davao Corrugated Carton Corp., G.R. No. 176868, July 26, 2010) p. 461

— If the period for the fulfillment of the obligation is fixed, demand upon the obligee is still necessary before the obligor can be considered in default and before a cause of action for rescission will accrue. *(Id.)*

OBLIGATIONS, EXTINGUISHMENT OF

Novation — Absent an express contractual stipulation authorizing the same, the subrogation of the third person to the rights of the creditor when payment has been made by such third person, is not allowed. (Sps. Publico *vs.* Bautista, G.R. No. 174096, July 20, 2010) p. 147

— How classified. (Banate *vs.* Phil. Countryside Rural Bank (Liloan, Cebu), Inc., G.R. No. 163825, July 13, 2010) p. 35

Payment or performance — Must be based on competent evidence and not by bare assertion of the party. (Sps. Publico vs. Bautista, G.R. No. 174096, July 20, 2010) p. 147

— Recovery of the payment advanced by a third person on behalf of the debtor is allowed even without the debtor's knowledge. *(Id.)*

OMBUDSMAN

Investigatory powers — Authority to investigate forfeiture cases for alleged ill-gotten wealth amassed before February 25, 1986 is upheld. (Romualdez *vs.* Sandiganbayan [3rd Division], G.R. No. 161602, July 13, 2010) p. 28

Jurisdiction — Concurrent with the Sangguniang Bayan over administrative cases against elective barangay officials occupying positions below Salary Grade 27. (Office of the Ombudsman vs. Rodriguez, G.R. No. 172700, July 23, 2010) p. 312

Primary jurisdiction to investigate any omission of a public officer or employee —Applies only to cases cognizable by the Sandiganbayan. (Office of the Ombudsman *vs.* Rodriguez, G.R. No. 172700, July 23, 2010) p. 312

PIERCING THE VEIL OF CORPORATE FICTION

Doctrine of — Whether the separate personality of a corporation should be pierced hinges on facts pleaded and proved. (Hung *vs*. BPI Card Finance Corp., G.R. No. 182398, July 20, 2010) p. 179

PLEADINGS

Formal amendment of — A correction of a typographical error can be summarily made at any stage of the action provided no prejudice is caused thereby to the adverse party. (Bormaheco Inc. *vs*. Malayan Insurance Co., Inc., G.R. No. 156599, July 26, 2010) p. 322

— Error on the actual date of the incident is purely technical hence, correction is proper. *(Id.)*

— Formal correction on the name of the defendant can be made at any stage of the action, even if the case is already before the Supreme Court and it can be made by the court motu propio. (Hung *vs*. BPI Card Finance Corp., G.R. No. 182398, July 20, 2010) p. 179

— Rule need not be applied rigidly, particularly where no surprise or prejudice is caused to the objecting party. (Bormaheco Inc. *vs*. Malayan Insurance Co., Inc., G.R. No. 156599, July 26, 2010) p. 322

POSSESSION

Continuous and actual physical possession — How proven. (Sps. Fernandez, Sr. *vs*. Sps. Co, G.R. No. 167390, July 26, 2010) p. 383

PRELIMINARY INVESTIGATION

Concept — Distinguished from preliminary inquiry to determine probable cause for issuance of a warrant of arrest. (People *vs*. Grey, G.R. No. 180109, July 26, 2010) p. 535

Probable cause — Rule on determining probable cause. (People *vs*. Grey, G.R. No. 180109, July 26, 2010) p. 535

Validity of — Does not necessarily require the presence of accused. (Romualdez *vs*. Sandiganbayan [3rd Division], G.R. No. 161602, July 13, 2010) p. 28

PRESUMPTIONS

Regularity in the performance of official duties — Cannot be applied where the official act is irregular on its face. (People *vs*. Nandi, G.R. No. 188905, July 13, 2010) p. 134

— Stands absent ill-motive to falsely testify against the accused. (People *vs*. Padua, G.R. No. 174097, July 21, 2010) p. 235

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Certificate of title — Not subject to collateral attack and cannot be altered, modified, or cancelled except in a direct proceeding in accordance with law. (Sps. Fernandez, Sr. *vs*. Sps. Co, G.R. No. 167390, July 26, 2010) p. 383

PROSECUTION OF OFFENSES

Criminal prosecution — Cannot be enjoined by injunction; exceptions. (People *vs.* Grey, G.R. No. 180109, July 26, 2010) p. 535

— Cannot be enjoined by mere allegation that the filing of charges is politically motivated if there is otherwise evidence to support the charges. *(Id.)*

RAPE

Commission of — Lust is no respecter of time and place and there is no rule that a woman can only be raped in seclusion. (People *vs*. Quiroz, G.R. No. 188600, July 13, 2010) p. 118

— Where a rape victim's testimony is corroborated by the physical findings of perpetration, there is sufficient basis for concluding that sexual intercourse did take place. *(Id.)*

Prosecution of rape cases — Guiding principles in the determination of the innocence or guilt of the accused. (People *vs*. Quiroz, G.R. No. 188600, July 13, 2010) p. 118

(People *vs*. Garbida, G.R. No. 188569, July 13, 2010) p. 107

— It is difficult to believe that an eleven (11)-year old child consented to having sex with her stepfather to spite or as revenge on her mother. *(Id.)*

— Testimonies of victims of tender age are credible, more so, if they are without any motive to falsely testify against the offender. (People *vs*. Quiroz, G.R. No. 188600, July 13, 2010) p. 118

(People *vs*. Garbida, G.R. No. 188569, July 13, 2010) p. 107

Statutory rape — Civil liabilities of accused. (People *vs*. Quiroz, G.R. No. 188600, July 13, 2010) p. 118

(People *vs*. Garbida, G.R. No. 188569, July 13, 2010) p. 107

— Committed by a man who shall have carnal knowledge of a woman who is under twelve (12) years of age. *(Id.)*

— Evidence of force, intimidation, or physical injury is immaterial. (People *vs*. Quiroz, G.R. No. 188600, July 13, 2010) p. 118

— Imposable penalty. *(Id.)*

(People *vs*. Garbida, G.R. No. 188569, July 13, 2010) p. 107

— Voluntary submission of the victim will not relieve the accused from criminal liability. *(Id.)*

REDUNDANCY

As a ground for dismissal of employees — Exists when the service capability of the workforce is in excess of what is reasonably needed to meet the demands of the enterprise. (Lambert Pawnbrokers and Jewelry Corp. *vs*. Binamira, G.R. No. 170464, July 12, 2010) p. 1

— Requisites. *(Id.)*

RES JUDICATA

Conclusiveness of judgment — Elucidated. (Sps. Noceda *vs*. Arbizo-Directo, G.R. No. 178495, July 26, 2010) p. 483

Elements of — That: (1) the former judgment or order must be final; (2) it must be a judgment on the merits; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be between the first and second actions, identity of parties, subject matter, and cause of action. (People *vs*. Grey, G.R. No. 180109, July 26, 2010) p. 535

Principle of — Bars the relitigation of particular facts or issues in another litigation between the same parties on a different claim or cause of action. (Sps. Noceda *vs*. Arbizo-Directo, G.R. No. 178495, July 26, 2010) p. 483

(Engr. Besana *vs*. Mayor, G.R. No. 153837, July 21, 2010) p. 216

Two concepts of — The first is "bar by prior judgment" under paragraph (b) of Rule 39, Section 47 of the Rules of Court, and the second is "conclusiveness of judgment" under paragraph (c) of Rule 39. (Sps. Noceda *vs*. Arbizo-Directo, G.R. No. 178495, July 26, 2010) p. 483

RETIREMENT

Retirement age — Primarily determined by the existing agreement or employment contract; absent such an agreement, the retirement age shall be fixed by law. (Obusan *vs*. PNB, G.R. No. 181178, July 26, 2010) p. 554

Retirement plan —Should be accepted by the employees to be commensurate to their faithful service to the employer within the required period. (Obusan *vs*. PNB, G.R. No. 181178, July 26, 2010) p. 554

RETRENCHMENT

As a ground for dismissal of employees — A management prerogative resorted to avoid or minimize business losses. (Lambert Pawnbrokers and Jewelry Corp. *vs*. Binamira, G.R. No. 170464, July 12, 2010) p. 1

— Elements. *(Id.)*

— Resorted to during periods of business recession, industrial depression, seasonal fluctuations, or during lulls occasioned by lack of orders, shortage of materials, conversion of the plant to a new production program or automation. *(Id.)*

RULES OF PROCEDURE

Application — Strict and rigid application especially on technical matters, which tend to frustrate rather than promote substantial justice, must be avoided. (Sps. Fernandez, Sr. *vs*. Sps. Co, G.R. No. 167390, July 26, 2010) p. 383

— Technicality and procedural imperfections should not serve as bases of the decision. (Tomas *vs*. Santos, G.R. No. 190448, July 26, 2010) p. 656

SALES

Buyer in bad faith — Established when he has actual knowledge of facts that would impel a reasonable man to inquire further on a possible defect in the title of the seller. (Sps. Noceda *vs.* Arbizo-Directo, G.R. No. 178495, July 26, 2010) p. 483

SANDIGANBAYAN

Jurisdiction — Limited to public officials occupying positions corresponding to Salary Grade 27 and higher. (Office of the Ombudsman *vs*. Rodriguez, G.R. No. 172700, July 23, 2010) p. 312

SEARCH AND SEIZURE

Search incidental to a lawful arrest — Includes search made by a buy-bust team (People *vs.* Marcelino, G.R. No. 189278, July 26, 2010) p. 643

SEQUESTRATION

Sequestration orders — May only be issued upon a showing of a prima facie case that the properties are ill-gotten wealth. (Rep. of the Phils. *vs*. Sandiganbayan [2nd Division], G.R. No. 154560, July 13, 2010) p. 17

SETTLEMENT OF ESTATE OF A DECEASED PERSON

Distribution of estate — Proceeds of a loan should be released to the heirs only after the settlement of the decedent's estate. (Pasco *vs*. Heirs of Filomena de Guzman, G.R. No. 165554, July 26, 2010) p. 356

SUBPOENA

Quashing a subpoena duces tecum — The Court may quash subpoena duces tecum upon motion promptly made and, in any event, at or before the time specified therein if it is unreasonable and oppressive, or the relevancy of the books, documents, or things does not appear, or if the person in whose behalf the subpoena is issued fails to advance the reasonable cost of the production thereof. (*In Re:* Petition for Cancellation and Correction of Entries in the Record of Birth, Lee vs. CA, G.R. No. 177861, July 13, 2010) p. 78

TESTIMONIES

Parental and filial privilege — Not applicable between stepdaughter and stepmother. (*In Re*: Petition for Cancellation and Correction of Entries in the Record of Birth, Lee vs. CA, G.R. No. 177861, July 13, 2010) p. 78

Weight of — An affirmative testimony coming from a credible witness without motives to perjure is far stronger than a negative testimony. (People *vs*. Desuyo, G.R. No. 186466, July 26, 2010) p. 601

TRANSPORTATION

Freight forwarders — Defined. (Unsworth Transport Int'l. [Phils.], Inc. *vs*. CA, G.R. No. 166250, July 26, 2010) p. 371

— Limitation on liability. *(Id.)*

UNLAWFUL DETAINER

Action for — Requisite for valid cause of action are (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by plaintiff to

defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment. (Dr. Carbonilla *vs*. Abiera, G.R. No. 177637, July 26, 2010) p. 473

— The case will not necessarily be decided in favor of the one who presented proof of ownership of the subject property. *(Id.)*

WAGES

Basic salary — Defined. (Central Azucarera de Tarlac *vs*. Central Azucarera de Tarlac Labor Union-NLU, G.R. No. 188949, July 26, 2010) p. 633

Non-diminution rule — When applicable; exception. (Central Azucarera de Tarlac *vs*. Central Azucarera de Tarlac Labor Union-NLU, G.R. No. 188949, July 26, 2010) p. 633

Overtime pay — Payment thereof not proper in the absence of a factual and legal basis. (Intertranz Container Lines, Inc. *vs*. Bautista, G.R. No. 187693, July 13, 2010) p. 86

P.D. No. 851 — Mandates the payment of thirteenth (13th) month pay. (Central Azucarera de Tarlac *vs*. Central Azucarera de Tarlac Labor Union-NLU, G.R. No. 188949, July 26, 2010) p. 633

Thirteenth (13th) month pay — Defined. (Central Azucarera de Tarlac *vs*. Central Azucarera de Tarlac Labor Union-NLU, G.R. No. 188949, July 26, 2010) p. 633

— Exemption from payment thereof, when allowed. *(Id.)*

WITNESSES

Credibility of — Determination of the trial court, especially when affirmed by the appellate court is accorded great respect; exceptions. (People *vs*. Omictin, G.R. No. 188130, July 26, 2010) p. 622

(People *vs*. Desuyo, G.R. No. 186466, July 26, 2010) p. 601

(People *vs*. Nandi, G.R. No. 188905, July 13, 2010) p. 134

(People *vs*. Quiroz, G.R. No. 188600, July 13, 2010) p. 118

— Not affected by discrepancies in their testimonies referring to minor details and collateral matters. (People *vs*. Rollan, G.R. No. 175835, July 13, 2010) p. 69

— Testimonies of victims of tender age are credible, more so, if they are without any motive to falsely testify against the offender. (People *vs*. Quiroz, G.R. No. 188600, July 13, 2010) p. 118

(People *vs*. Garbida, G.R. No. 188569, July 13, 2010) p. 107

Presentation of — The prosecution has the discretion as to how to present its case and it has the right to choose whom it wishes to present as witnesses. (People *vs*. Padua, G.R. No. 174097, July 21, 2010) p. 235

Rights of witnesses — The trial court's duty is to protect every witness against oppressive behavior of an examiner and this is especially true where the witness is of advanced age. (*In Re*: Petition for Cancellation and Correction of Entries in the Record of Birth, Lee vs. CA, G.R. No. 177861, July 13, 2010) p. 78

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REFERENCES

I. LOCAL AUTHORITIES

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Sec. 2 640
Sec. 7 642

D. BOOKS
(Local)

Azucena, Jr., Cesario Alvero, Everyone's Labor Code,
2001 Ed., p. 79 639
De Leon and De Leon, Jr., Comments and Cases on
Obligations and Contracts (2003 Ed.), p. 431 45
I Herrera, Remedial Law, p. 596 (2000) 333
Ronaldo P. Ledesma, An Outline of Philippine
Immigration and Citizenship Laws, 1999,
Rex Printing Company, Inc., p. 360 585
Paras, Civil Code of the Philippines,
Vol. II, 1989 Ed., p. 653 594
Regalado, Remedial Law Compendium (1988 ed.), p. 188 551
Tolentino, Civil Code of the Philippines,
Vol. IV (1991 Ed.), p. 274 50
IV Arturo M. Tolentino, Commentaries and Jurisprudence
on the Civil Code of the Philippines (1985 Ed.), p. 10 469

II. FOREIGN AUTHORITIES

A. BOOKS

2 Am. Jur. §102 47
3 Am. Jur. 2d §79 47