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SUPREME COURT

OF THE

PHILIPPINES

FROM

AUGUST 10, 2010 TO AUGUST 23, 2010

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MANILA
2014

Prepared
by

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

EN BANC

[A.C. No. 5835. August 10, 2010]

CARLOS REYES, *complainant, vs.* **ATTY. JEREMIAS R. VITAN,** *respondent.*

[A.C. No. 6051. August 10, 2010]

CELIA ARROYO-POSIDIO, *complainant, vs.* **ATTY. JEREMIAS R. VITAN,** *respondent.*

[A.C. No. 6441. August 10, 2010]

VIOLETA TAHAW, *complainant, vs.* **ATTY. JEREMIAS R. VITAN,** *respondent.*

[A.C. No. 6955. August 10, 2010]

MAR YUSON, *complainant, vs.* **ATTY. JEREMIAS R. VITAN,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; ATTORNEYS; SUSPENSION; IN CASE OF TWO OR MORE SUSPENSIONS, THE SAME SHALL BE SERVED SUCCESSIVELY. —** In a Report dated February 23, 2010, the OBC noted that respondent has been repeatedly suspended from the practice of law, for an aggregate period of

30 months or 2 ½ years. Accordingly, respondent should have served the orders of suspension successively pursuant to the Court's resolution in A.M. No. RTJ-04-1857, entitled "*Gabriel de la Paz v. Judge Santos B. Adiong*," where the Court clearly stated that "in case of two or more suspensions, the same shall be served successively by the erring respondent." It is, therefore, incumbent upon respondent to show to the Court that he has desisted from the practice of law for a period of at least 2 ½ years.

2. **ID.; ID.; ID.; LIFTING OF SUSPENSION; COURT MAY STILL WITHHOLD THE PRACTICE OF LAW IF RESPONDENT ATTORNEY IS STILL NOT WORTHY THEREOF. —** The Court, in the recent case of *Ligaya Maniago v. Atty. Lourdes I. De Dios,* issued the guidelines on the lifting of orders of suspension, and has advised strict observance thereof. However, the Court will not hesitate to withhold the privilege of the practice of law if it is shown that respondent, as an officer of the Court, is still not worthy of the trust and confidence of his clients and of the public.

APPEARANCES OF COUNSEL

Salvador B. Hababag for respondent.

R E S O L U T I O N

NACHURA, *J.*:

This refers to the undated Petition filed with the Office of the Bar Confidant (OBC) on July 28, 2009 by Atty. Jeremias R. Vitan, praying that he be reinstated as member in good standing of the Philippine Bar and be allowed to resume the practice of law, claiming that he had already served the penalty of suspension imposed on him, and that he is now reformed.

As background, four (4) administrative cases were filed against Atty. Jeremias R. Vitan, in each of which he was found guilty and meted the penalty of suspension from the practice of law.

In the first case, A.C. No. 6441, (*Violeta R. Tahaw v. Atty. Jeremias R. Vitan*), promulgated on October 21, 2004,[1] Atty. Vitan was suspended for six (6)months, effective immediately upon receipt of the Decision. He was further ordered to return the amount of ₱30,000 to complainant for legal services he did not render. The records disclose that respondent received the Decision on November 12, 2004 and the period of suspension would have ended on May 12, 2005.

In A.C. No. 5835, (*Carlos B. Reyes v. Atty. Jeremias R. Vitan*), promulgated on April 15, 2005,[2] Atty. Vitan was suspended for six (6) months; and ordered to pay complainant ₱17,000.00 with interest of 12% per annum from the date of the promulgation of the Decision until the full amount shall have been returned. Per records, the Court's decision was received by him on May 13, 2005, and his suspension would have ended on November 13, 2005.

In A.C. No. 6955 (*Mar Yuson v. Atty. Jeremias R. Vitan*), promulgated on July 27, 2006,[3] respondent was found liable for his failure to pay a just debt in the amount of ₱100,000.00. Upon investigation, the Integrated Bar of the Philippines (IBP) imposed the penalty of Suspension for two (2) years. This was modified by the Court after finding that there was partial payment of the loan, and the penalty was reduced to six (6) months suspension with warning, effective upon receipt of the Decision. In a Motion to Lift Order of Suspension, respondent moved for the reconsideration of the decision, asserting that there was full payment of the loan. The motion was denied in the Resolution dated March 6, 2007.

In this connection, the OBC noted respondent's shrewdness by moving out of his given address to evade receipt of the copy of the decision/resolutions of the Court. After diligent efforts at searching for respondent's correct address proved unavailing,

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[1] Second Division; 484 Phil. 1, 9 (2004).

[2] Third Division; 496 Phil. 1, 6 (2005).

[3] *En Banc*; 496 SCRA 540.

the Court in its Resolution dated July 17, 2007, considered the March 6, 2007 Resolution as having been served on respondent.

In the decision in the fourth case, A.C. No. 6051, (*Celia Arroyo-Pesidio v. Atty. Jeremias R. Vitan*), promulgated on April 2, 2007,[4] respondent was found to have failed to render the legal services sought after he had received the amount of ₱100,000, and was once again, suspended for one (1) year, with stern warning. The Decision was received on April 18, 2007, so the suspension period should have lapsed on April 18, 2008.

Upon the recommendation of the OBC, the four administrative cases were consolidated.[5]

In a Report dated February 23, 2010, the OBC noted that respondent has been repeatedly suspended from the practice of law, for an aggregate period of 30 months or 2 ½ years. Accordingly, respondent should have served the orders of suspension successively pursuant to the Court's resolution in A.M. No. RTJ-04-1857, entitled "*Gabriel de la Paz v. Judge Santos B. Adiong*," where the Court clearly stated that "in case of two or more suspensions, the same shall be served successively by the erring respondent."[6] It is, therefore, incumbent upon respondent to show to the Court that he has desisted from the practice of law for a period of at least 2 ½ years.

The Court, in the recent case of *Ligaya Maniago v. Atty. Lourdes I. De Dios,*[7] issued the guidelines on the lifting of orders of suspension, and has advised strict observance thereof. However, the Court will not hesitate to withhold the privilege of the practice of law if it is shown that respondent, as an officer of the Court, is still not worthy of the trust and confidence of his clients and of the public.

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[4] Third Division; 520 SCRA 1-12.

[5] Resolution of the Special Third Division, dated June 21, 2010.

[6] *En Banc* Resolution dated July 29, 2005.

[7] A.C. No. 7472, March 10, 2010.

Thus, applying the guidelines in *Maniago,* the Court Resolved to *GRANT* Respondent's Petition for Reinstatement, effective upon his submission to the Court of a Sworn Statement attesting to the fact:

1) that he has completely served the four (4) suspensions imposed on him successively;

2) that he had desisted from the practice of law, and has not appeared as counsel in any court during the periods of suspension, as follows:

(a) Six (6) months suspension in A.C. No. 5835 from May 13, 2005 to November 13, 2005;

(b) One (1) year suspension in A.C. No. 6051 from April 18, 2007 to April 18, 2008;

(c) Six (6) months suspension in A.C. No. 6441 from November 12, 2004 to May 12, 2005; and

(d) Six (6) months suspension in A.C. No. 6955 from date of receipt of the Resolution dated March 6, 2007 denying the Motion for Reconsideration of the Decision dated July 27, 2006.

3) that he has returned the sums of money to the complainants as ordered by the Court in the following cases, attaching proofs thereof:

(a) In A.C. No. 5835 – the sum of ₱17,000 with interest of 12% per annum from the date of promulgation of the Decision until the full amount shall have been returned; and

(b) In A.C. No. 6441 – the amount of ₱30,000.

Atty. Jeremias R. Vitan is further directed to *FURNISH* copies of the Sworn Statement to the Integrated Bar of the Philippines and Executive Judge(s), as mandated in *Maniago*.

Any finding or report contrary to the statements made by the Respondent under oath shall be a ground for the imposition of a more severe punishment, or disbarment, as may be warranted.

SO ORDERED.

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

Velasco, Jr., J., on official leave.

EN BANC

[G.R. No. 157383. August 10, 2010]

WINSTON F. GARCIA, in his capacity as President and General Manager of GSIS, *petitioner, vs.* **MARIO I. MOLINA and ALBERT M. VELASCO,** *respondents.*

[G.R. No. 174137. August 10, 2010]

WINSTON F. GARCIA, in his capacity as President and General Manager of the Government Service Insurance System, *petitioner, vs.* **MARIO I. MOLINA and ALBERT M. VELASCO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE DECREE OF THE PHILIPPINES (P.D. NO. 807); HEADS OF DEPARTMENTS, AGENCIES AND INSTRUMENTALITIES, HAVE AUTHORITY TO INVESTIGATE AND DECIDE MATTERS INVOLVING DISCIPLINARY ACTION AGAINST OFFICERS AND EMPLOYEES UNDER THEIR JURISDICTION. — The civil service encompasses all branches and agencies of the Government, including government-owned or controlled corporations (GOCCs) with original charters, like the GSIS, or those created by special law. As such, the employees are part of the civil service system and are subject to the law and

to the circulars, rules and regulations issued by the CSC on discipline, attendance and general terms and conditions of employment. The CSC has jurisdiction to hear and decide disciplinary cases against erring employees. In addition, Section 37 (b) of Presidential Decree No. 807 or the Civil Service Decree of the Philippines also gives the heads of departments, agencies and instrumentalities, provinces, cities and municipalities the authority to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction.

2. **ID.; ID.; GSIS ACT OF 1997 (R.A. 8291); AUTHORITY OF THE PRESIDENT AND GENERAL MANAGER OF THE GOVERNMENT SERVICE AND INSURANCE CORPORATION (GSIS) TO DISCIPLINE ITS PERSONNEL FOR CAUSE MUST BE EXERCISED IN ACCORDANCE WITH CIVIL SERVICE RULES.—** As for the GSIS, Section 45, Republic Act (R.A.) 8291 otherwise known as the GSIS Act of 1997, specifies its disciplining authority xxx By this legal provision, petitioner, as President and General Manager of GSIS, is vested the authority and responsibility to remove, suspend or otherwise discipline GSIS personnel for cause. However, despite the authority conferred on him by law, such power is not without limitations for it must be exercised in accordance with Civil Service rules.

3. **ID.; ID.; UNIFORM RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; IT IS MANDATORY FOR THE DISCIPLINING AUTHORITY TO CONDUCT A PRELIMINARY INVESTIGATION OR THE EMPLOYEE SHOULD BE GIVEN THE OPPORTUNITY TO COMMENT AND EXPLAIN HIS SIDE PRIOR TO THE ISSUANCE OF A FORMAL CHARGE; AN INDICTMENT *IN FLAGRANTE* IS NOT AN EXCEPTION. —** The Uniform Rules on Administrative Cases in the Civil Service lays down the procedure to be observed in issuing a formal charge against an erring employee xxx. Indeed, the CSC Rules does not specifically provide that a formal charge without the requisite preliminary investigation is null and void. However, as clearly outlined above, upon receipt of a complaint which is sufficient in form and substance, the disciplining authority shall require the person complained of to submit a Counter-Affidavit/ Comment under oath within three days from receipt. The use

of the word "shall" quite obviously indicates that it is mandatory for the disciplining authority to conduct a preliminary investigation or at least respondent should be given the opportunity to comment and explain his side. As can be gleaned from the procedure set forth above, this is done prior to the issuance of the formal charge and the comment required therein is different from the answer that may later be filed by respondents. Contrary to petitioner's claim, no exception is provided for in the CSC Rules. Not even an indictment *in flagrante* as claimed by petitioner.

4. ID.; ID.; ID.; ID.; NON-COMPLIANCE WITH THE MANDATED PRELIMINARY INVESTIGATION PRIOR TO THE FILING OF THE FORMAL CHARGES AGAINST THE EMPLOYEES CONCERNED CONSTITUTES A VIOLATION OF THEIR RIGHT TO DUE PROCESS; EFFECT THEREOF. — This is true even if the complainant is the disciplining authority himself, as in the present case. To comply with such requirement, he could have issued a memorandum requiring respondents to explain why no disciplinary action should be taken against them instead of immediately issuing formal charges. With respondents' comments, petitioner would have properly evaluated both sides of the controversy before making a conclusion that there was a *prima facie* case against respondents, leading to the issuance of the questioned formal charges. It is noteworthy that the very acts subject of the administrative cases stemmed from an event that took place the day before the formal charges were issued. It appears, therefore, that the formal charges were issued after the sole determination by the petitioner as the disciplining authority that there was a *prima facie* case against respondents. To condone this would give the disciplining authority an unrestricted power to judge by himself the nature of the act complained of as well as the gravity of the charges. We, therefore, conclude that respondents were denied due process of law. Not even the fact that the charges against them are serious and evidence of their guilt is – in the opinion of their superior – strong can compensate for the procedural shortcut undertaken by petitioner which is evident in the record of this case. The filing by petitioner of formal charges against the respondents without complying with the mandated preliminary investigation or at least give the respondents the opportunity to comment violated the latter's right to due process. Hence, the

formal charges are void *ab initio* and may be assailed directly or indirectly at anytime.

5. **ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; WHERE THE DENIAL OF THE FUNDAMENTAL RIGHT TO DUE PROCESS IS APPARENT, A DECISION RENDERED IN DISREGARD OF THAT RIGHT IS VOID FOR LACK OF JURISDICTION; RULE APPLICABLE TO QUASI-JUDICIAL AND ADMINISTRATIVE PROCEEDINGS. —** The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted from their jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. Where the denial of the fundamental right to due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction. This rule is equally true in quasi-judicial and administrative proceedings, for the constitutional guarantee that no man shall be deprived of life, liberty, or property without due process is unqualified by the type of proceedings (whether judicial or administrative) where he stands to lose the same.

6. **ID.; POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE DUE PROCESS; REQUISITES. —** Although administrative procedural rules are less stringent and often applied more liberally, administrative proceedings are not exempt from basic and fundamental procedural principles, such as the right to due process in investigations and hearings. In particular, due process in administrative proceedings has been recognized to include the following: (1) the right to actual or constructive notice to the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.

7. **ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; DECISION RENDERED WITHOUT DUE**

PROCESS IS VOID *AB INITIO* AND MAY BE ATTACKED AT ANYTIME DIRECTLY OR INDIRECTLY BY MEANS OF A SEPARATE ACTION OR BY RESISTING SUCH DECISION IN ANY ACTION WHERE IT IS INVOKED; NO WAIVER OF THE RIGHT TO PRELIMINARY INVESTIGATION IN CASE AT BAR. — It is well-settled that a decision rendered without due process is void *ab initio* and may be attacked at anytime directly or collaterally by means of a separate action, or by resisting such decision in any action or proceeding where it is invoked. Moreover, while respondents failed to raise before the GSIS the lack of preliminary investigation, records show that in their Urgent Motion to Resolve (their Motion to Lift Preventive Suspension Order) filed with the CSC, respondents questioned the validity of their preventive suspension and the formal charges against them for lack of preliminary investigation. There is, thus, no waiver to speak of.

8. ID.; ADMINISTRATIVE LAW; CIVIL SERVICE OFFICERS AND EMPLOYEES; PREVENTIVE SUSPENSION OF THE RESPONDENT EMPLOYEES DECLARED NULL AND VOID. — In the procedure adopted by petitioner, respondents were preventively suspended in the same formal charges issued by the former without the latter knowing that there were pending administrative cases against them. It is true that prior notice and hearing are not required in the issuance of a preventive suspension order. However, considering that respondents were preventively suspended in the same formal charges that we now declare null and void, then their preventive suspension is likewise null and void.

9. ID.; ID.; ID.; ID.; PAYMENT OF BACKWAGES DURING THE PERIOD OF THE EMPLOYEES' UNJUSTIFIED SUSPENSION, WARRANTED; REASON; PRINCIPLE OF "NO WORK, NO PAY" DOES NOT APPLY WHERE THE EMPLOYEE HIMSELF WAS UNLAWFULLY FORCED OUT OF JOB. — [T]he CA committed no reversible error in ordering the payment of back salaries during the period of respondents' preventive suspension. As the administrative proceedings involved in this case are void, no delinquency or misconduct may be imputed to respondents and the preventive suspension meted them is baseless. Consequently, respondents should be awarded their salaries during the period of their unjustified suspension. In granting their back salaries, we are simply repairing the damage

that was unduly caused respondents, and unless we can turn back the hands of time, we can do so only by restoring to them that which is physically feasible to do under the circumstances. The principle of "no work, no pay" does not apply where the employee himself was unlawfully forced out of job.

APPEARANCES OF COUNSEL

GSIS Legal Services Group and *GSIS Investigating Unit* for petitioner.

Barbers Molina and Molina for respondents.

D E C I S I O N

NACHURA, *J.*:

Before the Court are two consolidated petitions filed by Winston F. Garcia (petitioner) in his capacity as President and General Manager of the Government Service Insurance System, or GSIS, against respondents Mario I. Molina (Molina) and Albert M. Velasco (Velasco). In G.R. No. 157383, petitioner assails the Court of Appeals (CA) Decision[1] dated January 2, 2003 and Resolution[2] dated March 5, 2003 in CA-G.R. SP No. 73170. In G.R. No. 174137, petitioner assails the CA Decision[3] dated December 7, 2005 and Resolution[4] dated August 10, 2006 in CA-G.R. SP No. 75973.

The factual and procedural antecedents of the case are as follows:

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[1] Penned by Associate Justice Eubolo G. Verzola, with Associate Justices Candido V. Rivera and Amelita G. Tolentino, concurring; *rollo* (G.R. No. 157383), pp. 37-40.

[2] Penned by Associate Justice Eubolo G. Verzola, with Associate Justices Marina L. Buzon and Amelita G. Tolentino, concurring; *id.* at 41.

[3] Penned by Associate Justice Danilo B. Pine, with Associate Justices Marina L. Buzon and Vicente S.E. Veloso, concurring; *rollo* (G.R. No. 174137), pp. 69-78.

[4] Penned by Associate Justice Marina L. Buzon, with Associate Justices Renato C. Dacudao and Vicente S.E. Veloso, concurring; *id.* at 80-83.

Respondents Molina and Velasco, both Attorney V of the GSIS, received two separate Memoranda[5] dated May 23, 2002 from petitioner charging them with grave misconduct. Specifically, Molina was charged for allegedly committing the following acts: 1) directly and continuously helping some alleged disgruntled employees to conduct concerted protest actions and/or illegal assemblies against the management and the GSIS President and General Manager; 2) leading the concerted protest activities held in the morning of May 22, 2002 during office hours within the GSIS compound; and 3) continuously performing said activities despite warning from his immediate superiors. [6] In addition to the charge for grave misconduct for performing the same acts as Molina, Velasco was accused of performing acts in violation of the Rules on Office Decorum for leaving his office without informing his supervisor of his whereabouts; and gross insubordination for persistently disregarding petitioner's instructions that Velasco should report to the petitioner's office.[7] These acts, according to petitioner, were committed in open betrayal of the confidential nature of their positions and in outright defiance of the Rules and Regulations on Public Sector Unionism. In the same Memoranda, petitioner required respondents to submit their verified answer within seventy two (72) hours. Considering the gravity of the charges against them, petitioner ordered the preventive suspension of respondents for ninety (90) days without pay, effective immediately.[8] The following day, a committee was constituted to investigate the charges against respondents.

In their Answer[9] dated May 27, 2002, respondents denied the charges against them. Instead, they averred that petitioner was motivated by vindictiveness and bad faith in charging them falsely. They likewise opposed their preventive suspension for

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[5] *Id.* at 85-89.

[6] *Id.* at 85-86.

[7] *Id.* at 87-88.

[8] *Id.* at 86 and 89.

[9] *Id.* at 90-101.

lack of factual and legal basis. They strongly expressed their opposition to petitioner acting as complainant, prosecutor and judge.

On May 28, 2002, respondents filed with the Civil Service Commission (CSC) an Urgent Petition to Lift Preventive Suspension Order.[10] They contended that the acts they allegedly committed were arbitrarily characterized as grave misconduct. Consistent with their stand that petitioner could not act as the complainant, prosecutor and judge at the same time, respondents filed with the CSC a Petition to Transfer Investigation to This Commission.[11]

Meanwhile, the GSIS hearing officer directed petitioners to submit to the jurisdiction of the investigating committee and required them to appear at the scheduled hearing.[12]

Despite their urgent motions, the CSC failed to resolve respondents' motions to lift preventive suspension order and to transfer the case from the GSIS to the CSC.

On October 10, 2002, respondents filed with the CA a special civil action for *certiotari* and prohibition with prayer for Temporary Restraining Order (TRO).[13] The case was docketed as CA-G.R. SP No. 73170. Respondents sought the annulment and setting aside of petitioner's order directing the former to submit to the jurisdiction of the committee created to hear and investigate the administrative case filed against them. They likewise prayed that petitioner (and the committee) be prohibited from conducting the scheduled hearing and from taking any action on the aforesaid administrative case against respondents.

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[10] *Id.* at 102-114.

[11] *Id.* at 119-122.

[12] Embodied in two Orders dated July 30, 2002 and September 24, 2002; *id.* at 145 and 161.

[13] *Id.* at 127-144.

On January 2, 2003, the CA rendered a decision[14] in favor of respondents, the dispositive portion of which reads:

ACCORDINGLY, the petition is hereby **GRANTED**. Public respondents are hereby **PERPETUALLY RESTRAINED** from hearing and investigating the administrative case against petitioners, without prejudice to pursuing the same with the Civil Service Commission or any other agency of government as may be allowed for (sic) by law.

SO ORDERED.[15]

The CA treated the petition as one raising an issue of gnawing fear, and thus agreed with respondents that the investigation be made not by the GSIS but by the CSC to ensure that the hearing is conducted before an impartial and disinterested tribunal.

Aggrieved, petitioner comes before the Court in this petition for review on *certiorari* under Rule 45 of the Rules of Court, raising the following issues:

I.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT THE PETITIONERS ABUSED THEIR AUTHORITY AND HAVE BEEN PARTIAL IN REGARD TO THE ADMINISTRATIVE CASES AGAINST THE RESPONDENTS; AND IN PERPETUALLY RESTRAINING THE PETITIONERS FROM HEARING AND INVESTIGATING THE ADMINISTRATIVE CASES FILED AGAINST THE RESPONDENTS – SOLELY ON THE BASIS OF THE TOTALLY UNFOUNDED ALLEGATIONS OF THE RESPONDENTS THAT THE PETITIONERS ARE PARTIAL AGAINST THEM.

II.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN FAILING TO APPRECIATE AND APPLY THE PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES AND THE RULE ON NON FORUM SHOPPING IN PERPETUALLY RESTRAINING THE PETITIONERS FROM

[14] *Supra* note 1.

[15] *Rollo* (G.R. No. 157383), p. 40.

HEARING AND INVESTIGATING THE ADMINISTRATIVE CASES AGAINST THE RESPONDENTS.

III.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS SERIOUSLY ERRED IN RENDERING A DECISION WHICH IS CONTRARY TO AND COMPLETELY DISREGARDS APPLICABLE JURISPRUDENCE AND WHICH, IN VIOLATION OF THE RULES OF COURT, DOES NOT CLEARLY STATE THE FACTS AND THE LAW ON WHICH IT IS BASED.[16]

In the meantime, on February 27, 2003, the CSC resolved respondents' Petition to Lift Order of Preventive Suspension and Petition to Transfer Investigation to the Commission through Resolution No. 03-0278,[17] the dispositive portion of which reads:

WHEREFORE, the Commission hereby rules that:

1. The Urgent Petition to Lift the Order of Preventive Suspension is hereby **DENIED** for having become moot and academic.

2. The Petition to Transfer Investigation to the Commission is likewise **DENIED** for lack of merit. Accordingly, GSIS President and General Manager Winston F. Garcia is directed to continue the conduct of the formal investigation of the charges against respondents-petitioners Albert Velasco and Mario I. Molina.[18]

As to the lifting of the order of preventive suspension, the CSC considered the issue moot and academic considering that the period had lapsed and respondents had been allowed to resume their specific functions. This notwithstanding, the CSC opted to discuss the matter by way of *obiter dictum*. Without making a definitive conclusion as to the effect thereof in the case against respondents, the CSC declared that a preliminary investigation is a pre-requisite condition to the issuance of a formal charge.[19]

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[16] *Id.* at 127-128.

[17] *Id.* at 42-51.

[18] *Id.* at 51.

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

On the requested transfer of the investigation from the GSIS to the CSC, the latter denied the same for lack of merit. The Commission concluded that the fact that the GSIS acted as the complainant and prosecutor and eventually the judge does not mean that impartiality in the resolution of the case will no longer be served.[20]

Aggrieved, respondents appealed to the CA through a Petition for Review under Rule 43 of the Rules of Court.[21] The case was docketed as CA-G.R. SP NO. 75973.

On December 7, 2005, the CA rendered a Decision[22] in favor of respondents, the dispositive portion of which reads:

PREMISES CONSIDERED, the petition is hereby **GRANTED**. The formal charges filed by the President and General Manager of the GSIS against petitioners, and necessarily, the order of preventive suspension emanating therefrom, are declared **NULL AND VOID.** The GSIS is hereby directed to pay petitioners' back salaries pertaining to the period during which they were unlawfully suspended. No pronouncement as to costs.

SO ORDERED.[23]

The CA declared null and void respondents' formal charges for lack of the requisite preliminary investigation. In view thereof, the CA disagreed with the CSC that the question on the propriety of the preventive suspension order had become moot and academic. Rather, it concluded that the same is likewise void having emanated from the void formal charges. Consequently, the CA found that respondents were entitled to back salaries during the time of their illegal preventive suspension.

Hence, the present petition raising the following issues:

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[20] *Id.* at 50.

[21] *Rollo* (G.R. No. 174137) pp. 232-248.

[22] *Supra* Note 3.

[23] *Rollo* (G.R. No. 174137) pp. 77-78.

I.

WHETHER THE RESPONDENTS WERE FULLY ACCORDED THE REQUISITE OPPORTUNITY TO BE HEARD, WERE IN FACT HEARD AND BEING HEARD, AND WHETHER THE CONDUCT OF PRELIMINARY INVESTIGATION IN ADMINISTRATIVE PROCEEDINGS IS AN ESSENTIAL REQUISITE TO THE CONDUCT OF ADJUDICATION.

II.

WHETHER THE RESPONDENTS WAIVED THEIR RIGHT TO PRELIMINARY INVESTIGATION.

III.

WHETHER PRELIMINARY INVESTIGATION IS REQUIRED IN INDICTMENTS *IN FLAGRANTE*, AS HERE.

IV.

WHETHER THE HONORABLE COURT OF APPEALS LACKED JURISDICTION, AS THE ALLEGED LACK OF PRELIMNARY INVESTIGATION SHOULD HAVE BEEN RAISED BEFORE THE GSIS AND, THEREAFTER, BEFORE THE CIVIL SERVICE COMMISSION, UNDER THE PRINCIPLE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; THE GSIS HAVING ACQUIRED JURISDICTION OVER THE PERSONS OF THE RESPONDENTS, TO THE EXCLUSION OF ALL OTHERS.

V.

WHETHER THE ALLEGED LACK OF PRELIMINARY INVESTIGATION IS A NON-ISSUE.

VI.

WHETHER THE PREVENTIVE SUSPENSION ORDERS ISSUED AGAINST RESPONDENTS MOLINA AND VELASCO ARE VALID, WELL-FOUNDED AND DULY RECOGNIZED BY LAW.

VII.

WHETHER PREVENTIVE SUSPENSION IS A PENALTY AND, THUS, MAY NOT BE IMPOSED WITHOUT BEING PRECEDED BY A HEARING.

VIII.

WHETHER THE RESPONDENTS ARE ENTITLED TO PAYMENT OF BACK SALARIES PERTAINING TO THE PERIOD OF THEIR PREVENTIVE SUSPENSION.

IX.

WHETHER THE INSTITUTION OF THE RESPONDENTS' PETITION BEFORE THE CIVIL SERVICE COMMISSION WAS ENTIRELY PREMATURE.

X.

WHETHER THE MISAPPREHENSIONS OF THE RESPONDENTS AS REGARDS THE PARTIALITY OF THE GSIS COMMITTEE INVESTIGATING THE CHARGES AGAINST THEM IS BLATANTLY WITHOUT FACTUAL BASIS.

XI.

WHETHER RESPONDENTS' OBVIOUS ACT OF FORUM SHOPPING SHOULD BE COUNTENANCED BY THIS HONORABLE COURT.[24]

The petitions are without merit.

The civil service encompasses all branches and agencies of the Government, including government-owned or controlled corporations (GOCCs) with original charters, like the GSIS, or those created by special law. As such, the employees are part of the civil service system and are subject to the law and to the circulars, rules and regulations issued by the CSC on discipline, attendance and general terms and conditions of employment.[25] The CSC has jurisdiction to hear and decide disciplinary cases against erring employees. In addition, Section 37 (b) of Presidential Decree No. 807 or the Civil Service Decree of the Philippines also gives the heads of departments, agencies and instrumentalities, provinces, cities and municipalities the authority to investigate and decide matters involving disciplinary action against officers

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[24] *Id.* at 509-512.

[25] *Government Service Insurance System (GSIS) v. Kapisanan ng mga Manggagawa sa GSIS*, G.R. No. 170132, December 6, 2006, 510 SCRA 622, 629-630.

and employees under their jurisdiction. As for the GSIS, Section 45, Republic Act (R.A.) 8291 otherwise known as the GSIS Act of 1997, specifies its disciplining authority, *viz*:

> SECTION 45. Powers and Duties of the President and General Manager. The President and General Manager of the GSIS shall among others, execute and administer the policies and resolutions approved by the Board and direct and supervise the administration and operations of the GSIS. The President and General Manager, subject to the approval of the Board, shall appoint the personnel of the GSIS, remove, suspend or otherwise discipline them for cause, in accordance with existing Civil Service rules and regulations, and prescribe their duties and qualifications to the end that only competent persons may be employed.

By this legal provision, petitioner, as President and General Manager of GSIS, is vested the authority and responsibility to remove, suspend or otherwise discipline GSIS personnel for cause.[26]

However, despite the authority conferred on him by law, such power is not without limitations for it must be exercised in accordance with Civil Service rules. The Uniform Rules on Administrative Cases in the Civil Service lays down the procedure to be observed in issuing a formal charge against an erring employee, to wit:

> First, the complaint. A complaint against a civil service official or employee shall not be given due course unless it is in writing and subscribed and sworn to by the complainant. However, in cases initiated by the proper disciplining authority, the complaint need not be under oath.[27] Except when otherwise provided for by law, an administrative complaint may be filed at anytime with the Commission, proper heads of departments, agencies, provinces, cities, municipalities and other instrumentalities.[28]
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> Second, the Counter-Affidavit/Comment. Upon receipt of a complaint which is sufficient in form and substance, the disciplining

[26] *Id.* at 637.

[27] Section 8, Uniform Rules on Administrative Cases in the Civil Service.

[28] Section 9, Uniform Rules on Administrative Cases in the Civil Service.

authority shall require the person complained of to submit Counter-Affidavit/Comment under oath within three days from receipt.[29]

Third, Preliminary Investigation. A Preliminary investigation involves the *ex parte* examination of records and documents submitted by the complainant and the person complained of, as well as documents readily available from other government offices. During said investigation, the parties are given the opportunity to submit affidavits and counter-affidavits. Failure of the person complained of to submit his counter-affidavit shall be considered as a waiver thereof.[30]

Fourth, Investigation Report. Within five (5) days from the termination of the preliminary investigation, the investigating officer shall submit the investigation report and the complete records of the case to the disciplining authority.[31]

Fifth, Formal Charge. If a *prima facie* case is established during the investigation, a formal charge shall be issued by the disciplining authority. A formal investigation shall follow. In the absence of a *prima facie* case, the complaint shall be dismissed.[32]

It is undisputed that the Memoranda separately issued to respondents were the formal charges against them. These formal charges contained brief statements of material or relevant facts, a directive to answer the charges within seventy two (72) hours from receipt thereof, an advice that they had the right to a formal investigation and a notice that they are entitled to be assisted by a counsel of their choice.[33]

It is likewise undisputed that the formal charges were issued without preliminary or fact-finding investigation. Petitioner explained that no such investigation was conducted because the CSC rules did not specifically provide that it is a pre-requisite to the issuance of a formal charge. He likewise claimed that

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[29] Section 11, Uniform Rules on Administrative Cases in the Civil Service.

[30] Section 12, Uniform Rules on Administrative Cases in the Civil Service.

[31] Section 14, Uniform Rules on Administrative Cases in the Civil Service.

[32] Section 15, Uniform Rules on Administrative Cases in the Civil Service.

[33] Section 16, Uniform Rules on Administrative Cases in the Civil Service.

preliminary investigation was not required in indictments *in flagrante* as in this case.

We disagree.

Indeed, the CSC Rules does not specifically provide that a formal charge without the requisite preliminary investigation is null and void. However, as clearly outlined above, upon receipt of a complaint which is sufficient in form and substance, the disciplining authority shall require the person complained of to submit a Counter-Affidavit/Comment under oath within three days from receipt. The use of the word "shall" quite obviously indicates that it is mandatory for the disciplining authority to conduct a preliminary investigation or at least respondent should be given the opportunity to comment and explain his side. As can be gleaned from the procedure set forth above, this is done prior to the issuance of the formal charge and the comment required therein is different from the answer that may later be filed by respondents. Contrary to petitioner's claim, no exception is provided for in the CSC Rules. Not even an indictment *in flagrante* as claimed by petitioner.

This is true even if the complainant is the disciplining authority himself, as in the present case. To comply with such requirement, he could have issued a memorandum requiring respondents to explain why no disciplinary action should be taken against them instead of immediately issuing formal charges. With respondents' comments, petitioner would have properly evaluated both sides of the controversy before making a conclusion that there was a *prima facie* case against respondents, leading to the issuance of the questioned formal charges. It is noteworthy that the very acts subject of the administrative cases stemmed from an event that took place the day before the formal charges were issued. It appears, therefore, that the formal charges were issued after the sole determination by the petitioner as the disciplining authority that there was a *prima facie* case against respondents.

To condone this would give the disciplining authority an unrestricted power to judge by himself the nature of the act complained of as well as the gravity of the charges. We, therefore, conclude that respondents were denied due process of law.

Not even the fact that the charges against them are serious and evidence of their guilt is – in the opinion of their superior – strong can compensate for the procedural shortcut undertaken by petitioner which is evident in the record of this case.[34] The filing by petitioner of formal charges against the respondents without complying with the mandated preliminary investigation or at least give the respondents the opportunity to comment violated the latter's right to due process. Hence, the formal charges are void *ab initio* and may be assailed directly or indirectly at anytime.[35]

The cardinal precept is that where there is a violation of basic constitutional rights, courts are ousted from their jurisdiction. The violation of a party's right to due process raises a serious jurisdictional issue which cannot be glossed over or disregarded at will. Where the denial of the fundamental right to due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction. This rule is equally true in quasi-judicial and administrative proceedings, for the constitutional guarantee that no man shall be deprived of life, liberty, or property without due process is unqualified by the type of proceedings (whether judicial or administrative) where he stands to lose the same.[36]

Although administrative procedural rules are less stringent and often applied more liberally, administrative proceedings are not exempt from basic and fundamental procedural principles, such as the right to due process in investigations and hearings.[37] In particular, due process in administrative proceedings has been recognized to include the following: (1) the right to actual or constructive notice to the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present

[34] *Pat. Go v. NPC*, 338 Phil. 162, 171 (1997).

[35] *Engr. Rubio, Jr. v. Hon. Paras*, 495 Phil. 629, 643 (2005).

[36] *Montoya v. Varilla*, G.R. No. 180146, December 18, 2008, 574 SCRA 831, 843.

[37] *Id.* at 841; *Civil Service Commission v. Lucas,* 361 Phil. 486, 491 (1999).

witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.[38]

Petitioner contends that respondents waived their right to preliminary investigation as they failed to raise it before the GSIS.

Again, we do not agree.

It is well-settled that a decision rendered without due process is void *ab initio* and may be attacked at anytime directly or collaterally by means of a separate action, or by resisting such decision in any action or proceeding where it is invoked.[39] Moreover, while respondents failed to raise before the GSIS the lack of preliminary investigation, records show that in their Urgent Motion to Resolve (their Motion to Lift Preventive Suspension Order) filed with the CSC, respondents questioned the validity of their preventive suspension and the formal charges against them for lack of preliminary investigation.[40] There is, thus, no waiver to speak of.

In the procedure adopted by petitioner, respondents were preventively suspended in the same formal charges issued by the former without the latter knowing that there were pending administrative cases against them. It is true that prior notice and hearing are not required in the issuance of a preventive suspension order.[41] However, considering that respondents were preventively suspended in the same formal charges that we

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[38] *Montoya v. Varilla*, *supra* at 841-842; *Fabella v. CA*, 346 Phil. 940, 952-953 (1997).

[39] *Engr. Rubio, Jr. v. Hon. Paras*, *supra* at 643.

[40] *Rollo* (G.R. No. 174137), p. 117.

[41] *Carabeo v. Court of Appeals*, G.R. Nos. 178000 and 178003, December 4, 2009, 607 SCRA 394.

now declare null and void, then their preventive suspension is likewise null and void.

Lastly, the CA committed no reversible error in ordering the payment of back salaries during the period of respondents' preventive suspension. As the administrative proceedings involved in this case are void, no delinquency or misconduct may be imputed to respondents and the preventive suspension meted them is baseless. Consequently, respondents should be awarded their salaries during the period of their unjustified suspension.[42] In granting their back salaries, we are simply repairing the damage that was unduly caused respondents, and unless we can turn back the hands of time, we can do so only by restoring to them that which is physically feasible to do under the circumstances.[43] The principle of "no work, no pay" does not apply where the employee himself was unlawfully forced out of job.[44]

In view of the foregoing disquisition, we find no necessity to discuss the other issues raised by petitioner.

WHEREFORE, premises considered, the petition in G.R. No. 157383 is *DENIED* while the petition in G.R. No. 174137 is *DISMISSED*, for lack of merit.

SO ORDERED.

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

Velasco, Jr., J., on official leave.

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[42] *Fabella v. CA*, *supra* at 958.

[43] *Neeland v. Villanueva, Jr.*, 416 Phil. 580, 594.

[44] *Id.* at 596.

EN BANC

[G.R. No. 158708. August 10, 2010]

JUSTINA MANIEBO, *petitioner, vs.* **HON. COURT OF APPEALS and THE CIVIL SERVICE COMMISSION,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; CONTENTS OF THE PETITION; RATIONALE FOR THE REQUIREMENT. —** The rule clearly requires the petition for review to be accompanied by "a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers." The requirement is intended to immediately enable the CA to determine whether to give due course to the appeal or not by having all the material necessary to make such determination before it. This is because an appeal under Rule 43 is a discretionary mode of appeal, which the CA may either dismiss if it finds the petition to be patently without merit, or prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration; or may process by requiring the respondent to file a comment on the petition, not a motion to dismiss, within 10 days from notice.

2. **ID.; ID.; ID.; ID.; MUST BE SUBSTANTIALLY COMPLIED WITH.—** The petitioner was not entitled to a liberal construction of the rules of procedure. Although her petition cited decisions of the Court declaring that only the copies of the decisions or final orders assailed on appeal needed to be certified, it is acknowledged even in the cited decisions of the Court that there should at least be a substantial compliance with the rules. She should not forget that her petition for review in the CA was essentially assailing not only CSC Resolution 02-1028 (denying her *motion for reconsideration*) but also CSC Resolution No. 02-0433 (the very decision of the CSC finding her guilty of possession of the spurious report of rating, falsification, grave misconduct, and dishonesty, and imposing the penalty of dismissal from the service). In *Heirs of Generoso*

A. Juaban v. Bancale, where only the order denying the respondents' *motion for reconsideration* was alleged as the subject of the appeal, the Court went beyond the literal content of respondents' notice of appeal and held that the appeal should be construed to include the final order that the respondents were seeking to be reconsidered when they filed their *motion for reconsideration*, because such approach was more in accord with the intent of the parties. Considering that the petitioner's appeal also assailed CSC Resolution No. 02-0433, she should have furnished the CA with a certified true copy of that resolution.

3. ID.; ID.; DENIAL OF THE MOTION FOR RECONSIDERATION FOR NON-COMPLIANCE WITH THE PROCEDURAL REQUIREMENT, JUSTIFIED. — With respect to the other supporting documents of the petition as set forth in Section 6, Rule 43, their legible copies should have been attached to the petition or to the *motion for reconsideration* filed against the resolution dismissing the petition. However, she did not even substantially comply with the requirement. Making her non-compliance worse was her reneging on her own express undertaking to the CA to submit the omitted documents within the 10-day period she had prayed for in her first *motion for reconsideration* by not furnishing the required supporting documents, or even the plain legible copies thereof from the time she filed her *motion for reconsideration* on October 23, 2002 until its resolution on January 8, 2003. Neither did she render any explanation for her failure to honor her undertaking. It was only when she filed the petition in this Court that she explained her failure to submit the required documents to the CA to be due to her financial constraints and the distance between her residence and the office of her counsel. Also, the petitioner's *motion for reconsideration* did not allege the date when she had received a copy of the resolution. Her omission to allege did not escape the attention of the CA, which cited it in the resolution dated January 8, 2003 as a ground for denying the *motion for reconsideration*. That detail was necessary to determine the timeliness of the filing of the *motion for reconsideration*. Hence, the CA committed no reversible error in denying her first *motion for reconsideration*.

4. **ID.; ID.; FILING OF SECOND MOTION FOR RECONSIDERATION IS NOT ALLOWED. —** The petitioner next filed a second *motion for reconsideration* after the issuance of the resolution dated January 8, 2003. The CA regarded her doing so as a blatant contravention of the *Rules of Court*. Indeed, her act directly violated Section 4, Rule 43, and Section 2, Rule 52, both of the *Rules of Court*, *viz*: xxx Section 2. *Second motion for reconsideration.* — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

5. **ID.; ID.; TRANSMITTAL OF THE RECORDS NOT MANDATORY BUT ONLY DISCRETIONARY UPON THE COURT OF APPEALS. —** Nonetheless, we point out that even in her prohibited second *motion for reconsideration*, the petitioner did not tender any explanation for her failure to make good her undertaking to furnish to the CA the required certified or legible copies of the material portions of the record. Instead, she contented herself with merely reiterating the grounds previously used in her first *motion for reconsideration*, adding only that any further documents needed by the CA could be made available once the records of the case were transmitted by the CSC to the CA, as provided in Section 11, Rule 43 of the *Rules of Court*. Contrary to the petitioner's position, the transmittal of the records was not mandatory but only discretionary upon the CA.

6. **ID.; RULES OF PROCEDURE; SHOULD NOT BE BELITTLED OR DISMISSED FOR THEIR NON-OBSERVANCE MIGHT HAVE RESULTED IN PREJUDICING A PARTY'S SUBSTANTIVE RIGHTS. —** [T]he petitioner repeatedly disregarded the rules too many times to merit any tolerance by the Court, thereby exhibiting a deplorable tendency to trivialize the rules of procedure. Yet, such rules were not to be belittled or dismissed simply because their non-observance might have resulted in prejudicing a party's substantive rights. The bare invocation of substantial justice was not a magic wand that would compel the suspension of the rules of procedure. Of necessity, the reviewing court had also to assess whether the appeal was substantially meritorious on its face, or not, for only after such finding could the review court ease the often stringent rules of procedure. Otherwise, the rules of procedure would be reduced to mere trifles.

7. POLITICAL LAW; ADMINISTRATIVE LAW; CIVIL SERVICE EMPLOYEES; CHARGE OF DISHONESTY; PRESUMPTION OF GOOD FAITH WILL NOT APPLY IN THE FACE OF A SHOWING OF THE GENUINENESS OF THE ENTRIES MADE IN OFFICIAL RECORDS. — It is not disputed that the petitioner's statement in her Personal Data Sheet dated June 24, 1994 that she had passed the July 17, 1983 Career Service (Professional) Examination given in Calapan, Oriental Mindoro with a rating of 74.01% was contrary to her actual rating of 60% shown in the Masterlist of Eligibles of the CSC. Her defense of good faith was weak and untrustworthy. Although she did not need to prove her good faith, it being presumed unless persuasive evidence to the contrary is adduced, the presumption did not apply to her in the face of a showing of the genuineness of the entries made in official records, like the Masterlist of Eligibles. Accordingly, she should have presented concrete evidence to prove that the spurious certificate of rating had been only mailed to her. In *Civil Service Commission v. Cayobit*, we ruled that as between a government employee's self serving claim that she passed the Civil Service Examination, and his actual score appearing in the Masterlist of Eligibles, the latter must prevail.

8. ID.; ID.; ID.; ID.; ABSENT SATISFACTORY EXPLANATION, THE PERSON IN POSSESSION OF THE FORGED DOCUMENT, OR WHO HAD USED IT, IS PRESUMED TO BE THE FORGER THEREOF, OR WHO HAD CAUSED ITS FORGERY. — [T]he petitioner could have easily presented a certification from the postmaster concerned in order to establish that she had received the spurious report of rating by mail. Yet, she did not, and, instead, she was content with making the bare denial of having any part in procuring the false document; and with claiming that the report had innocently landed on her doorstep. She was guilty of procuring the document, because she had produced and relied on it. Without her satisfactory explanation, her being in possession of the forged document, or her having used it warranted the presumption of her being herself the forger or the person who had caused the forgery.

9. ID.; ID.; ID.; REPUBLIC ACT NO. 6850; REQUIREMENT BEFORE A TEMPORARY EMPLOYEE EFFICIENTLY SERVING THE GOVERNMENT FOR AT LEAST SEVEN YEARS MAY BE

GRANTED CIVIL SERVICE ELIGIBILITY; EXPLAINED. — [Sections 1 and 2 of Republic Act No. 6850] show that not every temporary or provisional employee is automatically deemed to be a permanent employee after rendering at least seven years of service in the Government. The CSC still needs to evaluate whether the employee is qualified to avail himself or herself of the privilege granted by the statute. Moreover, that an appointee obtains a civil service eligibility later on does not *ipso facto* convert his temporary appointment into a permanent one. A new appointment is still required, because a permanent appointment is not a continuation of the temporary appointment; the two are distinct acts of the appointing authority. As held in *Maturan v. Maglana,* a permanent appointment implies the holding of a civil service eligibility on the part of the appointee, unless the position involved requires no such eligibility. Where the appointee does not possess a civil service eligibility, the appointment is considered temporary. The subsequent acquisition of the required eligibility will not make the temporary appointment regular or permanent; a new appointment is needed. Accordingly, any temporary employee who has served for the required duration of seven years must first be found by the CSC to continuously possess the minimum qualifications for holding the position, except the required eligibility, before he or she may be granted civil service eligibility. Among the *minimum* qualifications is the continuous observance of the *Code of Conduct and Ethical Standards for Public Officials and Employees*.

10. ID.; ID.; ID.; ID.; NEVER MEANT TO CURE AN APPOINTMENT VOID FROM THE VERY BEGINNING FOR BEING BASED ON A FALSE REPRESENTATION OF ELIGIBILITY; INITIAL APPROVAL OF THE APPOINTMENT, GROUNDS FOR THE RECALL THEREOF. — [P]ursuant to Section 20, Rule VI of the *Omnibus Implementing Regulations of the Revised Administrative Code*, to wit: Section 20. Notwithstanding the initial approval of an appointment, the same may be recalled on any of the following grounds. a) Non-compliance with the procedures/criteria provided in the agency's Merit Promotion Plan: b) Failure to pass through the agency's Selection/Promotion Board; c) Violation of the existing collective agreement between management and employees relative to promotion;

or d) Violation of other existing civil service law, rules and regulations. (E)ven an appointment initially approved by the CSC may be subsequently recalled when found to be invalid. R.A. No. 6850 was never meant to cure an appointment void from the very beginning for being based on a false representation of eligibility, like that of the petitioner. A contrary construction of the statute will, in effect, reward dishonesty.

11. **ID.; ID.; ID.; CHARGE OF DISHONESTY; FALSE REPRESENTATION OF ELIGIBILITY; PENALTY OF DISMISSAL, PROPER; LENGTH OF SERVICE, NOT MITIGATING. —** [T]he petitioner's posture, that her dismissal from the service was too harsh a punishment, considering that she had rendered 20 years of efficient service in the Government, does not convince. In *Civil Service Commission v. Sta. Ana,* the CSC Office for Legal Affairs (CSC-OLA) found the respondent guilty of dishonesty and falsification of public documents for falsely representing in his Personal Data Sheet that he had passed the Career Service Professional Examinations with a rating of 83.8%, when in fact he was not in the Masterlist of Eligibles. The Office of the Court Administrator affirmed the findings of the CSC-OLA, but recommended the reduction of the penalty from dismissal to suspension of one year xxx. Even so, we still ruled that dismissal from the service should be imposed, explaining: The facts and evidence, coupled with respondent's admission, sufficiently established his culpability. Respondent's use of a false certificate of eligibility constitutes an act of dishonesty under civil service rules and his act of making a false statement in his personal data sheet renders him administratively liable for falsification. xxx In the petitioner's case, we have more reason to hold that length of service was not mitigating. Unlike the respondent in *Sta. Ana*, she neither owned up to her dishonesty, nor showed regret for it. The State would surely face greater risks were she now allowed to continue in public office despite her having been found guilty of dishonesty.

APPEARANCES OF COUNSEL

Joselito M. Dimayacyac for petitioner.
The Solicitor General for respondents.

DECISION

BERSAMIN, *J.*:

We consider herein the last plea for clemency of the petitioner herein, an employee of a local government unit, who was dismissed from the service after her dishonesty in presenting herself as holding a civil service eligibility was discovered. The Civil Service Commission (CSC) meted the ultimate penalty on her. The Court of Appeals (CA) found her petition for review defective, and dismissed it, in effect upholding the CSC's action.

By petition for review on *certiorari,* therefore, the petitioner appeals the resolutions dated September 5, 2002, January 8, 2003, and June 5, 2003,[1] all issued by the Court of Appeals (CA) in CA-G.R. SP No. 72555 entitled *Justina Maniebo v. Civil Service Commission*.

Antecedents[2]

On July 1, 1994, the Mayor of the Municipality of Puerto Galera, Oriental Mindoro issued a promotional permanent appointment to the petitioner as Cashier III in the Office of the Municipal Treasurer because she appeared to possess the qualifications for the position, including the Career Service (Professional) Eligibility appearing in line 18 of her Personal Data Sheet showing her to have passed with a rating of 74.01% the Career Service (Professional) examination given in Calapan, Oriental Mindoro on July 17, 1983.

When the report of her rating was verified against the Masterlist of Eligibles, however, it was discovered that the petitioner had actually failed in the examination for obtaining a rating of only 60%.

The CSC Regional Office (CSCRO) No. IV subsequently held a preliminary investigation that resulted in the finding that

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[1] *Rollo*, pp. 26, 28 and 30, respectively; penned by Associate Justice Teodoro P. Regino (retired), and concurred in by Associate Justice Remedios Salazar-Fernando and Associate Justice Juan Q. Enriquez, Jr.

[2] CA *Rollo*, pp. 16-17.

a *prima facie* case of falsification existed against the petitioner. Accordingly, on October 28, 1997, CSCRO No. IV formally charged her with possession of spurious report of rating, falsification, grave misconduct, and dishonesty.

On November 7, 1997, the petitioner filed her answer, which CSCRO No. IV considered unsatisfactory. Thus, CSCRO set the case for hearing.

During the November 22, 1999 hearing, the Hearing Officer allowed the petitioner to comment verbally or to file her objection to the evidence formally offered against her. Instead, her counsel requested the Hearing Officer to mark her supporting documents as her evidence, and for her to be allowed to testify for herself.

In her direct testimony, the petitioner denied knowledge of the falsified nature of her Career Service (Professional) eligibility rating. She asserted that the rating had come from the CSC through the mails. She insisted that she did not on any occasion approach any personnel of the CSC, or anybody else connected with the CSC in order to procure the passing grade of 74.01%.

CSCRO No. IV then rendered its decision on December 16, 1999, *viz*:

> WHEREFORE, this Office finds respondent Justina Maniebo, Cashier III, Office of the Municipal Treasurer, Municipal Government of Puerto Galera, Oriental Mindoro, guilty of Possession of Spurious Report of Rating, Falsification, Grave Misconduct. Accordingly, respondent Maniebo is hereby meted the penalty of DISMISSAL from the service.[3]

On February 4, 2000, the petitioner appealed to the CSC,[4] which affirmed the decision of CSCRO No. IV through its Resolution No. 02-0433 dated March 20, 2002,[5] disposing thus:

> WHEREFORE, premises considered, the appeal of Justina M. Maniebo is hereby DISMISSED for lack of merit. Accordingly, the

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[3] *Rollo*, p. 15.

[4] CA *Rollo*, pp. 21-31.

[5] *Id.*, p. 4.

Decision of the Civil Service Commission Regional Office No. IV dated December 16, 1999 is AFFIRMED.

On August 20, 2002, the petitioner sought reconsideration, but the CSC denied her motion through Resolution No. 02-1028.[6]

The petitioner next appealed to the CA.[7]

Ruling of the CA

In the CA, the petitioner raised the following issues,[8] to wit:

a) Whether the CSC committed grave error in not considering good faith on the part of the petitioner in the determination of the appealed decision; and

b) Whether the CSC was correct in imposing the penalty of dismissal in view of the circumstances obtaining in the case.

She attached to the petition for review the following annexes:

a) Certified true copy of CSC Resolution No. 02-1028 dated August 5, 2002 denying the petitioner's motion for reconsideration (Annex A);[9]

b) Original copy of the notice of appeal dated August 23, 2002 filed in the CSC (Annex B);[10]

c) Photocopy of the petitioner's appeal dated January 31, 2000 to the CSC (Annex C);[11]

d) The petitioner's affidavit of merit dated August 2002 (Annex D).[12]

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[6] *Id.*, p. 3.

[7] *Id.,* pp. 2-12.

[8] *Id.,* pp. 4-5.

[9] *Id.,* pp. 13-19.

[10] *Id.,* p. 20.

[11] *Id.,* pp. 21-31.

[12] *Id.*, p. 32.

In its assailed resolution dated September 5, 2002,[13] the CA dismissed the petition for review due to the petitioner's failure to accompany it with the requisite certified true copies of the material portions of the record, stating:

> For failure to accompany the petition for review with the requisite certified true copies of the material portions of the record referred to therein, *i.e.*, the preliminary investigation and charge for possession of spurious report of rating, the answer, the decision dated December 16, 1999 of Civil Service Commission Regional Office No. IV, Civil Service Commission Resolution No. 02-0433 dated March 20, 2002, and other supporting papers and the evidences submitted, the Court Resolved to DENY DUE COURSE and, consequently, to DISMISS the petition pursuant to Section 7, Rule 43 of the 1997 Rules of Civil Procedure.
>
> SO ORDERED.

The petitioner filed a *motion for reconsideration,*[14] in which her counsel, Atty. Al Harith D. Sali, even undertook to submit the required certified copies of the material portions within ten days from October 23, 2002. She explained in her motion that her counsel had failed to submit the required certified copies, due to her failure to turn over said copies to her counsel because of the distance between her home in Puerto Galera, Oriental Mindoro and the office of her counsel in Fairview, Quezon City.

Following its receipt of the comment of the Office of the Solicitor General on December 12, 2002,[15] the CA denied the *motion for reconsideration* in the assailed resolution dated January 8, 2003,[16] *viz*:

> Acting on the motion of the petitioner for a reconsideration of the Resolution dated September 5, 2002, which dismissed the petition for failure to append thereto the requisite certified true copies of the material portions of the record referred to therein, as well as

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[13] *Id.,* p. 34.

[14] *Id.,* pp. 35-37.

[15] *Id.*, pp. 44-52.

[16] *Id.,* p. 54.

the Comment interposed thereto filed by the Office of the Solicitor General, and considering that the aforesaid motion failed to allege the date of receipt of a copy of the assailed Resolution to determine the timeliness of the filing of the said motion and no efforts (sic) was exerted to rectify or supply the procedural errors the petition suffered even within the requested period of ten (10) days, the Court Resolved to DENY the aforesaid motion for reconsideration.

SO ORDERED.

On February 5, 2003, the petitioner filed a so-called *motion for reconsideration* that was signed by another lawyer, Atty. Joventino V. Diamante (allegedly as collaborating counsel), although Atty. Al Harith D. Sali remained as counsel.[17]

In its third assailed resolution dated June 5, 2003,[18] the CA denied the petitioner's *motion for reconsideration,* which was in reality as *second motion for reconsideration* that was prohibited under Rule 52, Sec. 2 of the *Rules of Court*.

Hence, this appeal by petition for review on *certiorari*.

Issues

The petitioner claims:[19]

I.

WHETHER THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN DISMISSING THE PETITIONER'S PETITION FOR REVIEW FOR FAILURE TO ATTACH CERTIFIED COPY OF THE ANNEXES WHEN THE RULES AND JURISPRUDENCE DO NOT REQUIRE THAT ALL ANNEXES ATTACHED TO THE PETITION SHOULD BE CERTIFIED.

II.

WHETHER THE COURT OF APPEALS ERRED IN DISMISSING THE PETITION BASED ON ALLEGED TECHNICALITY WHICH WAS NOT SANCTIONED BY JURISPRUDENCE.

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[17] *Id.,* pp. 62-64.

[18] *Id.,* pp. 85-86.

[19] *Rollo*, p. 18.

Ruling

The petition has no merit.

A

The petitioner argues that her submission of a certified true copy of CSC Resolution 02-1028 in her petition before the CA constituted a substantial compliance with Section 6, Rule 43 of the *Rules of Court*. She averred that rules of procedure should be liberally construed to afford litigants the opportunity to prove their claims and prevent a denial of justice due to legal technicalities; that she had already lost her job due to the immediate execution of the decision pending appeal, that to require her to secure certified true copies of all the annexes to the petition would be too burdensome for her and would contravene the constitutionally guaranteed free access to the courts and quasi-judicial bodies and adequate legal assistance; and that it was already settled that under Section 6, Rule 43 of the *Rules of Court*, only the copies of the assailed judgments or final orders of the lower courts needed to be certified.[20] She insisted that the dismissal of her appeal due to technicalities would constitute a deprivation of property without due process of law because what was at stake herein was her right to employment.

In its comment,[21] the CSC insisted that the CA justifiably denied due course to the petition, considering that Section 7, Rule 43 of the *Rules of Court* expressly stated that the failure of the petitioner to file the required certified true copies of the material portions of the record referred to in the petition was sufficient ground for its dismissal; and that the subsequent *motions for reconsideration* were also rightly denied because the petitioner exerted no effort to furnish the required certified copies within the requested period of ten days.

The petitioner's plea for liberality is undeserving of acceptance.

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[20] *Cadayona v. Court of Appeals*, G.R. No. 128772, February 3, 2000, 324 SCRA 619.

[21] *Rollo*, pp. 38-46.

The CA did not commit any error, least of all a reversible one. Its dismissal was founded on the correct application of the applicable rule. Indeed, Section 6, Rule 43 of the *Rules of Court* expressly lists down the pleadings and other matters that a petition for review should contain, thus:

> Section 6. *Contents of the petition*. — The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; (b) contain a concise statement of the facts and issues involved and the grounds relied upon for the review; (c) **be accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers**; and (d) contain a sworn certification against forum shopping as provided in the last paragraph of Section 2, Rule 42. The petition shall state the specific material dates showing that it was filed within the period fixed herein. (2a)

The rule clearly requires the petition for review to be accompanied by "a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers." The requirement is intended to immediately enable the CA to determine whether to give due course to the appeal or not by having all the material necessary to make such determination before it. This is because an appeal under Rule 43 is a discretionary mode of appeal, which the CA may either dismiss if it finds the petition to be patently without merit, or prosecuted manifestly for delay, or that the questions raised therein are too unsubstantial to require consideration; or may process by requiring the respondent to file a comment on the petition, not a motion to dismiss, within 10 days from notice.[22]

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[22] Rule 43 states:

Section 8. *Action on the petition*. — The Court of Appeals may require the respondent to file a comment on the petition, not a motion to dismiss, within ten (10) days from notice, or 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. (6a)

The petitioner was not entitled to a liberal construction of the rules of procedure. Although her petition cited decisions of the Court declaring that only the copies of the decisions or final orders assailed on appeal needed to be certified,[23] it is acknowledged even in the cited decisions of the Court that there should at least be a substantial compliance with the rules. She should not forget that her petition for review in the CA was essentially assailing not only CSC Resolution 02-1028 (denying her *motion for reconsideration*) but also CSC Resolution No. 02-0433 (the very decision of the CSC finding her guilty of possession of the spurious report of rating, falsification, grave misconduct, and dishonesty, and imposing the penalty of dismissal from the service). In *Heirs of Generoso A. Juaban v. Bancale,*[24] where only the order denying the respondents' *motion for reconsideration* was alleged as the subject of the appeal, the Court went beyond the literal content of respondents' notice of appeal and held that the appeal should be construed to include the final order that the respondents were seeking to be reconsidered when they filed their *motion for reconsideration*, because such approach was more in accord with the intent of the parties. Considering that the petitioner's appeal also assailed CSC Resolution No. 02-0433, she should have furnished the CA with a certified true copy of that resolution.

With respect to the other supporting documents of the petition as set forth in Section 6, Rule 43, their legible copies should have been attached to the petition or to the *motion for reconsideration* filed against the resolution dismissing the petition. However, she did not even substantially comply with the requirement. Making her non-compliance worse was her reneging on her own express undertaking to the CA to submit the omitted

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[23] *E.g., Cadayona v. Court of Appeals,* G.R. No. 128772, February 3, 2000, 324 SCRA 619; *Cusi-Hernandez v. Diaz*, G.R. No. 140436, July 18, 2000, 336 SCRA 113, 119-120; *Ace Navigation Co., Inc. v. Court of Appeals,* G.R. No. 140364, August 15, 2000, 338 SCRA 70, 71; *Roadway Express, Inc. v. Court of Appeals*, G.R. No. 121488, November 21, 1996, 264 SCRA 696, 697.

[24] G.R. No. 156011, July 3, 2008, 557 SCRA 1.

documents within the 10-day period she had prayed for in her first *motion for reconsideration* by not furnishing the required supporting documents, or even the plain legible copies thereof from the time she filed her *motion for reconsideration* on October 23, 2002 until its resolution on January 8, 2003. Neither did she render any explanation for her failure to honor her undertaking. It was only when she filed the petition in this Court that she explained her failure to submit the required documents to the CA to be due to her financial constraints and the distance between her residence and the office of her counsel.

Also, the petitioner's *motion for reconsideration* did not allege the date when she had received a copy of the resolution. Her omission to allege did not escape the attention of the CA, which cited it in the resolution dated January 8, 2003 as a ground for denying the *motion for reconsideration*. That detail was necessary to determine the timeliness of the filing of the *motion for reconsideration*. Hence, the CA committed no reversible error in denying her first *motion for reconsideration*.

The petitioner next filed a second *motion for reconsideration* after the issuance of the resolution dated January 8, 2003. The CA regarded her doing so as a blatant contravention of the *Rules of Court*. Indeed, her act directly violated Section 4, Rule 43, and Section 2, Rule 52, both of the *Rules of Court*, *viz*:

Section 4. *Period of appeal*—The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo*. **Only one (1) motion for reconsideration shall be allowed.** Upon proper motion and the payment of the full amount of the docket fee 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.

Section 2. *Second motion for reconsideration.* — No second motion for reconsideration of a judgment or final resolution by the same party shall be entertained.

Nonetheless, we point out that even in her prohibited second *motion for reconsideration*, the petitioner did not tender any explanation for her failure to make good her undertaking to furnish to the CA the required certified or legible copies of the material portions of the record. Instead, she contented herself with merely reiterating the grounds previously used in her first *motion for reconsideration*, adding only that any further documents needed by the CA could be made available once the records of the case were transmitted by the CSC to the CA, as provided in Section 11, Rule 43 of the *Rules of Court*.

Contrary to the petitioner's position, the transmittal of the records was not mandatory but only discretionary upon the CA.[25] Section 11, Rule 43 of the *Rules of Court* provides:

Section 11. *Transmittal of record*.–Within fifteen (15) days from notice that the petition has been given due course, the Court of Appeals **may require** the court or agency concerned to transmit the original or a legible certified true copy of the entire record of the proceeding under review. The record to be transmitted may be abridged by agreement of all parties to the proceeding. The Court of Appeals may require or permit subsequent correction of or addition to the record.

Evidently, the petitioner repeatedly disregarded the rules too many times to merit any tolerance by the Court, thereby exhibiting a deplorable tendency to trivialize the rules of procedure. Yet, such rules were not to be belittled or dismissed simply because

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[25] *Torres, Jr. v. Court of Appeals*, G.R. No. 120138, September 5, 1997, 278 SCRA 793 (the Court said: "xxx **in resolving appeals from quasi judicial agencies, it is within the discretion of the Court of Appeals to have the original records of the proceedings under review be transmitted to it.** In this connection, petitioners' claim that the Court of Appeals could not have decided the case on the merits without the records being brought before it is patently lame. Indubitably, the Court of Appeals decided the case on the basis of the uncontroverted facts and admissions contained in the pleadings, that is, the petition, comment, reply, rejoinder, memoranda, *etc*. filed by the parties.).

their non-observance might have resulted in prejudicing a party's substantive rights.[26] The bare invocation of substantial justice was not a magic wand that would compel the suspension of the rules of procedure. Of necessity, the reviewing court had also to assess whether the appeal was substantially meritorious on its face, or not, for only after such finding could the review court ease the often stringent rules of procedure.[27] Otherwise, the rules of procedure would be reduced to mere trifles.

B.

The petitioner claims that she relied in good faith on the rating she had received through the mails. She denies being the author of the forged certificate. She pleads that with her government service since 1981 and her very satisfactory performance (borne out by the series of promotional appointments from the position of Accounting Clerk to Cashier III), she would never deliberately misrepresent to the CSC that she had passed the Career Service Examination, because she knew that the CSC could verify her eligibility rating at any time.

Although the Court is not called upon to rule on the foregoing matters in view of its finding that the CA's assailed dismissal of the petition for review was based on the correct application of the pertinent provisions of the *Rules of Court*, it is nonetheless not amiss but reasonable to dwell on such matters if only to establish that the positions taken by the petitioner do not advance her cause at all and save the day for her.

It is not disputed that the petitioner's statement in her Personal Data Sheet dated June 24, 1994 that she had passed the July 17, 1983 Career Service (Professional) Examination given in Calapan, Oriental Mindoro with a rating of 74.01% was contrary to her actual rating of 60% shown in the Masterlist of Eligibles of the CSC. Her defense of good faith was weak and untrustworthy. Although she did not need to prove her good

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[26] *Spouses Galang v. Court of Appeals,* G.R. No. 76221, July 29, 1991, 199 SCRA 683, 689.

[27] *Cuevas v. Bais Steel Corporation,* G.R. No. 142689, October 17, 2002, 391 SCRA 192.

faith, it being presumed unless persuasive evidence to the contrary is adduced,[28] the presumption did not apply to her in the face of a showing of the genuineness of the entries made in official records,[29] like the Masterlist of Eligibles. Accordingly, she should have presented concrete evidence to prove that the spurious certificate of rating had been only mailed to her.

In *Civil Service Commission v. Cayobit*,[30] we ruled that as between a government employee's self serving claim that she passed the Civil Service Examination, and his actual score appearing in the Masterlist of Eligibles, the latter must prevail. We observed there that:

> The bare testimony of respondent that she has nothing to do with forging the certificate as she actually just received it by mail in her residential address deserves scant belief. We cannot accept her simplistic claim that she used the certificate under the false impression that it was genuine. The three witnesses and the various documents she presented cannot exculpate her. The witnesses, in essence, merely testified that they received the certificate of eligibility in question from respondent. Their belief that she was eligible was based on their reliance on the certificate.
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> Apropos is the following finding of petitioner:
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> > The testimonies of the three (3) abovementioned witnesses failed to rebut the fact that Cayobit did not pass the examination and does not have an eligibility. Respondent also failed to prove that she had no participation in the procurement of eligibility. Hence it cannot be presumed that Cayobit used the fake eligibility in good faith.

In that regard, the petitioner could have easily presented a certification from the postmaster concerned in order to establish that she had received the spurious report of rating by mail. Yet, she did not, and, instead, she was content with making the bare denial of having any part in procuring the false document;

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[28] *Heirs of Severa P. Gregorio v. Court of Appeals,* G.R. No. 117609, December 29, 1998, 300 SCRA 565.

[29] Section 44, Rule 130, *Rules of Court*.

[30] G.R. No. 145737, September 3, 2003, 410 SCRA 357.

and with claiming that the report had innocently landed on her doorstep. She was guilty of procuring the document, because she had produced and relied on it. Without her satisfactory explanation, her being in possession of the forged document, or her having used it warranted the presumption of her being herself the forger or the person who had caused the forgery.[31]

C.

The petitioner contends that even assuming that notwithstanding her lack of any civil service eligibility upon her entry into the Civil Service, she could still be deemed to have acquired eligibility by operation of law under the terms of Republic Act No. 6850,[32] a law granting civil service eligibility to employees efficiently serving the Government for at least seven years; that she was already a civil service eligible as of February 8, 1990, the date of approval of the law, and was no longer dismissible from the civil service by then; and that any defect in her appointment as a permanent government employee was cured by her acquisition of eligibility in 1990.

The petitioner's contention has no basis.

Sections 1 and 2 of Republic Act No. 6850 state:

Section 1. All government employees as of the approval of this Act who are holding career civil service positions appointed under provisional or temporary status who have rendered at least a total of seven (7) years of efficient service may be granted the civil service eligibility that will qualify them for permanent appointment to their permanent positions.

The Civil Service Commission shall formulate performance evaluation standards in order to determine those temporary employees

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[31] *Civil Service Commission v. Perocho, Jr.,* A.M. No. P-05-1985, July 26, 2007, 528 SCRA 171; *Pecho v. People,* G.R. No.111399, September 27, 1996, 262 SCRA 518; *Alarcon v. Court of Appeals*, G.R. No. L-21846, March 31, 1967, 19 SCRA 688.

[32] *An Act to Grant Civil Service Eligibility Under Certain Conditions to Government Employees Appointed Under Provisional or Temporary Status Who Have Rendered a Total of Seven (7) Years of Efficient Service, and for Other Purposes*; Approved, February 8, 1990.

who are qualified to avail themselves of the privilege granted under this Act.

The civil service eligibility herein granted may apply to such other positions as the Civil Service Commission may deem appropriate.

Section 2. The Civil Service Commission shall promulgate the rules and regulations to implement this act consistent with the merit and fitness principle within ninety (90) days after its effectivity.

These legal provisions show that not every temporary or provisional employee is automatically deemed to be a permanent employee after rendering at least seven years of service in the Government. The CSC still needs to evaluate whether the employee is qualified to avail himself or herself of the privilege granted by the statute. Moreover, that an appointee obtains a civil service eligibility later on does not *ipso facto* convert his temporary appointment into a permanent one. A new appointment is still required, because a permanent appointment is not a continuation of the temporary appointment; the two are distinct acts of the appointing authority.[33] As held in *Maturan v. Maglana,*[34] a permanent appointment implies the holding of a civil service eligibility on the part of the appointee, unless the position involved requires no such eligibility. Where the appointee does not possess a civil service eligibility, the appointment is considered temporary. The subsequent acquisition of the required eligibility will not make the temporary appointment regular or permanent; a new appointment is needed.

Accordingly, any temporary employee who has served for the required duration of seven years must first be found by the CSC to continuously possess the minimum qualifications for holding the position, except the required eligibility, before he or she may be granted civil service eligibility. Among the *minimum* qualifications is the continuous observance of the *Code of Conduct and Ethical Standards for Public Officials and Employees*.[35]

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[33] *Province of Camarines Sur v. Court of Appeals*, G.R. No. 104639, July 14, 1995, 246 SCRA 281; *Torio v. Civil Service Commission*, G.R. No. 99336, June 9, 1992, 209 SCRA 677.

[34] G.R. No. 52091, March 29, 1982, 113 SCRA 268.

[35] Republic Act No. 6713.

The petitioner failed to comply with this necessary *minimum* qualification. She thrived on her having misled the Government into believing that she had possessed the requisite civil service eligibility for the various positions she had successively held in her 20 years of service. In the first place, she would not have been appointed in a permanent or temporary capacity, had the CSC sooner discovered her dishonesty.

Besides, pursuant to Section 20, Rule VI of the *Omnibus Implementing Regulations of the Revised Administrative Code*, to wit:

> Section 20. Notwithstanding the initial approval of an appointment, the same may be recalled on any of the following grounds.
>
> a) Non-compliance with the procedures/criteria provided in the agency's Merit Promotion Plan:
>
> b) Failure to pass through the agency's Selection/Promotion Board;
>
> c) Violation of the existing collective agreement between management and employees relative to promotion; or
>
> d) Violation of other existing civil service law, rules and regulations.

even an appointment initially approved by the CSC may be subsequently recalled when found to be invalid. R.A. No. 6850 was never meant to cure an appointment void from the very beginning for being based on a false representation of eligibility, like that of the petitioner. A contrary construction of the statute will, in effect, reward dishonesty.

Lastly, the petitioner's posture, that her dismissal from the service was too harsh a punishment, considering that she had rendered 20 years of efficient service in the Government, does not convince.

In *Civil Service Commission v. Sta. Ana,*[36] the CSC Office for Legal Affairs (CSC-OLA) found the respondent guilty of dishonesty and falsification of public documents for falsely representing in his Personal Data Sheet that he had passed the Career Service Professional Examinations with a rating of 83.8%,

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[36] A.M. No. OCA-01-5, August 1, 2002, 386 SCRA 1.

when in fact he was not in the Masterlist of Eligibles. The Office of the Court Administrator affirmed the findings of the CSC-OLA, but recommended the reduction of the penalty from dismissal to suspension of one year, because:

> xxx the fact that respondent has already spent more than twenty (20) years of his life in the service of this Court and this is his first administrative complaint. It could be that he committed the acts complained of out of his desire to be promoted for the benefit of his family. Respondent's admission and prayer for forgiveness is a good sign that he is indeed remorseful for what he did. xxx

Even so, we still ruled that dismissal from the service should be imposed, explaining:

> The facts and evidence, coupled with respondent's admission, sufficiently established his culpability. Respondent's use of a false certificate of eligibility constitutes an act of dishonesty under civil service rules and his act of making a false statement in his personal data sheet renders him administratively liable for falsification. Under Section 23, Rule XIV of the Administrative Code of 1987, dishonesty (par. a) and falsification (par. f) are considered grave offenses warranting the penalty of dismissal from service upon commission of the first offense.
>
> On numerous occasions, the Court did not hesitate to impose such extreme punishment on employees found guilty of these offenses.[37] There is no reason why respondent should be treated differently. xxx

In the petitioner's case, we have more reason to hold that length of service was not mitigating. Unlike the respondent in *Sta. Ana*, she neither owned up to her dishonesty, nor showed regret for it. The State would surely face greater risks were she

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[37] Citing *Lumiqued v. Exevea,* 282 SCRA 125 (1997); *Re: Financial Audit of RTC, General Santos City*, 271 SCRA 302 (1997); *Marasigan vs. Buena,* 284 SCRA 1 (1997); *Moner v. Ampatua,* 295 SCRA 20 (1998); *Regalado v. Buena,* 309 SCRA 265 (1999); *Eamiguel v. Ho,* 287 SCRA 79 (1998); *Re: Suspension of Clerk of Court Rogelio R. Joboco, RTC, Br. 16, Naval, Biliran*, 294 SCRA 119 (1998); *Marbas-Vizcarra v. Florendo,* 310 SCRA 592 (1999); *Amane v. Mendoza-Arce,* 318 SCRA 465; *Almario v. Resus,* 318 SCRA 742 (1999).

now allowed to continue in public office despite her having been found guilty of dishonesty.

WHEREFORE, we deny the petition for review on *certiorari*, and affirm the resolutions dated September 5, 2002, January 8, 2003, and June 5, 2003, all issued in CA-G.R. SP No. 72555.

Costs of suit to be paid by the petitioner.

SO ORDERED.

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

EN BANC

[G.R. No. 164301. August 10, 2010]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **BPI EMPLOYEES UNION-DAVAO CHAPTER-FEDERATION OF UNIONS IN BPI UNIBANK,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNIONS; COLLECTIVE BARGAINING AGREEMENT; UNION SECURITY CLAUSES; EXPLAINED.** — "Union security" is a generic term which is applied to and comprehends "closed shop," "union shop," "maintenance of membership" or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period for their continued employment. There is maintenance of membership shop when employees,

who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated. A closed-shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part. x x x In other words, the purpose of a union shop or other union security arrangement is to guarantee the continued existence of the union through enforced membership for the benefit of the workers.

2. **ID.; ID.; ID.; ID.; UNION SHOP CLAUSE; EMPLOYEES EXEMPTED FROM THE COVERAGE THEREOF; FIRST THREE EXCEPTIONS NOT APPLICABLE TO CASE AT BAR.** — All employees in the bargaining unit covered by a Union Shop Clause in their CBA with management are subject to its terms. **However, under law and jurisprudence, the following kinds of employees are exempted from its coverage**, namely, employees who at the time the union shop agreement takes effect are bona fide members of a religious organization which prohibits its members from joining labor unions on religious grounds; **employees already in the service and already members of a union other than the majority at the time the union shop agreement took effect**; confidential employees who are excluded from the rank and file bargaining unit; and **employees excluded from the union shop by express terms of the agreement**. x x x Indeed, the situation of the former FEBTC employees in this case clearly does not fall within the first three exceptions to the application of the Union Shop Clause discussed earlier. No allegation or evidence of religious exemption or prior membership in another union or engagement as a confidential employee was presented by both parties.

3. **ID.; ID.; ID.; ID.; ID.; NOT A RESTRICTION OF THE RIGHT OF FREEDOM OF ASSOCIATION GUARANTEED BY THE CONSTITUTION.—** When certain employees are obliged

to join a particular union as a requisite for continued employment, as in the case of Union Security Clauses, this condition is a valid restriction of the freedom or right not to join any labor organization because it is in favor of unionism. This Court, on occasion, has even held that a union security clause in a CBA is not a restriction of the right of freedom of association guaranteed by the Constitution.

4. **ID.; ID.; ID.; ID.; ID.; CLOSED SHOP AGREEMENT; DEFINED. —** Moreover, a closed shop agreement is an agreement whereby an employer binds himself to hire only members of the contracting union who must continue to remain members in good standing to keep their jobs. It is "**the most prized achievement of unionism**." It adds membership and compulsory dues. By holding out to loyal members a promise of employment in the closed shop, **it wields group solidarity**.

5. **COMMERCIAL LAW; CORPORATION LAW; MERGER; ABSORPTION OF THE EMPLOYEES OF THE NON-SURVIVING ENTITY OF THE MERGER IS NOT MANDATORY ON THE SURVIVING CORPORATION. —** In legal parlance, however, human beings are never embraced in the term "assets and liabilities." Moreover, BPI's absorption of former FEBTC employees was neither by operation of law nor by legal consequence of contract. There was no government regulation or law that compelled the merger of the two banks or the absorption of the employees of the dissolved corporation by the surviving corporation. Had there been such law or regulation, the absorption of employees of the non-surviving entities of the merger would have been mandatory on the surviving corporation. In the present case, the merger was voluntarily entered into by both banks presumably for some mutually acceptable consideration. **In fact, the Corporation Code does not also mandate the absorption of the employees of the non-surviving corporation by the surviving corporation in the case of a merger**.

6. **ID.; ID.; ID.; UNLESS EXPRESSLY ASSUMED, EMPLOYMENT CONTRACTS AND COLLECTIVE BARGAINING AGREEMENTS ARE NOT ENFORCEABLE AGAINST A TRANSFEREE OF AN ENTERPRISE; RATIONALE. —** Significantly, too, the Articles of Merger and Plan of Merger dated April 7, 2000 did **not** contain any specific stipulation with respect to the employment contracts of existing personnel of

the non-surviving entity which is FEBTC. Unlike the Voluntary Arbitrator, this Court cannot uphold the reasoning that the general stipulation regarding transfer of FEBTC assets and liabilities to BPI as set forth in the Articles of Merger necessarily includes the transfer of all FEBTC employees into the employ of BPI and neither BPI nor the FEBTC employees allegedly could do anything about it. **Even if it is so, it does not follow that the absorbed employees should not be subject to the terms and conditions of employment obtaining in the surviving corporation**. The rule is that unless expressly assumed, labor contracts such as employment contracts and collective bargaining agreements are not enforceable against a transferee of an enterprise, labor contracts being *in personam*, thus binding only between the parties. A labor contract merely creates an action *in personam* and does not create any real right which should be respected by third parties. This conclusion draws its force from the right of an employer to select his employees and to decide when to engage them as protected under our Constitution, and the same can only be restricted by law through the exercise of the police power.

7. ID.; ID.; ID.; ABSORBED EMPLOYEES ARE NEITHER ASSETS NOR LIABILITIES OF THE DISSOLVED CORPORATION; EXPLAINED. — [T]his Court believes that it is contrary to public policy to declare the former FEBTC employees as forming part of the assets or liabilities of FEBTC that were transferred and absorbed by BPI in the Articles of Merger. Assets and liabilities, in this instance, should be deemed to refer only to property rights and obligations of FEBTC and do not include the employment contracts of its personnel. A corporation cannot unilaterally transfer its employees to another employer like chattel. Certainly, if BPI as an employer had the right to choose who to retain among FEBTC's employees, FEBTC employees had the concomitant right to choose not to be absorbed by BPI. Even though FEBTC employees had no choice or control over the merger of their employer with BPI, they had a choice whether or not they would allow themselves to be absorbed by BPI. Certainly nothing prevented the FEBTC's employees from resigning or retiring and seeking employment elsewhere instead of going along with the proposed absorption.

8. ID.; ID.; ID.; ABSENT AN EXPRESS PROVISION IN THE ARTICLES OF MERGER, THE SURVIVING CORPORATION HAS THE PREROGATIVE TO WHETHER OR NOT EMPLOY THE EMPLOYEES OF THE DISSOLVED ENTITY AND THE LATTER RETAINED THE PREROGATIVE TO ALLOW THEMSELVES TO BE ABSORBED OR NOT. — Employment is a personal consensual contract and absorption by BPI of a former FEBTC employee without the consent of the employee is in violation of an individual's freedom to contract. It would have been a different matter if there was an express provision in the articles of merger that as a condition for the merger, BPI was being required to assume all the employment contracts of all existing FEBTC employees with the conformity of the employees. In the absence of such a provision in the articles of merger, then BPI clearly had the business management decision as to whether or not employ FEBTC's employees. FEBTC employees likewise retained the prerogative to allow themselves to be absorbed or not; otherwise, that would be tantamount to involuntary servitude.

9. ID.; ID.; ID.; THE SURVIVING CORPORATION IS LIABLE FOR THE PAYMENT OF SEPARATION PAY, RETIREMENT PAY OR OTHER BENEFITS TO THE EMPLOYEES OF THE DISSOLVED ENTITY WHO CHOSE NOT TO BE ABSORBED. — There appears to be no dispute that with respect to FEBTC employees that BPI chose not to employ or FEBTC employees who chose to retire or be separated from employment instead of "being absorbed," **BPI's assumed liability** to these employees pursuant to the merger is FEBTC's liability to them in terms of separation pay, retirement pay or other benefits that may be due them depending on the circumstances.

10. ID.; ID.; ID.; ID.; CONSEQUENCES OF VOLUNTARY MERGERS ON THE RIGHT TO EMPLOYMENT AND SENIORITY RIGHTS; APPLICATION IN THE CASE AT BAR. — The lack of a provision in the plan of merger regarding the transfer of employment contracts to the surviving corporation could have very well been deliberate on the part of the parties to the merger, in order to grant the surviving corporation the freedom to choose who among the dissolved corporation's employees to retain, in accordance with the surviving

corporation's business needs. If terminations, for instance due to redundancy or labor-saving devices or to prevent losses, are done in good faith, they would be valid. The surviving corporation too is duty-bound to protect the rights of its own employees who may be affected by the merger in terms of seniority and other conditions of their employment due to the merger. Thus, we are not convinced that in the absence of a stipulation in the merger plan the surviving corporation was compelled, or may be judicially compelled, to absorb all employees under the same terms and conditions obtaining in the dissolved corporation as the surviving corporation should also take into consideration the state of its business and its obligations to its own employees, and to their certified collective bargaining agent or labor union.

11. **ID.; ID.; ID.; EMPLOYMENT CONTRACTS ARE NOT AUTOMATICALLY TRANSFERABLE FROM ONE ENTITY TO ANOTHER. —** For the employee to be "absorbed" by BPI, it requires the employees' implied or express consent. It is because of this human element in employment contracts and the personal, consensual nature thereof that we cannot agree that, in a merger situation, employment contracts are automatically transferable from one entity to another in the same manner that a contract pertaining to purely proprietary rights – such as a promissory note or a deed of sale of property – is perfectly and automatically transferable to the surviving corporation.

12. **ID.; ID.; ID.; EFFECT OF MERGER IN THE EMPLOYMENT CONDITION OF THE EMPLOYEES ABSORBED BY THE SURVIVING CORPORATION; DISCUSSED. —** That BPI is the same entity as FEBTC after the merger is but a legal fiction intended as a tool to adjudicate rights and obligations between and among the merged corporations and the persons that deal with them. Although in a merger it is as if there is no change in the personality of the employer, there is in reality a change in the situation of the employee. Once an FEBTC employee is absorbed, there are presumably changes in his condition of employment even if his previous tenure and salary rate is recognized by BPI. It is reasonable to assume that BPI would have different rules and regulations and company practices than FEBTC and it is incumbent upon the former FEBTC employees to obey these new rules and adapt to their new

environment. Not the least of the changes in employment condition that the absorbed FEBTC employees must face is the fact that prior to the merger they were employees of an unorganized establishment and after the merger they became employees of a unionized company that had an existing collective bargaining agreement with the certified union. This presupposes that the union who is party to the collective bargaining agreement is the certified union that has, in the appropriate certification election, been shown to represent a majority of the members of the bargaining unit. Likewise, with respect to FEBTC employees that BPI chose to employ and who also chose to be absorbed, then due to BPI's blanket assumption of liabilities and obligations under the articles of merger, BPI was bound to respect the years of service of these FEBTC employees and to pay the same, or commensurate salaries and other benefits that these employees previously enjoyed with FEBTC. As the Union likewise pointed out in its pleadings, **there were benefits under the CBA that the former FEBTC employees did not enjoy with their previous employer**. As BPI employees, they will enjoy all these CBA benefits upon their "absorption." Thus, although in a sense BPI is continuing FEBTC's employment of these absorbed employees, BPI's employment of these absorbed employees was not under exactly the same terms and conditions as stated in the latter's employment contracts with FEBTC. This further strengthens the view that BPI and the former FEBTC employees voluntarily contracted with each other for their employment in the surviving corporation.

13. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNION; COLLECTIVE BARGAINING AGREEMENT; UNION SHOP CLAUSE; TERM "NEW EMPLOYEES," CONSTRUED; APPLICATION TO THE CASE AT BAR. —** In any event, it is of no moment that the former FEBTC employees retained the regular status that they possessed while working for their former employer upon their absorption by petitioner. This fact would not remove them from the scope of the phrase "new employees" as contemplated in the Union Shop Clause of the CBA, contrary to petitioner's insistence that the term "new employees" only refers to those who are initially hired as **non-regular** employees for possible regular employment. The Union Shop Clause in the CBA simply states that "new employees" who during the effectivity of the CBA

"may be regularly employed" by the Bank must join the union within thirty (30) days from their regularization. There is nothing in the said clause that limits its application to only **new employees who possess non-regular status,** meaning probationary status, at the start of their employment. Petitioner likewise failed to point to any provision in the CBA expressly excluding from the Union Shop Clause new employees who are "absorbed" as regular employees from the beginning of their employment. What is indubitable from the Union Shop Clause is that upon the effectivity of the CBA, petitioner's new regular employees (**regardless of the manner by which they became employees of BPI**) are required to join the Union as a condition of their continued employment. x x x [T]he Court should not uphold an interpretation of the term "new employee" based on the general and extraneous provisions of the Corporation Code on merger that would defeat, rather than fulfill, the purpose of the union shop clause. **To reiterate, the provision of the Article 248(e) of the Labor Code in point mandates that nothing in the said Code or any other law should stop the parties from requiring membership in a recognized collective bargaining agent as a condition of employment.**

14. COMMERCIAL LAW; CORPORATION LAW; MERGER, BECOMES EFFECTIVE ONLY UPON THE APPROVAL BY THE SECURITIES AND EXCHANGE COMMISSION OF THE ARTICLES OF MERGER. — By law and jurisprudence, a merger only becomes effective upon approval by the Securities and Exchange Commission (SEC) of the articles of merger. xxx [E]ven though BPI steps into the shoes of FEBTC as the surviving corporation, BPI does so at a particular point in time, *i.e.,* the effectivity of the merger upon the SEC's issuance of a certificate of merger. In fact, the articles of merger themselves provided that both BPI and FEBTC will continue their respective business operations until the SEC issues the certificate of merger and in the event SEC does not issue such a certificate, they agree to hold each other blameless for the non-consummation of the merger.

15. ID.; ID.; ID.; ID.; THE SURVIVING CORPORATION BECAME THE EMPLOYER OF THE ABSORBED EMPLOYEES ONLY AFTER THE EFFECTIVITY OF THE MERGER, NOTWITHSTANDING THAT THE LATTER'S YEARS OF SERVICE WITH THE DISSOLVED CORPORATION WERE

VOLUNTARILY RECOGNIZED BY THE SURVIVING CORPORATION. — BPI could have only become the employer of the FEBTC employees it absorbed after the approval by the SEC of the merger. If the SEC did not approve the merger, BPI would not be in the position to absorb the employees of FEBTC at all. Indeed, there is evidence on record that BPI made the assignments of its absorbed employees in BPI effective April 10, 2000, or after the SEC's approval of the merger. In other words, BPI became the employer of the absorbed employees only at some point **after the effectivity of the merger**, notwithstanding the fact that the absorbed employees' years of service with FEBTC were voluntarily recognized by BPI. Even assuming for the sake of argument that we consider the absorbed FEBTC employees as "old employees" of BPI who are not members of any union (***i.e.,* it is their date of hiring by FEBTC and not the date of their absorption that is considered**), this does not necessarily exclude them from the union security clause in the CBA. The CBA subject of this case was effective from April 1, 1996 until March 31, 2001. Based on the allegations of the former FEBTC employees themselves, there were former FEBTC employees who were **hired by FEBTC after April 1, 1996** and if their date of hiring by FEBTC is considered as their date of hiring by BPI, they would undeniably be considered "new employees" of BPI within the contemplation of the Union Shop Clause of the said CBA. Otherwise, it would lead to the absurd situation that we would discriminate not only between new BPI employees (hired during the life of the CBA) and former FEBTC employees (absorbed during the life of the CBA) but also among the former FEBTC employees themselves. In other words, we would be treating employees who are exactly similarly situated (*i.e.,* the group of absorbed FEBTC employees) differently. This hardly satisfies the demands of equality and justice.

16. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNION; COLLECTIVE BARGAINING AGREEMENT; UNION SHOP CLAUSE; APPLIES TO REGULAR EMPLOYEES HIRED AFTER PROBATIONARY STATUS AND REGULAR EMPLOYEES HIRED AFTER THE MERGER. —** Petitioner limited itself to the argument that its absorbed employees do not fall within the term "new employees"

contemplated under the Union Shop Clause with the apparent objective of excluding all, and not just some, of the former FEBTC employees from the application of the Union Shop Clause. However, in law or even under the express terms of the CBA, there is no special class of employees called "absorbed employees." In order for the Court to apply or not apply the Union Shop Clause, we can only classify the former FEBTC employees as either "old" or "new." If they are not "old" employees, they are necessarily "new" employees. If they are new employees, the Union Shop Clause did not distinguish between new employees who are *non-regular* at their hiring but who subsequently become regular and new employees who are "absorbed" as regular and permanent from the beginning of their employment. The Union Shop Clause did not so distinguish, and so neither must we. Verily, we agree with the Court of Appeals that there are no substantial differences between a newly hired non-regular employee who was regularized weeks or months after his hiring and a new employee who was absorbed from another bank as a regular employee pursuant to a merger, for purposes of applying the Union Shop Clause. Both employees were hired/employed only after the CBA was signed. At the time they are being required to join the Union, they are both already regular rank and file employees of BPI. They belong to the same bargaining unit being represented by the Union. They both enjoy benefits that the Union was able to secure for them under the CBA. When they both entered the employ of BPI, the CBA and the Union Shop Clause therein were already in effect and neither of them had the opportunity to express their preference for unionism or not. We see no cogent reason why the Union Shop Clause should not be applied equally to these two types of new employees, for they are undeniably similarly situated.

17. **ID.; ID.; ID.; ID.; ID.; NOT VIOLATIVE OF THE "ABSORBED" EMPLOYEES' FREEDOM OF ASSOCIATION. —** The effect or consequence of BPI's so-called "absorption" of former FEBTC employees should be limited to what they actually agreed to, *i.e.* recognition of the FEBTC employees' years of service, salary rate and other benefits with their previous employer. The effect should not be stretched so far as to **exempt** former FEBTC employees from the existing CBA terms, company policies and rules which apply to employees similarly situated. If the Union Shop Clause is valid as to other new regular BPI

employees, there is no reason why the same clause would be a violation of the "absorbed" employees' freedom of association.

18. **ID.; ID.; ID.; ID.; ID.; SIMILARLY SITUATED EMPLOYEES WHO ENJOY THE SAME PRIVILEGES OF CBA SHOULD BE LIKEWISE SUBJECT TO THE SAME OBLIGATIONS THE CBA IMPOSES UPON THEM; NON-APPLICATION THEREOF IN CASE AT BAR IS CONTRARY TO THE POLICY OF THE LABOR CODE AND INIMICAL TO INDUSTRIAL PEACE. —** It is but fair that similarly situated employees who enjoy the same privileges of a CBA should be likewise subject to the same obligations the CBA imposes upon them. A contrary interpretation of the Union Shop Clause will be inimical to industrial peace and workers' solidarity. This unfavorable situation will not be sufficiently addressed by asking the former FEBTC employees to simply pay agency fees to the Union in lieu of union membership x x x. The fact remains that other new regular employees, to whom the "absorbed employees" should be compared, do not have the option to simply pay the agency fees and they must join the Union or face termination. Petitioner's restrictive reading of the Union Shop Clause could also inadvertently open an avenue, which an employer could readily use, in order to dilute the membership base of the certified union in the collective bargaining unit (CBU). By entering into a voluntary merger with a non-unionized company that employs more workers, an employer could get rid of its existing union by the simple expedient of arguing that the "absorbed employees" are **not** new employees, as are commonly understood to be covered by a CBA's union security clause. This could then lead to a new majority within the CBU that could potentially threaten the majority status of the existing union and, ultimately, spell its demise as the CBU's bargaining representative. Such a dreaded but not entirely far-fetched scenario is no different from the ingenious and creative "union-busting" schemes that corporations have fomented throughout the years, which this Court has foiled time and again in order to preserve and protect the valued place of labor in this jurisdiction consistent with the Constitution's mandate of insuring social justice.

19. **ID.; ID.; ID.; ID.; ID.; AN EMPLOYER MAY CONFER UPON A NEW EMPLOYEE THE STATUS OF REGULAR**

EMPLOYMENT EVEN AT THE ONSET OF HIS ENGAGEMENT. — There is nothing in the Labor Code and other applicable laws or the CBA provision at issue that requires that a new employee has to be of probationary or non-regular status at the beginning of the employment relationship. An employer may confer upon a new employee the status of regular employment even at the onset of his engagement. Moreover, no law prohibits an employer from voluntarily recognizing the length of service of a new employee with a previous employer in relation to computation of benefits or seniority but it should not unduly be interpreted to exclude them from the coverage of the CBA which is a binding contractual obligation of the employer and employees.

20. **ID.; ID.; ID.; ID.; ID.; PURPOSE THEREOF. —** Indeed, a union security clause in a CBA should be interpreted to give meaning and effect to its purpose, which is to afford protection to the certified bargaining agent and ensure that the employer is dealing with a union that represents the interests of the legally mandated percentage of the members of the bargaining unit. The union shop clause offers protection to the certified bargaining agent by ensuring that future regular employees who (a) enter the employ of the company during the life of the CBA; (b) are deemed part of the collective bargaining unit; and (c) whose number will affect the number of members of the collective bargaining unit will be compelled to join the union. Such compulsion has legal effect, precisely because the employer by voluntarily entering in to a union shop clause in a CBA with the certified bargaining agent takes on the responsibility of dismissing the new regular employee who does not join the union.

21. **ID.; ID.; ID.; ID.; ID.; RESTRICTIVE INTERPRETATION THEREOF WOULD PLACE THE CERTIFIED UNION'S VERY EXISTENCE AT THE MERCY AND CONTROL OF THE EMPLOYER. —** Without the union shop clause or with the restrictive interpretation thereof x x x, the company can jeopardize the majority status of the certified union by excluding from union membership all new regular employees whom the Company will "absorb" in future mergers and all new regular employees whom the Company hires as regular from the beginning of their employment without undergoing a probationary period. In this manner, the Company can increase

the number of members of the collective bargaining unit and if this increase is not accompanied by a corresponding increase in union membership, the certified union may lose its majority status and render it vulnerable to attack by another union who wishes to represent the same bargaining unit. Or worse, a certified union whose membership falls below twenty percent (20%) of the total members of the collective bargaining unit may lose its status as a legitimate labor organization altogether, even in a situation where there is no competing union. In such a case, an interested party may file for the cancellation of the union's certificate of registration with the Bureau of Labor Relations. Plainly, the restrictive interpretation of the union shop clause would place the certified union's very existence at the mercy and control of the employer. **Relevantly, only BPI, the employer appears to be interested in pursuing this case**. The former FEBTC employees have not joined BPI in this appeal.

22. **ID.; ID.; ID.; ID.; ID.; AN EMPLOYEE'S PERMANENT AND REGULAR EMPLOYMENT STATUS IN ITSELF DOES NOT NECESSARILY EXEMPT HIM FROM THE COVERAGE THEREOF. —** The dissenting opinions place a premium on the fact that even if the former FEBTC employees are not old employees, they nonetheless were employed as regular and permanent employees without a gap in their service. However, an employee's permanent and regular employment status in itself does not necessarily exempt him from the coverage of a union shop clause. In the past this Court has upheld even the more stringent type of union security clause, *i.e.*, the closed shop provision, and held that it can be made applicable to old employees who are already regular and permanent but have chosen not to join a union. In the early case of *Juat v. Court of Industrial Relations*, the Court held that an old employee who had no union may be compelled to join the union even if the collective bargaining agreement (CBA) imposing the closed shop provision was only entered into <u>seven years after of the hiring of the said employee</u>. x x x Although the present case does not involve a closed shop provision that included even old employees, the *Juat* example is but one of the cases that laid down the doctrine that the right not to join a union is not absolute. Theoretically, there is nothing in law or jurisprudence to prevent an employer and a union from stipulating that existing employees (who already attained regular

and permanent status but who are not members of any union) are to be included in the coverage of a union security clause. Even Article 248 (e) of the Labor Code only expressly exempts **old employees who already have a union** from inclusion in a union security clause. *Juat* has not been overturned by *Victoriano v. Elizalde Rope Workers' Union* nor by *Reyes v. Trajano*.

23. **ID.; ID.; ID.; ID.; ID.; NOT A VIOLATION OF THE EMPLOYEE'S CONSTITUTIONAL RIGHT TO FREEDOM OF ASSOCIATION; RATIONALE. —** Time and again, this Court has ruled that the individual employee's right not to join a union may be validly restricted by a union security clause in a CBA and such union security clause is not a violation of the employee's constitutional right to freedom of association. It is unsurprising that significant provisions on labor protection of the 1987 Constitution are found in Article XIII on Social Justice. The constitutional guarantee given the right to form unions and the State policy to promote unionism have social justice considerations. In *People's Industrial and Commercial Employees and Workers Organization v. People's Industrial and Commercial Corporation*, we recognized that "[l]abor, being the weaker in economic power and resources than capital, deserve protection that is actually substantial and material." The rationale for upholding the validity of union shop clauses in a CBA, even if they impinge upon the individual employee's right or freedom of association, is not to protect the union for the union's sake. Laws and jurisprudence promote unionism and afford certain protections to the certified bargaining agent in a unionized company because a strong and effective union presumably benefits **all employees in the bargaining unit** since such a union would be in a better position to demand improved benefits and conditions of work from the employer. This is the rationale behind the State policy to promote unionism declared in the Constitution, which was elucidated in the case of *Liberty Flour Mills Employees v. Liberty Flour Mills, Inc.*

24. **ID.; ID.; ID.; ID.; ID.; THE RIGHT TO ABSTAIN FROM JOINING A LABOR ORGANIZATION IS SUBORDINATE TO THE POLICY OF ENCOURAGING UNIONISM AS AN INSTRUMENT OF SOCIAL JUSTICE. —** In the case at bar, since the former FEBTC employees are deemed covered by the Union Shop Clause, they are required to join the certified

bargaining agent, which supposedly has gathered the support of the majority of workers within the bargaining unit in the appropriate certification proceeding. Their joining the certified union would, in fact, be in the best interests of the former FEBTC employees for it unites their interests with the majority of employees in the bargaining unit. It encourages employee solidarity and affords sufficient protection to the majority status of the union during the life of the CBA which are precisely the objectives of union security clauses, such as the Union Shop Clause involved herein. We are indeed not being called to balance the interests of individual employees as against the State policy of promoting unionism, since the employees, who were parties in the court below, no longer contested the adverse Court of Appeals' decision. Nonetheless, settled jurisprudence has already swung the balance in favor of unionism, in recognition that ultimately the individual employee will be benefited by that policy. In the hierarchy of constitutional values, this Court has repeatedly held that the right to abstain from joining a labor organization is subordinate to the policy of encouraging unionism as an instrument of social justice.

25. **ID.; ID.; ID.; ID.; ID.; "ABSORBED EMPLOYEES" ARE COVERED BY THE UNION SHOP CLAUSE CONTAINED IN THE EXISTING COLLECTIVE BARGAINING AGREEMENT OF THE SURVIVING CORPORATION.—** [T]his Court finds it reasonable and just to conclude that the Union Shop Clause of the CBA covers the former FEBTC employees who were hired/employed by BPI during the effectivity of the CBA in a manner which petitioner describes as "absorption." A contrary appreciation of the facts of this case would, undoubtedly, lead to an inequitable and very volatile labor situation which this Court has consistently ruled against. In the case of former FEBTC employees who initially joined the union but later withdrew their membership, there is even greater reason for the union to request their dismissal from the employer since the CBA also contained a Maintenance of Membership Clause.

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

1. **POLITICAL LAW; CONSTITUTIONAL LAW; LABOR; RIGHT OF WORKERS TO SELF-ORGANIZATION; DISCUSSED. —** The Constitution guarantees the fundamental right of all workers

to "self-organization." The right to "self-organization" is a species of the broader constitutional right of the people "to form unions, associations, or societies for purposes not contrary to law," which right "shall not be abridged." The right of workers to self-organization is protected under the Labor Code which provides that workers "shall have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purpose of collective bargaining." The Code proscribes the abridgment of this right, stating that: "It shall be unlawful for any person to restrain, coerce, discriminate against or unduly interfere with employees and workers in their exercise of the right to self-organization. Such right shall include the right to form, join, or assist labor organizations for the purpose of collective bargaining through representatives of their own choosing x x x." The right of workers to self-organization means that workers themselves voluntarily organize, without compulsion from outside forces. "Self-organization" means voluntary association without compulsion, threat of punishment, or threat of loss of livelihood. Workers who "self-organize" are workers who on their own volition freely and voluntarily form or join a union. **Compulsory membership is anathema to "self-organization."**

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNION; FREEDOM TO JOIN UNIONS NECESSARILY INCLUDES THE FREEDOM NOT TO JOIN UNIONS; ELABORATED.— The right to self-organize includes the right not to exercise such right. Freedom to associate necessarily includes the freedom not to associate. Thus, freedom to join unions necessarily includes the freedom not to join unions. *Reyes v. Trajano* cannot be any clearer on this point: Logically, the right NOT to join, affiliate with, or assist any union, and to disaffiliate or resign from a labor organization, is subsumed in the right to join, affiliate with, or assist any union, and to maintain membership therein. **The right to form or join a labor organization necessarily includes the right to refuse or refrain from exercising said right.** It is self-evident that just as no one should be denied the exercise of a right granted by law, so also, no one should be compelled to exercise such a conferred right. xxx **Thus, it is the worker who should personally decide whether or not to join a labor union.** The union, the management, the

courts, and even the State cannot decide this for the worker, more so against his will.

3. **ID.; ID.; ID.; PURPOSE OF. —** The State encourages union membership to protect an individual employee from the power of the employer. A union is an instrumentality utilized to achieve the objective of protecting the rights of workers. In *Guijarno v. Court of Industrial Relations*, we clarified the purpose of a union: x x x The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work." (Art. II, Sec. 9 of the Revised Constitution) **Where does that leave a labor union, it may be asked. Correctly understood, it is nothing but the means of assuring that such fundamental objectives would be achieved**. **It is the instrumentality through which an individual laborer who is helpless as against a powerful employer may, through concerted effort and activity, achieve the goal of economic well-being.** That is the philosophy underlying the Industrial Peace Act. (Republic Act No. 875 (1953)) For, rightly has it been said that workers unorganized are weak; workers organized are strong. Necessarily then, they join labor unions.

4. **ID.; ID.; ID.; COLLECTIVE BARGAINING AGREEMENT; UNION SECURITY CLAUSES; UNION SHOP, EXPLAINED. —** To further strengthen the powers of a union, the State has allowed the inclusion of union security clauses, including a "union shop" (the type of union security clause involved in this case), in collective bargaining agreements (CBA). In a "union shop," employees who are not union members at the time of signing of the contract need not join the union, but all workers hired thereafter must join. Non-members may be hired, but to retain employment must become union members after a certain period. The *ponencia* points out the validity in this jurisdiction of the more stringent union security of "closed shop" and its applicability to old employees who are non-union members at the time of effectivity of the CBA. In a "closed shop," only union members can be hired by the company and they must remain union members to retain employment in the company.

5. **ID.; ID.; ID.; ID.; ID.; CLOSED SHOP; MUST BE STRICTLY CONSTRUED AND DOUBTS MUST BE RESOLVED AGAINST IT. —** As explained in *Guijarno*, it was to "further

increase the effectiveness of [unions] that a closed shop has been allowed." However, this undertaking did not come without detrimental effects on the workers themselves, such that in *Confederated Sons of Labor v. Anakan Lumber Co.*, we declared that a closed shop is "so harsh that it must be strictly construed" and that "doubts must be resolved against [it]." We also ruled in *Anakan* that "In order that an employer may be deemed bound, under a collective bargaining agreement, to dismiss employees for non-union membership, the stipulation to this effect must be so clear and unequivocal as to leave no room for doubt thereon."

6. **STATUTORY CONSTRUCTION; LABOR STATUTES; IF BASED ON STATUTES IN FOREIGN JURISDICTION, THE DECISIONS OF THE HIGH COURTS IN THOSE JURISDICTIONS CONSTRUING AND INTERPRETING THE ACT ARE GIVEN PERSUASIVE EFFECTS IN THE APPLICATION OF PHILIPPINE LAW. —** Although United States laws and jurisprudence on closed shops and union shops, as they now stand, are different from our own laws, it may be worthwhile to treat them with careful regard since our Labor Code and its precursor, the Industrial Peace Act, are patterned after US labor laws. We have previously ruled that when a statute has been adopted from another state or country and such statute has previously been construed by the courts of such state or country, the statute is deemed to have been adopted with the construction given to it. Where our labor statutes are based on statutes in foreign jurisdiction, the decisions of the high courts in those jurisdictions construing and interpreting the Act are given persuasive effects in the application of Philippine law.

7. **COMMERCIAL LAW; CORPORATION LAW; MERGER; EFFECTS THEREOF; APPLICATION. —** Union security agreements were adopted in our jurisdiction primarily to safeguard the rights of the working man. Where utilized to achieve a contrary purpose, these union devices should be curtailed and carefully maneuvered to remain within the periphery of labor protection. In this case, the CBA between BPI and the BPI Employees Union contains a union shop clause requiring that "new employees" of BPI join the Union within 30 days after they become regularized, as a condition for their continued employment. Upon merger, BPI, as the surviving entity, absorbs FEBTC and continues the combined business of the two banks. BPI

assumes the legal personality of FEBTC, and automatically acquires FEBTC's rights, privileges and powers, as well as its liabilities and obligations. Section 80 of Batas Pambansa Blg. 68, otherwise known as "The Corporation Code of the Philippines" enumerates the effects of merger xxx. Among the obligations and liabilities of FEBTC is to continue the employment of FEBTC employees. These employees have already acquired certain employment status, tenure, salary and benefits. They are regular employees of FEBTC. Since after the merger, BPI has continued the business of FEBTC, FEBTC's obligation to these employees is assumed by BPI, and BPI becomes duty-bound to continue the employment of these FEBTC employees.

8. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ABSENT JUST OR AUTHORIZED CAUSES, THE MERGER OF TWO CORPORATIONS DOES NOT AUTHORIZE THE SURVIVING CORPORATION TO TERMINATE THE EMPLOYEES OF THE ABSORBED CORPORATION. —** Under Article 279 of the Labor Code, regular employees acquire security of tenure, and hence, may not be terminated by the employer except upon legal grounds. These grounds are the "just causes" enumerated under Article 282 of the Code, which include serious misconduct or willful disobedience by the employee, gross habitual neglect of duties, fraud or willful breach of employer's trust, and commission of a crime; or "authorized causes" under Article 283, which include installation of labor saving devices, redundancy, retrenchment to prevent losses, and closing or cessation of business operations. Without any of these legal grounds, the employer cannot validly terminate the employment of regular employees; otherwise, the employees' right to security of tenure would be violated. The merger of two corporations does not authorize the surviving corporation to terminate the employees of the absorbed corporation in the absence of just or authorized causes as provided in Articles 282 and 283 of the Labor Code. Merger of two corporations is not one of the just or authorized causes for termination of employment.

9. **ID.; ID.; ID.; A UNION SHOP AGREEMENT IS NOT A JUST OR AUTHORIZED CAUSE TO TERMINATE A PERMANENT EMPLOYEE. —** Not even a union shop agreement is just or authorized cause to terminate a permanent employee.

A union shop clause is only a ground to terminate a probationary employee who refuses to join the union as a condition for continued employment. Once an employee becomes permanent, he is protected by the security of tenure clause in the Constitution, and he can be terminated only for just or authorized causes as provided by law.

10. **COMMERCIAL LAW; CORPORATION LAW; MERGER; THE SURVIVING CORPORATION IS OBLIGATED TO CONTINUE THE EMPLOYMENT OF THE ABSORBED CORPORATION. —** The right to security of tenure of regular employees is enshrined in the Constitution. This right cannot be eroded, let alone be forfeited except upon a clear and convincing showing of a just and lawful cause. In this case, there is no showing that legal ground exists to warrant a termination of the FEBTC employees. Therefore, BPI is obligated to continue FEBTC employees' regular employment in deference to their constitutional right to security of tenure.

11. **ID.; ID.; ID.; A LEGITIMATE MANAGEMENT PREROGATIVE WHICH CANNOT BE REJECTED BY THE EMPLOYEES OF THE MERGING ENTITIES. —** Meanwhile, the FEBTC employees **had no choice but to accept the absorption by way of merger.** A merger is a legitimate management prerogative which cannot be opposed or rejected by the employees of the merging entities. Hence, the absorption by BPI of the FEBTC employees was not within the FEBTC employees' control, and the latter had no choice but to be absorbed by BPI, unless they opted to give up their means of livelihood.

12. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNION; THE PETITIONER BANK'S EXISTING NON-UNION EMPLOYEES AT THE TIME OF THE EFFECTIVITY OF THE COLLECTIVE BARGAINING AGREEMENT CANNOT BE COMPELLED TO JOIN THE UNION AS A CONDITION FOR THEIR CONTINUED EMPLOYMENT; RATIONALE. —** Upon the effectivity of the CBA in this case, BPI employees who were members of the Union were required to maintain their membership as a condition for continued employment. **On the other hand, the then non-union employees of BPI were not compelled to join the Union — they were given a choice whether or not to join the Union at no risk to their continued employment**. In other words, non-union BPI employees could opt not to join the Union and still retain their employment with

BPI. Meanwhile, "new employees" or those who were hired by BPI after the effectivity and during the life of the CBA were automatically required to join the Union within 30 days after they were regularized. Existing BPI employees who were non-union members were not compelled to join the Union as a condition for their continued employment, as this would violate their fundamental constitutional right not to join a union. This freedom of choice exercised by non-union BPI employees was in recognition of their fundamental constitutional right to join or not to join a union which is part of their broader constitutional right to form associations. To force these employees to join a labor union at the risk of losing their means of livelihood would violate the Constitution. Thus, under the CBA, the BPI employees required to acquire or maintain union membership as a condition for their continued employment are (1) the union members at the time of the effectivity of the CBA and (2) the "new employees" who were hired during the effectivity of the CBA. Non-union BPI employees at the time of the effectivity of the CBA were not, and are still not, required to join the Union.

13. **ID.; ID.; ID.; "NEW EMPLOYEES" HIRED BY THE PETITIONER BANK DURING THE LIFE OF THE COLLECTIVE BARGAINING AGREEMENT MAY BE COMPELLED TO JOIN THE UNION AS A CONDITION FOR CONTINUED EMPLOYMENT; REASON.** — In the case of "new employees" hired by BPI during the life of the CBA, there is no violation of their constitutional right not to join a union. At the time of their application for employment with BPI, or at the latest, at the time they were hired by BPI, these employees knew that they were required to join the Union within 30 days upon regularization as a condition for continued employment with BPI. In short, the employees knew beforehand that they had to join the Union to be employed with BPI. **Thus, these employees had a clear choice whether or not to be employed with BPI, which requires that they must join the Union upon regularization**.

14. **ID.; ID.; ID.; AFTER THE MERGER, THE EMPLOYEES ABSORBED BY THE SURVIVING ENTITY ARE NOT CONSIDERED AS NEW EMPLOYEES THEREOF; PROBATIONARY PERIOD, NOT APPLICABLE; APPLICATION.** — The former FEBTC employees should not be considered as "new employees" of BPI. The former FEBTC

employees were absorbed by BPI immediately upon merger, leaving no gap in their employment. The employees retained their previous employment status, tenure, salary and benefits. This clearly indicates the intention of BPI to assume and continue the employer-employee relations of FEBTC and its employees. The FEBTC employees' employment remained continuous and unchanged, except that their employer, FEBTC, merged with BPI which, as the surviving entity, continued the combined business of the two banks. Thus, the former FEBTC employees are immediately **regularized and made permanent employees of BPI**. They are not subject to any probationary period as in the case of "new employees" of BPI. The 30-day period within which regularized "new employees" of BPI must join the Union does not apply to former FEBTC employees who are not probationary employees but are immediately regularized as permanent employees of BPI. **In short, the former FEBTC employees are immediately given the same permanent status as old employees of BPI**.

15. **ID.; ID.; ID.; AFTER THE MERGER, THE ABSORBED EMPLOYEE SHOULD BE GIVEN THE RIGHT TO CHOOSE WHETHER TO JOIN OR NOT A UNION. —** The absorbed FEBTC employees are not "new employees" who are seeking jobs for the first time. These absorbed employees are employees who have been working with FEBTC for years, or even decades, and were only absorbed by BPI because of the merger. Without the merger, these employees would have remained FEBTC employees without being required to join a union to retain their employment. **These absorbed employees are recognized by BPI and even by the Union as permanent employees immediately upon their absorption by BPI because these employees do not have to go through a probationary period.** These absorbed employees are different from the newly-hired employees of BPI, as these absorbed employees already had existing employment tenure, and were earning a livelihood when they were told that they had to join the Union at the risk of losing their livelihood. To require these absorbed employees to join the Union at the risk of losing their jobs is akin to forcing an existing non-union BPI employee to join the Union on pain of termination. In the same way that an existing non-union BPI employee is given the constitutional right to choose whether or not to join a union, an absorbed employee should be equally given the same right. And this

right must be conferred to the absorbed employee upon the effectivity of the merger between FEBTC and BPI.

16. **ID.; ID.; ID.; THE RIGHT TO FORM AN ASSOCIATION DOES NOT INCLUDE THE RIGHT TO COMPEL OTHERS TO FORM OR JOIN ONE. —** Indisputably, the right to join or not to join a Union is part of the fundamental constitutional right to form associations. In *Sta. Clara Homeowners' Association v. Gaston*, we held that, "The constitutionally guaranteed freedom of association includes the freedom *not* to associate. **The right to choose with whom one will associate oneself is the very foundation and essence of that partnership. It should be noted that the provision guarantees the right to form an association. It does not include the right to compel others to form or join one."** Thus, to compel the absorbed FEBTC employees to join the Union at the risk of losing their jobs is violative of their constitutional freedom to associate.

17. **ID.; ID.; ID.; COLLECTIVE BARGAINING AGREEMENT; THE UNION SHOP CLAUSE CANNOT PREVAIL OVER THE FUNDAMENTAL CONSTITUTIONAL RIGHT OF A WORKER TO JOIN OR NOT TO JOIN A UNION. —** The *ponencia* states, "When certain employees are obliged to join a particular union as a requisite for continued employment, as in the case of a Union Shop Clause, a form of discrimination or a derogation of the freedom or right not to join any labor organization occurs but *these are valid restrictions because they are in favor of unionism*." In this case, a derogation of the employees' fundamental constitutional right not to join a union is being done without a determination of whether the employees are in favor of unionism. Certainly, the union shop clause in a CBA cannot prevail over the fundamental constitutional right of a worker to join or not to join a union.

18. **ID.; ID.; ID.; ID.; OBLIGATION OF NON-UNION EMPLOYEES WHO ACCEPT BENEFITS UNDER THE COLLECTIVE BARGAINING AGREEMENT. —** Section 248(e) of the Labor Code provides that, "Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement x x x." **The absorbed FEBTC employees who refuse to join the Union**

will not be free riders. We held in *Holy Cross of Davao College, Inc. v. Joaquin* that the collection of agency fees in an amount equivalent to union dues and fees, from employees who are not union members, is recognized by Article 248 (e) of the Labor Code. The employee's acceptance of benefits resulting from a CBA justifies the deduction of agency fees from his pay and the union's entitlement thereto. In this aspect, the legal basis of the union's right to agency fees is neither contractual nor statutory, but quasi-contractual, deriving from the established principle that non-union employees may not unjustly enrich themselves by benefiting from employment conditions negotiated by the bargaining union. In the present case, since the absorbed FEBTC employees will pay all union dues and fees, there is no reason to force them to join the Union except to humiliate them by trampling upon their fundamental constitutional right to join or not join a union. This the Court should not allow.

BRION, ***J., dissenting opinion:***

1. **COMMERCIAL LAW; CORPORATION CODE; CORPORATIONS; MERGER; THE SURVIVING OR CONSOLIDATED CORPORATION ASSUMES *IPSO JURE* THE LIABILITIES OF THE DISSOLVED CORPORATIONS REGARDLESS OF WHETHER THE CREDITORS CONSENTED TO THE MERGER OR CONSOLIDATION. —** Unlike the old Corporation Code that did not contain express provisions on mergers and consolidations, the present law now authorizes, under Section 76, two or more corporations to merge under one of the participating constituent corporations, or to consolidate into a new single corporation called the consolidated corporation. In either case, no liquidation of the assets of the dissolved corporations takes place, and the *surviving or consolidated corporation assumes ipso jure the liabilities of the dissolved corporations, regardless of whether the creditors consented to the merger or consolidation.*

2. **ID.; ID.; ID.; ID.; LEGAL EFFECTS THEREOF; APPLICATION TO THE CASE AT BAR. —** The transaction between BPI and FEBTC was a merger under one of the modes provided under Section 76 – *i.e.,* the two corporations, BPI and FEBTC, merged with FEBTC fading away as a corporate entity and BPI surviving as FEBTC's successor. Section 80 of the Corporation Code

provides for the legal effects of a merger. As applied to BPI and FEBTC, the effects were: a. BPI and FEBTC became a single corporation with BPI as the surviving corporation; b. The separate corporate existence of FEBTC ceased; c. BPI now possesses all the rights, obligations, privileges, immunities, and franchises of both BPI and FEBTC; d. All property, real or personal, and all receivables due on whatever choses in action, and all other interest of, belonging to, or due to FEBTC are deemed transferred to BPI; e. BPI becomes responsible and liable for all the liabilities and obligations of FEBTC as if it had incurred these liabilities or obligations; f. Any claim, action, or proceeding pending by or against FEBTC should be prosecuted by or against BPI; and g. Neither the rights of creditors nor any lien on the property of FEBTC is impaired by the merger. In short, FEBTC ceased to have any legal personality, and *BPI stepped into everything that was FEBTC's, pursuant to the law and the terms of their Merger Plan*.

3. ID.; ID.; ID.; ID.; MODE OF TRANSFER OF CORPORATE ASSETS AND LIABILITIES, DISCUSSED. — An overview of the whole range or levels of transfers of corporate assets and liabilities, as established by jurisprudence, is helpful and instructive for the full appreciation of the nature of the BPI-FEBTC merger. These levels of transfers are: (1) the **assets-only level**; (2) the **business enterprise level**; and (3) the **equity level**. Each has its own impact on the participating corporations and the immediately affected parties, among them, the employees. **Beyond and encompassing all these levels of transfers is total corporate merger or consolidation.** The **asset-only transfer** affects only the corporate seller's raw assets and properties; the purchaser is not interested in the seller's corporate personality – its goodwill, or in other factors affecting the business itself. In this transaction, no complications arise affecting the employer-employee relationship, except perhaps the redundancy of employees whose presence in the selling company is affected by the sale of the chosen assets and properties, but this is a development completely internal to the selling corporation. In the **business enterprise** level transaction, the purchaser's interest goes beyond the assets and properties and extends into the seller corporation's whole business and "earning capability," short of the seller's juridical personality. Thus, a whole business is sold and purchased but the parties retain their respective juridical personalities. In this type of

transaction, employer-employee and employer liability complications arise, as can be seen from a survey of the cases on corporate transfers that this Court has already passed upon. A transaction at the **equity level** does not disturb the participating corporations' separate juridical personality as both corporations continue to remain in existence; the purchaser corporation simply buys the underlying equity of the selling corporation which thus retains its separate corporate personality. The selling corporation continues to run its business, but control of the business is transferred to the purchaser corporation whose control of the selling corporation's equity enables it to elect the members of the selling corporation's board of directors. As pointed out above, a total merger or consolidation goes way beyond all three levels of dealings in corporate business, assets and property. *In a total merger, the merged corporation transfers everything – figuratively speaking, its "body and soul" – to the surviving corporation.* This was what happened in the BPI-FEBTC merger.

4. ID.; ID.; ID.; ID.; THE RIGHT OF THE CORPORATION OVER ITS HUMAN RESOURCES CAN BE CLASSIFIED AS CORPORATE ASSETS; CLARIFIED. — A corporation possesses tangible and intangible assets and properties that, operated on and managed by the corporation's human resources, become an operating business. The intangibles consist, among others, of the corporate goodwill, credits and other incorporeal rights. The human resources that the corporation relies upon to run its business, strictly speaking, are not corporate assets because the corporation does not "own" the people running its business. But corporations are bound to their managers and employees by various forms of contracts of service, such as individual employment contracts, consultancies and other instruments evidencing personal service. In this sense, a corporation has rights over the human resources it has contracted to run and serve its business. These contractual rights, because they are exercised over those who enable the company to fulfill its goal of production, can be classified as corporate assets. But unlike the usual assets, they are unique and special, as contracts of personal service embody rights *in personam, i.e.,* intransferable rights demandable by the parties only against one another. An employment contract or contract of service essentially has value because it embodies work – the means

of adding value to basic raw materials and the processes for producing goods, materials and services that become the lifeblood of corporations and, ultimately, of the nation. Viewed from this perspective, the employment contract or contract of service is not an ordinary agreement that can be viewed in strictly *contractual* sense. It embodies work and production and carries with it a very significant element of public interest; thus, the Constitution, no less, accords full recognition and protection to workers and their contribution to production.

5. **ID.; ID.; ID.; ID.; WHERE NO APPROPRIATE PROVISION FOR THE MERGED CORPORATION'S HUMAN RESOURCES COMPONENT IS MADE IN THE MERGER PLAN, THE SURVIVING ENTITY MAY BE COMPELLED TO ABSORB THE AFFECTED EMPLOYEES. —** In a corporate merger situation – where one corporation totally surrenders itself, giving up to another corporation even the human resources that enable its business to operate – the terms of the Constitution bar us from looking at the corporate transaction purely as a contract that should be analyzed purely on the basis of the law on contracts. Nor can we accept as valid that the transfer of all assets and liabilities in a merger situation, as in this case, refers only to FEBTC's property rights and obligations and does not include the employment contracts of its personnel. [D]ue consideration of Section 80 of the Corporation Code, the constitutionally declared policies on work, labor and employment, and the specific FEBTC-BPI situation – *i.e.*, a merger with complete "body and soul" transfer of all that FEBTC embodied and possessed and where both participating banks were willing (albeit by deed, not by their written agreement) to provide for the affected human resources by recognizing continuity of employment – should point this Court to a declaration that ***in a complete merger situation*** *where there is total takeover by one corporation over another and there is silence in the merger agreement on what the fate of the human resource complement shall be*, the latter should not be left in legal limbo and should be properly provided for, by compelling the surviving entity to absorb these employees. This is what Section 80 of the Corporation Code commands, as the surviving corporation has the legal obligation to assume all the obligations and liabilities of the merged constituent corporation. Not to be forgotten is that the affected employees managed, operated and worked on the transferred assets and properties as their means of livelihood;

they constituted a basic component of their corporation during its existence. In a merger and consolidation situation, they cannot be treated without consideration of the applicable constitutional declarations and directives, or, worse, be simply disregarded. If they are so treated, it is up to this Court to read and interpret the law so that they are treated in accordance with the legal requirements of mergers and consolidation, read in light of the social justice, economic and social provisions of our Constitution. **Hence, there is a need for the surviving corporation to take responsibility for the affected employees and to absorb them into its workforce where no appropriate provision for the merged corporation's human resources component is made in the Merger Plan.**

6. ID.; ID.; ID.; ID.; RATIONALE — This recognition is not to objectify the workers as assets and liabilities, but to recognize – using the spirit of the law and constitutional standards – their necessary involvement and need to be provided for in a merger situation. Neither does this step, directly impacting on the employees' individual employment contracts, detract from the *in personam* character of these contracts. **For in a merger situation, no change of employer is involved; the change is in the *internal personality of the employer* rather than through the introduction of a new employer which would have novated the contract.** This conclusion proceeds from the nature of a merger as a corporate development regulated by law and the merger's implementation through the parties' merger agreement. In the context of this case, BPI's relationship with the absorbed employees ***cannot be equated with a situation involving voluntary hiring.*** Note that voluntary hiring, as the basis of the relationship, presupposes that employment with FEBTC had been terminated – a development that, as explained above, did not take place; the employment of the absorbed employees simply continued by operation of law, specifically by the combined operation of the Corporation Code and the Labor Code under the backdrop of the labor and social justice provisions of the Constitution.

7. ID.; ID.; ID.; ID.; AN INDIVIDUAL EMPLOYEE CAN WALK AWAY FROM HIS EMPLOYMENT CONTRACT SUBJECT ONLY TO THE ADJUSTMENT OF THE OBLIGATIONS HE HAS INCURRED UNDER THE CONTRACTUAL RELATIONSHIP THAT BINDS HIM; A CONTRARY RULE IS VIOLATIVE OF

THE CONSTITUTIONAL PROVISION ON INVOLUNTARY SERVICE. — An individual employee can, at any time, in a consensual and *in personam* employment contract, walk away from it, subject only to the adjustment of the obligations he has incurred under the contractual relationship that binds him; a contrary rule would violate the involuntary service provision of the Constitution. Ordinarily, walking away would be an act of voluntary resignation that entitles the employee only to benefits that have been earned and accrued; a merger situation is differentiated by the separation pay that the Merger Plan should at least provide under the combined application of the Corporation Code, as well as the just and authorized causes for termination of employment under the Labor Code. Otherwise, the employee has the right to be secure in his tenure without loss of seniority, benefits and level of pay.

8. **ID.; ID.; ID.; ID.; ID.; EMPLOYMENT CONTRACTS SHOULD BE HELD TO BE CONTINUING, UNLESS REJECTED BY THE EMPLOYEES THEMSELVES OR DECLARED BY THE MERGING PARTIES TO BE SUBJECT TO THE AUTHORIZED CAUSES FOR TERMINATION OF EMPLOYMENT. —** That an employment contract is *in personam* cannot be disputed as this is the essence of such contract and what this contract should be in light of the constitutional prohibition against involuntary servitude. But as pointed out, this is not wholly and strictly how an employment contract is to be viewed under our Constitution. While these contracts are binding only between the parties, they resonate with public interest that the Constitution and our laws have seen fit to regulate; employment contracts translate to service which itself translates to productive work that the economy and the nation need. In the BPI-FEBTC situation, these employment contracts are part of the obligations that the merging parties have to account and make provisions for under the Constitution and the Corporation Code; in the absence of any clear agreement, these employment contracts subsist, subject to the right of the employees to reject them as they cannot be compelled to render service but can only be made to answer in damages if the rejection constitutes a breach. ***In other words, in mergers and consolidations, these contracts should be held to be continuing, unless rejected by the employees themselves or declared by the merging parties to***

be subject to the authorized causes for termination of employment under Sections 282 and 283 of the Labor Code. In this sense, the merging parties' control and business decision on how employees shall be affected, in the same manner that the affected employees' decision on whether to abide by the merger or to opt out, remain unsullied.

9. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; LABOR UNIONS; IN A MERGER SITUATION, THE ABSORBED EMPLOYEES MAY COME WITHIN THE COVERAGE OF THE BARGAINING UNIT BUT MAY STILL BE EXEMPT FROM COMPULSORY UNION MEMBERSHIP UNDER THE UNION SECURITY CLAUSES. — Where a union is present in a merger situation, complications arise as the adjustment will not only involve the assumption of the role of the merged corporation as employer and the non-diminution of the terms and conditions of employment; existing terms and conditions of the relationship with the union must as well be observed and respected. This union scenario gave rise to the present case and at its core asks: *what terms and conditions of relationship with the union must be observed in light of BPI's expanded role as an employer*. Union presence at the workplace is generally most effective when it has a current CBA with the employer. This agreement necessarily implies that a bargaining unit has been properly defined and delineated in the organized portion of the employer's establishment. In the present case, the establishment is BPI's Davao Branch and the defined bargaining unit covers the rank-and-file positions in the Branch. At the minimum, the absorbed employees working within BPI's Davao Branch who are ***classified as rank-and-file employees*** and ***who are not expressly excluded*** from coverage should be covered by the collective bargaining unit and by the CBA. Note that *this coverage by the bargaining unit is separate from compulsory union membership which is provided under the union security clauses* xxx. *Employees may come within the coverage of the bargaining unit, but may still be exempt from compulsory union membership under the union security clauses.*

10. ID.; ID.; ID.; COLLECTIVE BARGAINING AGREEMENT; UNION SECURITY CLAUSES; MAINTENANCE OF MEMBERSHIP DISTINGUISHED FROM UNION SHOP; APPLICATION TO THE CASE AT BAR. — The CBA at BPI

contains two union security provisions whose respective roles are **to protect** and **to compel** union membership within the effective term of the CBA. The first is the **Maintenance of Membership** provision whose role is to ***protect the union's current membership.*** By its express terms, it covers and renders continued union membership compulsory for: **(1)** those who were already union members at the time the CBA was signed; and **(2)** the new employees who will become regular during the life of the CBA. The first classification of union members directly implies that ***BPI employees who were not members of the union, at the time of the signing of the CBA, are not compelled to be union members.*** Thus, on the basis of this union security clause and the compulsory membership it compels, there are three kinds of employees at BPI, namely – (1) those who **are not compelled to be union members** because they were not union members at the time the CBA was signed; (2) those **who are compelled** to continue membership because they were **already union members when the CBA was signed;** and (3) those who, **previously non-regular employees**, are compelled to be union members **after they attain regular status.** As applied to the absorbed employees, the maintenance of membership clause would apply to them *only if they voluntarily joined the union after the BPI-FEBTC merger*; they would thereafter have to maintain their union membership under pain of dismissal. The second union security provision is entitled **Union Shop** *whose role is to compel the membership of those who are not yet union members.* To quote its direct terms, it refers to "**[N]ew employees falling within the bargaining unit** as defined in Article I of this Agreement, **who may hereafter be regularly employed by the Bank."** Strictly speaking, this definition is defective as it speaks of new non-regular employees who are not therefore members of the bargaining unit yet. The provision should properly read: *new employees occupying positions falling within the bargaining unit.* x x x. In a resulting **purely maintenance of membership** regime, those who would not opt to join the union carry no obligation to maintain any union membership. In a **union shop** regime, the absorbed employees may remain non-union members until an agreed specified time when union membership is declared obligatory as a condition for continued employment. With the same effect would be the stricter **closed shop** clause that compels management to hire

only union members. **In any of these regimes, of course, compulsory membership shall depend on the terms of the CBA on who would be subject to compulsion and how compulsion would operate.** As a cautionary note to avoid similar problems in the future, it may be best for the parties to incorporate terms expressly providing for the situation of employees absorbed by reason of merger.

11. ID.; ID.; ID.; ID.; TERM "NEW EMPLOYEES," CONSTRUED. — Read closely, this reference to "new employees" is not a definition that specifies who are new. It simply refers to those employees *whose positions fall within the bargaining unit and who are subsequently given regular status;* they must join the union as a condition of their continued employment. By its reference to employees who are as yet on non-regular status, what is clearly a requirement for the application of the union shop clause, as framed by this provision, is the grant of regular status. In other words, it applies to those recently given regular employment and who, by necessary implication, were hired as non-regular employees and were thereafter accorded regular status. In contrast with the non-regular employees that the CBA clearly referred to, absorbed FEBTC employees did not undergo the process of waiting for the grant of regular status; their regular employment simply continued from FEBTC to BPI without any break because BPI only succeeded to the role of FEBTC as employer in a merger, where the same employment was maintained and only the employer's personality changed. Thus, they cannot be "new" under the terms of the union security clause. For that matter, they are not even "new" under the ordinary meaning of this word which connotes something that recently came into existence, use, or a particular state or relation.

12. ID.; ID.; ID.; ID.; ABSORBED EMPLOYEES AND THOSE WHO ARE HIRED AS IMMEDIATE REGULARS, DISTINGUISHED. — Even granting the validity of the *ponencia's* position that the union shop provision *as written* does not distinguish between non-regular employees, who subsequently became regular, and those who were hired and immediately granted regular status without passing through a non-regular phase, still the union security clause would not cover the absorbed employees because they do not fall under either classification. An intrinsic distinction exists between the absorbed employees and those who are hired as immediate regulars, which distinction

cannot simply be disregarded because it establishes how the absorbed employees came to work for BPI. Those who are immediately hired as regulars acquire their status through the voluntary act of hiring done within the effective term or period of the CBA. The absorbed employees, on the other hand, merely continued the employment they started with FEBTC; they came to be BPI employees by reason of a corporate merger that changed the personality of their employer but *did not at all give them any new employment*. Thus, they are neither "new" employees nor employees who became regular only during the term of the CBA in the way that newly regularized employees become so. They were regular employees under their present employment long before BPI succeeded to FEBTC's role as employer.

13. **ID.; ID.; ID.; ID.; ABSORBED EMPLOYEES OF THE DISSOLVED CORPORATION, CLASSIFICATION THEREOF CLARIFIED. —** It may well be asked: what then is the classification under the CBA of the absorbed employees whose positions fall within the bargaining unit? As discussed, they cannot be new employees. In fact, they are more similar to the "old" employees, if their continuity of service will be considered. This characterization, nevertheless, is clearly inapt since they cannot also be treated in exactly the same way as the pre-merger BPI employees. Besides, *being "old" employees will not compel them to join the union under the maintenance of membership provision as they never had any union membership to maintain.* Ultimately, the absorbed employees are best recognized for what they really are – a ***sui generis*** **group of employees** whose classification will not be duplicated until BPI has another merger where it would be the surviving corporation and no provision would be made to define the situation of the employees of the merged constituent corporation. Significantly, this classification – ***obviously, not within the contemplation of the CBA parties when they executed their CBA*** – is not contrary to, nor governed by, any of the agreed terms of the existing CBA on union security, and thus occupies a gap that BPI, in the exercise of its management prerogative, can fill. In the meantime, whether to join or not to join the union is a choice that these absorbed employees will have to make after the next CBA, when their status becomes subject to the results of the collective negotiations.

APPEARANCES OF COUNSEL

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Gregorio A. Pizzaro for respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

May a corporation invoke its merger with another corporation as a valid ground to exempt its "absorbed employees" from the coverage of a union shop clause contained in its existing Collective Bargaining Agreement (CBA) with its own certified labor union? That is the question we shall endeavor to answer in this petition for review filed by an employer after the Court of Appeals decided in favor of respondent union, which is the employees' recognized collective bargaining representative.

At the outset, we should call to mind the spirit and the letter of the Labor Code provisions on union security clauses, specifically Article 248 (e), which states, "x x x **Nothing in this Code or <u>in any other law</u> shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment,** except those employees who are already members of another union at the time of the signing of the collective bargaining agreement."[1] This case which involves the application of a collective bargaining agreement with a union shop clause should be resolved principally from the standpoint of the clear provisions of our labor laws, and the express terms of the CBA in question, and not by inference from the general consequence of the merger of corporations under the Corporation Code, which obviously does not deal with and, therefore, is silent on the terms and conditions of employment in corporations or juridical entities.

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[1] Presidential Decree No. 442, as amended. Emphasis added.

This issue must be resolved NOW, instead of postponing it to a future time when the CBA is renegotiated as suggested by the Honorable Justice Arturo D. Brion because the same issue may still be resurrected in the renegotiation if the absorbed employees insist on their privileged status of being exempt from any union shop clause or any variant thereof.

We find it significant to note that it is only the employer, Bank of the Philippine Islands (BPI), that brought the case up to this Court *via* the instant petition for review; while the employees actually involved in the case did not pursue the same relief, but had instead chosen in effect to acquiesce to the decision of the Court of Appeals which effectively required them to comply with the union shop clause under the existing CBA at the time of the merger of BPI with Far East Bank and Trust Company (FEBTC), **which decision had already become final and executory as to the aforesaid employees**. By not appealing the decision of the Court of Appeals, the aforesaid employees are bound by the said Court of Appeals' decision to join BPI's duly certified labor union. In view of the apparent acquiescence of the affected FEBTC employees in the Court of Appeals' decision, BPI should not have pursued this petition for review. However, even assuming that BPI may do so, the same still cannot prosper.

What is before us now is a petition for review under Rule 45 of the Rules of Court of the Decision[2] dated September 30, 2003 of the Court of Appeals, as reiterated in its Resolution[3] of June 9, 2004, reversing and setting aside the Decision[4] dated November 23, 2001 of Voluntary Arbitrator Rosalina Letrondo-Montejo, in *CA-G.R. SP No. 70445*, entitled *BPI Employees*

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[2] Penned by Associate Justice Arsenio J. Magpale (ret.) with Associate Justices Conrado M. Vasquez, Jr. and Bienvenido L. Reyes, concurring; *rollo*, pp. 15-25.

[3] *Rollo,* pp. 41-42.

[4] *Id.* at 86-93.

Union-Davao Chapter-Federation of Unions in BPI Unibank v. Bank of the Philippine Islands, et al.

The antecedent facts are as follows:

On March 23, 2000, the Bangko Sentral ng Pilipinas approved the Articles of Merger executed on January 20, 2000 by and between BPI, herein petitioner, and FEBTC.[5] This Article and Plan of Merger was approved by the Securities and Exchange Commission on April 7, 2000.[6]

Pursuant to the Article and Plan of Merger, all the assets and liabilities of FEBTC were transferred to and absorbed by BPI as the surviving corporation. FEBTC employees, including those in its different branches across the country, were hired by petitioner as its own employees, with their status and tenure recognized and salaries and benefits maintained.

Respondent BPI Employees Union-Davao Chapter - Federation of Unions in BPI Unibank (hereinafter the "Union," for brevity) is the exclusive bargaining agent of BPI's rank and file employees in Davao City. The former FEBTC rank-and-file employees in Davao City did not belong to any labor union at the time of the merger. Prior to the effectivity of the merger, or on March 31, 2000, respondent Union invited said FEBTC employees to a meeting regarding the Union Shop Clause (Article II, Section 2) of the existing CBA between petitioner BPI and respondent Union.[7]

The parties both advert to certain provisions of the existing CBA, which are quoted below:

ARTICLE I

Section 1. Recognition and Bargaining Unit – The BANK recognizes the UNION as the sole and exclusive collective bargaining

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[5] *Id.* at 78.

[6] *Id.* at 79.

[7] *Id.* at 18.

representative of all the regular rank and file employees of the Bank offices in Davao City.

Section 2. Exclusions

Section 3. Additional Exclusions

Section 4. Copy of Contract

ARTICLE II

Section 1. Maintenance of Membership – All employees within the bargaining unit who are members of the Union on the date of the effectivity of this Agreement as well as employees within the bargaining unit who subsequently join or become members of the Union during the lifetime of this Agreement shall as a condition of their continued employment with the Bank, maintain their membership in the Union in good standing.

Section 2. Union Shop — **New employees** falling within the bargaining unit as defined in Article I of this Agreement, **who may hereafter be regularly employed** by the Bank shall, within thirty (30) days after they become regular employees, join the Union as a condition of their continued employment. It is understood that membership in good standing in the Union is a condition of their continued employment with the Bank.[8] (Emphases supplied.)

After the meeting called by the Union, some of the former FEBTC employees joined the Union, while others refused. Later, however, some of those who initially joined retracted their membership.[9]

Respondent Union then sent notices to the former FEBTC employees who refused to join, as well as those who retracted their membership, and called them to a hearing regarding the matter. When these former FEBTC employees refused to attend the hearing, the president of the Union requested BPI to implement the Union Shop Clause of the CBA and to terminate their employment pursuant thereto.[10]

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

[9] Records, p. 8.

[10] *Id.* at 18.

After two months of management inaction on the request, respondent Union informed petitioner BPI of its decision to refer the issue of the implementation of the Union Shop Clause of the CBA to the Grievance Committee. However, the issue remained unresolved at this level and so it was subsequently submitted for voluntary arbitration by the parties.[11]

Voluntary Arbitrator Rosalina Letrondo-Montejo, in a Decision[12] dated November 23, 2001, ruled in favor of petitioner BPI's interpretation that the former FEBTC employees were not covered by the Union Security Clause of the CBA between the Union and the Bank on the ground that the said employees were not new employees who were hired and subsequently regularized, but were absorbed employees "by operation of law" because the "**former employees** of FEBTC can be considered **assets and liabilities of the absorbed corporation**." The Voluntary Arbitrator concluded that the former FEBTC employees could not be compelled to join the Union, as it was their constitutional right to join or not to join any organization.

Respondent Union filed a Motion for Reconsideration, but the Voluntary Arbitrator denied the same in an Order dated March 25, 2002.[13]

Dissatisfied, respondent then appealed the Voluntary Arbitrator's decision to the Court of Appeals. In the herein assailed Decision dated September 30, 2003, the Court of Appeals reversed and set aside the Decision of the Voluntary Arbitrator.[14] Likewise, the Court of Appeals denied herein petitioner's Motion for Reconsideration in a Resolution dated June 9, 2004.

The Court of Appeals pertinently ruled in its Decision:

> A union-shop clause has been defined as a form of union security provision wherein non-members may be hired, but to retain employment must become union members after a certain period.

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[11] *Id.* at 19.

[12] *Supra* note 4.

[13] *Rollo*, p. 19.

[14] *Id.* at 24.

There is no question as to the existence of the union-shop clause in the CBA between the petitioner-union and the company. The controversy lies in its application to the "absorbed" employees.

This Court agrees with the voluntary arbitrator that the ABSORBED employees are distinct and different from NEW employees BUT only in so far as their employment service is concerned. The distinction ends there. In the case at bar, the absorbed employees' length of service from its former employer is tacked with their employment with BPI. Otherwise stated, the absorbed employees service is continuous and there is no gap in their service record.

This Court is persuaded that the *similarities* of "new" and "absorbed" employees far outweighs the *distinction* between them. The similarities lies on the following, to wit: (a) they have a new employer; (b) new working conditions; (c) new terms of employment and; (d) new company policy to follow. As such, they should be considered as "new" employees for purposes of applying the provisions of the CBA regarding the "union-shop" clause.

To rule otherwise would definitely result to a very awkward and unfair situation wherein the "absorbed" employees shall be in a different if not, better situation than the existing BPI employees. The existing BPI employees by virtue of the "union-shop" clause are required to pay the monthly union dues, remain as members in good standing of the union otherwise, they shall be terminated from the company, and other union-related obligations. On the other hand, the "absorbed" employees shall enjoy the "fruits of labor" of the petitioner-union and its members for nothing in exchange. Certainly, this would disturb industrial peace in the company which is the paramount reason for the existence of the CBA and the union.

The voluntary arbitrator's interpretation of the provisions of the CBA concerning the coverage of the "union-shop" clause is at war with the spirit and the rationale why the Labor Code itself allows the existence of such provision.

The Supreme Court in the case of *Manila Mandarin Employees Union vs. NLRC* (G.R. No. 76989, September 29, 1987) rule, to quote:

> "This Court has held that a valid form of union security, and such a provision in a collective bargaining agreement is not a restriction of the right of freedom of association guaranteed by the Constitution.

> A closed-shop agreement is an agreement whereby an employer binds himself to hire only members of the contracting union who must continue to remain members in good standing to keep their jobs. It is **"THE MOST PRIZED ACHIEVEMENT OF UNIONISM." IT ADDS MEMBERSHIP AND COMPULSORY DUES.** By holding out to loyal members a promise of employment in the closed-shop, **it wields group solidarity**." (Emphasis supplied)

Hence, the voluntary arbitrator erred in construing the CBA literally at the expense of industrial peace in the company.

With the foregoing ruling from this Court, necessarily, the alternative prayer of the petitioner to require the individual respondents to become members or if they refuse, for this Court to direct respondent BPI to dismiss them, follows.[15]

Hence, petitioner's present recourse, raising the following issues:

I

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE FORMER FEBTC EMPLOYEES SHOULD BE CONSIDERED 'NEW' EMPLOYEES OF BPI FOR PURPOSES OF APPLYING THE UNION SHOP CLAUSE OF THE CBA

II

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN FINDING THAT THE VOLUNTARY ARBITRATOR'S INTERPRETATION OF THE COVERAGE OF THE UNION SHOP CLAUSE IS "AT WAR WITH THE SPIRIT AND THE RATIONALE WHY THE LABOR CODE ITSELF ALLOWS THE EXISTENCE OF SUCH PROVISION"[16]

In essence, the sole issue in this case is whether or not the former FEBTC employees that were absorbed by petitioner upon the merger between FEBTC and BPI should be covered by the Union Shop Clause found in the existing CBA between petitioner and respondent Union.

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[15] *Rollo,* pp. 229-231.

[16] *Id.* at 66.

Petitioner is of the position that the former FEBTC employees are not new employees of BPI for purposes of applying the Union Shop Clause of the CBA, on this note, petitioner points to Section 2, Article II of the CBA, which provides:

> **New employees falling within the bargaining unit** as defined in Article I of this Agreement, **who may hereafter be regularly employed by the Bank shall, within thirty (30) days after they become regular** employees, **join the Union as a condition of their continued employment.** It is understood that membership in good standing in the Union is a condition of their continued employment with the Bank.[17] (Emphases supplied.)

Petitioner argues that the term "new employees" in the Union Shop Clause of the CBA is qualified by the phrases "who may hereafter be regularly employed" and "after they become regular employees" which led petitioner to conclude that the "new employees" referred to in, and contemplated by, the Union Shop Clause of the CBA were only those employees who were "new" to BPI, on account of having been hired initially on a temporary or probationary status for possible regular employment at some future date. BPI argues that the FEBTC employees absorbed by BPI cannot be considered as "new employees" of BPI for purposes of applying the Union Shop Clause of the CBA.[18]

According to petitioner, the contrary interpretation made by the Court of Appeals of this particular CBA provision ignores, or even defies, what petitioner assumes as its clear meaning and scope which allegedly contradicts the Court's strict and restrictive enforcement of union security agreements.

We do not agree.

Section 2, Article II of the CBA is silent as to how one becomes a "regular employee" of the BPI for the first time. **There is nothing in the said provision which requires that a "new" regular employee first undergo a temporary or**

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[17] *Id.* at 17.

[18] *Id.* at 68-69.

probationary status before being deemed as such under the union shop clause of the CBA.

"Union security" is a generic term which is applied to and comprehends "closed shop," "union shop," "maintenance of membership" or any other form of agreement which imposes upon employees the obligation to acquire or retain union membership as a condition affecting employment. There is union shop when all new regular employees are required to join the union within a certain period for their continued employment. There is maintenance of membership shop when employees, who are union members as of the effective date of the agreement, or who thereafter become members, must maintain union membership as a condition for continued employment until they are promoted or transferred out of the bargaining unit or the agreement is terminated. A closed-shop, on the other hand, may be defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part.[19]

In the case of *Liberty Flour Mills Employees v. Liberty Flour Mills, Inc.*,[20] we ruled that:

> **It is the policy of the State to promote unionism to enable the workers to negotiate with management on the same level and with more persuasiveness than if they were to individually and independently bargain for the improvement of their respective conditions.** To this end, the Constitution guarantees to them the rights "to self-organization, collective bargaining and negotiations and peaceful concerted actions including the right to strike in accordance with law." There is no question that these purposes could be thwarted if every worker were to choose to go his own separate way instead of joining his co-employees in planning

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[19] *Inguillo v. First Philippine Scales, Inc.*, G.R. No. 165407, June 5, 2009, 588 SCRA 471, 485-486.

[20] 259 Phil. 1156, 1167-1168 (1989).

collective action and presenting a united front when they sit down to bargain with their employers. It is for this reason that the law has sanctioned stipulations for the union shop and the closed shop as a means of encouraging the workers to join and support the labor union of their own choice as their representative in the negotiation of their demands and the protection of their interest *vis-à-vis* the employer. (Emphasis ours.)

In other words, the purpose of a union shop or other union security arrangement is to guarantee the continued existence of the union through enforced membership for the benefit of the workers.

All employees in the bargaining unit covered by a Union Shop Clause in their CBA with management are subject to its terms. **However, under law and jurisprudence, the following kinds of employees are exempted from its coverage**, namely, employees who at the time the union shop agreement takes effect are bona fide members of a religious organization which prohibits its members from joining labor unions on religious grounds;[21] **employees already in the service and already members of a union other than the majority at the time the union shop agreement took effect**;[22] confidential employees who are excluded from the rank and file bargaining unit;[23] and **employees excluded from the union shop by express terms of the agreement**.

When certain employees are obliged to join a particular union as a requisite for continued employment, as in the case of Union Security Clauses, this condition is a valid restriction of the freedom or right not to join any labor organization because it is in favor of unionism. This Court, on occasion, has even held that a

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[21] *Victoriano v. Elizalde Rope Workers' Union,* G.R. No. L-25246, September 12, 1974, 59 SCRA 54, 68.

[22] *Freeman Shirt Manufacturing Co. v. Court of Industrial Relations,* G.R. No. L-16561, January 28,1961, 1 SCRA 353, 356; *Sta. Cecilia Sawmills v. Court of Industrial Relations,* G.R. Nos. L-19273-74, February 29, 1964, 10 SCRA 433, 437.

[23] *Metrolab Industries, Inc. v. Confesor,* G.R. No. 108855, February 28, 1996, 254 SCRA 182, 197.

union security clause in a CBA is not a restriction of the right of freedom of association guaranteed by the Constitution.[24]

Moreover, a closed shop agreement is an agreement whereby an employer binds himself to hire only members of the contracting union who must continue to remain members in good standing to keep their jobs. It is "**the most prized achievement of unionism**." It adds membership and compulsory dues. By holding out to loyal members a promise of employment in the closed shop, **it wields group solidarity**.[25]

Indeed, the situation of the former FEBTC employees in this case clearly does not fall within the first three exceptions to the application of the Union Shop Clause discussed earlier. No allegation or evidence of religious exemption or prior membership in another union or engagement as a confidential employee was presented by both parties. The sole category therefore in which petitioner may prove its claim is the fourth recognized exception or whether the former FEBTC employees are excluded by the express terms of the existing CBA between petitioner and respondent.

To reiterate, petitioner insists that the term "new employees," as the same is used in the Union Shop Clause of the CBA at issue, refers only to employees hired by BPI as **non-regular** employees who **later qualify** for regular employment and become regular employees, and not those who, as a legal consequence of a merger, are allegedly automatically deemed regular employees of BPI. However, the CBA does not make a distinction as to how a regular employee attains such a status. Moreover, there is nothing in the Corporation Law and the merger agreement mandating the automatic employment as regular employees by the surviving corporation in the merger.

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[24] *Manila Mandarin Employees Union v. National Labor Relations Commission,* G.R. No. 76989, September 29, 1987, 154 SCRA 368, 375 (citing *Lirag Textile Mills, Inc. v. Blanco*, G.R. No. L-27029, November 12, 1981, 109 SCRA 87 and *Manalang v. Artex Development Company, Inc.,* G.R. No. L-20432, October 30, 1967, 21 SCRA 561).

[25] *Id.* at 375.

It is apparent that petitioner hinges its argument that the former FEBTC employees were absorbed by BPI merely as a legal consequence of a merger based on the characterization by the Voluntary Arbiter of these absorbed employees as included in the "assets and liabilities" of the dissolved corporation - assets because they help the Bank in its operation and liabilities because redundant employees may be terminated and company benefits will be paid to them, thus reducing the Bank's financial status. Based on this ratiocination, she ruled that the same are not new employees of BPI as contemplated by the CBA at issue, noting that the Certificate of Filing of the Articles of Merger and Plan of Merger between FEBTC and BPI stated that "x x x the entire assets and liabilities of FAR EASTERN BANK & TRUST COMPANY will be transferred to and absorbed by the BANK OF THE PHILIPPINE ISLANDS x x x (underlining supplied)."[26] In sum, the Voluntary Arbiter upheld the reasoning of petitioner that the FEBTC employees became BPI employees by "operation of law" because they are included in the term "assets and liabilities."

Absorbed FEBTC Employees are Neither Assets nor Liabilities

In legal parlance, however, human beings are never embraced in the term "assets and liabilities." Moreover, BPI's absorption of former FEBTC employees was neither by operation of law nor by legal consequence of contract. There was no government regulation or law that compelled the merger of the two banks or the absorption of the employees of the dissolved corporation by the surviving corporation. Had there been such law or regulation, the absorption of employees of the non-surviving entities of the merger would have been mandatory on the surviving corporation.[27] In the present case, the merger was voluntarily entered into by both banks presumably for some mutually acceptable consideration. **In fact, the Corporation Code does**

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[26] *Rollo*, p. 79.

[27] *Filipinas Port Services, Inc. v. National Labor Relations Commission*, G.R. No. 97237, August 16, 1991, 200 SCRA 773, 780.

not also mandate the absorption of the employees of the non-surviving corporation by the surviving corporation in the case of a merger. Section 80 of the Corporation Code provides:

SEC. 80. *Effects of merger or consolidation*. – The merger or consolidation, as provided in the preceding sections shall have the following effects:

1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;

2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;

3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be taken and deemed to be transferred to and vested in such surviving or consolidated corporation without further act or deed; and

5. The surviving or the consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any claim, action or proceeding pending by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation, as the case may be. Neither the rights of creditors nor any lien upon the property of any of such constituent corporations shall be impaired by such merger or consolidated.

Significantly, too, the Articles of Merger and Plan of Merger dated April 7, 2000 did **not** contain any specific stipulation with respect to the employment contracts of existing personnel of the non-surviving entity which is FEBTC. Unlike the Voluntary Arbitrator, this Court cannot uphold the reasoning that the general stipulation regarding transfer of FEBTC assets and liabilities to BPI as set forth in the Articles of Merger necessarily includes the transfer of all FEBTC employees into the employ of BPI and neither BPI nor the FEBTC employees allegedly could do anything about it. **Even if it is so, it does not follow that the absorbed employees should not be subject to the terms and conditions of employment obtaining in the surviving corporation**.

The rule is that unless expressly assumed, labor contracts such as employment contracts and collective bargaining agreements are not enforceable against a transferee of an enterprise, labor contracts being *in personam*, thus binding only between the parties. A labor contract merely creates an action *in personam* and does not create any real right which should be respected by third parties. This conclusion draws its force from the right of an employer to select his employees and to decide when to engage them as protected under our Constitution, and the same can only be restricted by law through the exercise of the police power.[28]

Furthermore, this Court believes that it is contrary to public policy to declare the former FEBTC employees as forming part of the assets or liabilities of FEBTC that were transferred and absorbed by BPI in the Articles of Merger. Assets and liabilities, in this instance, should be deemed to refer only to property rights and obligations of FEBTC and do not include the employment contracts of its personnel. A corporation cannot unilaterally transfer its employees to another employer like chattel. Certainly, if BPI as an employer had the right to choose who to retain among FEBTC's employees, FEBTC employees had the concomitant right to choose not to be absorbed by BPI. Even though FEBTC employees had no choice or control over

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[28] *Sundowner Development Corporation v. Drilon,* G.R. No. 82341, December 6, 1989, 180 SCRA 14, 18.

the merger of their employer with BPI, they had a choice whether or not they would allow themselves to be absorbed by BPI. Certainly nothing prevented the FEBTC's employees from resigning or retiring and seeking employment elsewhere instead of going along with the proposed absorption.

Employment is a personal consensual contract and absorption by BPI of a former FEBTC employee without the consent of the employee is in violation of an individual's freedom to contract. It would have been a different matter if there was an express provision in the articles of merger that as a condition for the merger, BPI was being required to assume all the employment contracts of all existing FEBTC employees with the conformity of the employees. In the absence of such a provision in the articles of merger, then BPI clearly had the business management decision as to whether or not employ FEBTC's employees. FEBTC employees likewise retained the prerogative to allow themselves to be absorbed or not; otherwise, that would be tantamount to involuntary servitude.

There appears to be no dispute that with respect to FEBTC employees that BPI chose not to employ or FEBTC employees who chose to retire or be separated from employment instead of "being absorbed," **BPI's assumed liability** to these employees pursuant to the merger is FEBTC's liability to them in terms of separation pay,[29] retirement

[29] Art. 283 of the Labor Code provides:

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

pay[30] or other benefits that may be due them depending on the circumstances.

Legal Consequences of Mergers

Although not binding on this Court, American jurisprudence on the consequences of voluntary mergers on the right to employment and seniority rights is persuasive and illuminating. We quote the following pertinent discussion from the American Law Reports:

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[30] Art. 287 of the Labor Code states:

RETIREMENT. – Any employees may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contact.

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

An underground mining employee upon reaching the age of fifty (50) years or more, but not beyond sixty (60) years which is hereby declared the compulsory retirement age for underground mine workers, who has served at least five (5) years as underground mine workers, who has served at least (5) years as underground mine worker, may retire and shall be entitled to all the retirement benefits provided for in this Article. (R.A. No.8558, approved on February 26, 1998.)

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

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

Several cases have involved the situation where as a result of **mergers**, consolidations, or shutdowns, one group of employees, who had accumulated seniority at one plant or for one employer, finds that their jobs have been discontinued except to the extent that they are offered employment at the place or by the employer where the work is to be carried on in the future. *Such cases have involved the question whether such transferring employees should be entitled to carry with them their accumulated seniority or whether they are to be compelled to start over at the bottom of the seniority list in the "new" job. It has been recognized in some cases that the accumulated seniority does not survive and cannot be transferred to the "new" job.*

In ***Carver v. Brien* (1942) 315 Ill App 643, 43 NE2d 597**, the shop work of three formerly separate railroad corporations, which had previously operated separate facilities, was consolidated in the shops of one of the roads. Displaced employees of the other two roads were given preference for the new jobs created in the shops of the railroad which took over the work. A controversy arose between the employees as to whether the displaced employees were entitled to carry with them to the new jobs the seniority rights they had accumulated with their prior employers, that is, whether the rosters of the three corporations, for seniority purposes, should be "dovetailed" or whether the transferring employees should go to the bottom of the roster of their new employer. Labor representatives of the various systems involved attempted to work out an agreement which, in effect, preserved the seniority status obtained in the prior employment on other roads, and the action was for specific performance of this agreement against a demurring group of the original employees of the railroad which was operating the consolidated shops. The relief sought was denied, the court saying that, *absent some specific contract provision otherwise, seniority rights were ordinarily limited to the employment in which they were earned*, and concluding that the contract for which specific performance was sought was not such a completed and binding agreement as would support such equitable relief, since the railroad, whose concurrence in the arrangements made was essential to their effectuation, was not a party to the agreement.

Where the provisions of a labor contract provided that in the event that a trucker **absorbed** the business of another private contractor or common carrier, or was a party to a **merger** of lines, *the seniority of the employees **absorbed** or affected thereby should be determined*

by mutual agreement between the trucker and the unions involved, it was held in ***Moore v. International Brotherhood of Teamsters, etc.*** **(1962, Ky) 356 SW2d 241**, that the trucker *was not required to absorb the affected employees as well as the business, the court saying that they could find no such meaning in the above clause, stating that it dealt only with seniority, and not with initial employment. Unless and until the absorbing company agreed to take the employees of the company whose business was being* ***absorbed****, no seniority problem was created, said the court, hence the provision of the contract could have no application*. Furthermore, said the court, it did not require that the absorbing company take these employees, but only that if it did take them *the question of seniority between the old and* ***new employees*** *would be worked out by agreement* or else be submitted to the grievance procedure.[31] (Emphasis ours.)

Indeed, from the tenor of local and foreign authorities, in voluntary mergers, absorption of the dissolved corporation's employees or the recognition of the absorbed employees' service with their previous employer may be demanded from the surviving corporation if required by provision of law or contract. The dissent of Justice Arturo D. Brion tries to make a distinction as to the terms and conditions of employment of the absorbed employees in the case of a corporate merger or consolidation which will, in effect, take away from corporate management the prerogative to make purely business decisions on the hiring of employees or will give it an excuse not to apply the CBA in force to the prejudice of its own employees and their recognized collective bargaining agent. In this regard, we disagree with Justice Brion.

Justice Brion takes the position that because the surviving corporation continues the personality of the dissolved corporation and acquires all the latter's rights and obligations, it is duty-bound to absorb the dissolved corporation's employees, even in the absence of a stipulation in the plan of merger. He proposes that this interpretation would provide the necessary protection to labor as it spares workers from being "left in legal limbo."

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[31] 90 ALR 2D 975, 983-984.

However, there are instances where an employer can validly discontinue or terminate the employment of an employee without violating his right to security of tenure. Among others, in case of redundancy, for example, superfluous employees may be terminated and such termination would be authorized under Article 283 of the Labor Code.[32]

Moreover, assuming for the sake of argument that there is an obligation to hire or absorb all employees of the non-surviving corporation, there is still no basis to conclude that the terms and conditions of employment under a valid collective bargaining agreement in force in the surviving corporation should not be made to apply to the absorbed employees.

The Corporation Code and the Subject Merger Agreement are Silent on Efficacy, Terms and Conditions of Employment Contracts

The lack of a provision in the plan of merger regarding the transfer of employment contracts to the surviving corporation could have very well been deliberate on the part of the parties to the merger, in order to grant the surviving corporation the freedom to choose who among the dissolved corporation's employees to retain, in accordance with the surviving corporation's

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

business needs. If terminations, for instance due to redundancy or labor-saving devices or to prevent losses, are done in good faith, they would be valid. The surviving corporation too is duty-bound to protect the rights of its own employees who may be affected by the merger in terms of seniority and other conditions of their employment due to the merger. Thus, we are not convinced that in the absence of a stipulation in the merger plan the surviving corporation was compelled, or may be judicially compelled, to absorb all employees under the same terms and conditions obtaining in the dissolved corporation as the surviving corporation should also take into consideration the state of its business and its obligations to its own employees, and to their certified collective bargaining agent or labor union.

Even assuming we accept Justice Brion's theory that in a merger situation the surviving corporation should be compelled to absorb the dissolved corporation's employees as a legal consequence of the merger and as a social justice consideration, it bears to emphasize his dissent also recognizes that the employee may choose to end his employment at any time by voluntarily resigning. For the employee to be "absorbed" by BPI, it requires the employees' implied or express consent. It is because of this human element in employment contracts and the personal, consensual nature thereof that we cannot agree that, in a merger situation, employment contracts are automatically transferable from one entity to another in the same manner that a contract pertaining to purely proprietary rights – such as a promissory note or a deed of sale of property – is perfectly and automatically transferable to the surviving corporation.

That BPI is the same entity as FEBTC after the merger is but a legal fiction intended as a tool to adjudicate rights and obligations between and among the merged corporations and the persons that deal with them. Although in a merger it is as if there is no change in the personality of the employer, there is in reality a change in the situation of the employee. Once an FEBTC employee is absorbed, there are presumably changes in his condition of employment even if his previous tenure and salary rate is recognized by BPI. It is reasonable to assume that BPI would have different rules and regulations and company

practices than FEBTC and it is incumbent upon the former FEBTC employees to obey these new rules and adapt to their new environment. Not the least of the changes in employment condition that the absorbed FEBTC employees must face is the fact that prior to the merger they were employees of an unorganized establishment and after the merger they became employees of a unionized company that had an existing collective bargaining agreement with the certified union. This presupposes that the union who is party to the collective bargaining agreement is the certified union that has, in the appropriate certification election, been shown to represent a majority of the members of the bargaining unit.

Likewise, with respect to FEBTC employees that BPI chose to employ and who also chose to be absorbed, then due to BPI's blanket assumption of liabilities and obligations under the articles of merger, BPI was bound to respect the years of service of these FEBTC employees and to pay the same, or commensurate salaries and other benefits that these employees previously enjoyed with FEBTC.

As the Union likewise pointed out in its pleadings, **there were benefits under the CBA that the former FEBTC employees did not enjoy with their previous employer**. As BPI employees, they will enjoy all these CBA benefits upon their "absorption." Thus, although in a sense BPI is continuing FEBTC's employment of these absorbed employees, BPI's employment of these absorbed employees was not under exactly the same terms and conditions as stated in the latter's employment contracts with FEBTC. This further strengthens the view that BPI and the former FEBTC employees voluntarily contracted with each other for their employment in the surviving corporation.

Proper Appreciation of the Term "New Employees" Under the CBA

In any event, it is of no moment that the former FEBTC employees retained the regular status that they possessed while working for their former employer upon their absorption by petitioner. This fact would not remove them from the scope of the phrase "new employees" as contemplated in the Union

Shop Clause of the CBA, contrary to petitioner's insistence that the term "new employees" only refers to those who are initially hired as **non-regular** employees for possible regular employment.

The Union Shop Clause in the CBA simply states that "new employees" who during the effectivity of the CBA "may be regularly employed" by the Bank must join the union within thirty (30) days from their regularization. There is nothing in the said clause that limits its application to only **new employees who possess non-regular status,** meaning probationary status, at the start of their employment. Petitioner likewise failed to point to any provision in the CBA expressly excluding from the Union Shop Clause new employees who are "absorbed" as regular employees from the beginning of their employment. What is indubitable from the Union Shop Clause is that upon the effectivity of the CBA, petitioner's new regular employees (**regardless of the manner by which they became employees of BPI**) are required to join the Union as a condition of their continued employment.

The dissenting opinion of Justice Brion dovetails with Justice Carpio's view only in their restrictive interpretation of who are "new employees" under the CBA. To our dissenting colleagues, the phrase "new employees" (who are covered by the union shop clause) should only include new employees who were hired as probationary during the life of the CBA and were later granted regular status. They propose that the former FEBTC employees who were deemed regular employees from the beginning of their employment with BPI should be treated as a special class of employees and be excluded from the union shop clause.

Justice Brion himself points out that there is no clear, categorical definition of "new employee" in the CBA. In other words, the term "new employee" as used in the union shop clause is used broadly without any qualification or distinction. However, the Court should not uphold an interpretation of the term "new employee" based on the general and extraneous provisions of the Corporation Code on merger that would defeat,

rather than fulfill, the purpose of the union shop clause. **To reiterate, the provision of the Article 248(e) of the Labor Code in point mandates that nothing in the said Code or any other law should stop the parties from requiring membership in a recognized collective bargaining agent as a condition of employment.**

Significantly, petitioner BPI never stretches its arguments so far as to state that the absorbed employees should be deemed "old employees" who are not covered by the Union Shop Clause. This is not surprising.

By law and jurisprudence, a merger only becomes effective upon approval by the Securities and Exchange Commission (SEC) of the articles of merger. In *Associated Bank v. Court of Appeals*,[33] we held:

> The procedure to be followed is prescribed under the Corporation Code. Section 79 of said Code requires the approval by the Securities and Exchange Commission (SEC) of the articles of merger which, in turn, must have been duly approved by a majority of the respective stockholders of the constituent corporations. The same provision further states that the merger shall be effective only upon the issuance by the SEC of a certificate of merger. **The effectivity date of the merger is crucial for determining when the merged or absorbed corporation ceases to exist; and when its rights, privileges, properties as well as liabilities pass on to the surviving corporation.** (Emphasis ours.)

In other words, even though BPI steps into the shoes of FEBTC as the surviving corporation, BPI does so at a particular point in time, *i.e.,* the effectivity of the merger upon the SEC's issuance of a certificate of merger. In fact, the articles of merger themselves provided that both BPI and FEBTC will continue their respective business operations until the SEC issues the certificate of merger and in the event SEC does not issue such a certificate, they agree to hold each other blameless for the non-consummation of the merger.

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[33] G.R. No. 123793, June 29, 1998, 291 SCRA 511, 521-522.

Considering the foregoing principle, BPI could have only become the employer of the FEBTC employees it absorbed after the approval by the SEC of the merger. If the SEC did not approve the merger, BPI would not be in the position to absorb the employees of FEBTC at all. Indeed, there is evidence on record that BPI made the assignments of its absorbed employees in BPI effective April 10, 2000, or after the SEC's approval of the merger.[34] In other words, BPI became the employer of the absorbed employees only at some point **after the effectivity of the merger**, notwithstanding the fact that the absorbed employees' years of service with FEBTC were voluntarily recognized by BPI.

Even assuming for the sake of argument that we consider the absorbed FEBTC employees as "old employees" of BPI who are not members of any union (***i.e.,*** **it is their date of hiring by FEBTC and not the date of their absorption that is considered**), this does not necessarily exclude them from the union security clause in the CBA. The CBA subject of this case was effective from April 1, 1996 until March 31, 2001. Based on the allegations of the former FEBTC employees themselves, there were former FEBTC employees who were **hired by FEBTC after April 1, 1996** and if their date of hiring by FEBTC is considered as their date of hiring by BPI, they would undeniably be considered "new employees" of BPI within the contemplation of the Union Shop Clause of the said CBA. Otherwise, it would lead to the absurd situation that we would discriminate not only between new BPI employees (hired during the life of the CBA) and former FEBTC employees (absorbed during the life of the CBA) but also among the former FEBTC employees themselves. In other words, we would be treating employees who are exactly similarly situated (*i.e.,* the group of absorbed FEBTC employees) differently. This hardly satisfies the demands of equality and justice.

Petitioner limited itself to the argument that its absorbed employees do not fall within the term "new employees" contemplated under the Union Shop Clause with the apparent

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[34] CA *rollo*, p. 218.

objective of excluding all, and not just some, of the former FEBTC employees from the application of the Union Shop Clause.

However, in law or even under the express terms of the CBA, there is no special class of employees called "absorbed employees." In order for the Court to apply or not apply the Union Shop Clause, we can only classify the former FEBTC employees as either "old" or "new." If they are not "old" employees, they are necessarily "new" employees. If they are new employees, the Union Shop Clause did not distinguish between new employees who are *non-regular* at their hiring but who subsequently become regular and new employees who are "absorbed" as regular and permanent from the beginning of their employment. The Union Shop Clause did not so distinguish, and so neither must we.

No Substantial Distinction Under the CBA Between Regular Employees Hired After Probationary Status and Regular Employees Hired After the Merger

Verily, we agree with the Court of Appeals that there are no substantial differences between a newly hired non-regular employee who was regularized weeks or months after his hiring and a new employee who was absorbed from another bank as a regular employee pursuant to a merger, for purposes of applying the Union Shop Clause. Both employees were hired/employed only after the CBA was signed. At the time they are being required to join the Union, they are both already regular rank and file employees of BPI. They belong to the same bargaining unit being represented by the Union. They both enjoy benefits that the Union was able to secure for them under the CBA. When they both entered the employ of BPI, the CBA and the Union Shop Clause therein were already in effect and neither of them had the opportunity to express their preference for unionism or not. We see no cogent reason why the Union Shop Clause should not be applied equally to these two types of new employees, for they are undeniably similarly situated.

The effect or consequence of BPI's so-called "absorption" of former FEBTC employees should be limited to what they

actually agreed to, *i.e.* recognition of the FEBTC employees' years of service, salary rate and other benefits with their previous employer. The effect should not be stretched so far as to **exempt** former FEBTC employees from the existing CBA terms, company policies and rules which apply to employees similarly situated. If the Union Shop Clause is valid as to other new regular BPI employees, there is no reason why the same clause would be a violation of the "absorbed" employees' freedom of association.

Non-Application of Union Shop Clause Contrary to the Policy of the Labor Code and Inimical to Industrial Peace

It is but fair that similarly situated employees who enjoy the same privileges of a CBA should be likewise subject to the same obligations the CBA imposes upon them. A contrary interpretation of the Union Shop Clause will be inimical to industrial peace and workers' solidarity. This unfavorable situation will not be sufficiently addressed by asking the former FEBTC employees to simply pay agency fees to the Union in lieu of union membership, as the dissent of Justice Carpio suggests. The fact remains that other new regular employees, to whom the "absorbed employees" should be compared, do not have the option to simply pay the agency fees and they must join the Union or face termination.

Petitioner's restrictive reading of the Union Shop Clause could also inadvertently open an avenue, which an employer could readily use, in order to dilute the membership base of the certified union in the collective bargaining unit (CBU). By entering into a voluntary merger with a non-unionized company that employs more workers, an employer could get rid of its existing union by the simple expedient of arguing that the "absorbed employees" are **not** new employees, as are commonly understood to be covered by a CBA's union security clause.This could then lead to a new majority within the CBU that could potentially threaten the majority status of the existing union and, ultimately, spell its demise as the CBU's bargaining representative.Such a dreaded but not entirely far-fetched

scenario is no different from the ingenious and creative "union-busting" schemes that corporations have fomented throughout the years, which this Court has foiled time and again in order to preserve and protect the valued place of labor in this jurisdiction consistent with the Constitution's mandate of insuring social justice.

There is nothing in the Labor Code and other applicable laws or the CBA provision at issue that requires that a new employee has to be of probationary or non-regular status at the beginning of the employment relationship. An employer may confer upon a new employee the status of regular employment even at the onset of his engagement. Moreover, no law prohibits an employer from voluntarily recognizing the length of service of a new employee with a previous employer in relation to computation of benefits or seniority but it should not unduly be interpreted to exclude them from the coverage of the CBA which is a binding contractual obligation of the employer and employees.

Indeed, a union security clause in a CBA should be interpreted to give meaning and effect to its purpose, which is to afford protection to the certified bargaining agent and ensure that the employer is dealing with a union that represents the interests of the legally mandated percentage of the members of the bargaining unit.

The union shop clause offers protection to the certified bargaining agent by ensuring that future regular employees who (a) enter the employ of the company during the life of the CBA; (b) are deemed part of the collective bargaining unit; and (c) whose number will affect the number of members of the collective bargaining unit will be compelled to join the union. Such compulsion has legal effect, precisely because the employer by voluntarily entering in to a union shop clause in a CBA with the certified bargaining agent takes on the responsibility of dismissing the new regular employee who does not join the union.

Without the union shop clause or with the restrictive interpretation thereof as proposed in the dissenting opinions, the company can jeopardize the majority status of the certified union by excluding from union membership all new regular

employees whom the Company will "absorb" in future mergers and all new regular employees whom the Company hires as regular from the beginning of their employment without undergoing a probationary period. In this manner, the Company can increase the number of members of the collective bargaining unit and if this increase is not accompanied by a corresponding increase in union membership, the certified union may lose its majority status and render it vulnerable to attack by another union who wishes to represent the same bargaining unit.[35]

Or worse, a certified union whose membership falls below twenty percent (20%) of the total members of the collective bargaining unit may lose its status as a legitimate labor organization altogether, even in a situation where there is no competing union.[36]

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[35] Article 256 of the Labor Code provides:

Art. 256. Representation issue in organized establishments. In organized establishments, when **a verified petition questioning the majority status of the incumbent bargaining agent** is filed before the Department of Labor and Employment within the sixty-day period before the expiration of the collective bargaining agreement, the Med-Arbiter shall automatically order an election by secret ballot when the verified petition is **supported by the written consent of at least twenty-five percent (25%) of all the employees** in the bargaining unit to ascertain the will of the employees in the appropriate bargaining unit. To have a valid election, at least a majority of all eligible voters in the unit must have cast their votes. The labor union receiving the majority of the valid votes cast shall be certified as the exclusive bargaining agent of all the workers in the unit. When an election which provides for three or more choices results in no choice receiving a majority of the valid votes cast, a run-off election shall be conducted between the labor unions receiving the two highest number of votes: Provided, that the total number of votes for all contending unions is at least fifty percent (50%) of the number of votes cast.

At the expiration of the freedom period, the employer shall continue to recognize the majority status of the incumbent bargaining agent where no petition for certification election is filed. (Emphases supplied.)

[36] Article 234 of the Labor Code provides:

Art. 234. Requirements of registration. Any applicant labor organization, association or group of unions or workers shall acquire legal personality and shall be entitled to the rights and privileges granted by law to legitimate labor organizations upon issuance of the certificate of registration based on the following requirements. x x x

In such a case, an interested party may file for the cancellation of the union's certificate of registration with the Bureau of Labor Relations.[37]

Plainly, the restrictive interpretation of the union shop clause would place the certified union's very existence at the mercy and control of the employer. **Relevantly, only BPI, the employer appears to be interested in pursuing this case**. The former FEBTC employees have not joined BPI in this appeal.

For the foregoing reasons, Justice Carpio's proposal to simply require the former FEBTC to pay agency fees is wholly inadequate to compensate the certified union for the loss of additional membership supposedly guaranteed by compliance with the union shop clause. This is apart from the fact that treating these "absorbed employees" as a special class of new employees does not encourage worker solidarity in the company since another class of new employees (*i.e.* those whose were hired as probationary and later regularized during the life of the CBA) would not have the option of substituting union membership with payment of agency fees.

Justice Brion, on the other hand, appears to recognize the inherent unfairness of perpetually excluding the "absorbed" employees from the ambit of the union shop clause. He proposes that this matter be left to negotiation by the parties in the next CBA. To our mind, however, this proposal does not sufficiently address the issue. With BPI already taking the position that employees "absorbed" pursuant to its voluntary mergers with other banks are exempt from the union shop clause, the chances of the said bank ever agreeing to the inclusion of such employees in a future CBA is next to nil – more so, if BPI's narrow interpretation of the union shop clause is sustained by this Court.

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

[37] Article 238 of the Labor Code provides "[t]he certificate of registration of any legitimate labor organization, whether national or local, shall be cancelled by the Bureau if it has reason to believe, after due hearing, that the said labor organization no longer meets one or more of the requirements herein prescribed."

Right of an Employee not to Join a Union is not Absolute and Must Give Way to the Collective Good of All Members of the Bargaining Unit

The dissenting opinions place a premium on the fact that even if the former FEBTC employees are not old employees, they nonetheless were employed as regular and permanent employees without a gap in their service. However, an employee's permanent and regular employment status in itself does not necessarily exempt him from the coverage of a union shop clause.

In the past this Court has upheld even the more stringent type of union security clause, *i.e.*, the closed shop provision, and held that it can be made applicable to old employees who are already regular and permanent but have chosen not to join a union. In the early case of *Juat v. Court of Industrial Relations*,[38] the Court held that an old employee who had no union may be compelled to join the union even if the collective bargaining agreement (CBA) imposing the closed shop provision was only entered into <u>seven years after of the hiring of the said employee</u>. To quote from that decision:

> A closed-shop agreement has been considered as one form of union security whereby only union members can be hired and workers must remain union members as a condition of continued employment. The requirement for employees or workers to become members of a union as a condition for employment **redounds to the benefit and advantage of said employees** because by holding out to loyal members a promise of employment in the closed-shop the union **wields group solidarity**. In fact, it is said that "the closed-shop contract is the most prized achievement of unionism."
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> xxx xxx xxx
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> This Court had categorically held in the case of *Freeman Shirt Manufacturing Co., Inc., et al. vs. Court of Industrial Relations, et al.*, G.R. No. L-16561, Jan. 28, 1961, that the **closed-shop proviso** of a collective bargaining agreement entered into between an employer and a duly authorized labor union is **applicable not only to the**

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[38] G.R. No. L-20764, November 29, 1965, 15 SCRA 391, 395-397.

employees or laborers that are employed after the collective bargaining agreement had been entered into but also to <u>old employees who are not members of any labor union at the time the said collective bargaining agreement was entered into</u>. In other words, if an employee or laborer is already a member of a labor union different from the union that entered into a collective bargaining agreement with the employer providing for a closed-shop, said employee or worker cannot be obliged to become a member of that union which had entered into a collective bargaining agreement with the employer as a condition for his continued employment. (Emphasis and underscoring supplied.)

Although the present case does not involve a closed shop provision that included even old employees, the *Juat* example is but one of the cases that laid down the doctrine that the right not to join a union is not absolute. Theoretically, there is nothing in law or jurisprudence to prevent an employer and a union from stipulating that existing employees (who already attained regular and permanent status but who are not members of any union) are to be included in the coverage of a union security clause. Even Article 248(e) of the Labor Code only expressly exempts **old employees who already have a union** from inclusion in a union security clause.[39]

Contrary to the assertion in the dissent of Justice Carpio, *Juat* has not been overturned by *Victoriano v. Elizalde Rope*

[39] Article 248. Unfair Labor Practices of Employers. – It shall be unlawful for an employer to commit any of the following unfair labor practice: x x x

(e) To discriminate in regard to wages, hours of work, and other terms and conditions of employment in order to encourage or discourage membership in any labor organization. **Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement**.

Employees of an appropriate collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized bargaining agent, if such non-union members accept the benefits under the collective agreement: Provided, that the individual authorization required under Article 242, paragraph (o) of this Code shall not apply to the non-members of the recognized collective bargaining agent. x x x. (Emphasis supplied.)

Workers' Union[40] nor by *Reyes v. Trajano*.[41] The factual milieus of these three cases are vastly different.

In *Victoriano,* the issue that confronted the Court was whether or not employees who were members of the Iglesia ni Kristo (INK) sect could be compelled to join the union under a closed shop provision, despite the fact that their religious beliefs prohibited them from joining a union. In that case, the Court was asked to balance the constitutional right to religious freedom against a host of other constitutional provisions including the freedom of association, the non-establishment clause, the non-impairment of contracts clause, the equal protection clause, and the social justice provision. In the end, the Court held that "religious freedom, although not unlimited, is a fundamental personal right and liberty, and has a preferred position in the hierarchy of values."[42]

However, *Victoriano* is consistent with *Juat* since they both affirm that the right to refrain from joining a union is not absolute. The relevant portion of *Victoriano* is quoted below:

> **The right to refrain from joining labor organizations recognized by Section 3 of the Industrial Peace Act is, however, limited.** The legal protection granted to such right to refrain from joining is **withdrawn by operation of law, where a labor union and an employer have agreed on a closed shop, by virtue of which the employer may employ only member of the collective bargaining union, and the employees must continue to be members of the union for the duration of the contract in order to keep their jobs**. Thus Section 4 (a) (4) of the Industrial Peace Act, before its amendment by Republic Act No. 3350, provides that **although it would be an unfair labor practice for an employer "to discriminate in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization" the employer is, however, not precluded "from making an agreement with a labor organization to require as a condition of employment membership**

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[40] *Supra* note 21.

[41] G.R. No. 84433, June 2, 1992, 209 SCRA 484.

[42] *Victoriano v. Elizalde Rope Workers' Union*, *supra* note 21 at 72.

therein, if such labor organization is the representative of the employees." By virtue, therefore, of a closed shop agreement, before the enactment of Republic Act No. 3350, if any person, regardless of his religious beliefs, wishes to be employed or to keep his employment, he must become a member of the collective bargaining union. **Hence, the right of said employee not to join the labor union is curtailed and withdrawn**.[43] (Emphases supplied.)

If *Juat* exemplified an exception to the rule that a person has the right not to join a union, *Victoriano* merely created an exception to the exception on the ground of religious freedom.

Reyes, on the other hand, did not involve the interpretation of any union security clause. In that case, there was no certified bargaining agent yet since the controversy arose during a certification election. In *Reyes,* the Court highlighted the idea that the freedom of association included the right not to associate or join a union in resolving the issue whether or not the votes of members of the INK sect who were part of the bargaining unit could be excluded in the results of a certification election, simply because they were not members of the two contesting unions and were expected to have voted for "NO UNION" in view of their religious affiliation. The Court upheld the inclusion of the votes of the INK members since in the previous case of *Victoriano* we held that INK members may not be compelled to join a union on the ground of religious freedom and even without *Victoriano* every employee has the right to vote "no union" in a certification election as part of his freedom of association. However, *Reyes* is not authority for Justice Carpio's proposition that an employee who is not a member of any union may claim an exemption from an existing union security clause because he already has regular and permanent status but simply prefers not to join a union.

The other cases cited in Justice Carpio's dissent on this point are likewise inapplicable. *Basa v. Federacion Obrera de la Industria Tabaquera y Otros Trabajadores de Filipinas*,[44]

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

[44] G.R. No. L-27113, November 19, 1974, 61 SCRA 93.

Anucension v. National Labor Union,[45] and *Gonzales v. Central Azucarera de Tarlac Labor Union*[46] all involved members of the INK. In line with *Victoriano,* these cases upheld the INK members' claimed exemption from the union security clause on religious grounds. In the present case, the former FEBTC employees never claimed any religious grounds for their exemption from the Union Shop Clause. As for *Philips Industrial Development, Inc. v. National Labor Relations Corporation*[47] and *Knitjoy Manufacturing, Inc. v. Ferrer-Calleja*,[48] the employees who were exempted from joining the respondent union or who were excluded from participating in the certification election were found to be **not members of the bargaining unit represented by respondent union** and were free to form/join their own union. In the case at bar, it is undisputed that the former FEBTC employees were part of the bargaining unit that the Union represented. Thus, the rulings in *Philips* and *Knitjoy* have no relevance to the issues at hand.

Time and again, this Court has ruled that the individual employee's right not to join a union may be validly restricted by a union security clause in a CBA[49] and such union security clause is not a violation of the employee's constitutional right to freedom of association.[50]

It is unsurprising that significant provisions on labor protection of the 1987 Constitution are found in Article XIII on Social Justice. The constitutional guarantee given the right to form unions[51] and

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[45] G.R. No. L-26097, November 29, 1977, 80 SCRA 350.

[46] G.R. No. L-38178, October 3, 1985, 139 SCRA 30.

[47] G.R. No. 88957, June 25, 1992, 210 SCRA 339.

[48] G.R. Nos. 81883 and 82111, September 23, 1992, 214 SCRA 174.

[49] *Dela Salle University v. Dela Salle University Employees Association,* 386 Phil. 569, 590 (2000).

[50] *Liberty Flour Mills Employees v. Liberty Flour Mills, Inc.*, *supra* note 20.

[51] Article III, Section 8 of the 1987 Constitution states: "The right of the people, including those employed in the public and private sectors, to form

the State policy to promote unionism[52] have social justice considerations. In *People's Industrial and Commercial Employees and Workers Organization v. People's Industrial and Commercial Corporation*,[53] we recognized that "[l]abor, being the weaker in economic power and resources than capital, deserve protection that is actually substantial and material."

The rationale for upholding the validity of union shop clauses in a CBA, even if they impinge upon the individual employee's right or freedom of association, is not to protect the union for the union's sake. Laws and jurisprudence promote unionism and afford certain protections to the certified bargaining agent in a unionized company because a strong and effective union presumably benefits **all employees in the bargaining unit** since such a union would be in a better position to demand improved

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unions, associations, or societies for purposes not contrary to law shall not be abridged."

[52] Article XIII, Section 3 of the 1987 Constitution provides:

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

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law.

They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.

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

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

[53] G.R. No. L-37687, March 15, 1982, 112 SCRA 440, 455.

benefits and conditions of work from the employer. This is the rationale behind the State policy to promote unionism declared in the Constitution, which was elucidated in the above-cited case of *Liberty Flour Mills Employees v. Liberty Flour Mills, Inc.*[54]

In the case at bar, since the former FEBTC employees are deemed covered by the Union Shop Clause, they are required to join the certified bargaining agent, which supposedly has gathered the support of the majority of workers within the bargaining unit in the appropriate certification proceeding. Their joining the certified union would, in fact, be in the best interests of the former FEBTC employees for it unites their interests with the majority of employees in the bargaining unit. It encourages employee solidarity and affords sufficient protection to the majority status of the union during the life of the CBA which are precisely the objectives of union security clauses, such as the Union Shop Clause involved herein. We are indeed not being called to balance the interests of individual employees as against the State policy of promoting unionism, since the employees, who were parties in the court below, no longer contested the adverse Court of Appeals' decision. Nonetheless, settled jurisprudence has already swung the balance in favor of unionism, in recognition that ultimately the individual employee will be benefited by that policy. In the hierarchy of constitutional values, this Court has repeatedly held that the right to abstain from joining a labor organization is subordinate to the policy of encouraging unionism as an instrument of social justice.

Also in the dissenting opinion of Justice Carpio, he maintains that one of the dire consequences to the former FEBTC employees who refuse to join the union is the forfeiture of their retirement benefits. This is clearly not the case precisely because BPI expressly recognized under the merger the length of service of the absorbed employees with FEBTC. Should some refuse to become members of the union, they may still opt to retire if they are qualified under the law, the applicable retirement plan, or the CBA, based on their combined length of service with

[54] *Supra* note 20.

FEBTC and BPI. Certainly, there is nothing in the union shop clause that should be read as to curtail an employee's eligibility to apply for retirement if qualified under the law, the existing retirement plan, or the CBA as the case may be.

In sum, this Court finds it reasonable and just to conclude that the Union Shop Clause of the CBA covers the former FEBTC employees who were hired/employed by BPI during the effectivity of the CBA in a manner which petitioner describes as "absorption." A contrary appreciation of the facts of this case would, undoubtedly, lead to an inequitable and very volatile labor situation which this Court has consistently ruled against.

In the case of former FEBTC employees who initially joined the union but later withdrew their membership, there is even greater reason for the union to request their dismissal from the employer since the CBA also contained a Maintenance of Membership Clause.

A final point in relation to procedural due process, the Court is not unmindful that the former FEBTC employees' refusal to join the union and BPI's refusal to enforce the Union Shop Clause in this instance may have been based on the honest belief that the former FEBTC employees were not covered by said clause. In the interest of fairness, we believe the former FEBTC employees should be given a fresh thirty (30) days from notice of finality of this decision to join the union before the union demands BPI to terminate their employment under the Union Shop Clause, assuming said clause has been carried over in the present CBA and there has been no material change in the situation of the parties.

WHEREFORE, the petition is hereby *DENIED*, and the Decision dated September 30, 2003 of the Court of Appeals is *AFFIRMED*, subject to the thirty (30) day notice requirement imposed herein. Former FEBTC employees who opt not to become union members but who qualify for retirement shall receive their retirement benefits in accordance with law, the applicable retirement plan, or the CBA, as the case may be.

SO ORDERED.

Corona, C.J., Peralta, del Castillo, Abad, Villarama, Jr., and *Perez, JJ.,* concur.

Carpio and Brion, JJ., see dissenting opinions.

Carpio Morales, J., joins the dissents of *JJ*. Carpio and Brion.

Nachura, Bersamin, and *Mendoza, JJ.,* join the dissent of *J.* Brion.

Velasco, Jr., J., on leave.

DISSENTING OPINION

CARPIO, *J.*:

I dissent.

The petition calls upon this Court to review the Court of Appeals decision which reversed the decision of the Voluntary Arbitrator. The Voluntary Arbitrator ruled that the FEBTC employees absorbed by BPI are not covered by the union shop clause in the CBA between BPI and BPI Employees Union (Union) because said absorbed employees are not "new employees" and they **"cannot be compelled to join the Union as it is their constitutional right to join or not to join any organization."**[1]

In its Memorandum, petitioner BPI reiterated that "**the State policy of promoting unionism should not be blindly and indiscriminately implemented at the expense of other rights as enshrined in the Constitution and the laws.**"[2] Petitioner discussed the protection of the rights of workers as provided in the Constitution and the Labor Code. We quote the pertinent portion of petitioner's Memorandum, to wit:[3]

Article II, [S]ection 18 of the 1987 Constitution x x x provides:

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[1] Voluntary Arbitrator's Decision dated 23 November 2001, Annex "C" to Petitioner's Memorandum dated 10 June 2005, *rollo*, p. 86; emphasis supplied.

[2] Petitioner's Memorandum dated 10 June 2005, *rollo*, p. 73; emphasis supplied.

[3] *Id.* at 73-74; emphasis in the original and underscoring omitted.

The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

One of the rights sought to be protected is the right of workers to self-organization and to form, join, or assist labor organizations of their own choosing. (Articles 3 and 243, Labor Code) In this regard, the Labor Code also declares as a policy of the State the fostering of a free and voluntary organization of a strong and united labor movement. (Article 211(A)(c), Labor Code)

Consequently, the Labor Code declares that it shall be unlawful for any person to restrain, coerce, discriminate against or unduly interfere with employees and workers in their exercise of the right to self-organization, which includes the right to form, join, or assist labor organizations for the purpose of collective bargaining through representatives of their own choosing and to engage in lawful concerted activities for the same purpose or for their mutual aid and protection. (Article 246, Labor Code)

In *Victoriano v. Elizalde Rope Workers' Union, et al.* (G.R. No. L-25246, September 12, 1974), the Supreme Court declared that the right to join a union includes the right to abstain from joining any union, for a right comprehends at least two broad notions, namely: first, liberty or freedom, *i.e.*, the absence of legal restraint, whereby an employee may act for himself without being prevented by law; and second, power, whereby an employee may, as he pleases, join or refrain from joining an association. **In as much as what both the Constitution and the Labor Code have recognized and guaranteed to the employee is the "right" to join associations of his choice, it would be absurd to say that the law also imposes, in the same breath, upon the employee the duty to join associations.**

Indeed, the right to abstain from joining labor organizations may be curtailed or restricted by union security agreements, such as the Union Shop Clause. However, being, in a sense, a derogation of the freedom or right NOT to join any labor organization, this Honorable Court's strict and restrictive enforcement of union security agreements is clearly warranted and justified. (Emphasis supplied)

Respondent Union requested petitioner BPI to implement the union shop clause of the CBA against absorbed FEBTC employees who refused to join the Union, and to **terminate their employment** pursuant to the union shop clause.[4]

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[4] *Ponencia*, p. 4; citing the Court of Appeals Decision, *rollo*, p. 18.

BPI, independently of the absorbed FEBTC employees, has the right to challenge the constitutionality of the union shop clause as applied to the absorbed FEBTC employees because BPI is being compelled, against its best interests, to terminate their employment if they do not join the Union. Besides, this Court cannot adopt as part of its jurisprudence a practice that clearly violates a fundamental constitutional right just because the aggrieved employees gave up the fight to protect such right.

The Constitution guarantees the fundamental right of all workers to "self-organization."[5] The right to "self-organization" is a species of the broader constitutional right of the people "to form unions, associations, or societies for purposes not contrary to law," which right "shall not be abridged."[6]

The right of workers to self-organization is protected under the Labor Code which provides that workers "shall have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purpose of collective bargaining."[7] The Code proscribes the abridgment of this right, stating that: "It shall be unlawful for any person to restrain, coerce, discriminate against or unduly interfere with employees and workers in their exercise of the right to self-organization. Such right shall include the right to form, join, or assist labor organizations for the purpose of collective bargaining through representatives of their own choosing x x x."[8]

The right of workers to self-organization means that workers themselves voluntarily organize, without compulsion from outside

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[5] Article XIII, Section 3 of the 1987 Philippine Constitution states:

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

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. x x x (Emphasis supplied)

[6] Article III, Section 8 of the 1987 Philippine Constitution.

[7] Article 243 (Coverage and Employees' Right to Self-Organization), The Labor Code of the Philippines, as amended.

[8] *Id.*, Article 246.

forces. "Self-organization" means voluntary association without compulsion, threat of punishment, or threat of loss of livelihood. Workers who "self-organize" are workers who on their own volition freely and voluntarily form or join a union. **Compulsory membership is anathema to "self-organization."**

The right to self-organize includes the right not to exercise such right. Freedom to associate necessarily includes the freedom not to associate. Thus, freedom to join unions necessarily includes the freedom not to join unions. *Reyes v. Trajano* [9] cannot be any clearer on this point:

> Logically, the right NOT to join, affiliate with, or assist any union, and to disaffiliate or resign from a labor organization, is subsumed in the right to join, affiliate with, or assist any union, and to maintain membership therein. **The right to form or join a labor organization necessarily includes the right to refuse or refrain from exercising said right.** It is self-evident that just as no one should be denied the exercise of a right granted by law, so also, no one should be compelled to exercise such a conferred right. (Emphasis supplied)

Reyes was decided on 2 June 1992 under the 1987 Constitution. Even prior to *Reyes*, this Court already declared in *Victoriano v. Elizalde Rope Workers' Union*,[10] decided on 12 September 1974 under the 1973 Constitution, that:

> What the Constitution and Industrial Peace Act recognize and guarantee is the 'right' to form or join associations. Notwithstanding the different theories propounded by the different schools of jurisprudence regarding the nature and contents of a 'right,' it can be safely said that whatever theory one subscribes to, a right comprehends at least two broad notions, namely: first, liberty or freedom, *i.e.*, the absence of legal restraint, whereby an employee may act for himself without being prevented by law; second, power, whereby an employee may, as he pleases, join or refrain from joining an association. **It is therefore the employee who should decide for himself whether he should join or not an association; and should he choose to join, he himself makes up his mind as to which**

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[9] G.R. No. 84433, 2 June 1992, 209 SCRA 484, 489.

[10] 158 Phil. 60, 75 (1974).

association he would join; and even after he has joined, he still retains the liberty and the power to leave and cancel his membership with said organization at any time x x x. It is clear, therefore, that the right to join a union includes the right to abstain from joining any union. (Citations omitted) **Inasmuch as what both the Constitution and the Industrial Peace Act have recognized, and guaranteed to the employee, is the 'right' to join associations of his choice, it would be absurd to say that the law also imposes, in the same breath, upon the employee the duty to join associations. The law does not enjoin an employee to sign up with any association**. (Emphasis supplied)

The ruling in *Victoriano* has been reiterated in a plethora of cases, including *Basa v. Federacion Obrera de la Industria Tabaquera y Otros Trabajadores de Filipinas (1974)*,[11] *Anucension v. National Labor Union (1977)*,[12] *Gonzales v. Central Azucarera de Tarlac Labor Union (1985)*,[13] and *Knitjoy Manufacturing, Inc. v. Ferrer-Calleja (1992)*.[14] In the case of *Philips Industrial Development, Inc. v. NLRC*, decided on 25 June 1992,[15] this Court held:

x x x in holding that they are included in the bargaining unit for the rank and file employees of PIDI, the NLRC practically forced them to become members of PEO-FFW or to be subject to its sphere of influence, it being the certified bargaining agent for the subject bargaining unit. **This violates, obstructs, impairs and impedes the service engineers' and the sales representatives' constitutional right to form unions or associations and to self-organization**. (Emphasis supplied)

Thus, it is the worker who should personally decide whether or not to join a labor union. The union, the management, the courts, and even the State cannot decide this for the worker, more so against his will.

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[11] 158 Phil. 753, 765-766 (1974).

[12] 170 Phil. 373, 384-385 (1977).

[13] 223 Phil. 249, 255-256 (1985).

[14] G.R. No. 81883, 23 September 1992, 214 SCRA 174, 182.

[15] G.R. No. 88957, 210 SCRA 339, 348-349.

The State encourages union membership to protect an individual employee from the power of the employer. A union is an instrumentality utilized to achieve the objective of protecting the rights of workers. In *Guijarno v. Court of Industrial Relations*,[16] we clarified the purpose of a union:

> x x x The State shall assure the rights of workers to self-organization, collective bargaining, security of tenure, and just and humane conditions of work." (Art. II, Sec. 9 of the Revised Constitution) **Where does that leave a labor union, it may be asked. Correctly understood, it is nothing but the means of assuring that such fundamental objectives would be achieved**. **It is the instrumentality through which an individual laborer who is helpless as against a powerful employer may, through concerted effort and activity, achieve the goal of economic well-being.** That is the philosophy underlying the Industrial Peace Act. (Republic Act No. 875 (1953)) For, rightly has it been said that workers unorganized are weak; workers organized are strong. Necessarily then, they join labor unions. (Emphasis supplied)

To further strengthen the powers of a union, the State has allowed the inclusion of union security clauses, including a "union shop" (the type of union security clause involved in this case), in collective bargaining agreements (CBA). In a "union shop," employees who are not union members at the time of signing of the contract need not join the union, but all workers hired thereafter must join.[17] Non-members may be hired, but to retain employment must become union members after a certain period.[18] The *ponencia* points out the validity in this jurisdiction of the more stringent union security of "closed shop" and its applicability to old employees who are non-union members at the time of effectivity of the CBA. In a "closed shop," only union members can be hired by the company and they must remain union members to retain employment in the company.[19]

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[16] G.R. Nos. L-28791-93, 27 August 1973, 52 SCRA 307, 310.

[17] Azucena, *The Labor Code with Comments and Cases*, vol. II, p. 242 (2004).

[18] *Id.*

[19] *Id.*

As explained in *Guijarno*, it was to "further increase the effectiveness of [unions] that a closed shop has been allowed."[20]However, this undertaking did not come without detrimental effects on the workers themselves, such that in *Confederated Sons of Labor v. Anakan Lumber Co.*,[21] we declared that a closed shop is "so harsh that it must be strictly construed" and that "doubts must be resolved against [it]." We also ruled in *Anakan* that "In order that an employer may be deemed bound, under a collective bargaining agreement, to dismiss employees for non-union membership, the stipulation to this effect must be so clear and unequivocal as to leave no room for doubt thereon."[22]

Guijarno elucidated the downside of a closed shop and its compulsory membership, thus:

> x x x To further increase the effectiveness of such organizations, a closed shop has been allowed. *It could happen, though, that such a stipulation which assures further weight to a labor union at the bargaining table could be utilized against minority groups or individual members thereof.* x x x Respondent Court, it would appear, was not sufficiently alert to such a danger. What is worse, it paid no heed to the controlling doctrine which is merely a recognition of a basic fact in life, namely, that power in a collectivity could be the means of crushing opposition and stifling the voices of those who are in dissent. The right to join others of like persuasion is indeed valuable. An individual by himself may feel inadequate to meet the exigencies of life or even to express his personality without the right to association being vitalized. It could happen though that whatever group may be in control of the organization may simply ignore his most-cherished desires and treat him as if he counts for naught. The antagonism between him and the group becomes marked. Dissatisfaction if given expression may be labeled disloyalty. In the labor field, the union under such circumstances may no longer be a haven of refuge, but indeed as much of a potential foe as management itself. Precisely with the *Anakan* doctrine, such an

[20] *Id.* at 314.

[21] 107 Phil. 915, 919 (1960).

[22] *Id.*

undesirable eventuality has been sought to be minimized, if not entirely avoided. x x x.[23] (Emphasis supplied)

Justice Fernando, in his concurring opinion in *Victoriano*,[24] highlighted the importance of freedom of association, while referring to closed shop and its coercive nature with manifest disapproval, *viz*:

> x x x **Thought must be given to the freedom of association, likewise an aspect of intellectual liberty**. For the late Professor Howe a constitutionalist and in his lifetime the biographer of the great Holmes, it even partakes of the political theory of pluralistic sovereignty. **So great is the respect for the autonomy accorded voluntary societies. Such a right implies at the very least that one can determine for himself whether or not he should join or refrain from joining a labor organization, an institutional device for promoting the welfare of the working man. A closed shop, on the other hand, is inherently coercive. That is why, as is unmistakably reflected in our decisions, the latest of which is *Guijarno v. Court of Industrial Relations*, it is far from being a favorite of the law. For a statutory provision then to further curtail its operation, is precisely to follow the dictates of sound public policy.** (Emphasis supplied, citations omitted)

In the United States, closed shops, which require compulsory union membership for all employees, have been declared unlawful since 1947, while union shops, which allow old employees to remain non-union members but require new employees to become members after a certain period, are generally allowed. Previously, closed shops, union shops and agency shops were all[25] permitted under Section 8(3) of the National Labor Relations Act of 1935 (NLRA), also known as the Wagner Act.[26] But in 1947, the US Congress "reacted to widespread abuses of closed-shop agreements by banning such arrangements" through the enactment

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[23] *Supra* note 16, p. 314.

[24] *Supra* note 10, pp. 98-99.

[25] An agreement whereby employees must either join the union or pay to the union as exclusive bargaining agent a sum equal to that paid by the members.

[26] *Oil, Chemical and Atomic Workers, International Union, AFL-CIO, et al. v. Mobil Oil Corporation*, 426 U.S. 407, 96 S. Ct. 2140 (1976).

of the Labor Management Relations Act (LMRA), or the Taft-Hartley Act, which amended the NLRA by adding Section 8(a)(3). [27] In *National Labor Relations Board v. General Motors Corporation*,[28] the US Supreme Court explained that the Taft-Hartley Act amendments were intended to accomplish twin purposes, one of which is to abolish closed shop to eliminate serious abuses of compulsory unionism.

> These additions were intended to accomplish twin purposes. On the one hand, the most serious abuses of compulsory unionism were eliminated by abolishing the closed shop. On the other hand, Congress recognized that in the absence of a union-security provision 'many employees sharing the benefits of what unions are able to accomplish by collective bargaining will refuse to pay their share *741 of the cost.' S.Rep.No.105, 80th Cong., 1st Sess., p. 6, 1 Leg.Hist.L.M.R.A. 412. Consequently, under the new law 'employers would still be permitted to enter into agreements requiring all the employees in a given bargaining unit to become members 30 days after being hired,' but 'expulsion from a union cannot be a ground of compulsory discharge if the worker is not delinquent in paying his initiation fee or dues.' S.Rep.No.105, p. 7, 1 Leg.Hist.L.M.R.A. 413. The amendments were intended only to 'remedy the most serious abuses of compulsory union membership and yet give employers and unions who feel that such agreements promoted stability by eliminating 'free riders' the right to continue such arrangements.' *Ibid*. As far as the federal law was concerned, all employees could be required to pay their way. The bill 'abolishes the closed shop but permits voluntary agreements for requiring such forms of compulsory membership as the union shop or maintenance of membership ***.' S.Rep.No.105, p. 3, 1 Leg.Hist.L.M.R.A. 409.

Union shops and agency shops are still permitted under Section 8(a)(3) of the NLRA as amended; however, Section 14(b) authorizes States to exempt themselves from Section 8(a)(3) and to enact "right-to-work" laws prohibiting union or agency shops.[29] Where union shop agreements are allowed, workers may be required to belong to labor unions as a condition of

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[27] *Id.*; 48 Am. Jur. 2d Labor and Labor Relations S. 1070.

[28] 373 U.S. 734, 83 S. Ct. 1453 (1963).

[29] *Supra* note 27.

their employment, so long as such workers are required to render nothing other than financial support to the union and so long as the unions themselves do not attempt to use union shop agreements as vehicles for imposing ideological conformity.[30] Thus, "membership" in unions as a condition of employment is whittled down to its financial core.[31]

Although United States laws and jurisprudence on closed shops and union shops, as they now stand, are different from our own laws, it may be worthwhile to treat them with careful regard since our Labor Code and its precursor, the Industrial Peace Act, are patterned after US labor laws.[32] We have previously ruled that when a statute has been adopted from another state or country and such statute has previously been construed by the courts of such state or country, the statute is deemed to have been adopted with the construction given to it.[33] Where our labor statutes are based on statutes in foreign jurisdiction, the decisions of the high courts in those jurisdictions construing and interpreting the Act are given persuasive effects in the application of Philippine law.[34]

Union security agreements were adopted in our jurisdiction primarily to safeguard the rights of the working man. Where utilized to achieve a contrary purpose, these union devices should be curtailed and carefully maneuvered to remain within the periphery of labor protection.

In this case, the CBA between BPI and the BPI Employees Union contains a union shop clause requiring that "new employees"

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[30] 16A Am. Jur. 2d Constitutional Law S. 549.

[31] *Supra* note 28.

[32] Azucena, *The Labor Code with Comments and Cases*, vol. 1, p. 16 (1999).

[33] *Cerezo v. Atlantic Gulf & Pacific Co*., 33 Phil. 425, 428-429 (1916).

[34] Concurring Opinion of Justice Reynato Puno in *United Pepsi-Cola Supervisory Union v. Laguesma*, G.R. No. 122226, 25 March 1998, 288 SCRA 15, p. 54, citing *Cerezo v. Atlantic Gulf & Pacific Co*., *supra* note 29, and *Boy Scouts of the Philippines v. Araos*, 102 Phil. 1080 (1958).

of BPI join the Union within 30 days after they become regularized, as a condition for their continued employment.

The *ponencia* points out that the absorption of FEBTC employees was purely voluntary on the part of BPI, and was not mandated by law or by a contract between the merging entities. The *ponencia* holds that in the absence of a stipulation in the plan of merger regarding the absorption of FEBTC's employees by BPI, the latter has no obligation to absorb or continue the employment of said FEBTC employees.

I do not agree.

Upon merger, BPI, as the surviving entity, absorbs FEBTC and continues the combined business of the two banks. BPI assumes the legal personality of FEBTC, and automatically acquires FEBTC's rights, privileges and powers, as well as its liabilities and obligations. Section 80 of Batas Pambansa Blg. 68, otherwise known as "The Corporation Code of the Philippines" enumerates the effects of merger, to wit:

1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; x x x

2. The separate existence of the constituent corporations shall cease, except that of the surviving x x x corporation;

3. The surviving x x x corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

4. **The surviving x x x corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations**; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving x x x corporation without further act or deed; and

5. **The surviving x x x corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations** in the same manner as if such surviving

x x x corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger. (Emphasis supplied)

Among the obligations and liabilities of FEBTC is to continue the employment of FEBTC employees. These employees have already acquired certain employment status, tenure, salary and benefits. They are regular employees of FEBTC. Since after the merger, BPI has continued the business of FEBTC, FEBTC's obligation to these employees is assumed by BPI, and BPI becomes duty-bound to continue the employment of these FEBTC employees.

Under Article 279 of the Labor Code, regular employees acquire security of tenure, and hence, may not be terminated by the employer except upon legal grounds. These grounds are the "just causes" enumerated under Article 282 of the Code, which include serious misconduct or willful disobedience by the employee, gross habitual neglect of duties, fraud or willful breach of employer's trust, and commission of a crime; or "authorized causes" under Article 283, which include installation of labor saving devices, redundancy, retrenchment to prevent losses, and closing or cessation of business operations. Without any of these legal grounds, the employer cannot validly terminate the employment of regular employees; otherwise, the employees' right to security of tenure would be violated.

The merger of two corporations does not authorize the surviving corporation to terminate the employees of the absorbed corporation in the absence of just or authorized causes as provided in Articles 282 and 283 of the Labor Code. Merger of two corporations is not one of the just or authorized causes for termination of employment. Not even a union shop agreement is just or authorized cause to terminate a permanent employee. A union shop clause is only a ground to terminate a probationary employee who refuses to join the union as a condition for continued employment. Once an employee becomes permanent,

he is protected by the security of tenure clause in the Constitution, and he can be terminated only for just or authorized causes as provided by law.

The right to security of tenure of regular employees is enshrined in the Constitution.[35] This right cannot be eroded, let alone be forfeited except upon a clear and convincing showing of a just and lawful cause.[36] In this case, there is no showing that legal ground exists to warrant a termination of the FEBTC employees. Therefore, BPI is obligated to continue FEBTC employees' regular employment in deference to their constitutional right to security of tenure.

Meanwhile, the FEBTC employees **had no choice but to accept the absorption by way of merger.** A merger is a legitimate management prerogative[37] which cannot be opposed or rejected by the employees of the merging entities. Hence, the absorption by BPI of the FEBTC employees was not within the FEBTC employees' control, and the latter had no choice but to be absorbed by BPI, unless they opted to give up their means of livelihood.

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[35] Article XIII, Section 3 of the 1987 Philippine Constitution states:

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

It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. **They shall be entitled to security of tenure,** humane conditions of work, and a living wage. x x x (Emphasis supplied)

[36] *BPI Credit Corporation v. NLRC*, G.R. No. 106027, 25 July 1994, 234 SCRA 441, 454.

[37] In *Central Azucarera del Danao v. Court of Appeals*, 221 Phil. 647, 657 (1985), this Court held that, "x x x [I]t is within the employer's legitimate sphere of management control of the business to adopt economic policies or make some changes or adjustments in their organization or operations that would ensure profit to itself or protect the investment of its stockholders. As in the exercise of such management prerogative, the employer may merge or consolidate its business with another, or sell or dispose all or substantially all of its assets and properties x x x ."

Upon the effectivity of the CBA in this case, BPI employees who were members of the Union were required to maintain their membership as a condition for continued employment. **On the other hand, the then non-union employees of BPI were not compelled to join the Union — they were given a choice whether or not to join the Union at no risk to their continued employment**. In other words, non-union BPI employees could opt not to join the Union and still retain their employment with BPI. Meanwhile, "new employees" or those who were hired by BPI after the effectivity and during the life of the CBA were automatically required to join the Union within 30 days after they were regularized.

Existing BPI employees who were non-union members were not compelled to join the Union as a condition for their continued employment, as this would violate their fundamental constitutional right not to join a union. This freedom of choice exercised by non-union BPI employees was in recognition of their fundamental constitutional right to join or not to join a union which is part of their broader constitutional right to form associations. To force these employees to join a labor union at the risk of losing their means of livelihood would violate the Constitution.

Thus, under the CBA, the BPI employees required to acquire or maintain union membership as a condition for their continued employment are (1) the union members at the time of the effectivity of the CBA and (2) the "new employees" who were hired during the effectivity of the CBA. Non-union BPI employees at the time of the effectivity of the CBA were not, and are still not, required to join the Union.

In the case of "new employees" hired by BPI during the life of the CBA, there is no violation of their constitutional right not to join a union. At the time of their application for employment with BPI, or at the latest, at the time they were hired by BPI, these employees knew that they were required to join the Union within 30 days upon regularization as a condition for continued employment with BPI. In short, the employees knew beforehand that they had to join the Union to be employed with BPI. **Thus, these employees had a clear choice whether or not to be**

employed with BPI, which requires that they must join the Union upon regularization.

The *ponencia* holds that the absorbed FEBTC employees should be considered as **"new employees"** of BPI, and therefore, required to join the Union pursuant to the union shop clause of the CBA. The *ponencia* deprives the absorbed employees of their fundamental constitutional right to choose whether or not to join the Union.

I cannot subscribe to this view.

The former FEBTC employees should not be considered as "new employees" of BPI. The former FEBTC employees were absorbed by BPI immediately upon merger, leaving no gap in their employment. The employees retained their previous employment status, tenure, salary and benefits. This clearly indicates the intention of BPI to assume and continue the employer-employee relations of FEBTC and its employees. The FEBTC employees' employment remained continuous and unchanged, except that their employer, FEBTC, merged with BPI which, as the surviving entity, continued the combined business of the two banks.

Thus, the former FEBTC employees are immediately **regularized and made permanent employees of BPI**. They are not subject to any probationary period as in the case of "new employees" of BPI. The 30-day period within which regularized "new employees" of BPI must join the Union does not apply to former FEBTC employees who are not probationary employees but are immediately regularized as permanent employees of BPI. **In short, the former FEBTC employees are immediately given the same permanent status as old employees of BPI**.

The absorbed FEBTC employees are not "new employees" who are seeking jobs for the first time. These absorbed employees are employees who have been working with FEBTC for years, or even decades, and were only absorbed by BPI because of the merger. Without the merger, these employees would have remained FEBTC employees without being required to join a

union to retain their employment. **These absorbed employees are recognized by BPI and even by the Union as permanent employees immediately upon their absorption by BPI because these employees do not have to go through a probationary period.** These absorbed employees are different from the newly-hired employees of BPI, as these absorbed employees already had existing employment tenure, and were earning a livelihood when they were told that they had to join the Union at the risk of losing their livelihood.

To require these absorbed employees to join the Union at the risk of losing their jobs is akin to forcing an existing non-union BPI employee to join the Union on pain of termination. In the same way that an existing non-union BPI employee is given the constitutional right to choose whether or not to join a union, an absorbed employee should be equally given the same right. And this right must be conferred to the absorbed employee upon the effectivity of the merger between FEBTC and BPI.

Indisputably, the right to join or not to join a Union is part of the fundamental constitutional right to form associations. In *Sta. Clara Homeowners' Association v. Gaston*,[38] we held that, "The constitutionally guaranteed freedom of association includes the freedom *not* to associate.[39] **The right to choose with whom one will associate oneself is the very foundation and essence of that partnership.[40] It should be noted that the provision guarantees the right to form an association. It does not include the right to compel others to form or join one."[41]** Thus, to compel the absorbed FEBTC employees to join the Union at the risk of losing their jobs is violative of their constitutional freedom to associate.

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[38] 425 Phil. 221 (2002).

[39] Citing *Sinaca v. Mula*, 373 Phil. 896 (1999).

[40] Citing *Ortega v. CA*, 315 Phil. 573 (1995).

[41] Citing Bernas, *The Constitution of the Republic of the Philippines: A Commentary,* p. 340 (1996).

To consider the former FEBTC employees *not* "new employees" of BPI for the purpose of the union shop clause of the CBA does not necessarily mean that the FEBTC employees are considered "old employees" of BPI, hired by BPI on the date that the employees were hired by FEBTC. The former FEBTC employees are not old BPI employees. They are former FEBTC employees *absorbed* by BPI upon effectivity of the merger. Nevertheless, as absorbed employees, these former FEBTC employees cannot be relegated to being "new employees" of BPI within the contemplation of the union shop clause of the CBA.

If the absorbed employees are treated as "new employees," and they refuse to join the Union, the Union can ask BPI to terminate their employment. And BPI can validly terminate their employment pursuant to the union shop clause. It is well-settled that termination of employment by virtue of a union security clause embodied in a CBA is recognized in our jurisdiction,[42] and an employer who merely complies in good faith with the union's request for the dismissal of an employee pursuant to the CBA cannot be considered guilty of unfair labor practice.[43]

Upon such termination, the absorbed employees are not entitled to separation pay under the law.[44] Grant of separation pay to

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[42] *Alabang Country Club, Inc. v. National Labor Relations Commission*, G.R. No. 170287, 14 February 2008, 545 SCRA 351, 361.

[43] *Olvido v. Court of Appeals*, G.R. Nos. 141166-67, 15 October 2007, 536 SCRA 73, 79, citing *Soriano v. Atienza*, G.R. No. 68619, 16 March 1989, 171 SCRA 284, 289-290 and *National Labor Union v. Zip Venetian Blinds*, G.R. Nos. L-15827 and L-15828, 31 May 1961, 2 SCRA 509, 514-515.

[44] Under the present law and jurisprudence, separation pay is given only in the following instances: (1) as the employer's statutory obligation in cases of legal termination due to authorized causes under Articles 283 and 284 of the Labor Code (*i.e.*, installation of labor saving devices, redundancy, retrenchment to prevent losses, the closing or cessation of operation of the establishment or undertaking, and in cases where an employee is found to be suffering from any disease and his continued employment is prohibited by law or is prejudicial to his health as well as to that of his co-employees); (2) as financial assistance, as an act of social justice, even in cases of legal

employees dismissed pursuant to a union shop clause of a CBA is not a statutory requirement. Worse, assuming that the absorbed employees have already reached the age of 60 years or above, as "new employees" of BPI, they will not be entitled to retirement benefits under the law. For instance, an absorbed employee who is 60 years old or above, but less than 65 years which is the compulsory retirement age, cannot avail of *optional* retirement benefits since the law requires that the employee "has served at least five (5) years in the said establishment."[45] Considering that the absorbed employees are required to join the Union within 30 days from regularization, and the law requires that probationary employment shall not exceed six months from

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dismissal under Article 282 of the Labor Code; (3) separation pay given in lieu of reinstatement in illegal dismissal cases where reinstatement is not feasible; and (4) separation pay as an employee benefit granted in a CBA or company policy. (C.A. Azucena, *The Labor Code with Comments and Cases,* Vol. 2 [2004], p. 694)

[45] Art. 287 of the Labor Code, as amended by Republic Act No. 7641, 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 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.

x x x x x x x x x

the date the employee started working,[46] after which the employee shall be considered a regular employee, it may be assumed that the absorbed employees had not yet served BPI for at least five years when required to join the Union. If, on the other hand, the absorbed employee has already reached the *compulsory* retirement age of 65 years, then neither can the employee avail of any retirement benefit since the law provides that a compulsory retiree shall be entitled to "at least one-half (½) month salary *for every year of service*, a fraction of at least six (6) months being considered as one whole year."[47] Assuming that the absorbed employee has not yet rendered service in BPI for at least six months when said employee reached the compulsory retirement age of 65 years, then the employee will not be entitled to receive any retirement benefit. Thus, to consider the absorbed FEBTC employees as "new employees" of BPI can have dire consequences on the absorbed employees who refuse to join the Union, not the least of which is the forfeiture of benefits which should be properly accorded these employees after years, or probably even decades, of loyal service to FEBTC.

The *ponencia* points to Article 248 (e) of the Labor Code which states, thus: "x x x Nothing in this Code or in any other law shall stop the parties from requiring membership in a recognized collective bargaining agent as a condition for employment, except those employees who are already members of another union at the time of the signing of the collective bargaining agreement. x x x"

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[46] With the exception of employment covered by an apprenticeship agreement stipulating a longer period. Art. 281 of the Labor Code provides:

Art. 281. Probationary employment. Probationary employment shall not exceed six (6) months from the date the employee started working, unless it is covered by an appreticeship agreement stipulating a longer period. The services of an employee who has been engaged on a probationary basis may be terminated for a just cause or when he fails to qualify as a regular employee in accordance with reasonable standards made known by the employer to the employee at the time of his engagement. An employee who is allowed to work after a probationary period shall be considered a regular employee.

[47] *Supra* note 45.

The above provision presupposes that the parties **agreed** on "requiring membership in a recognized collective bargaining agent as a condition for employment," with the stated exception. In this case, BPI and the Union agreed on a union shop clause concerning "**new employees**" only. We quote:

> Section 2. Union Shop – **New employees** falling within the bargaining unit as defined in Article I of the Agreement, **who may hereafter be regularly employed** by the Bank shall, within thirty (30) days after they become regular employees, join the Union as a condition of their continued employment.[48] x x x." (Emphasis in the original)

As previously discussed, the absorbed FEBTC employees are NOT and cannot be considered as "new employees" within the contemplation of the union shop clause.

Verily, BPI and the Union never agreed on requiring the former FEBTC employees to join the Union as a condition for their employment by BPI. On the contrary, BPI is questioning the applicability of the union shop clause to said employees.

The *ponencia* states, "When certain employees are obliged to join a particular union as a requisite for continued employment, as in the case of a Union Shop Clause, a form of discrimination or a derogation of the freedom or right not to join any labor organization occurs but *these are valid restrictions because they are in favor of unionism*." In this case, a derogation of the employees' fundamental constitutional right not to join a union is being done without a determination of whether the employees are in favor of unionism. Certainly, the union shop clause in a CBA cannot prevail over the fundamental constitutional right of a worker to join or not to join a union.

Finally, the *ponencia* agrees with the Court of Appeals that sustaining petitioner's position will result in an awkward and unfair situation wherein the absorbed employees will be in a better position than the existing BPI employees, since the latter will be required to pay monthly union dues, while the absorbed

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[48] *Ponencia*, p. 5.

employees will "enjoy the fruits of labor of the [union] and its members for nothing in exchange." This is not correct. Section 248(e) of the Labor Code provides that, "Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the collective bargaining agreement x x x." **The absorbed FEBTC employees who refuse to join the Union will not be free riders.**

We held in *Holy Cross of Davao College, Inc. v. Joaquin*[49] that the collection of agency fees in an amount equivalent to union dues and fees, from employees who are not union members, is recognized by Article 248 (e) of the Labor Code. The employee's acceptance of benefits resulting from a CBA justifies the deduction of agency fees from his pay and the union's entitlement thereto. [50] In this aspect, the legal basis of the union's right to agency fees is neither contractual nor statutory, but quasi-contractual, deriving from the established principle that non-union employees may not unjustly enrich themselves by benefiting from employment conditions negotiated by the bargaining union.[51]

In the present case, since the absorbed FEBTC employees will pay all union dues and fees, there is no reason to force them to join the Union except to humiliate them by trampling upon their fundamental constitutional right to join or not to join a union. This the Court should not allow.

It is this Court's solemn duty to implement the State policy of promoting unionism. However, this duty cannot be done at the expense of a fundamental constitutional right of a worker. We cannot exalt union rights over and above the freedom and right of employees to join or not to join a union.

Accordingly, I vote to **GRANT** the petition.

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[49] G.R. No. 110007, 18 October 1996, 263 SCRA 358, 369.

[50] *Id.*

[51] *Id.*

DISSENTING OPINION

BRION, *J.:*

I dissent.

Out at outset, I wish to clarify what this case **is** all about and what it **is not** about.

The case is simply about the interpretation and application, in a merger situation, of union security clauses in the petitioner's collective bargaining agreement (*CBA*) with the respondent union. To be exact, the basic underlying issue of the case is about the effects of merger on the merging corporations' employees – an issue that arose soon after the merger and one that is still current despite the execution of two subsequent CBAs. It is not an issue, therefore, that simply must be resolved because it will recur, as the *ponencia* posits; it must be resolved because it is a live dispute that now exists between the parties.

The case is not about the constitutional validity of union security provisions in CBAs or their application. No constitutional issue has been raised either in the petition or in the respondent's comment, although I invoked the Constitution in this Dissenting Opinion for interpretative purposes. Justice Antonio T. Carpio, in his own dissent, injects a constitutional issue by positing that the employees absorbed by the surviving corporation in the merger have the constitutional right not to join any union, and cannot be compelled to join, under the union, security clauses whose interpretation and application are disputed.

The Bank of the Philippine Islands (*BPI* or *successor corporation*) merged with the Far East Bank and Trust Company (*FEBTC* or *merged corporation*) pursuant to an Article and Plan of Merger (*Merger Plan*) that saw *all the assets and liabilities of FEBTC transferred to, and absorbed by, BPI, with the latter as the surviving as well as the successor corporate entity.* No specific provision in the Merger Plan referred to the FEBTC employees, specifically, what their situation would be under the merger. BPI, however, absorbed all the FEBTC employees (*absorbed employees*) as its own employees with

their status of employment, tenure, salaries and benefits under the FEBTC maintained.

The BPI Employees Union–Davao Chapter Federation of Unions in BPI Unibank (the *union* or *respondent union*) is the exclusive bargaining agent of BPI's rank-and-file employees in Davao City. The absorbed employees in Davao City did not belong to any labor union while they were with the FEBTC. The union now claims that the absorbed employees whose positions fall within the bargaining unit it represents should now join the union *as members* pursuant to the following provisions of the existing CBA:

ARTICLE I

Section 1. Recognition and Bargaining Unit. The BANK recognizes the UNION as the sole and exclusive bargaining representative of all rank-and-file employees of the Bank offices in Davao City.

x x x x x x x x x

ARTICLE II

Section 1. Maintenance of Membership. All employees within the bargaining unit ***who are members of the Union on the date of the effectivity of this Agreement*** as well as employees within the bargaining unit ***who subsequently join or become members of the Union during the lifetime of this Agreement*** shall, as a condition of their continued employment with the Bank, maintain their membership in the Union in good standing. [Emphasis supplied.]

Section 2. Union Shop. ***New employees falling within the bargaining unit*** as defined in Article I of this Agreement, ***who may hereafter be regularly employed by the Bank*** shall, within ***thirty (30) days after they become regular employees***, join the Union as a condition of their continued employment. It is understood that membership in good standing is a condition of their continued employment with the Bank. [Emphasis supplied.]

Some of the absorbed employees refused to join the union while BPI failed to act on the grievance filed by the union after it had asked BPI to dismiss the refusing absorbed employees. BPI took the position that the absorbed employees are not "new" employees who, under the terms of the union security provisions,

are under obligation to join the union to maintain their employment.

When settlement of the disagreement at the grievance machinery was not reached, the union referred the matter to voluntary arbitration. *The voluntary arbitrator ruled in favor of the refusing absorbed employees and BPI, holding that the refusing employees are not new employees to whom the union shop provision of the CBA applies. On appeal, the Court of Appeals reversed and set aside the voluntary arbitrator's ruling.*

The *ponencia* affirms the CA decision and reiterates that all absorbed employees falling within the bargaining unit should join the union pursuant to the CBA's union security clauses. In so ruling, the *ponencia* holds that:

a. The absorbed employees are "new" BPI employees to whom the union shop provision of the CBA applies;[1]

b. The absorbed employees do not fall within the exceptions recognized by law and jurisprudence to be excluded from the application of union security provisions; thus, the only issue is whether the absorbed employees "are excluded by the express terms of the existing CBA between the petitioner and the respondent";[2]

c. Unless expressly assumed, labor contracts, such as employment contracts and CBAs, are not enforceable against the transferee of an enterprise, labor contracts being *in personam*, thus binding only between the parties;[3]

d. BPI's role as the employer of the former FEBTC employees was not by operation of law nor a legal consequence of the merger agreement;[4] BPI simply voluntarily hired or contracted with these absorbed employees;[5]

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[1] *Ponencia*, pp. 6, 17-19.

[2] *Id.* at 9.

[3] *Id.* at 10-11.

[4] *Id.* at 10.

[5] *Id.* at 14.

e. It is contrary to public policy to declare the absorbed employees a part of the assets or liabilities of FEBTC that were transferred to BPI through the Merger Plan. The transferred assets and liabilities should be deemed to refer only to property rights and obligations of FEBTC and do not include employment contracts of its personnel;[6] and

f. The constitutional associational right not to join the union does not apply to the absorbed employees because they fall within a collective bargaining unit and are covered by a CBA whose union security clauses are constitutionally valid.[7]

I disagree with points (a) to (e) and submit in point (f) that the constitutional issue raised is not material to the resolution of the issues raised.

Parenthetically, the non-involvement of affected employees at this level of the litigation (a new point the modified *ponencia* raised) is not a stumbling block to the present petition as the *ponencia* now posits. In interpreting a CBA provision, the real parties in interest are the bargaining parties – the company and the union – the agreement is between them. Hence, it matters not that the affected employees, mere necessary parties, are not direct parties in the present petition for review on *certiorari*. For ease of appreciation, I submit the following discussions topically presented, not necessarily in the order of the *ponencia's* presentation of positions as shown above.

<u>The Merger</u>

A basic point of disagreement with the *ponencia* relates to the approach in resolving the issues raised. The *ponencia* appears to consider only the purely labor law aspect of the case in determining the relationships among BPI, FEBTC and the absorbed employees. More than anything else, however, the issues before us are rooted in the corporate merger that took place; thus, the

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[6] *Id.* at 27.

[7] *Id.* at 24.

first priority in resolving the issues before us should be to consider and analyze the nature and consequences of the BPI-FEBTC merger – essentially a matter under the Corporation Code. On the basis of this analysis, the application of labor law can follow.

Unlike the old Corporation Code that did not contain express provisions on mergers and consolidations, the present law now authorizes, under Section 76,[8] two or more corporations to merge under one of the participating constituent corporations, or to consolidate into a new single corporation called the consolidated corporation. In either case, no liquidation of the assets of the dissolved corporations takes place, and the *surviving or consolidated corporation assumes ipso jure the liabilities of the dissolved corporations, regardless of whether the creditors consented to the merger or consolidation.*[9]

The transaction between BPI and FEBTC was a merger under one of the modes provided under Section 76 – *i.e.,* the two corporations, BPI and FEBTC, merged with FEBTC fading away as a corporate entity and BPI surviving as FEBTC's successor. Section 80 of the Corporation Code[10] provides for the legal effects of a merger. As applied to BPI and FEBTC, the effects were:

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[8] Section 76 of the Corporation Code reads:

Section 76. **Plan of merger or consolidation.** — Two or more corporations may merge into a single corporation which shall be one of the constituent corporations or may consolidate into a new single corporation which shall be the consolidated corporation.

[9] Villanueva, *Philippine Corporate Law*, 2001 ed., pp. 606-607.

[10] Section 80. Effects of merger or consolidation. — The merger or consolidation x x x shall have the following effects:

1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;

2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;

3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

a. BPI and FEBTC became a single corporation with BPI as the surviving corporation;

b. The separate corporate existence of FEBTC ceased;

c. BPI now possesses all the rights, obligations, privileges, immunities, and franchises of both BPI and FEBTC;

d. All property, real or personal, and all receivables due on whatever choses in action, and all other interest of, belonging to, or due to FEBTC are deemed transferred to BPI;

e. BPI becomes responsible and liable for all the liabilities and obligations of FEBTC as if it had incurred these liabilities or obligations;

f. Any claim, action, or proceeding pending by or against FEBTC should be prosecuted by or against BPI; and

g. Neither the rights of creditors nor any lien on the property of FEBTC is impaired by the merger.

In short, FEBTC ceased to have any legal personality, and *BPI stepped into everything that was FEBTC's, pursuant to the law and the terms of their Merger Plan*.

An overview of the whole range or levels of transfers of corporate assets and liabilities, as established by jurisprudence,

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4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be taken and deemed to be transferred to andvested in such surviving or consolidated corporation without further act or deed; and

5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any claim, action or proceeding pending by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation, as the case may be. Neither the rights of creditors nor any lien upon the property of any of each constituent corporations shall be impaired by such merger or consolidation.

is helpful and instructive for the full appreciation of the nature of the BPI-FEBTC merger. These levels of transfers are: (1) the **assets-only level**; (2) the **business enterprise level**; and (3) the **equity level**. Each has its own impact on the participating corporations and the immediately affected parties, among them, the employees.[11] **Beyond and encompassing all these levels of transfers is total corporate merger or consolidation.**

The **asset-only transfer** affects only the corporate seller's raw assets and properties; the purchaser is not interested in the seller's corporate personality – its goodwill, or in other factors affecting the business itself. In this transaction, no complications arise affecting the employer-employee relationship, except perhaps the redundancy of employees whose presence in the selling company is affected by the sale of the chosen assets and properties, but this is a development completely internal to the selling corporation.[12]

In the **business enterprise** level transaction, the purchaser's interest goes beyond the assets and properties and extends into the seller corporation's whole business and "earning capability," short of the seller's juridical personality.Thus, a whole business is sold and purchased but the parties retain their respective juridical personalities.In this type of transaction, employer-employee and employer liability complications arise, as can be seen from a survey of the cases on corporate transfers that this Court has already passed upon.[13]

A transaction at the **equity level** does not disturb the participating corporations' separate juridical personality as both corporations continue to remain in existence; the purchaser corporation simply buys the underlying equity of the selling corporation which thus retains its separate corporate personality. The selling corporation continues to run its business, but control

[11] Villanueva, *Phillippine Corporate Law*, 2001 ed., pp. 592–633.

[12] *Id.* at 593.

[13] *Id.* at 594, 620-624, citing *Central Azucarera del Danao v. Court of Appeals*, 221 SCRA 647 (1985) and *San Felipe Neri School of Mandaluyong, Inc. v. National Labor Relations Commission*, G.R. No. 78350, September 11, 1991, 201 SCRA 478.

of the business is transferred to the purchaser corporation whose control of the selling corporation's equity enables it to elect the members of the selling corporation's board of directors.[14]

As pointed out above, a total merger or consolidation goes way beyond all three levels of dealings in corporate business, assets and property. *In a total merger, the merged corporation transfers everything – figuratively speaking, its "body and soul" – to the surviving corporation.* This was what happened in the BPI-FEBTC merger.

Corporate Assets and Employment Contracts

A corporation possesses tangible and intangible assets and properties that, operated on and managed by the corporation's human resources, become an operating business. The intangibles consist, among others, of the corporate goodwill, credits and other incorporeal rights. The human resources that the corporation relies upon to run its business, strictly speaking, are not corporate assets because the corporation does not "own" the people running its business. But corporations are bound to their managers and employees by various forms of contracts of service, such as individual employment contracts, consultancies and other instruments evidencing personal service.In this sense, a corporation has rights over the human resources it has contracted to run and serve its business. These contractual rights, because they are exercised over those who enable the company to fulfill its goal of production, can be classified as corporate assets. But unlike the usual assets, they are unique and special, as contracts of personal service embody rights *in personam, i.e.,* intransferable rights demandable by the parties only against one another.[15]

An employment contract or contract of service essentially has value because it embodies work – the means of adding value to basic raw materials and the processes for producing goods, materials and services that become the lifeblood of corporations and, ultimately, of the nation. Viewed from this

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[14] *Id.* at 593-594.

[15] *Sundowner Development Corporation v. Drilon*, G.R. No. 82341, December 6, 1989, 180 SCRA 14, 18.

perspective, the employment contract or contract of service is not an ordinary agreement that can be viewed in strictly *contractual* sense. It embodies work and production and carries with it a very significant element of public interest; thus, the Constitution, no less, accords full recognition and protection to workers and their contribution to production. Section 18, Article II of the Constitution provides:

SECTION 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.

Another recognition of the value of work, production and labor to the national economy is reflected in Article XII on National Economy and Patrimony whose Section 1 states:

The goals of the national economy are a more equitable distribution of opportunities, income, and wealth; **a sustained increase in the amount of goods and services produced by the nation for the benefit of the people; and an expanding productivity as the key to raising the quality of life for all, especially the underprivileged.**

The State shall promote industrialization and full employment based on sound agricultural development and agrarian reform, **through industries that make full and efficient use of human and natural resources,** and which are competitive in both domestic and foreign markets. However, the State shall protect Filipino enterprises against unfair foreign competition and trade practices.

In the pursuit of these goals, all sectors of the economy and all regions of the country shall be given **optimum opportunity to develop. Private enterprises, including corporations, cooperatives, and similar collective organizations,** shall be encouraged to broaden the base of their ownership. [Emphasis supplied.]

From the point of view of labor itself, Article XIII, Section 3 commands:

The State shall afford **full protection to labor**, local and overseas, organized and unorganized, and promote **full employment and equality of employment opportunities** for all. [Emphasis supplied.]

These constitutional statements and directives, aside from telling us to consider work, labor and employment beyond purely *contractual* terms, also provide us directions on how our

considerations should be made, *i.e.,* with an eye on the interests they represent – the individual, the corporate, and more importantly, the national.

In a corporate merger situation – where one corporation totally surrenders itself, giving up to another corporation even the human resources that enable its business to operate – the terms of the Constitution bar us from looking at the corporate transaction purely as a contract that should be analyzed purely on the basis of the law on contracts, in the way the *ponencia* suggested. Nor can we accept as valid the *ponencia*'s pronouncement, apparently in line with its purely contractual analysis, that the transfer of all assets and liabilities in a merger situation, as in this case, refers only to FEBTC's property rights and obligations and does not include the employment contracts of its personnel.

To my mind, due consideration of Section 80 of the Corporation Code, the constitutionally declared policies on work, labor and employment, and the specific FEBTC-BPI situation – *i.e.*, a merger with complete "body and soul" transfer of all that FEBTC embodied and possessed and where both participating banks were willing (albeit by deed, not by their written agreement) to provide for the affected human resources by recognizing continuity of employment – should point this Court to a declaration that ***in a complete merger situation*** *where there is total takeover by one corporation over another and there is silence in the merger agreement on what the fate of the human resource complement shall be*, the latter should not be left in legal limbo and should be properly provided for, by compelling the surviving entity to absorb these employees. This is what Section 80 of the Corporation Code commands, as the surviving corporation has the legal obligation to assume all the obligations and liabilities of the merged constituent corporation.

Not to be forgotten is that the affected employees managed, operated and worked on the transferred assets and properties as their means of livelihood; they constituted a basic component of their corporation during its existence. In a merger and consolidation situation, they cannot be treated without consideration of the applicable constitutional declarations and

directives, or, worse, be simply disregarded. If they are so treated, it is up to this Court to read and interpret the law so that they are treated in accordance with the legal requirements of mergers and consolidation, read in light of the social justice, economic and social provisions of our Constitution. **Hence, there is a need for the surviving corporation to take responsibility for the affected employees and to absorb them into its workforce where no appropriate provision for the merged corporation's human resources component is made in the Merger Plan.**

This recognition is not to objectify the workers as assets and liabilities, but to recognize – using the spirit of the law and constitutional standards – their necessary involvement and need to be provided for in a merger situation. Neither does this step, directly impacting on the employees' individual employment contracts, detract from the *in personam* character of these contracts. **For in a merger situation, no change of employer is involved; the change is in the *internal personality of the employer* rather than through the introduction of a new employer which would have novated the contract.** This conclusion proceeds from the nature of a merger as a corporate development regulated by law and the merger's implementation through the parties' merger agreement.

In the context of this case, BPI's relationship with the absorbed employees ***cannot be equated with a situation involving voluntary hiring, as the ponencia posited***. Note that voluntary hiring, as the basis of the relationship, presupposes that employment with FEBTC had been terminated – a development that, as explained above, did not take place; the employment of the absorbed employees simply continued by operation of law, specifically by the combined operation of the Corporation Code and the Labor Code under the backdrop of the labor and social justice provisions of the Constitution.

An individual employee can, at any time, in a consensual and *in personam* employment contract, walk away from it, subject only to the adjustment of the obligations he has incurred under the contractual relationship that binds him; a contrary

rule would violate the involuntary service provision of the Constitution.[16] Ordinarily, walking away would be an act of voluntary resignation that entitles the employee only to benefits that have been earned and accrued; a merger situation is differentiated by the separation pay[17] that the Merger Plan should at least provide under the combined application of the Corporation Code,[18] as well as the just and authorized causes for termination of employment under the Labor Code.[19] Otherwise, the employee has the right to be secure in his tenure without loss of seniority, benefits and level of pay.[20]

The above view reconciles the terms of the Constitution, the Corporation Code, and the Labor Code, and directly conflicts with the *ponencia's* views that: (1) BPI's role as employer of the absorbed FEBTC employees was not by operation of law or a legal consequence of the merger, but by BPI's voluntary act of hiring the employees after the merger; (2) the employees' contracts are purely *in personam* and are binding only between the parties; and (3) it is contrary to public policy to declare the absorbed employees to be part of the assets or liabilities of FEBTC that were transferred to BPI under the Merger Plan since the transferred assets and liabilities should be deemed to refer only to property rights and obligations of FEBTC and do not include the employment contracts of its personnel.

To encapsulate the discussions above in relation with the *ponencia's*, BPI was the successor of FEBTC in the latter's employment relationships, and the succession occurred both

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[16] Article III, Section 18(2) of the Constitution states that:

Section 18. (1) x x x

(2) No involuntary servitude in any form shall exist except as a punishment for a crime whereof the party shall have been duly convicted.

[17] *Glory Philippines, Inc. v. Vergara*, G.R. No. 176627, August 24,2007, 531 SCRA 253, 264; *F.F. Marine Corporation v. National Labor Relations Commission*, G.R. No. 152039, April 8, 2005, 455 SCRA 154, 172; *Torillo v. Leogardo*, 274 Phil. 758, 765-767 (1991).

[18] Section 80 of the Corporation Code.

[19] Sections 282, 283 and 284 of the Labor Code.

[20] Section 279 of the Labor Code.

by contract and by operation of law. The two corporations decided to merge; necessarily, their merger – made through a merger agreement – is governed by the Corporation Code that recognizes the merger and its terms, including the "body and soul" succession to BPI of everything that was FEBTC's.

This succession included FEBTC's employment contracts, subject to the right of the employees to reject or accept the succession because employment contracts are essentially *in personam*. It is immaterial that BPI's assumption of the role of employer was not embodied in the merger agreement; in the absence of clear agreement terms, the law – specifically, Section 80 of the Corporation Code – takes over and governs. What appeared to be BPI's voluntary act of "hiring" the former FEBTC employees is legally insignificant as BPI was in fact obliged under the law to assume the role of employer to the FEBTC employees in the absence of an agreement on how the merging parties would treat the employment contracts and the employees they cover.

In support of its position, the *ponencia* cites the American Law Reports on "the consequences of voluntary mergers on the right to employment and seniority rights" with the view that these are "persuasive and illuminating." The first case cited is *Carver v. Brien,*[21] which relates to the recognition of seniority in a consolidation of operations situation. Another is *Moore v. International Brotherhood of Teamsters*,[22] which refers to the absorption by a trucker of the business of another private trucker or common carrier, and holds that the seniority of affected employees depends on the agreement between the trucker and the unions involved.

I do not believe that these cited cases are relevant to the present case, particularly for the purposes the *ponencia* cites them; these cited cases can neither be "persuasive nor illuminating" as they do not even approximate the factual situation of the present case so that their rulings can be applied to the latter.

[21] 43 NE2nd 597 (1942).

[22] 356 SW2nd 241 (1962).

No corporate merger was involved in the cited cases, in the same sense as in the present case; in fact, what was involved in *Carver* was merely a consolidation of operations, while *Moore* merely related to the absorption of the business of one corporation by another, not to a merger. As painstakingly explained above, these are dealings in corporate interests and properties that are lesser in extent and scope than total merger or consolidation and should be distinguished from the latter under the terms of Section 80 of our Corporation Code. Thus, the cited cases and rulings should not at all be considered in resolving the issues posed in the present case.

From another perspective, the differing consequences, discussed above,[23] arising from the different modes of transfers of corporate assets and liabilities and corporate consolidations, apparently escape the *ponencia.* Thus, it has no hesitation at all in citing American cases that do not at all involve fact situations equivalent to the merger envisioned by Sections 76 and 80 of the Corporation Code. This is a fatal error, leading no less to the *ponencia's* conclusion that the issue before us is purely a labor law issue, divorced from its corporation law context.

That an employment contract is *in personam* cannot be disputed as this is the essence of such contract and what this contract should be in light of the constitutional prohibition against involuntary servitude.[24] But as above pointed out, this is not wholly and strictly how an employment contract is to be viewed under our Constitution. While these contracts are binding only between the parties, they resonate with public interest that the Constitution and our laws have seen fit to regulate; employment contracts translate to service which itself translates to productive work that the economy and the nation need.

In the BPI-FEBTC situation, these employment contracts are part of the obligations that the merging parties have to account and make provisions for under the Constitution and the Corporation Code; in the absence of any clear agreement, these

[23] At pages 7 to 8 of this Dissent.

[24] Article III, Section 18(2) of the Constitution.

employment contracts subsist, subject to the right of the employees to reject them as they cannot be compelled to render service but can only be made to answer in damages if the rejection constitutes a breach.[25] ***In other words, in mergers and consolidations, these contracts should be held to be continuing, unless rejected by the employees themselves or declared by the merging parties to be subject to the authorized causes for termination of employment under Sections 282 and 283 of the Labor Code. In this sense, the merging parties' control and business decision on how employees shall be affected, in the same manner that the affected employees' decision on whether to abide by the merger or to opt out, remain unsullied.*** Unfortunately, this is another dimension of a merger situation that escapes the *ponencia's* short-sighted reading of corporate mergers in general, and of the merger between BPI and FEBTC in particular.

From these perspectives, it appears clearly that the *ponencia* has not fully appreciated how mergers operate and how they affect employment contracts when it viewed employment contracts as *strictly contractual* and *binding only between the parties*, with no effective legal intervention from the law in terms of the combined operation of the Constitution, the Corporation Code and the Labor Code.

BPI's Assumption of Role as Employer

As soon as the BPI-FEBTC merger took effect, FEBTC completely faded out as employer and BPI succeeded to this role. BPI's assumption of this role is not in the sense of a novation, *i.e.,* that a change of employer took place as the employment contracts were transferred to BPI. As stated above, instead of the clear change or substitution of an employer for another that would have taken place in a novated employment contract (*e.g.*, such that would have taken place if only a *business enterprise level of transfer* took place where the whole business is transferred, accompanied by a substitution of the employer running the business), what took place in the BPI-FEBTC total

[25] Article 2201 of the Civil Code.

merger was an internal change; BPI succeeded to everything that was FEBTC's, thereby assuming the latter's identity and role as employer. In this sense, BPI simply expanded its role as an employer to encompass the employees who were previously identified as FEBTC employees.

The effect of this development on the internal BPI employment situation in a *non-unionized environment* would not have posed any difficulty, as there would simply be an adjustment of working conditions based on the premise that the absorbed employees would not suffer any diminution of the terms and conditions of employment under their contracts.

Where a union is present in a merger situation, complications arise as the adjustment will not only involve the assumption of the role of the merged corporation as employer and the non-diminution of the terms and conditions of employment; existing terms and conditions of the relationship with the union must as well be observed and respected. This union scenario gave rise to the present case and at its core asks: *what terms and conditions of relationship with the union must be observed in light of BPI's expanded role as an employer*.

Union presence at the workplace is generally most effective when it has a current CBA with the employer. This agreement necessarily implies that a bargaining unit has been properly defined and delineated in the organized portion of the employer's establishment. In the present case, the establishment is BPI's Davao Branch and the defined bargaining unit covers the rank-and-file positions in the Branch. At the minimum, the absorbed employees working within BPI's Davao Branch who are ***classified as rank-and-file employees*** and ***who are not expressly excluded*** from coverage should be covered by the collective bargaining unit and by the CBA. Note that *this coverage by the bargaining unit is separate from compulsory union membership which is provided under the union security clauses discussed below. Employees may come within the coverage of the bargaining unit, but may still be exempt*

from compulsory union membership under the union security clauses. [26]

The CBA's Union Security Clauses

The CBA at BPI contains two union security provisions whose respective roles are **to protect** and **to compel** union membership within the effective term of the CBA.

The first is the **Maintenance of Membership** provision whose role is to ***protect the union's current membership.*** By its express terms, it covers and renders continued union membership compulsory for: **(1)** those who were already union members at the time the CBA was signed; and **(2)** the new employees who will become regular during the life of the CBA. The first classification of union members directly implies that ***BPI employees who were not members of the union, at the time of the signing of the CBA, are not compelled to be union members.***

Thus, on the basis of this union security clause and the compulsory membership it compels, there are three kinds of employees at BPI, namely – (1) those who **are not compelled to be union members** because they were not union members at the time the CBA was signed; (2) those **who are compelled** to continue membership because they were **already union members when the CBA was signed;** and (3) those who, **previously non-regular employees**, are compelled to be union members **after they attain regular status.**

As applied to the absorbed employees, the maintenance of membership clause would apply to them *only if they voluntarily joined the union after the BPI-FEBTC merger*; they would thereafter have to maintain their union membership under pain of dismissal.

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[26] Note that confidential employees may occupy rank and file positions but are not covered by the bargaining unit because of express exclusion. Rank and file employees who are not union members because they are "old" employees not covered by the maintenance of membership clause are covered by the CBA but are not union members; they simply pay "agency fees" to avoid being "free riders" to the CBA.

The second union security provision is entitled **Union Shop** *whose role is to compel the membership of those who are not yet union members.* To quote its direct terms, it refers to "**[N]ew employees falling within the bargaining unit** as defined in Article I of this Agreement, **who may hereafter be regularly employed by the Bank."**[27] Strictly speaking, this definition is defective as it speaks of new non-regular employees who are not therefore members of the bargaining unit yet. The provision should properly read: *new employees occupying positions falling within the bargaining unit.*

Read closely, this reference to "new employees" is not a definition that specifies who are new. It simply refers to those employees *whose positions fall within the bargaining unit and who are subsequently given regular status;* they must join the union as a condition of their continued employment.

By its reference to employees who are as yet on non-regular status, what is clearly a requirement for the application of the union shop clause, as framed by this provision, is the grant of regular status. In other words, it applies to those recently given regular employment and who, by necessary implication, were hired as non-regular employees and were thereafter accorded regular status.

In contrast with the non-regular employees that the CBA clearly referred to, absorbed FEBTC employees did not undergo the process of waiting for the grant of regular status; their regular employment simply continued from FEBTC to BPI without any break because BPI only succeeded to the role of FEBTC as employer in a merger, where the same employment was maintained and only the employer's personality changed. Thus, they cannot be "new" under the terms of the union security clause. For that matter, they are not even "new" under the

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[27] *Rollo,* p. 17. The CBA provides that "[n]ew employees falling within the bargaining unit as defined in Article I of this Agreement, who may hereafter be regularly employed by the Bank, shall, within thirty (30) days after they become regular employees, join the Union as a condition of their continued employment. It is understood that membership in good standing in the Union is a condition of their continued employment with the Bank."

ordinary meaning of this word which connotes something that recently came into existence, use, or a particular state or relation.[28]

Even granting the validity of the *ponencia's* position that the union shop provision *as written* does not distinguish between non-regular employees, who subsequently became regular, and those who were hired and immediately granted regular status without passing through a non-regular phase, still the union security clause would not cover the absorbed employees because they do not fall under either classification.

An intrinsic distinction exists between the absorbed employees and those who are hired as immediate regulars, which distinction cannot simply be disregarded because it establishes how the absorbed employees came to work for BPI. Those who are immediately hired as regulars acquire their status through the voluntary act of hiring done within the effective term or period of the CBA. The absorbed employees, on the other hand, merely continued the employment they started with FEBTC; they came to be BPI employees by reason of a corporate merger that changed the personality of their employer but *did not at all give them any new employment*. Thus, they are neither "new" employees nor employees who became regular only during the term of the CBA in the way that newly regularized employees become so. They were regular employees under their present employment long before BPI succeeded to FEBTC's role as employer.

It may well be asked: what then is the classification under the CBA of the absorbed employees whose positions fall within the bargaining unit? As discussed above, they cannot be new employees. In fact, they are more similar to the "old" employees, if their continuity of service will be considered. This characterization, nevertheless, is clearly inapt since they cannot also be treated in exactly the same way as the pre-merger BPI employees. Besides, *being "old" employees will not compel them to join the union under the maintenance of membership provision as they never had any union membership to maintain.*

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[28] *Webster's Third New International Dictionary,* 1993 ed.

Ultimately, the absorbed employees are best recognized for what they really are – a ***sui generis*** **group of employees** whose classification will not be duplicated until BPI has another merger where it would be the surviving corporation and no provision would be made to define the situation of the employees of the merged constituent corporation. Significantly, this classification – ***obviously, not within the contemplation of the CBA parties when they executed their CBA*** – is not contrary to, nor governed by, any of the agreed terms of the existing CBA on union security, and thus occupies a gap that BPI, in the exercise of its management prerogative, can fill.

In the meantime, whether to join or not to join the union is a choice that these absorbed employees will have to make after the next CBA, when their status becomes subject to the results of the collective negotiations.

In a resulting **purely maintenance of membership** regime, those who would not opt to join the union carry no obligation to maintain any union membership. In a **union shop** regime, the absorbed employees may remain non-union members until an agreed specified time when union membership is declared obligatory as a condition for continued employment. With the same effect would be the stricter **closed shop** clause that compels management to hire only union members. **In any of these regimes, of course, compulsory membership shall depend on the terms of the CBA on who would be subject to compulsion and how compulsion would operate.** As a cautionary note to avoid similar problems in the future, it may be best for the parties to incorporate terms expressly providing for the situation of employees absorbed by reason of merger.

<u>The Constitutional Question</u>

The constitutional question, as framed by Justice Antonio T. Carpio, arises under the view that the absorbed employees cannot be covered by the union security clause and thereby be compelled to join the union. As indicated at the beginning of this Opinion, this question was never posed <u>nor discussed</u> by any of the parties and, hence, is not a question presented for our consideration in the present case. Besides, this is a question

that *may only arise when and if the absorbed employees are considered bound under the union security clauses to join the union*. For these reasons, I see no need to confront and resolve this constitutional issue.

In light of these considerations, I vote to **GRANT** the petition.

FIRST DIVISION

[G.R. No. 137794. August 11, 2010]

ERLINDA REYES and ROSEMARIE MATIENZO, *petitioners, vs.* **HON. JUDGE BELEN B. ORTIZ, Presiding, Branch 49, Metropolitan Trial Court, Caloocan City; SPOUSES BERNARD and FLORENCIA PERL, represented by Attorney-in-Fact BENJAMIN MUCIO; HON. JUDGE VICTORIA ISABEL A. PAREDES, Presiding, Branch 124, Regional Trial Court, Caloocan City and SEGUNDO BAUTISTA,** *respondents.*

[G.R. No. 149664. August 11, 2010]

SPS. ALBERTO EMBORES and LOURDES EMBORES, SPS. ROBERTO and EVELYN PALAD, DENNIS HENOSA and CORAZON LAURENTE, *petitioners, vs.* **HON. RAYMUNDO G. VALLEGA, Presiding Judge, Branch 52, Metropolitan Trial Court, Caloocan City; HON. ELEANOR R. KWONG, Presiding Judge, Branch 51, Metropolitan Trial Court, Caloocan City; HON. JUDGE BELEN B. ORTIZ, Presiding Judge, Branch 49, Metropolitan Trial Court, Caloocan City; VICTORIA C. SALIRE-ALBIS, represented by her attorney-in-fact MR. MENELIO C. SALIRE; MA. FE**

R. ROCO, ALFREDO TAN, MANUELITO ESTRELLA; and HON. JUDGE ANTONIO FINEZA, Presiding Judge, Branch 131, Regional Trial Court, Caloocan City, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; DISCUSSED. —** [Section 1, Rule 63 of the 1997 Rules of Court] can be dissected into two parts. The first paragraph concerns declaratory relief, which has been defined as a special civil action by any person interested under a deed, will, contract or other written instrument or whose rights are affected by a statute, ordinance, executive order or regulation to determine any question of construction or validity arising under the instrument, executive order or regulation, or statute and for a declaration of his rights and duties thereunder. The second paragraph pertains to (1) an action for the reformation of an instrument; (2) an action to quiet title; and (3) an action to consolidate ownership in a sale with a right to repurchase.

2. **ID.; ID.; ID.; NOT PROPER REMEDY TO ASSAIL DENIAL OF THE MOTION TO SUSPEND PROCEEDINGS; SUBJECT MATTERS TO BE TESTED IN A PETITION FOR DECLARATORY RELIEF ARE EXCLUSIVE. —** The first paragraph of Section 1 of Rule 63 enumerates the subject matter to be inquired upon in a declaratory relief namely, deed, will, contract or other written instrument, a statute, executive order or regulation, or any government regulation. This Court, in *Lerum v. Cruz*, declared that the subject matters to be tested in a petition for declaratory relief are exclusive, *viz*: Under this rule, only a person who is interested "under a deed, will, contract or other written instrument, and whose rights are affected by a statute or ordinance, may bring an action to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder." **This means that the subject matter must refer to a deed, will, contract or other written instrument, or to a statute or ordinance, to warrant declaratory relief. Any other matter not mentioned therein is deemed excluded. This is under the principle of *expressio unius***

est exclussio alterius. The foregoing holding was reiterated in *Natalia Realty, Inc. v. Court of Appeals,* wherein this Court stressed that court orders or decisions cannot be made the subject matter of a declaratory relief x x x. In the instant case, petitioners Erlinda Reyes and Rosemarie Matienzo assailed *via* Declaratory Relief under Rule 63 of the Rules of Court, the orders of the trial courts denying their motions to suspend proceedings. This recourse by petitioners, unfortunately, cannot be countenanced since a court order is not one of those subjects to be examined under Rule 63.

3. **ID.; MOTIONS; MOTION TO SUSPEND PROCEEDINGS; PROPER REMEDY TO ASSAIL THE DENIAL THEREOF IS A MOTION FOR RECONSIDERATION AND, IF DENIED, A PETITION FOR *CERTIORARI*. —** The proper remedy that petitioner Erlinda Reyes could have utilized from the denial of her motion to suspend proceedings in the Caloocan City MeTC was to file a motion for reconsideration and, if it is denied, to file a petition for *certiorari* before the RTC pursuant to Rule 65 of the Rules of Court. On the other hand, petitioner Matienzo should have filed a special civil action on *certiorari* also under Rule 65 with the Court of Appeals from the denial of her motion by the Caloocan City RTC. The necessity of filing the petition to the RTC in the case of Erlinda Reyes and to the Court of Appeals in the case of Matienzo is dictated by the principle of the hierarchy of courts. Both petitions must be filed within 60 days from the receipt or notice of the denial of the motion to suspend proceedings or from the denial of the motion for reconsideration.

4. **ID.; COURTS; SUPREME COURT; NO ORIGINAL AND EXCLUSIVE JURISDICTION OVER PETITION FOR DECLARATORY RELIEF; DIRECT RESORT THERETO, WHEN ALLOWED. —** Despite [the] procedural remedy available to them, petitioners, under the pretext that they were in a quandary as to their rights under the Injunction order of the Quezon City RTC, directly filed the instant case here. Petitioners did not bother to proffer a compelling reason for their direct resort to this Court. This procedural *faux pas* proves fatal. The Court's exhortation against taking a procedural shortcut cannot be overemphasized. In *Ortega v. The Quezon City Government*, the Court accentuated: At all events, even if this petition delves on questions of law, there is no statutory or

jurisprudential basis for according to this Court original and exclusive jurisdiction over declaratory relief which advances only questions of law. Finally, while a petition for declaratory relief may be treated as one for prohibition if it has far reaching implications and raises questions that need to be resolved, there is no allegation of facts by petitioner tending to show that she is entitled to such a writ. **The judicial policy must thus remain that this Court will not entertain direct resort to it, except when the redress sought cannot be obtained in the proper courts or when exceptional and compelling circumstances warrant availment of a remedy within and calling for the exercise of this Court's primary jurisdiction**.

5. **ID.; JUDGMENTS; NO COURT HAS THE POWER TO INTERFERE BY INJUNCTION WITH THE JUDGMENTS OF A COURT OF CONCURRENT OR COORDINATE JURISDICTION; RATIONALE; EXCEPTIONS NOT PRESENT.** — Also unavailing are the contentions of petitioners that the Caloocan City RTC and MeTC committed grave abuse of discretion when they denied petitioners' motions to suspend proceedings. x x x [The Injunction Order of the Quezon City RTC] is not addressed to the Caloocan City RTC. Neither can it be inferred from the language thereof that the Quezon City RTC intended to enjoin the Caloocan City RTC from further proceeding with the Recovery case. The order merely mentions the Caloocan City MeTCs. Nothing more. But more importantly, the Quezon City RTC could not have validly enjoined the Caloocan City RTC without violating the doctrine that no court has the power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction. *Spouses Ching v. Court of Appeals*· justifies this rule in this manner: Beginning with the case of *Orais v. Escaño*, down to the subsequent cases of *Nuñez v. Low, Cabigao v. del Rosario, Hubahib v. Insular Drug Co., Inc., National Power Corp. v. De Veyra, Luciano v. Provincial Governor, De Leon v. Hon. Judge Salvador, Cojuangco v. Villegas, Darwin v. Tokonaga*, we laid down **the long standing doctrine that no court has the power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction**. The various trial courts of a province or city, having the same or equal authority, should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments. A contrary rule would

obviously lead to confusion and seriously hamper the administration of justice. x x x While there are recognized exceptions to the foregoing rule, other than citing said cases, petitioners did not explain the applicability of said exceptional cases to their petition.

6. ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; PENDENCY OF ANNULMENT/REVERSION CASE SHALL NOT *IPSO FACTO* SUSPEND AN EJECTMENT PROCEEDING; RATIONALE; EXCEPTION NOT PRESENT. — Bereft of merit too is petitioners' argument that the Caloocan City MeTC cannot disregard the injunction order of the Quezon City RTC hearing the Annulment/Reversion case. The established rule is that a pending civil action for ownership such as annulment of title shall not *ipso facto* suspend an ejectment proceeding. The Court explained that the rationale for this is that in an ejectment case, the issue is possession, while in an annulment case the issue is ownership. In fact, an ejectment case can be tried apart from an annulment case. Although there is an exception to this rule, petitioners failed to justify that this case falls within said exception. The words of the Court on this matter are instructive: **In the absence of a concrete showing of compelling equitable reasons** at least comparable and under circumstances analogous to *Amagan*, we cannot override **the established rule that a pending civil action for ownership shall not *ipso facto* suspend an ejectment proceeding.** Additionally, to allow a suspension on the basis of the reasons the petitioners presented in this case would create the dangerous precedent of allowing an ejectment suit to be suspended by an action filed in another court by parties who are not involved or affected by the ejectment suit. Hence, petitioners' posture that the Ejectment cases should be suspended due to the pendency of the Annulment/Reversion case is not meritorious.

APPEARANCES OF COUNSEL

Luis Sementilla, Jr. for E. Reyes and R. Matienzo.
Marlin F. Velasco for Sps. Bernard & Florencia Perl.
Medina Libatique & Associates Law Office for Sps. Alberto & Lourdes Embores, *et al*.
Angel De Vera for S. Bautista.
Godofredo T. Robeniol for Alfredo Tan.

DECISION

LEONARDO-DE CASTRO, *J.*:

The instant cases are consolidated Petitions[1] for Declaratory Relief, *Certiorari*, and Prohibition. The petitioners in G.R. No. 137794 seek to declare null and void the proceedings in Civil Case No. 23477, an ejectment case, before the Metropolitan Trial Court (MeTC), Caloocan City, Branch 49, and Civil Case No. C-17725, a complaint for Recovery of Possession and Ownership, filed with the Regional Trial Court (RTC), Caloocan City, Branch 124;[2] while the petitioners in G.R. No. 149664 pray for the nullity of the following ejectment proceedings before the different branches of the Caloocan City MeTC: (1) Civil Case No. 99-25011, Branch 52; (2) Civil Case No. 22559 and Civil Case No. 18575, Branch 49 and its appeal to the RTC, Branch 131; (3) Civil Case No. 00-25892, Branch 51; and (4) Civil Case No. 00-25889, Branch 51.[3] G.R. No. 149664 was considered closed and terminated by the Court's Resolution dated August 30, 2006.[4]

The parcels of land which are the subject matter of these cases are part of the Tala Estate, situated between the boundaries of Caloocan City and Quezon City and encompassing an area of 7,007.9515 hectares more or less.[5]

In G.R. No. 137794, respondents Segundo Bautista and spouses Bernard and Florencia Perl sought the ouster from the contested lots of Erlinda Reyes, spouses Rene and Rosemarie Matienzo and Sergio Abejero, who are occupants of separate home lots in Camarin, Caloocan City.

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[1] Petitioners in G.R. No. 137794 insist that their petition is mainly a Declaratory Relief. (See *rollo,* p. 366.)

[2] *Rollo* (G.R. No. 137794), pp. 3-15.

[3] *Rollo* (G.R. No. 149664), pp. 3-19.

[4] *Id.* at 398.

[5] *Id.* at 45.

The first case was commenced on December 11, 1996, by respondent Segundo Bautista, a registered owner of the parcel of land occupied by spouses Rene and Rosemarie Matienzo. The case was a complaint for Recovery of Possession and/or Ownership of Real Property (**Recovery case**) against the latter spouses with the RTC Caloocan City, Branch 124.[6] This was docketed as Civil Case No. C-17725.[7]

Shortly thereafter, a separate but related action, was initiated by the Republic of the Philippines, represented by the Director of Lands on December 27, 1996, before the Quezon City RTC, Branch 85 (re-raffled to Branch 93).[8] This was a complaint for Annulment of Title/Reversion (**Annulment/Reversion case**) against Biyaya Corporation and the Register of Deeds of the Cities of Pasig, Caloocan, and Quezon, the City of Manila, and the Administrator of the Land Registration Authority involving the Tala Estate. The case, docketed as Civil Case No. Q-96-29810, sought to declare null and void the transfer certificates of title issued in the name of Biyaya Corporation, and all derivative titles emanating therefrom, and to declare the land in suit to be reverted to it as part of the patrimonial property of the State, and the same be awarded to the actual occupants. One of the intervenors therein is Samahan ng Maliliit na Magkakapitbahay (SAMAKABA) of which petitioners Erlinda Reyes and Rosemarie Matienzo are members.[9]

On May 28, 1997, the Quezon City RTC in the Annulment/ Reversion case issued a Preliminary Injunction (**Injunction**) freezing all ejectment cases involving the Tala Estate pending in the MeTCs of Quezon City and Caloocan City.[10]

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[6] *Rollo* (G.R. No. 137794), p. 543.

[7] *Id.* at 6.

[8] *Id.* at 556.

[9] *Id.* at 299.

[10] The motion for reconsideration of the injunction order was denied on October 21, 1997. Apparently no further actions were taken against the said order. (*Rollo* [G.R. No. 137794], pp. 35-41.)

Believing that the Injunction issued by the Quezon City RTC can be beneficial to them in the Recovery case pending before the Caloocan City RTC, on June 27, 1997, spouses Rene and Rosemarie Matienzo filed a motion to suspend the proceedings of the Recovery case.[11] On December 8, 1997, the Caloocan City RTC, Branch 124 denied said motion.[12] Spouses Matienzo moved for the reconsideration of the motion, but the same was denied on May 14, 1998.[13] The spouses received the order denying their motion for reconsideration on June 9, 1998.[14] Trial on the merits started on December 2, 1998.[15]

The second case, an ejectment complaint, was commenced by spouses Bernard and Florencia Perl on June 25, 1997, against Erlinda Reyes before the Caloocan City MeTC, Branch 49.[16] It was docketed as Civil Case No. 23477. Shortly thereafter, on July 8, 1997, spouses Perl filed the third case, an ejectment action against Sergio Abejero. The case, which was raffled off to Branch 49 of the Caloocan City MeTC, was docketed as Civil Case No. 23519.[17] Subsequently, these two ejectment cases were consolidated (**Ejectment cases**).[18] In her Answer and during the preliminary conference, Erlinda Reyes moved for the suspension of the proceedings and/or for the dismissal of these cases citing the Injunction issued in Civil Case No. Q-96-29810.[19] In its Order[20] dated January 22, 1999, the MeTC did not entertain Reyes's motion, instead, it required her to submit a position paper. Erlinda Reyes received the order on

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[11] *Rollo* (G.R. No. 137794), p. 546.

[12] *Id.* at 548.

[13] *Id.* at 551.

[14] *Id.* at 15.

[15] *Id.* at 552.

[16] *Id.* at 299.

[17] *Id.* at 299-300.

[18] *Id.* at 300.

[19] *Id.* at 112.

[20] *Id.* at 76.

March 11, 1999.[21] On April 16, 1999, the trial court issued a Decision ordering Erlinda to vacate the contested property.[22]

The Recovery case and the Ejectment cases converged when petitioners Rosemarie Matienzo and Erlinda Reyes, joined on March 25, 1999 in filing directly with this Court the instant petition denominated as "Declaratory Relief, *Certiorari*, and Prohibition," mainly assailing the denial of their respective motions for suspension.[23] Petitioners Matienzo and Reyes asked that the proceedings in the Ejectment cases and the Recovery case be declared null and void for violating the Injunction order of the Quezon City RTC. This case is docketed as G.R. No. 137794.

During the pendency of G.R. No. 137794, certain events supervened when the Ejectment cases ran their course and petitioner Reyes appealed the MeTC decision to the RTC. In the RTC, the Ejectment cases were docketed as Civil Cases Nos. C-18904-05.[24] Apparently, respondent-spouses Perl moved for the execution of the MeTC decision pending appeal, which the RTC granted as the Writ of Execution was thereafter issued on October 20, 2000.[25] Petitioner Erlinda Reyes and company, thus, filed with this Court a motion to suspend the proceedings in the RTC. [26] On October 25, 2000, this Court issued a Temporary Restraining Order restraining the implementation of the said writ of execution.[27]

G.R. No. 149664, on the other hand, emanated from four distinct ejectment complaints filed against petitioners Corazon Laurente, spouses Alberto and Lourdes Embores, spouses Roberto

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[21] *Id.* at 15.

[22] *Id.* at 112.

[23] *Id.* at 3.

[24] *Id.* at 224.

[25] *Id.* at 284.

[26] *Id.* at 267-270.

[27] *Id.* at 283-284.

and Evelyn Palad, and Dennis Henosa.[28] The parcels of land from which petitioners were sought to be evicted were located in Camarin, Caloocan City and within the Tala Estate.[29] Petitioners were members of Alyansa Ng Mga Naninirahan Sa Tala Friar Lands (ALNATFRAL), an intervenor in the Reversion case.[30] These ejectment cases were all filed after the Injunction order was issued on May 28, 1997 by the Quezon City RTC in the Annulment/ Reversion case. Thus, petitioners separately invoked the said injunction in seeking the dismissal or suspension of the four ejectment cases. Petitioners' motions for suspension were dismissed and the trial court proceeded to render judgments on these cases. Petitioners resorted directly to this Court in seeking the declaration of nullity of the proceedings of these ejectment cases for violating the prevailing injunction issued by the Quezon City RTC.

Meanwhile, on March 4, 2003, the petitioners in G.R. No. 149664 filed a motion for consolidation asking that the said case be consolidated with G.R. No. 137794.

On April 28, 2003, this Court resolved to consolidate the two cases.

On July 28, 2006, petitioners in G.R. No. 149664 filed a Motion to Withdraw and/or Dismiss Instant Petition[31] stating that since a decision in the Annulment/Reversion case (Civil Case No. Q-96-29810) was already issued (although they did not attach a copy thereof), the petition is therefore rendered moot and academic as the injunction order was effective only pending determination of the merits.

On August 30, 2006, the Court granted the motion to withdraw petition in G.R. No. 149664 and considered the same closed and terminated.[32] On October 11, 2006, G.R. No. 149664 became final and executory.

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[28] *Rollo* (G.R. No. 149664), p. 8.

[29] *Id.* at 6.

[30] *Id.* at 40.

[31] *Id.* at 392.

[32] *Id.* at 398.

What remains to be resolved, therefore, are the issues raised in G.R. No. 137794.

In their bid to declare null and void the proceedings in the Recovery case and the Ejectment cases, petitioners argued that the Caloocan City MeTC, where the Ejectment cases were filed, and the Caloocan City RTC where the Recovery case was pending, were divested of jurisdiction since the Quezon City RTC acquired jurisdiction over the subject matter.[33] Petitioners specifically alleged that the MeTC's refusal to suspend the Ejectment cases despite the Injunction order is tantamount or amounting to lack of or excess of jurisdiction. As to the Caloocan City RTC, its desistance to heed the Injunction is unjustified and contrary to well-settled jurisprudence.[34] Petitioners were of the view that the interference by the Quezon City RTC was justified since no third-party claim is involved.[35]

The Office of the Solicitor General (OSG) adopts the position of petitioners in praying that the orders denying the motion to suspend proceedings and the proceedings that transpired in the Ejectment cases be set aside for having been issued with grave abuse of discretion.[36] Citing *Honda Giken Kogyo-Kabushiki Kaisha v. San Diego*,[37] where it was held that a writ of injunction may be issued to a court by another court superior in rank, the OSG maintains that the Injunction issued by the Quezon City RTC in Civil Case No. Q-96-29810 covers all metropolitan trial courts including the Ejectment cases in Caloocan City MeTC, Branch 49.[38] The OSG also maintains that the Injunction was in accordance with the settled jurisprudence where the reversion case is being filed by the State.

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[33] *Id.* at 12.

[34] *Id.*

[35] *Id.* at 13.

[36] *Rollo* (G.R. No. 137794), p. 307.

[37] G.R. No. L-22756, March 18, 1966, 16 SCRA 406; *rollo* (G.R. No. 137794), p. 303.

[38] *Rollo* (G.R. No. 137794), p. 303.

Respondent Segundo Bautista contends that petitioners resorted to a wrong remedy. He argues that the action for declaratory relief can only prosper if the statute, deed, or contract has not been violated.[39] Hence, where the law or contract has already been breached prior to the filing of the declaratory relief, courts can no longer assume jurisdiction since this action is not geared towards the settling of issues arising from breach or violation of the rights and obligations of the parties under a statute, deed, and contract, but rather it is intended to secure an authoritative statement for guidance in their enforcement or compliance of the same.[40] Since the Injunction order of the Quezon City RTC had already been violated as early as December 8, 1997 by the Caloocan City RTC in the Recovery case, or before the filing of this instant petition, resort to Rule 63 of the Rules of Court would not lie. Respondent Bautista insists that the instant recourse of petitioner Matienzo was resorted to as a ploy to substitute the filing of *certiorari* under Rule 65, which she already lost since the 60-day period had already expired.[41] Respondent points out that direct resort to this Court violates the rule on the hierarchy of courts. Since it was the Caloocan City RTC which denied petitioner Matienzo's motion to suspend proceedings, the petition for declaratory relief should have been filed with the Court of Appeals. Direct filing with this Court is not justified as, other than making motherhood statements, petitioner Matienzo failed to state clearly the exceptional and compelling circumstances to justify the exercise of this Court's primary jurisdiction.[42] He likewise contends that the Caloocan City RTC did not err in not suspending the proceedings in the Recovery case, notwithstanding the Injunction issued by the Quezon City RTC, since the said injunction applied only to the MeTCs of Quezon City and Caloocan City so the RTC was excluded from the injunction order. He avers that it is the Caloocan City RTC which is vested with the jurisdiction

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[39] *Id.* at 558.

[40] *Id.*

[41] *Id.* at 354-355.

[42] *Id.* at 560-561.

to hear and decide the case until its final conclusion since it had acquired the same ahead of the Quezon City RTC. He states that being co-equal, the Quezon City RTC had no authority to stop by injunction the Caloocan City RTC and even though there are instances where another court may exercise coordinate jurisdiction in cases where there are justifiable grounds, here, petitioner Matienzo has not alleged any of those circumstances.

Petitioners insist that this is mainly a petition for declaratory relief. Section 1, Rule 63 of the 1997 Rules of Court provides:

> SECTION 1. *Who may file petition.* — Any person interested under a deed, will, contract or other written instrument, or whose rights are affected by a statute, executive order or regulation, ordinance, or any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.
>
> An action for the reformation of an instrument, to quiet title to real property or remove clouds therefrom, or to consolidate ownership under Article 1607 of the Civil Code, may be brought under this Rule.

The foregoing section can be dissected into two parts. The first paragraph concerns declaratory relief, which has been defined as a special civil action by any person interested under a deed, will, contract or other written instrument or whose rights are affected by a statute, ordinance, executive order or regulation to determine any question of construction or validity arising under the instrument, executive order or regulation, or statute and for a declaration of his rights and duties thereunder. The second paragraph pertains to (1) an action for the reformation of an instrument; (2) an action to quiet title; and (3) an action to consolidate ownership in a sale with a right to repurchase.[43]

The first paragraph of Section 1 of Rule 63 enumerates the subject matter to be inquired upon in a declaratory relief namely, deed, will, contract or other written instrument, a statute, executive

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[43] *Malana v. Tappa*, G.R. No. 181303, September 17, 2009, 600 SCRA 189, 199-200; *Atlas Consolidated Mining & Development Corporation v. Court of Appeals*, G.R. No. 54305, February 14, 1990, 182 SCRA 166, 177.

order or regulation, or any government regulation. This Court, in *Lerum v. Cruz,*[44] declared that the subject matters to be tested in a petition for declaratory relief are exclusive, *viz*:

> Under this rule, only a person who is interested "under a deed, will, contract or other written instrument, and whose rights are affected by a statute or ordinance, may bring an action to determine any question of construction or validity arising under the instrument or statute and for a declaration of his rights or duties thereunder." **This means that the subject matter must refer to a deed, will, contract or other written instrument, or to a statute or ordinance, to warrant declaratory relief. Any other matter not mentioned therein is deemed excluded. This is under the principle of *expressio unius est exclussio alterius*.** (Emphasis supplied.)

The foregoing holding was reiterated in *Natalia Realty, Inc. v. Court of Appeals,*[45] wherein this Court stressed that court orders or decisions cannot be made the subject matter of a declaratory relief, thus:

> Judge Querubin's query is not an action for declaratory relief. Section 1 of Rule 64 [now Rule 63] of the Rules of Court provides the requisites of an action for declaratory relief. In interpreting these requisites, the Court has ruled that:
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> x x x x x x x x x
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> **The letter of Judge Querubin pertained to final orders and decisions of the courts that are clearly not the proper subjects of a petition for declaratory relief.** Thus, the requisites prescribed by the Rules of Court in an action for declaratory relief are not applicable to the letter of Judge Querubin.[46] (Emphasis supplied.)

Then again in a recent ruling of this Court, it was emphasized:

> **A petition for declaratory relief cannot properly have a court decision as its subject matter.** In *Tanda v. Aldaya* [98 Phil. 244 (1956)], we ruled that:

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[44] 87 Phil. 652, 657 (1950); Declaratory Relief was then under Rule 66 of the 1948 Rules of Court.

[45] 440 Phil. 1, 19 (2002).

[46] Declaratory Relief was then under Rule 64 of the 1994 Rules of Court.

[A] court decision cannot be interpreted as included within the purview of the words "other written instrument," as contended by appellant, for the simple reason that the Rules of Court already provide for the ways by which an ambiguous or doubtful decision may be corrected or clarified without need of resorting to the expedient prescribed by Rule 66 [now Rule 64].[47] (Emphasis supplied.)

In the instant case, petitioners Erlinda Reyes and Rosemarie Matienzo assailed *via* Declaratory Relief under Rule 63 of the Rules of Court, the orders of the trial courts denying their motions to suspend proceedings. This recourse by petitioners, unfortunately, cannot be countenanced since a court order is not one of those subjects to be examined under Rule 63.

The proper remedy that petitioner Erlinda Reyes could have utilized from the denial of her motion to suspend proceedings in the Caloocan City MeTC was to file a motion for reconsideration and, if it is denied, to file a petition for *certiorari* before the RTC pursuant to Rule 65 of the Rules of Court. On the other hand, petitioner Matienzo should have filed a special civil action on *certiorari* also under Rule 65 with the Court of Appeals from the denial of her motion by the Caloocan City RTC. The necessity of filing the petition to the RTC in the case of Erlinda Reyes and to the Court of Appeals in the case of Matienzo is dictated by the principle of the hierarchy of courts.[48] Both petitions must be filed within 60 days from the receipt or notice of the denial of the motion to suspend proceedings or from the denial of the motion for reconsideration. Section 4 of Rule 65 partly provides:

Sec. 4. *When and where to file the petition*. — The petition shall be filed not later than sixty (60) days from notice of the judgment, order or resolution. In case a motion for reconsideration or new trial is timely filed, whether such motion is required or not, the petition shall be filed not later than sixty (60) days counted from the notice of the denial of said motion.

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[47] *CJH Development Corporation v. Bureau of Internal Revenue*, G.R. No. 172457, December 24, 2008, 575 SCRA 467, 473.

[48] *Tano v. Socrates*, 343 Phil. 670, 700 (1997).

If the petition relates to an act or an omission of a municipal trial court x x x, it shall be filed with the Regional Trial Court exercising jurisdiction over the territorial area as defined by the Supreme Court. It may also be filed with the Court of Appeals or with the Sandiganbayan, whether or not the same is in aid of the court's appellate jurisdiction.

Despite this procedural remedy available to them, petitioners, under the pretext that they were in a quandary as to their rights under the Injunction order of the Quezon City RTC, directly filed the instant case here. Petitioners did not bother to proffer a compelling reason for their direct resort to this Court. This procedural *faux pas* proves fatal. The Court's exhortation against taking a procedural shortcut cannot be overemphasized. In *Ortega v. The Quezon City Government*, [49] the Court accentuated:

At all events, even if this petition delves on questions of law, there is no statutory or jurisprudential basis for according to this Court original and exclusive jurisdiction over declaratory relief which advances only questions of law.

Finally, while a petition for declaratory relief may be treated as one for prohibition if it has far reaching implications and raises questions that need to be resolved, there is no allegation of facts by petitioner tending to show that she is entitled to such a writ. **The judicial policy must thus remain that this Court will not entertain direct resort to it, except when the redress sought cannot be obtained in the proper courts or when exceptional and compelling circumstances warrant availment of a remedy within and calling for the exercise of this Court's primary jurisdiction**. (Emphasis supplied.)

To make matters worse, petitioner Matienzo obviously availed of the instant declaratory relief to substitute for a petition for *certiorari*, a remedy which she sadly lost by inaction. It must be recalled that on December 8, 1997, the Caloocan City RTC, Branch 124 denied Matienzo's motion to suspend proceedings.[50] She moved for reconsideration, but the same was denied on

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[49] 506 Phil. 373, 380-381 (2005).

[50] *Rollo* (G.R. No. 137794), p. 548.

May 14, 1998.[51] She received the Order denying her motion for reconsideration on June 9, 1998.[52] She had 60 days therefrom to question the same before the Quezon City RTC. It was only on March 25, 1999 that petitioner Matienzo assailed the order denying her motion for reconsideration, albeit wrongly before this Court.[53] From this, it can be inferred that petitioner Matienzo's recourse is a belated attempt designed to salvage her lost opportunity to assail the order denying her motion to suspend proceedings.

Also unavailing are the contentions of petitioners that the Caloocan City RTC and MeTC committed grave abuse of discretion when they denied petitioners' motions to suspend proceedings. The pertinent portion of the Injunction order of the Quezon City RTC reads:

> WHEREFORE, premises considered, this Court has to grant, as it hereby grants the application for the issuance of the writ of preliminary injunction. Let a writ of preliminary Injunction be issued ordering defendant representing Biyaya Corporation, its agents, assigns, and transferees, as well as all other persons representing themselves as owners of certain portions of the land in question, otherwise known as the Tala Estate, to immediately cease and desist from doing or causing to do, further acts of disposition of the lots subject of the present complaint, such as the filing of ejectment cases in **the Municipal Trial Courts of Quezon City and Caloocan City** and, the demolition and ejectment therefrom of the members of the herein Intervenors. Accordingly, the Metropolitan Trial Courts of Quezon City and Caloocan City are specifically ordered to cease and desist from further conducting trials and proceedings in the ejectment cases filed and to be filed involving the lots of the present complaint, until further orders from this Court.[54] (Emphasis supplied.)

The foregoing order is not addressed to the Caloocan City RTC. Neither can it be inferred from the language thereof that the Quezon City RTC intended to enjoin the Caloocan City

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[51] *Id.* at 551.

[52] *Id.* at 15.

[53] *Id.* at 3.

[54] *Id.* at 41.

RTC from further proceeding with the Recovery case. The order merely mentions the Caloocan City MeTCs. Nothing more. But more importantly, the Quezon City RTC could not have validly enjoined the Caloocan City RTC without violating the doctrine that no court has the power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction.[55] *Spouses Ching v. Court of Appeals*[56] justifies this rule in this manner:

> Beginning with the case of *Orais v. Escaño*, down to the subsequent cases of *Nuñez v. Low, Cabigao v. del Rosario, Hubahib v. Insular Drug Co., Inc., National Power Corp. v. De Veyra, Luciano v. Provincial Governor, De Leon v. Hon. Judge Salvador, Cojuangco v. Villegas, Darwin v. Tokonaga*, we laid down **the long standing doctrine that no court has the power to interfere by injunction with the judgments or decrees of a court of concurrent or coordinate jurisdiction**. The various trial courts of a province or city, having the same or equal authority, should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments. A contrary rule would obviously lead to confusion and seriously hamper the administration of justice. (Emphasis supplied.)

In *Compania General de Tabacos de Filipinas v. Court of Appeals*,[57] two civil cases with identical causes of action were filed in different RTCs, one ahead of the other. The second RTC which acquired jurisdiction over the case issued a preliminary injunction enjoining the proceedings in the RTC which first acquired jurisdiction of the case. Ruling against the injunction issued by the RTC, this Court stressed:

> Hence, nothing can be clearer than that Judge Rapatalo had indeed issued the questioned writ of preliminary injunction with grave abuse of discretion amounting to excess or lack of jurisdiction for the **blatant disregard of the basic precept that no court has the power to interfere by injunction with the judgments or orders**

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[55] *Suico Industrial Corporation v. Court of Appeals*, 361 Phil. 160, 172 (1999).

[56] 446 Phil. 121, 129 (2003).

[57] 422 Phil. 405 (2001).

of a co-equal and coordinate court of concurrent jurisdiction having the power to grant the relief sought by injunction.

This Court explained in *Parco vs. Court of Appeals* that:

x x x Jurisdiction is vested in the court not in any particular branch or judge, and as a corollary rule, the various branches of the Court of First Instance of a judicial district are a coordinate and co-equal courts one branch stands on the same level as the other. Undue interference by one on the proceedings and processes of another is prohibited by law. In the language of this Court, the various branches of the Court of First Instance of a province or city, having as they have the same or equal authority and exercising as they do concurrent and coordinate jurisdiction should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments x x x.

Needless to say, adherence to a different rule would sow confusion and wreak havoc on the orderly administration of justice, and in the ensuing melee, hapless litigants will be at a loss as to where to appear and plead their cause.[58] (Emphasis supplied.)

While there are recognized exceptions to the foregoing rule, other than citing said cases, [59] petitioners did not explain the applicability of said exceptional cases to their petition.

Bereft of merit too is petitioners' argument that the Caloocan City MeTC cannot disregard the injunction order of the Quezon City RTC hearing the Annulment/Reversion case. The established rule is that a pending civil action for ownership such as annulment of title shall not *ipso facto* suspend an ejectment proceeding.[60] The Court explained that the rationale for this is that in an ejectment case, the issue is possession, while in an annulment case the issue is ownership.[61] In fact, an ejectment case can

[58] *Id.* at 420-421.

[59] *Rollo*, p. 341. The cases cited are *Inter-Regional Development Corporation v. Court of Appeals,* 160 Phil. 265, 269 (1975) and *Abiera v. Court of Appeals,* 150-A Phil. 666, 674-675 (1972), *etc*.

[60] *Wilmon Auto Supply Corporation v. Court of Appeals,* G.R. No. 97637, April 10, 1992, 208 SCRA 108, 116.

[61] *Antonio v. Court of Appeals*, 237 Phil. 572, 581 (1987); *Spouses Barnachea v. Court of Appeals*, G.R. No. 150025, July 23, 2008, 559 SCRA 363, 375.

be tried apart from an annulment case.[62] Although there is an exception to this rule, petitioners failed to justify that this case falls within said exception. The words of the Court on this matter are instructive:

> **In the absence of a concrete showing of compelling equitable reasons** at least comparable and under circumstances analogous to *Amagan*, we cannot override **the established rule that a pending civil action for ownership shall not *ipso facto* suspend an ejectment proceeding.** Additionally, to allow a suspension on the basis of the reasons the petitioners presented in this case would create the dangerous precedent of allowing an ejectment suit to be suspended by an action filed in another court by parties who are not involved or affected by the ejectment suit.[63] (Emphases supplied.)

Hence, petitioners' posture that the Ejectment cases should be suspended due to the pendency of the Annulment/Reversion case is not meritorious.

WHEREFORE, premises considered, the instant petition is hereby *DISMISSED*. The Temporary Restraining Order dated October 25, 2000 issued by this Court is *LIFTED.*

SO ORDERED.

Corona, C.J.(Chairperson), Bersamin,[*] *del Castillo,* and *Perez, JJ.,* concur.

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[62] *Antonio v. Court of Appeals*, *id.*

[63] *Spouses Barnachea v. Court of Appeals*, *supra* note 61 at 377.

[*] Per Special Order No. 876 dated August 2, 2010.

THIRD DIVISION

[G.R. No. 157049. August 11, 2010]

CITYTRUST BANKING CORPORATION (now Bank of the Philippine Islands), *petitioner, vs.* **CARLOS ROMULO N. CRUZ,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; ONLY QUESTIONS OF LAW CAN BE ELEVATED TO THE SUPREME COURT.—** [T]he errors sought to be reviewed focused on the correctness of the factual findings of the CA. Such review will require the Court to again assess the facts. Yet, the Court is not a trier of facts. Thus, the appeal is not proper, for only questions of law can be elevated to the Court *via* petition for review on *certiorari*.

2. **COMMERCIAL LAW; BANKS AND BANKING; FIDUCIARY RELATIONSHIP WITH THE DEPOSITOR, EXPLAINED; BANKS SHOULD BEAR THE RESPONSIBILITY FOR THE NEGLIGENCE COMMITTED BY ITS EMPLOYEE IN THE HANDLING OF ITS DEPOSITORS' ACCOUNTS.—** Unquestionably, the petitioner, being a banking institution, had the direct obligation to supervise very closely the employees handling its depositors' accounts, and should always be mindful of the fiduciary nature of its relationship with the depositors. Such relationship required it and its employees to record accurately *every* single transaction, and as promptly as possible, considering that the depositors' accounts should always reflect the amounts of money the depositors could dispose of as they saw fit, confident that, as a bank, it would deliver the amounts to whomever they directed. If it fell short of that obligation, it should bear the responsibility for the consequences to the depositors, who, like the respondent, suffered particular embarrassment and disturbed peace of mind from the negligence in the handling of the accounts.

3. **CIVIL LAW; DAMAGES; MORAL DAMAGES; SHALL BE AWARDED TO THE DEPOSITOR FOR THE DAMAGE TO HIS REPUTATION DUE TO THE NEGLIGENCE OF**

THE BANK, EVEN ABSENT PROOF OF MALICE OR BAD FAITH ON THE LATTER'S PART.— [I]n several decisions of the Court, the banks, defendants therein, were made liable for negligence, even without sufficient proof of malice or bad faith on their part, and the Court awarded moral damages of ₱100,000.00 each time to the suing depositors in proper consideration of their reputation and their social standing. The respondent should be similarly awarded for the damage to his reputation as an architect and businessman.

4. **CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES AND ATTORNEY'S FEES; AWARD THEREOF WARRANTED WHERE THE BANK FAILED TO EXERCISE THE REQUIRED DILIGENCE AND METICULOUSNESS IN THE HANDLING OF THE ACCOUNT OF ITS DEPOSITORS.—** [T]he CA properly affirmed the RTC's award of exemplary damages and attorney's fees. It is never overemphasized that the public always relies on a bank's profession of diligence and meticulousness in rendering irreproachable service. Its failure to exercise diligence and meticulousness warranted its liability for exemplary damages and for reasonable attorney's fees.

APPEARANCES OF COUNSEL

Gonzaga Law Office for petitioner.
Eliseo M. Cruz for respondent.

R E S O L U T I O N

BERSAMIN, *J*.:

Under review is the decision promulgated on October 8, 2002 in CA-G.R. CV No. 48928,[1] whereby the Court of Appeals (CA) affirmed the decision dated January 13, 1995 of the Regional Trial Court (RTC), Branch 91, in Quezon

[1] *Rollo*, pp. 39-49; penned by Associate Justice Danilo B. Pine (retired), with Associate Justice Ruben T. Reyes (later a Member of the Court, since retired) and Associate Justice Andres B. Reyes, Jr. (now Presiding Justice of the Court of Appeals), concurring.

City,[2] finding the petitioner liable to pay to the respondent moral damages of ₱100,000.00, exemplary damages of ₱20,000.00, and attorney's fees of ₱20,000.00.

In the time material to the case, the respondent, an architect and businessman, maintained savings and checking accounts at the petitioner's Loyola Heights Branch. The savings account was considered closed due to the oversight committed by one of the latter's tellers. The closure resulted in the extreme embarrassment of the respondent, for checks that he had issued could not be honored although his savings account was sufficiently funded and the accounts were maintained under the petitioner's check-o-matic arrangement (whereby the current account was maintained at zero balance and the funds from the savings account were automatically transferred to the current account to cover checks issued by the depositor like the respondent).

Unmoved by the petitioner's apologies and the adjustment made on his accounts by its employees, the respondent sued in the RTC to claim damages from the petitioner.

After trial, the RTC ruled in the respondent's favor, and ordered the petitioner to pay him ₱100,000.00 as moral damages, ₱20,000.00 as exemplary damage, and ₱20,0000.00 as attorney's fees. The RTC found that the petitioner had failed to properly supervise its teller; and that the petitioner's negligence had made the respondent suffer serious anxiety, embarrassment and humiliation, entitling him to damages.[3]

The petitioner appealed to the Court of Appeals (CA), arguing that the RTC erred in ordering it to pay moral and exemplary damages.

However, the CA affirmed the RTC, explaining that the erroneous closure of the respondent's account would not have been committed in the first place if the petitioner had not been careless in supervising its employees. According to the CA,

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[2] *Id.*, pp. 56-64; penned by then Presiding Judge Marina L. Buzon (later an Associate Justice of the Court of Appeals).

[3] *Id.*

"the fiduciary relationship and the extent of diligence that is to be expected from a banking institution, like herein appellant Citytrust, in handling the accounts of its depositors cannot be relaxed behind the shadow of an employee whether or not he/she is new on the job."[4] Moreover, the CA said that the negligence of the petitioner's personnel was the proximate cause that had set in motion the events leading to the damage caused to the respondent; hence, the RTC correctly opined that "while a bank is not expected to be infallible, it must bear the blame for not discovering the mistake of its teller for lack of proper supervision."[5]

The petitioner sought reconsideration, but the CA denied its motion for reconsideration for lack of merit.

Hence, this appeal, in which the petitioner maintains that there were "decisive fact situations showing excusable negligence and good faith"[6] that did not justify the award of moral and exemplary damages and attorney's fees.

The petition has no merit.

Firstly, the errors sought to be reviewed focused on the correctness of the factual findings of the CA. Such review will require the Court to again assess the facts. Yet, the Court is not a trier of facts. Thus, the appeal is not proper, for only questions of law can be elevated to the Court *via* petition for review on *certiorari*.[7]

Secondly, nothing from the petitioner's arguments persuasively showed that the RTC and the CA erred. The findings of both lower courts were fully supported by the evidence adduced.

Unquestionably, the petitioner, being a banking institution, had the direct obligation to supervise very closely the employees

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[4] *Supra,* at note 1, p. 46.

[5] *Id.*

[6] *Id.,* p. 30.

[7] Section 1, Rule 45, *Rules of Court*, specifically states that the petition for review on *certiorari* "shall raise only questions of law, which must be distinctly set forth."

handling its depositors' accounts, and should always be mindful of the fiduciary nature of its relationship with the depositors. Such relationship required it and its employees to record accurately *every* single transaction, and as promptly as possible, considering that the depositors' accounts should always reflect the amounts of money the depositors could dispose of as they saw fit, confident that, as a bank, it would deliver the amounts to whomever they directed.[8] If it fell short of that obligation, it should bear the responsibility for the consequences to the depositors, who, like the respondent, suffered particular embarrassment and disturbed peace of mind from the negligence in the handling of the accounts.

Thirdly, in several decisions of the Court,[9] the banks, defendants therein, were made liable for negligence, even without sufficient proof of malice or bad faith on their part, and the Court awarded moral damages of ₱100,000.00 each time to the suing depositors in proper consideration of their reputation and their social standing. The respondent should be similarly awarded for the damage to his reputation as an architect and businessman.

Lastly, the CA properly affirmed the RTC's award of exemplary damages and attorney's fees. It is never overemphasized that the public always relies on a bank's profession of diligence and meticulousness in rendering irreproachable service.[10] Its failure to exercise diligence and meticulousness warranted its liability for exemplary damages and for reasonable attorney's fees.

WHEREFORE, we deny the petition for review on *certiorari*, and affirm the decision rendered on October 8, 2002 by the Court of Appeals.

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[8] *Citytrust Banking Corp. v. Intermediate Appellate Court*, G.R. No. 84281, 27 May 1994, 232 SCRA 559, 564.

[9] *Prudential Bank v. Court of Appeals*, G.R. No. 125536, March 16, 2000, 328 SCRA 264; *Philippine National Bank v. Court of Appeals,* G.R. No. 126152, September 28, 1999, 315 SCRA 309; *Metropolitan Bank and Trust Company v. Wong*, G.R. No. 120859, June 26, 2001, 359 SCRA 608.

[10] *Prudential Bank v. Court of Appeals*, *supra,* at p. 271.

Costs of suit to be paid by the petitioner.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Abad,[*] and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 158298. August 11, 2010]

ISIDRO ABLAZA, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CIVIL LAW; MARRIAGE; THE VALIDITY OF THE MARRIAGE IS TESTED ACCORDING TO THE LAW IN FORCE AT THE TIME THE MARRIAGE IS CONTRACTED.—** A *valid* marriage is essential in order to create the relation of husband and wife and to give rise to the mutual rights, duties, and liabilities arising out of such relation. The law prescribes the requisites of a valid marriage. Hence, the validity of a marriage is tested according to the law in force at the time the marriage is contracted. As a general rule, the nature of the marriage already celebrated cannot be changed by a subsequent amendment of the governing law. To illustrate, a marriage between a stepbrother and a stepsister was void under the *Civil Code*, but is not anymore prohibited under the *Family Code*; yet, the intervening effectivity of the *Family Code* does not affect the void nature of a marriage between a stepbrother and a stepsister solemnized under the regime of the *Civil Code*. The *Civil Code* marriage remains void, considering that the validity of a marriage is governed by the law in force at the time of the marriage ceremony.

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[*] Additional member per Special Order No. 843 dated May 17, 2010.

2. ID.; ID.; VOID MARRIAGE; A.M. NO. 02-11-10-SC (RULE ON DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGES AND ANNULMENT OF VOIDABLE MARRIAGES); PETITION FOR DECLARATION OF ABSOLUTE NULLITY OF VOID MARRIAGE MAY BE FILED SOLELY BY THE HUSBAND OR WIFE; EXCEPTIONS.— [T]he Court has to clarify the impact to the issue posed herein of Administrative Matter (A.M.) No. 02-11-10-SC (*Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages*), which took effect on March 15, 2003. Section 2, paragraph (a), of A.M. No. 02-11-10-SC explicitly provides the limitation that a petition for declaration of absolute nullity of void marriage may be filed *solely* by the husband or wife. Such limitation demarcates a line to distinguish between marriages covered by the *Family Code* and those solemnized under the regime of the *Civil Code*. Specifically, A.M. No. 02-11-10-SC extends only to marriages covered by the *Family Code*, which took effect on August 3, 1988, but, being a procedural rule that is prospective in application, is confined only to proceedings commenced *after* March 15, 2003. Based on *Carlos v. Sandoval,* the following actions for declaration of absolute nullity of a marriage are excepted from the limitation, to wit: 1. Those commenced *before* March 15, 2003, the effectivity date of A.M. No. 02-11-10-SC; and 2. Those filed *vis-à-vis* marriages celebrated during the effectivity of the *Civil Code* and, those celebrated under the regime of the *Family Code* prior to March 15, 2003.

3. ID.; ID.; ID.; ID.; RULE ON EXCLUSIVITY OF THE PARTIES TO THE MARRIAGE AS HAVING THE RIGHT TO INITIATE THE ACTION FOR DECLARATION OF NULLITY OF MARRIAGE IS NOT APPLICABLE TO MARRIAGE SOLEMNIZED UNDER THE REGIME OF THE OLD CIVIL CODE; APPLIED TO CASE AT BAR.— Considering that the marriage between Cresenciano and Leonila was contracted on December 26, 1949, the applicable law was the old *Civil Code,* the law in effect at the time of the celebration of the marriage. Hence, the rule on the exclusivity of the parties to the marriage as having the right to initiate the action for declaration of nullity of the marriage under A.M. No. 02-11-10-SC had absolutely no application to the petitioner. The old and new *Civil Codes* contain no provision on who can

file a petition to declare the nullity of a marriage, and when. Accordingly, in *Niñal v. Bayadog,* the children were allowed to file *after the death of their father* a petition for the declaration of the nullity of their father's marriage to their stepmother contracted on December 11, 1986 due to lack of a marriage license.

4. **ID.; ID.; ID.; ABSENCE OF A PROVISION IN THE OLD AND NEW CIVIL CODES ON PARTY ALLOWED TO FILE A PETITION TO DECLARE THE NULLITY OF A MARRIAGE CANNOT BE CONSTRUED AS GIVING LICENSE TO JUST ANY PERSON TO BRING THE ACTION; EXPLAINED; REAL-PARTY IN INTEREST, ELABORATED.—** It is clarified, that the absence of a provision in the old and new *Civil Codes* cannot be construed as giving a license to just any person to bring an action to declare the absolute nullity of a marriage. According to *Carlos v. Sandoval*, the plaintiff must still be the party who stands to be benefited by the suit, or the party entitled to the avails of the suit, for it is basic in procedural law that every action must be prosecuted and defended in the name of the real party in interest. Thus, only the party who can demonstrate a "proper interest" can file the action. Interest within the meaning of the rule means material interest, or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved or a mere incidental interest. One having no material interest to protect cannot invoke the jurisdiction of the court as plaintiff in an action. When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action.

5. **ID.; ID.; ID.; THE ACTION TO SEEK THE DECLARATION OF NULLITY OF THE MARRIAGE OF THE DECEDENT MAY BE FILED BY HIS ALLEGED HEIR; EXPLAINED.—** [T]he petitioner alleged himself to be the late Cresenciano's brother and surviving heir. Assuming that the petitioner was as he claimed himself to be, then he has a material interest in the estate of Cresenciano that will be adversely affected by any judgment in the suit. Indeed, a brother like the petitioner, albeit not a compulsory heir under the laws of succession, has the right to succeed to the estate of a deceased brother under the conditions stated in Article 1001 and Article 1003 of the *Civil Code* xxx. Pursuant to these provisions, the presence of

descendants, ascendants, or illegitimate children of the deceased *excludes* collateral relatives like the petitioner from succeeding to the deceased's estate. Necessarily, therefore, the right of the petitioner to bring the action hinges upon a *prior determination* of whether Cresenciano had any descendants, ascendants, or children (legitimate or illegitimate), and of whether the petitioner was the late Cresenciano's surviving heir. Such prior determination must be made by the trial court, for the inquiry thereon involves questions of fact.

6. **REMEDIAL LAW; ACTIONS; PARTIES; INDISPENSABLE PARTY; SURVIVING WIFE IS AN INDISPENSABLE PARTY IN THE PETITION FOR NULLIFICATION OF HER MARRIAGE WITH HER DECEASED SPOUSE.—** [W]e note that the petitioner did not implead Leonila, who, as the late Cresenciano's surviving wife, stood to be benefited or prejudiced by the nullification of her *own* marriage. It is relevant to observe, moreover, that not all marriages celebrated under the old *Civil Code* required a marriage license for their validity; hence, her participation in this action is made all the more necessary in order to shed light on whether the marriage had been celebrated without a marriage license and whether the marriage might have been a marriage excepted from the requirement of a marriage license. She was truly an indispensable party who must be joined herein xxx.

7. **ID.; ID.; ID.; ID.; OMISSION TO IMPLEAD AN INDISPENSABLE PARTY, NOT FATAL; AMENDMENT OF THE INITIATORY PLEADING TO IMPLEAD THE INDISPENSABLE PARTIES, PROPER.—** The omission to implead Leonila and Leila was not immediately fatal to the present action, however, considering that Section 11, Rule 3, *Rules of Court*, states that neither misjoinder nor non-joinder of parties is a ground for the dismissal of an action. The petitioner can still amend his initiatory pleading in order to implead her, for under the same rule, such amendment to implead an indispensable party may be made "on motion of any party or on (the trial court's) own initiative *at any stage of the action* and on such terms as are just."

APPEARANCES OF COUNSEL

Rosalito B. Apoya for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

Whether a person may bring an action for the declaration of the absolute nullity of the marriage of his deceased brother solemnized under the regime of the old *Civil Code* is the legal issue to be determined in this appeal brought by the petitioner whose action for that purpose has been dismissed by the lower courts on the ground that he, not being a party in the assailed marriage, had no right to bring the action.

Antecedents

On October 17, 2000, the petitioner filed in the Regional Trial Court (RTC) in Cataingan, Masbate a petition for the declaration of the absolute nullity of the marriage contracted on December 26, 1949 between his late brother Cresenciano Ablaza and Leonila Honato.[1] The case was docketed as Special Case No. 117 entitled *In Re: Petition for Nullification of Marriage Contract between Cresenciano Ablaza and Leonila Honato; Isidro Ablaza, petitioner*.

The petitioner alleged that the marriage between Cresenciano and Leonila had been celebrated without a marriage license, due to such license being issued only on January 9, 1950, thereby rendering the marriage void *ab initio* for having been solemnized without a marriage license. He insisted that his being the surviving brother of Cresenciano who had died without any issue entitled him to one-half of the real properties acquired by Cresenciano before his death, thereby making him a real party in interest; and that any person, himself included, could impugn the validity of the marriage between Cresenciano and Leonila at any time,

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[1] *Rollo*, pp. 24-26.

even after the death of Cresenciano, due to the marriage being void *ab initio*.[2]

Ruling of the RTC

On October 18, 2000,[3] the RTC dismissed the petition, stating:

> Considering the petition for annulment of marriage filed, the Court hereby resolved to DISMISS the petition for the following reasons: 1) petition is filed out of time (action had long prescribed) and 2) petitioner is not a party to the marriage (contracted between Cresenciano Ablaza and Leonila Nonato (sic) on December 26, 1949 and solemnized by Rev. Fr. Eusebio B. Calolot).
>
> SO ORDERED.

The petitioner seasonably filed a *motion for reconsideration*, but the RTC denied the *motion for reconsideration* on November 14, 2000.

Ruling of the Court of Appeals

The petitioner appealed to the Court of Appeals (CA), assigning the lone error that:

> The trial court erred in dismissing the petition for being filed out of time and that the petitioner is not a party to the marriage.

In its decision dated January 30, 2003,[4] however, the CA affirmed the dismissal order of the RTC, thus:

> While an action to declare the nullity of a marriage considered void from the beginning does not prescribe, the law nonetheless requires that the same action must be filed by the proper party, which in this case should be filed by any of the parties to the marriage. In the instant case, the petition was filed by Isidro Ablaza, a brother of the deceased-spouse, who is not a party to the marriage contracted by Cresenciano Ablaza and Leonila Honato. The contention of

[2] *Id.*, p. 14.

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

[4] Penned by Associate Justice Mariano C. Del Castillo (now a Member of this Court), with Associate Justice Buenaventura J. Guerrerro (retired) and Associate Justice Teodoro P. Regino (retired), concurring; *rollo,* pp. 18-21.

petitioner-appellant that he is considered a real party in interest under Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as he stands to be benefited or injured by the judgment in the suit, is simply misplaced. Actions for annulment of marriage will not prosper if persons other than those specified in the law file the case.

Certainly, a surviving brother of the deceased spouse is not the proper party to file the subject petition. More so that the surviving wife, who stands to be prejudiced, was not even impleaded as a party to said case.

WHEREFORE, finding no reversible error therefrom, the Orders now on appeal are hereby AFFIRMED. Costs against the petitioner-appellant.

SO ORDERED.[5]

Hence, this appeal.

Issues

The petitioner raises the following issues:

I.

WHETHER OR NOT THE DECISION OF THIS HONORABLE COURT OF APPEALS IN CA-G.R. CV NO. 69684 AFFIRMING THE ORDER OF DISMISSAL OF THE REGIONAL TRIAL COURT, BRANCH 49 AT CATAINGAN, MASBATE IN SPECIAL PROCEEDING NO. 117 IS IN ACCORDANCE WITH APPLICABLE LAWS AND JURISPRUDENCE;

II.

WHETHER OR NOT THE DECISION OF THE HONORABLE COURT OF APPEALS IN CA-G.R. CV NO. 69684 (SHOULD) BE REVERSED BASED ON EXECUTIVE ORDER NO. 209 AND EXISTING JURISPRUDENCE.

The issues, rephrased, boil down to whether the petitioner is a real party in interest in the action to seek the declaration of nullity of the marriage of his deceased brother.

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[5] *Rollo,* pp. 20-21.

Ruling

The petition is meritorious.

A *valid* marriage is essential in order to create the relation of husband and wife and to give rise to the mutual rights, duties, and liabilities arising out of such relation. The law prescribes the requisites of a valid marriage. Hence, the validity of a marriage is tested according to the law in force at the time the marriage is contracted.[6] As a general rule, the nature of the marriage already celebrated cannot be changed by a subsequent amendment of the governing law.[7] To illustrate, a marriage between a stepbrother and a stepsister was void under the *Civil Code*, but is not anymore prohibited under the *Family Code*; yet, the intervening effectivity of the *Family Code* does not affect the void nature of a marriage between a stepbrother and a stepsister solemnized under the regime of the *Civil Code*. The *Civil Code* marriage remains void, considering that the validity of a marriage is governed by the law in force at the time of the marriage ceremony.[8]

Before anything more, the Court has to clarify the impact to the issue posed herein of Administrative Matter (A.M.) No. 02-11-10-SC (*Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages*), which took effect on March 15, 2003.

Section 2, paragraph (a), of A.M. No. 02-11-10-SC explicitly provides the limitation that a petition for declaration of absolute nullity of void marriage may be filed *solely* by the husband or wife. Such limitation demarcates a line to distinguish between marriages covered by the *Family Code* and those solemnized under the regime of the *Civil Code*.[9] Specifically, A.M. No. 02-11-10-SC extends only to marriages covered by the *Family Code*, which took effect on August 3, 1988, but, being a procedural

[6] Sta. Maria Jr., *Persons and Family Relations,* 2004 ed., p. 105; citing *Stewart v. Vandervort,* 34 W. VA. 524, 12 SE 736, 12 LRA 50.

[7] *Id.* p. 106.

[8] *Id,* pp. 106-107.

[9] *Id.*

rule that is prospective in application, is confined only to proceedings commenced *after* March 15, 2003.[10]

Based on *Carlos v. Sandoval,*[11] the following actions for declaration of absolute nullity of a marriage are excepted from the limitation, to wit:

1. Those commenced *before* March 15, 2003, the effectivity date of A.M. No. 02-11-10-SC; and
2. Those filed *vis-à-vis* marriages celebrated during the effectivity of the *Civil Code* and, those celebrated under the regime of the *Family Code* prior to March 15, 2003.

Considering that the marriage between Cresenciano and Leonila was contracted on December 26, 1949, the applicable law was the old *Civil Code,* the law in effect at the time of the celebration of the marriage. Hence, the rule on the exclusivity of the parties to the marriage as having the right to initiate the action for declaration of nullity of the marriage under A.M. No. 02-11-10-SC had absolutely no application to the petitioner.

The old and new *Civil Codes* contain no provision on who can file a petition to declare the nullity of a marriage, and when. Accordingly, in *Niñal v. Bayadog,*[12] the children were allowed to file *after the death of their father* a petition for the declaration of the nullity of their father's marriage to their stepmother contracted on December 11, 1986 due to lack of a marriage license. There, the Court distinguished between a void marriage and a voidable one, and explained *how* and *when* each might be impugned, thuswise:

> Jurisprudence under the *Civil Code* states that no judicial decree is necessary in order to establish the nullity of a marriage. "A void marriage does not require a judicial decree to restore the parties to their original rights or to make the marriage void but though no

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[10] *Enrico vs. Heirs of Sps. Eulogio B. Medinaceli and Trinidad Catli-Medinaceli,* G.R. No. 173614, September 28, 2007, 534 SCRA 418.

[11] G.R. No. 179922, December 16, 2008, 574 SCRA 116.

[12] G.R. No. 133778, March 14, 2000, 328 SCRA 122.

sentence of avoidance be absolutely necessary, yet as well for the sake of good order of society as for the peace of mind of all concerned, it is expedient that the nullity of the marriage should be ascertained and declared by the decree of a court of competent jurisdiction." "**Under ordinary circumstances, the effect of a void marriage, so far as concerns the conferring of legal rights upon the parties, is as though no marriage had ever taken place. And therefore, being good for no legal purpose, its invalidity can be maintained in any proceeding in which the fact of marriage may be material, either direct or collateral, in any civil court between any parties at any time, whether before or after the death of either or both the husband and the wife, and upon mere proof of the facts rendering such marriage void, it will be disregarded or treated as non-existent by the courts**." **It is not like a voidable marriage which cannot be collaterally attacked except in direct proceeding instituted during the lifetime of the parties so that on the death of either, the marriage cannot be impeached, and is made good *ab initio*.** But Article 40 of the *Family Code* expressly provides that there must be a judicial declaration of the nullity of a previous marriage, though void, before a party can enter into a second marriage and such absolute nullity can be based only on a final judgment to that effect. **For the same reason, the law makes either the action or defense for the declaration of absolute nullity of marriage imprescriptible. Corollarily, if the death of either party would extinguish the cause of action or the ground for defense, then the same cannot be considered imprescriptible**.

However, other than for purposes of remarriage, no judicial action is necessary to declare a marriage an absolute nullity. For other purposes, such as but not limited to determination of heirship, legitimacy or illegitimacy of a child, settlement of estate, dissolution of property regime, or a criminal case for that matter, the court may pass upon the validity of marriage even in a suit not directly instituted to question the same so long as it is essential to the determination of the case. This is without prejudice to any issue that may arise in the case. When such need arises, a final judgment of declaration of nullity is necessary even if the purpose is other than to remarry. The clause "on the basis of a final judgment declaring such previous marriage void" in Article 40 of the *Family Code* connotes that such final judgment need not be obtained only for purpose of remarriage.[13]

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[13] At pp. 135-136 (highlighting provided for emphasis).

It is clarified, however, that the absence of a provision in the old and new *Civil Codes* cannot be construed as giving a license to just any person to bring an action to declare the absolute nullity of a marriage. According to *Carlos v. Sandoval*,[14] the plaintiff must still be the party who stands to be benefited by the suit, or the party entitled to the avails of the suit, for it is basic in procedural law that every action must be prosecuted and defended in the name of the real party in interest.[15] Thus, only the party who can demonstrate a "proper interest" can file the action.[16] Interest within the meaning of the rule means material interest, or an interest in issue to be affected by the decree or judgment of the case, as distinguished from mere curiosity about the question involved or a mere incidental interest. One having no material interest to protect cannot invoke the jurisdiction of the court as plaintiff in an action. When the plaintiff is not the real party in interest, the case is dismissible on the ground of lack of cause of action.[17]

Here, the petitioner alleged himself to be the late Cresenciano's brother and surviving heir. Assuming that the petitioner was as he claimed himself to be, then he has a material interest in the estate of Cresenciano that will be adversely affected by any judgment in the suit. Indeed, a brother like the petitioner, albeit not a compulsory heir under the laws of succession, has the right to succeed to the estate of a deceased brother under the conditions stated in Article 1001 and Article 1003 of the *Civil Code*, as follows:

Article 1001. Should brothers and sisters or their children survive with the widow or widower, the latter shall be entitled to one half of the inheritance and the brothers and sisters or their children to the other half.

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[14] *Supra*, note 12.

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

[16] *Amor-Catalan v. Court of Appeals,* G.R. No. 167109, February 6, 2007, 514 SCRA 607.

[17] *Carlos v. Sandoval, supra*, note 15; citing *Abella Jr. v. Civil Service Commission*, G.R. No. 152574, November 17, 2004, 442 SCRA 507.

Article 1003. If there are no descendants, ascendants, illegitimate children, or a surviving spouse, the collateral relatives shall succeed to the entire estate of the deceased in accordance with the following articles.

Pursuant to these provisions, the presence of descendants, ascendants, or illegitimate children of the deceased *excludes* collateral relatives like the petitioner from succeeding to the deceased's estate.[18] Necessarily, therefore, the right of the petitioner to bring the action hinges upon a *prior determination* of whether Cresenciano had any descendants, ascendants, or children (legitimate or illegitimate), and of whether the petitioner was the late Cresenciano's surviving heir. Such prior determination must be made by the trial court, for the inquiry thereon involves questions of fact.

As can be seen, both the RTC and the CA erroneously resolved the issue presented in this case. We reverse their error, in order that the substantial right of the petitioner, *if any*, may not be prejudiced.

Nevertheless, we note that the petitioner did not implead Leonila, who, as the late Cresenciano's surviving wife,[19] stood to be benefited or prejudiced by the nullification of her *own* marriage. It is relevant to observe, moreover, that not all marriages celebrated under the old *Civil Code* required a marriage license for their validity;[20] hence, her participation in this action is made

[18] See *Heirs of Ignacio Conti v. Court of Appeals,* G.R. No. 118464, December 21, 1998, 300 SCRA 345.

[19] This action is entitled *In Re: Petition for Nullification of Marriage Contract between Cresenciano Ablaza and Leonila Honato; Isidro Ablaza, petitioner*.

[20] Under the old *Civil Code*, not all marriages solemnized without a marriage license were void from the beginning. Exempt from the requirement of a marriage license were marriages of exceptional character, as provided for from Article 72 to Article 79, old *Civil Code*, to wit:

Article 72. In case either of the contracting parties is on the point of death or the female has her habitual residence at a place more than fifteen kilometers distant from the municipal building and there is no communication by railroad or by provincial or local highways between the former and the latter, the marriage may be solemnized without necessity of a marriage license;

all the more necessary in order to shed light on whether the marriage had been celebrated without a marriage license and whether the marriage might have been a marriage excepted from the requirement of a marriage license. She was truly an indispensable party who must be joined herein:

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but in such cases the official, priest, or minister solemnizing it shall state in an affidavit made before the local civil registrar or any person authorized by law to administer oaths that the marriage was performed *in articulo mortis* or at a place more than fifteen kilometers distant from the municipal building concerned, in which latter case he shall give the name of the barrio where the marriage was solemnized. The person who solemnized the marriage shall also state, in either case, that he took the necessary steps to ascertain the ages and relationship of the contracting parties and that there was in his opinion no legal impediment to the marriage at the time that it was solemnized.

Article 73. The original of the affidavit required in the last preceding article, together with a copy of the marriage contract, shall be sent by the person solemnizing the marriage to the local civil registrar of the municipality where it was performed within the period of thirty days, after the performance of the marriage. The local civil registrar shall, however, before filing the papers, require the payment into the municipal treasury of the legal fees required in Article 65.

Article 74. A marriage *in articulo mortis* may also be solemnized by the captain of a ship or chief of an airplane during a voyage, or by the commanding officer of a military unit, in the absence of a chaplain, during war. The duties mentioned in the two preceding articles shall be complied with by the ship captain, airplane chief or commanding officer.

Article 75. Marriages between Filipino citizens abroad may be solemnized by consuls and vice-consuls of the Republic of the Philippines. The duties of the local civil registrar and of a judge or justice of the peace or mayor with regard to the celebration of marriage shall be performed by such consuls and vice-consuls.

Article 76. No marriage license shall be necessary when a man and a woman who have attained the age of majority and who, being unmarried, have lived together as husband and wife for at least five years, desire to marry each other. The contracting parties shall state the foregoing facts in an affidavit before any person authorized by law to administer oaths. The official, priest or minister who solemnized the marriage shall also state in an affidavit that he took steps to ascertain the ages and other qualifications of the contracting parties and that he found no legal impediment to the marriage.

Article 77. In case two persons married in accordance with law desire to ratify their union in conformity with the regulations, rites, or practices of any church, sect, or religion it shall no longer be necessary to comply with the requirements of Chapter 1 of this Title and any ratification made shall merely be considered as a purely religious ceremony.

xxx under any and all conditions, [her] presence being a *sine qua non* for the exercise of judicial power. It is precisely "when an indispensable party is not before the court [that] the action should be dismissed." The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[21]

We take note, too, that the petitioner and Leonila were parties in CA-G.R. CV No. 91025 entitled *Heirs of Cresenciano Ablaza, namely: Leonila G. Ablaza and Leila Ablaza Jasul v. Spouses Isidro and Casilda Ablaza,* an action to determine who between the parties were the legal owners of the property involved therein. Apparently, CA-G.R. CV No. 91025 was decided on November 26, 2009, and the petitioner's motion for reconsideration was denied on June 23, 2010. As a defendant in that action, the petitioner is reasonably presumed to have knowledge that the therein plaintiffs, Leonila and Leila, were the wife and daughter, respectively, of the late Cresenciano. As such, Leila was another indispensable party whose substantial right any

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Article 78. Marriages between Mohammedans or pagans who live in the non-Christian provinces may be performed in accordance with their customs, rites or practices. No marriage license or formal requisites shall be necessary. Nor shall the persons solemnizing these marriages be obliged to comply with Article 92.

However, twenty years after approval of this Code, all marriages performed between Mohammedans or pagans shall be solemnized in accordance with the provisions of this Code. But the President of the Philippines, upon recommendation of the Secretary of the Interior, may at any time before the expiration of said period, by proclamation, make any of said provisions applicable to the Mohammedan and non-Christian inhabitants of any of the non-Christian provinces.

Article 79. Mixed marriages between a Christian male and a Mohammedan or pagan female shall be governed by the general provision of this Title and not by those of the last preceding article, but mixed marriages between a Mohammedan or pagan male and a Christian female may be performed under the provisions of the last preceding article if so desired by the contracting parties, subject, however, in the latter case to the provisions of the second paragraph of said article.

[21] *Regner v. Logarta*, G.R. No. 168747, October 19, 2007, 537 SCRA 277, 289; citing *Borlasa v. Polistico*, 47 Phil. 345, 347 (1925) and *People v. Hon. Rodriguez*, 106 Phil. 325, 327 (1959).

judgment in this action will definitely affect. The petitioner should likewise implead Leila.

The omission to implead Leonila and Leila was not immediately fatal to the present action, however, considering that Section 11,[22] Rule 3, *Rules of Court*, states that neither misjoinder nor non-joinder of parties is a ground for the dismissal of an action. The petitioner can still amend his initiatory pleading in order to implead her, for under the same rule, such amendment to implead an indispensable party may be made "on motion of any party or on (the trial court's) own initiative *at any stage of the action* and on such terms as are just."

WHEREFORE, the petition for review on *certiorari* is granted.

We reverse and set aside the decision dated January 30, 2003 rendered by the Court of Appeals.

Special Case No. 117 entitled *In Re: Petition for Nullification of Marriage Contract between Cresenciano Ablaza and Leonila Honato; Isidro Ablaza, petitioner*, is reinstated, and its records are returned to the Regional Trial Court, Branch 49, in Cataingan, Masbate, for further proceedings, with instructions to first require the petitioner to amend his initiatory pleading in order to implead Leonila Honato and her daughter Leila Ablaza Jasul as parties-defendants; then to determine whether the late Cresenciano Ablaza had any ascendants, descendants, or children (legitimate or illegitimate) at the time of his death as well as whether the petitioner was the brother and surviving heir of the late Cresenciano Ablaza entitled to succeed to the estate of said deceased; and thereafter to proceed accordingly.

No costs of suit.

SO ORDERED.

Carpio Morales (Chairperson), Brion, Abad,[*] and *Villarama, Jr., JJ.,* concur.

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[22] Section 11. *Misjoinder and non-joinder of parties*. — Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage of the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately. (11a)

[*] Additional member per Special Order No. 843 dated May 17, 2010.

THIRD DIVISION

[G.R. No. 161834. August 11, 2010]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **HEIR OF TRINIDAD S. *VDA. DE* ARIETA, represented by the sole and only heir, ALICIA ARIETA TAN,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; REPUBLIC ACT NO. 6657 (COMPREHENSIVE AGRARIAN REFORM LAW (CARL), SECTION 16 THEREOF; CONSTRUED.—** We find the [Court of Appeals' interpretation of Section 16, R.A. No. 6657] as a strained interpretation of a simple and clear enough provision on the procedure governing acquisition of lands under CARP, whether under the compulsory acquisition or VOS scheme. Indeed, it would make no sense to mention anything about the provisional deposit in sub-paragraphs (a) and (b) – the landowner is sent a notice of valuation to which he should reply within a specified time, and in sub-paragraph (c) – when the landowner *accepts* the offer of the DAR/LBP as compensation for his land. Sub-paragraph (d) provides for the consequence of the landowner's rejection of the initial valuation of his land, that is, the conduct of a summary administrative proceeding for a preliminary determination by the DARAB through the PARAD or RARAD, during which the LBP, landowner and other interested parties are required to submit evidence to aid the DARAB/RARAD/PARAD in the valuation of the subject land. Sub-paragraph (e), on the other hand, states the precondition for the State's taking of possession of the landowner's property and the cancellation of the landowner's title, thus paving the way for the eventual redistribution of the land to qualified beneficiaries: *payment* of the compensation (if the landowner already accepts the offer of the DAR/LBP) **or** *deposit* of the provisional compensation (if the landowner rejects or fails to respond to the offer of the DAR/LBP). Indeed, the CARP Law conditions the transfer of possession and ownership of the land to the government on receipt by the landowner of the corresponding payment *or* the deposit of the compensation in cash or LBP bonds with an

accessible bank. It was thus erroneous for the CA to conclude that the provisional compensation required to be deposited as provided in Section 16 (e) is the sum determined by the DARAB/ PARAD/RARAD in a summary administrative proceeding merely because the word "deposit" appeared for the first time in the sub-paragraph immediately succeeding that sub-paragraph where the administrative proceeding is mentioned (sub-paragraph d). On the contrary, sub-paragraph (e) should be related to sub-paragraphs (a), (b) and (c) considering that the taking of possession by the State of the private agricultural land placed under the CARP is the next step *after* the DAR/ LBP has complied with notice requirements which include the *offer* of just compensation *based on the initial valuation by LBP*. To construe sub-paragraph (e) as the appellate court did would hamper the land redistribution process because the government still has to wait for the termination of the summary administrative proceeding before it can take possession of the lands. Contrary to the CA's view, the deposit of provisional compensation is made even before the summary administrative proceeding commences, or at least simultaneously with it, once the landowner rejects the initial valuation ("offer") by the LBP. Such deposit results from his rejection of the DAR offer (based on the LBP's initial valuation). Both the conduct of summary administrative proceeding and deposit of provisional compensation follow as a consequence of the landowner's rejection under both the compulsory acquisition and VOS. This explains why the words "rejection or failure to reply" and "rejection or no response from the landowner" are found in sub-paragraphs (d) and (e). Such "rejection" no response from the landowner" could not possibly refer to the award of just compensation in the summary administrative proceeding considering that the succeeding sub-paragraph (f) states that the landowner who *disagrees* with the same is granted the right to petition in court for final determination of just compensation. As it is, the CA's interpretation would have loosely interchanged the terms "rejected the offer" and "disagrees with the decision," which is far from what the entire provision plainly conveys.

2. ID.; ID.; LAND VALUATION; THE LAND BANK OF THE PHILIPPINES IS PRIMARILY RESPONSIBLE FOR THE DETERMINATION OF THE LAND VALUATION AND COMPENSATION AND MAY QUESTION BEFORE THE SPECIAL AGRARIAN COURT (SAC) THE DEPARTMENT

OF AGRARIAN REFORM'S (DAR) DETERMINATION OF JUST COMPENSATION.— We find the CA's conclusion that petitioner's interpretation of Section 16 (e) would render unnecessary the filing of an administrative proceeding before the deposit is made, as untenable. Said court raised a perceived inconsistency or contradiction not found in the law. Precisely, the deposit of provisional compensation is required to be made because the landowner has rejected the initial valuation or amount offered by the DAR, which is then mandated to conduct a summary administrative proceeding for preliminary determination of just compensation. It may be that the confusion in reading the provision stems from the words "offer of the DAR" rejection or acceptance of the offer" used in Section 16 (b) and (c), which seemingly leaves out the active role of the LBP at the early stage of the land acquisition procedure, whether under compulsory acquisition or VOS. Under the law, the LBP is charged with the initial responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking. Once an expropriation proceeding or the acquisition of private agricultural lands is commenced by the DAR, the indispensable role of LBP begins. EO No. 405, issued on June 14, 1990, provides that the DAR is required to make use of the determination of the land valuation and compensation by the LBP as the latter is primarily responsible for the determination of the land valuation and compensation. In fact, the LBP can disagree with the decision of the DAR in the determination of just compensation, and bring the matter to the RTC designated as SAC for final determination of just compensation.

3. **ID.; ID.; ID.; THE INITIAL VALUATION OF THE LAND BANK OF THE PHILIPPINES BECOMES THE BASIS OF THE DEPOSIT OF PROVISIONAL COMPENSATION PENDING FINAL DETERMINATION OF JUST COMPENSATION.—** The amount of "offer" which the DAR gives to the landowner as compensation for his land, as mentioned in Section 16 (b) and (c), is based on the initial valuation by the LBP. This then is the amount which may be accepted or rejected by the landowner under the procedure established in Section 16. Perforce, such initial valuation by the LBP also becomes the basis of the deposit of provisional compensation pending final determination of just compensation, in accordance with sub-paragraph (e). xxx DAR AO No. 02, series of 1996, "*Revised Rules and*

Procedures Governing the Acquisition of Agricultural Lands Subject of Voluntary Offer to Sell and Compulsory Acquisition Pursuant to Republic Act No. 6657" reinforces the view that it is the initial valuation of the LBP which becomes the basis of the provisional compensation deposit. [P]rocedural steps on Valuation and Compensation under DAR AO No. 02 clearly show that such deposit of provisional compensation is to be made by LBP either before or simultaneously with the conduct of the summary administrative proceedings, without awaiting the termination of the proceedings or rendition of judgment/decision by the DARAB/RARAD/PARAD. Consequently, the amount of just compensation determined by the DARAB/RARAD/PARAD cannot be the deposit contemplated in Section 16 (e).

4. **ID.; ID.; ID.; DARAB 2003 RULES OF PROCEDURE; DELIVERY OR DEPOSIT OF PROVISIONAL COMPENSATION BASED ON THE JUDGMENT OR AWARD BY THE PARAD/RARAD OR DARAB, NOT REQUIRED; RULE ONLY ALLOWS EXECUTION OF JUDGMENTS FOR COMPENSATION WHICH HAVE BECOME FINAL AND EXECUTORY.—** It must also be noted that under the DARAB 2003 Rules of Procedure, there is no requirement of delivery or deposit of provisional compensation based on the judgment or award by the PARAD/RARAD or DARAB. Section 10, Rule XIX of the DARAB 2003 Rules only allows execution of judgments for compensation which have become final and executory. This only underscores the primary responsibility of the LBP to submit an initial valuation at which DAR would offer to purchase the land, and to deposit said amount after the landowner has rejected the offer.

5. **ID.; ID.; ID.; THE AUTHORITY OF THE DEPARTMENT OF AGRARIAN REFORM (DAR) TO DETERMINE JUST COMPENSATION IS MERELY PRELIMINARY.—** The objective of the procedures on land valuation provided by the Comprehensive Agrarian Reform Law (CARL) as amplified by the issuances of the DAR/DARAB is to enforce the constitutional guarantee of just compensation for the taking of private agricultural lands placed under the CARP. It must be stressed that the DAR's authority to determine just

compensation is merely preliminary. On the other hand, under Section 1 of EO No. 405, series of 1990, the LBP is charged with the initial responsibility of determining the value of lands placed under land reform and the just compensation to be paid for their taking.

6. **ID.; ID.; ID.; THE LAND BANK OF THE PHILIPPINES' VALUATION OF LANDS COVERED BY THE CARL IS NOT CONCLUSIVE; FINAL DETERMINATION OF JUST COMPENSATION IS ESSENTIALLY A JUDICIAL FUNCTION VESTED WITH THE REGIONAL TRIAL COURT, SITTING AS SPECIAL AGRARIAN COURT.—** In both voluntary and compulsory acquisitions, wherein the landowner rejects the offer, the DAR opens an account in the name of the landowner and conducts a summary administrative proceeding. If the landowner disagrees with the valuation, the matter may be brought to the RTC, acting as a special agrarian court. But as with the DAR-awarded compensation, LBP's valuation of lands covered by CARL is considered only as an initial determination, which is not conclusive, as it is the RTC, sitting as a Special Agrarian Court, that should make the final determination of just compensation, taking into consideration the factors enumerated in Section 17 of R.A. No. 6657 and the applicable DAR regulations. It is now settled that the valuation of property in eminent domain is essentially a judicial function which is vested with the RTC acting as Special Agrarian Court. The same cannot be lodged with administrative agencies and may not be usurped by any other branch or official of the government.

7. **ID.; ID.; ID.; THE SPECIAL AGRARIAN COURT (SAC) MAY NOT ORDER THE LAND BANK OF THE PHILIPPINES TO DEPOSIT OR DELIVER THE MUCH HIGHER AMOUNT ADJUDGED BY THE RARAD WHERE IT ALREADY COMPLIED WITH THE DEPOSIT OF PROVISIONAL COMPENSATION BY DEPOSITING THE AMOUNT OF ITS INITIAL VALUATION WHICH WAS REJECTED BY THE LANDOWNER.—** Although under the CARL of 1988, the landowners are entitled to withdraw the amount deposited in their behalf pending the final resolution of the case involving the final valuation of his property, the SAC may not, as in this case, order the petitioner to deposit or deliver the much higher amount adjudged by the RARAD

considering that it already complied with the deposit of provisional compensation by depositing the amount of its initial valuation which was rejected by the respondent. And while the DARAB Rules of Procedure provides for execution pending appeal upon "meritorious grounds," respondent has not established such meritorious reasons for allowing execution of the RARAD decision pending final determination of just compensation by the court.

8. **ID.; ID.; ID.; ID.; THE LAND BANK OF THE PHILIPPINES MAY CHALLENGE THE LAND VALUATION AND DETERMINATION OF JUST COMPENSATION BY A PARTY, THE DAR OR THE COURTS, BEFORE THE COURT OF APPEALS OR TO THE SUPREME COURT, IF APPROPRIATE.—** As the Court had previously declared, the LBP is primarily responsible for the valuation and determination of compensation for all private lands. It has the discretion to approve or reject the land valuation and just compensation for a private agricultural land placed under the CARP. In case the LBP disagrees with the valuation of land and determination of just compensation by a party, the DAR, or even the courts, the LBP not only has the right, but the duty, to challenge the same, by appeal to the CA or to this Court, if appropriate. Both LBP and respondent filed petitions before the SAC disputing the RARAD judgment awarding compensation in the amount of ₱10,294,721.00. In view of the substantial difference in the valuations — the initial valuation by the LBP being only ₱1,145,806.06 — the more prudent course is to await the final resolution of the issue of just compensation already filed with said court.

9. **ID.; ID.; ID.; SECTION 2, RULE XIV OF THE REVISED RULES OF THE DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD (DARAB) APPLIES TO CASE AT BAR; 2003 DARAB RULES OF PROCEDURE APPLIES ONLY TO CASES FILED ON OR AFTER ITS EFFECTIVITY.—** [T]he Court finds no merit in the contention of respondent that the RARAD's decision had already become final due to failure of the petitioner to appeal the same to the Board, in accordance with Section 5, Rule XIX of the 2003 DARAB Rules of Procedure. It must be noted that said Rules was adopted only on January 17, 2003. Section 1, Rule XXIV of the 2003 DARAB Rules explicitly states that: SECTION 1.

> *Transitory Provisions*. These rules shall govern all cases filed on or after its effectivity. All cases pending with the Board and the Adjudicators, prior to the date of effectivity of these Rules, shall be governed by the DARAB Rules prevailing at the time of their filing. The applicable rule is Section 2, Rule XIV (Judicial Review) of the Revised Rules of the Department of Agrarian Reform Adjudication Board which provides: Section 2. *Just Compensation Cases to the Special Agrarian Courts.* — The decision, resolution or order of the Adjudicator or the Board on land valuation or determination of just compensation, may be brought to the proper Special Agrarian Court for final judicial determination.

APPEARANCES OF COUNSEL

LBP Legal Services for petitioner.
Chichina Faye L. Lim & Ian Joseph Z. Uy for respondent.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* filed by petitioner under Rule 45 of the 1997 Rules of Civil Procedure, as amended, to reverse and set aside the Decision[1] dated August 8, 2003 of the Court of Appeals (CA) in CA-G.R. SP No. 76572 denying its petition for *certiorari* and sustaining the Orders dated December 12, 2002 and February 17, 2003 of the Regional Trial Court (RTC) (Special Agrarian Court [SAC]) of Tagum City, Davao del Norte, Branch 2 in DAR Case No. 79-2002.

The antecedents are set forth in the CA Decision:

> Private respondent is the registered owner of a parcel of agricultural land situated in Sampao, Kapalong, Davao del Norte with an approximate area of 37.1010 hectares covered by Transfer Certificate of Title No. T-49200, 14.999 hectares of which was covered by RA

[1] *Rollo*, pp. 52-61. Penned by Associate Justice Remedios A. Salazar-Fernando and concurred in by Associate Justices Godardo A. Jacinto and Edgardo F. Sundiam.

No. 6657 through the Voluntary Offer to Sell (VOS) scheme of the Comprehensive Agrarian Reform Program (CARP).

Private respondent offered to the Department of Agrarian Reform (DAR) the price of ₱2,000,000.00 per hectare for said portion of the land covered by CARP.

Petitioner Land Bank of the Philippines (LBP) valued and offered as just compensation for said 14.999 hectares the amount of ₱1,145,806.06 or ₱76,387.57 per hectare. The offer was rejected by private respondent.

In accordance with Section 16 of RA No. 6657, petitioner LBP deposited for the account of private respondent ₱1,145,806.06 in cash and in bonds as provisional compensation for the acquisition of the property.

Thereafter, the DAR Adjudication Board (DARAB), through the Regional Adjudicator (RARAD) for Region XI conducted summary administrative proceedings under DARAB Case No. LV-XI-0330-DN-2002 to fix the just compensation.

On June 26, 2002, the DARAB rendered a decision fixing the compensation of the property at ₱10,294,721.00 or ₱686,319.36 per hectare.

Petitioner LBP filed a motion for reconsideration of the above decision but the same was denied on September 4, 2002.

Petitioner LBP filed a petition against private respondent for judicial determination of just compensation before the Special Agrarian Court, Regional Trial Court, Branch 2, Tagum City, docketed as DAR Case No. 78-2002, which is the subject of this petition.

Private respondent, on the other hand, filed a similar petition against DAR before the same Special Agrarian Court docketed as DAR Case No. 79-2002, to which petitioner LBP filed its answer and moved for the dismissal of the petition for being filed out of time.

Private respondent filed a Motion for Delivery of the Initial Valuation praying that petitioner LBP be ordered to deposit the DARAB determined amount of ₱10,294,721.00 in accordance with the Supreme Court ruling in *"Land Bank of the Philippines vs. Court of Appeals, Pedro L. Yap, Et Al., G.R. No. 118712, October 6, 1995."*

Petitioner LBP filed a Manifestation praying that the amount of the deposit should only be the initial valuation of the DAR/LBP in the amount of ₱1,145,806.06 and not ₱10,294,721.00 as determined by the DARAB.

On December 12, 2002, public respondent rendered the assailed resolution ordering petitioner LBP to deposit for release to the private respondent the DARAB determined just compensation of ₱10,294,721.00.

On December 13, 2002, petitioner LBP filed a motion for reconsideration of the said order to deposit.

On December 17, 2002, private respondent filed a motion to cite Romeo Fernando Y. Cabanal and Atty. Isagani Cembrano, manager of petitioner LBP's Agrarian Operations Office in Region XI and its handling lawyer, respectively, for contempt for failure to comply with the order to deposit.

After the filing of private respondent's comment to the motion for reconsideration and petitioner LBP's explanation and memorandum to the motion for reconsideration, public respondent rendered the assailed resolution dated February 17, 2003, denying petitioner LBP's motion for reconsideration.

Petitioner LBP filed a motion to admit a second motion for reconsideration which still remains unacted upon by public respondent.

Hence, this petition based on the following grounds:

> "I. THE SAC ORDER TO DEPOSIT HAD NO LEGAL BASIS, CONSIDERING THAT THE REQUIREMENT FOR THE PROMPT PAYMENT OF JUST COMPENSATION TO THE PRIVATE RESPONDENT WAS SATISFIED BY THE DEPOSIT OF THE PROVISIONAL COMPENSATION OF ₱1,145,806.06 REQUIRED UNDER SECTION 16 (E) OF RA 6657 AND THE RULING IN THE CASE OF '*LAND BANK OF THE PHILIPPINES V. COURT OF APPEALS, PEDRO L. YAP, ET AL.*,' G.R. NO. 118712, OCTOBER 6, 1995 AND JULY 5, 1996.
>
> II. THE SPECIAL AGRARIAN COURT IS NOT AN APPELLATE COURT FOR DARAB DECISIONS ON COMPENSATION AND HAS NO

JURISDICTION TO REVIEW, ADOPT, OR ORDER THE EXECUTION OF DARAB DECISIONS ON COMPENSATION PENDING FINAL DETERMINATION OF JUST COMPENSATION OR TO PREJUDGE THE CASE IN VIOLATION OF PETITIONER'S RIGHT TO DUE PROCESS OF LAW."[2]

On August 8, 2003, the CA dismissed the petition holding that the assailed orders of the SAC are correct and within the parameters of Republic Act (R.A.) No. 6657, thus:

Section 16 (a) refers to an "offer" of the DAR to pay a corresponding value of the land. Facts of the case show that ₱1,145,806.06 was the offered price which was rejected by the private respondent.

In cases of rejection of the offer, Section 16(d) states that there shall be a summary administrative proceedings to determine the compensation for the land. Hence, the proceedings before the DARAB, through the RARAD for Region XI as in this case.

Note that in Sections 16(a) to (d), or, during the offer until its rejection, there was no reference to a deposit of the compensation.

The reference to a deposit of the compensation appears only in Section 16(e) or after the DAR, in a summary administrative proceedings, had determined or decided the case relative to the compensation of the land.

If it had been the intention of the law to require the deposit of the compensation based on the offer or in the amount of ₱1,145,806.06, the law should have stated such.

The reference to the "deposit" right after [the] decision of the DARAB shall have been rendered, obviously means that the amount of the deposit should be based on the DARAB decision. Otherwise, there would be no need to institute an administrative proceeding before the DARAB, before a deposit shall be required.

In the case of *Association of Small Landowners in the Philippines, Inc. vs. Secretary of Agrarian Reform,* the Supreme

[2] *Id.* at 53-56.

Court held that the determination made by the DAR is only preliminary unless accepted by all parties concerned.

Apropos, it was held in the case of *Land Bank of the Philippines vs. Court of Appeals and Jose Pascual* that it is the DARAB which has the authority to determine the initial valuation of lands involving agrarian reform although such valuation may only be considered preliminary as the final determination of just compensation is vested in the courts.

Therefore, the deposit of the initial valuation referred to in Section 16 of RA No. 6657 is the DAR-determined amount or in this case, the amount of ₱10,294,721.00.

The assailed orders of the SAC are correct and within the parameters of RA No. 6657.[3] [ITALICS SUPPLIED.]

Petitioner LBP filed a motion for reconsideration but the same was denied by the CA on January 21, 2004.[4]

In this recourse from the appellate court's ruling, petitioner alleges that:

THE COURT OF APPEALS GRAVELY ERRED ON A QUESTION OF LAW IN DENYING AND/OR DISMISSING THE PETITION FOR *CERTIORARI* FILED BY LBP, THEREBY AFFIRMING THE ORDER OF THE SAC *A QUO* THAT THE DEPOSIT OF THE INITIAL VALUATION REFERRED TO IN SECTION 16 OF RA 6657 IS THE NON-FINAL DAR ADJUDICATION BOARD (DARAB)-DETERMINED AMOUNT OR IN THIS CASE, THE AMOUNT OF ₱10,294,721.00.[5]

Petitioner argues that a reading of Section 16 shows that the "rejection" by the landowner refers to the "offer" of the DAR as compensation for the land as initially valued by LBP pursuant to Executive Order (EO) No. 405, and *not* the compensation award contained in the decision of the DARAB/RARAD. It contends that the CA's interpretation would only inject obscurity and vagueness in the law, which is otherwise clear and

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

[4] *Id.* at 64.

[5] *Id.* at 32.

unambiguous. The over-stretching of the connotation and meaning of "rejection" as relating to the decision of the DARAB/RARAD, as the CA would have it, is utterly wrong and not within the intendment of Section 16. Obviously, sub-paragraph (e) does not make any reference at all to the decisions of quasi-judicial bodies. If the law so intended to attach connotation to the word "rejection" in sub-paragraph (e) in relation to the decisions of the DARAB/RARAD, or the word "deposit" in relation to the compensation award of the DARAB/RARAD, sub-paragraph (e) should have stated it plain and clear.[6]

Petitioner points out that the amount it deposited as provisional compensation is the starting point for the cancellation of the title of the landowner in favor of the Government, while the administrative proceeding for the determination of just compensation is ongoing with the DARAB. Thus, if the amount to be deposited is the amount as determined by the PARAD, RARAD or DARAB, then the implementation of the CARP will be adversely affected since the cancellation of the landowner's title will now depend on how fast the decision would be rendered by said quasi-judicial bodies. Logic, therefore, dictates that the amount that should be deposited is the amount initially offered by the DAR and not the amount as determined by a quasi-judicial body like the PARAD, RARAD or DARAB.[7]

Citing DAR Administrative Order (AO) No. 02, series of 1996, which converted all existing trust deposits and instituted a new procedure on the direct deposit in cash and bonds, petitioner asserts that the provisional compensation consists of the original DAR/LBP valuation offered to the landowner, following the correct interpretation of Section 16 (e) of R.A. No. 6657. This deposit is done only once, that is, after the landowner rejects the original valuation offered by DAR/LBP. It must also be noted from the procedure provided in DAR AO No. 02, the request by the DAR to the DARAB/RARAD/PARAD to conduct administrative proceedings is done only after a request to deposit the initial/original compensation proceeds had been made by

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[6] *Id.* at 33-36.

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

the DAR to LBP; the amount to be deposited is that offered initially by the DAR based on the valuation made by LBP pursuant to EO No. 405.[8]

Petitioner further points out that with thousands of cases involving compensation of lands, if LBP were to implement the SAC order that the PARAD/RARAD valuation is the one (1) to be deposited but thereafter the valuation by LBP is finally upheld by the Court as the just compensation due to the landowner, petitioner will be faced with an enormous responsibility of filing recovery suits against thousands of landowners. It stressed that once deposited, the inordinately high valuation would be under the complete disposal of the landowner, the withdrawal thereof, pending final determination by the Court of just compensation, is only made subject to compliance with payment release requirements of petitioner. Indeed, the SAC misinterpreted the law and if its erroneous order is implemented, it will create financial havoc to the already scarce Agrarian Reform Fund (ARF) because every victorious party before the RARAD/PARAD/DARAB will surely move for a similar "order to deposit" their compensation award even if the cases for judicial determination of just compensation are still pending before the SAC.[9]

On the other hand, respondent points out that petitioner did not appeal the decision of the RARAD to the Board, and hence, the administrative proceeding for determination of just compensation is over. The proceeding before the SAC is not an appeal from the decision of the RARAD. Consequently, what is to be deposited is not the initial valuation by petitioner but that of the RARAD. Moreover, if petitioner's interpretation of Section 16 is upheld, it will render the proceedings before the DARAB useless, for after all it is the LBP's valuation which will be followed.[10]

The lone issue in this controversy is the correct amount of provisional compensation which the LBP is required to deposit

[8] *Id.* at 41-43.

[9] *Id.* at 43-45.

[10] *Id.* at 94-98.

in the name of the landowner if the latter rejects the DAR/ LBP's offer. Petitioner maintains it should be its initial valuation of the land subject of Voluntary Offer to Sell (VOS) while respondent claims it pertains to the sum awarded by the PARAD/ RARAD/DARAB in a summary administrative proceeding pending final determination by the courts.

The petition is meritorious.

Section 16 of R.A. No. 6657 reads:

SEC. 16. *Procedure for Acquisition of Private Lands.* — For purposes of acquisition of private lands, the following procedures shall be followed:

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

(b) Within thirty (30) days from the date of receipt of written notice by personal delivery or registered mail, the landowners, his administrator or representative shall inform the DAR of his acceptance or rejection of the offer.

(c) If the landowner accepts the offer of the DAR, the LBP shall pay the landowner the purchase price of the land within thirty (30) days after he executes and delivers a deed of transfer in favor of the Government and surrenders the Certificate of Title and other muniments of title.

(d) In case of **rejection or failure to reply, the DAR shall conduct summary administrative proceedings to determine the compensation for the land** by requiring the landowner, the LBP and other interested parties to submit evidence as to the just compensation for the land, within fifteen (15) days from the receipt of the notice. After the expiration of the above period, the matter is deemed submitted for decision. The DAR shall decide the case within thirty (30) days after it is submitted for decision.

(e) Upon receipt by the landowner of the corresponding payment or **in case of rejection or no response from the landowner, upon the deposit with an accessible bank designated by the DAR of the compensation in cash or in LBP bonds in accordance with this Act,** the DAR shall take immediate possession of the land and shall request the proper Register of Deeds to issue a Transfer Certificate of Title (TCT) in the name of the Republic of the Philippines. The DAR shall thereafter proceed with the redistribution of the land to the qualified beneficiaries.

(f) Any party who disagrees with the decision may bring the matter to the court of proper jurisdiction for final determination of just compensation. [EMPHASIS SUPPLIED.]

According to the CA, the deposit of provisional compensation mentioned in sub-paragraph (e) pertains to that amount awarded by the DAR in the summary administrative proceeding under the preceding sub-paragraph (d). It noted that the word "deposit" was not mentioned until after sub-paragraph (d), when the DAR is tasked to conduct a summary administrative proceeding. Otherwise, said the appellate court, there would be no need to institute an administrative proceeding before the DARAB, before a deposit is required.

We find the foregoing as a strained interpretation of a simple and clear enough provision on the procedure governing acquisition of lands under CARP, whether under the compulsory acquisition or VOS scheme. Indeed, it would make no sense to mention anything about the provisional deposit in sub-paragraphs (a) and (b) – the landowner is sent a notice of valuation to which he should reply within a specified time, and in sub-paragraph (c) – when the landowner *accepts* the offer of the DAR/LBP as compensation for his land. Sub-paragraph (d) provides for the consequence of the landowner's rejection of the initial valuation of his land, that is, the conduct of a summary administrative proceeding for a preliminary determination by the DARAB through the PARAD or RARAD, during which the LBP, landowner and other interested parties are required to submit evidence to aid the DARAB/RARAD/PARAD in the valuation of the subject land. Sub-paragraph (e), on the other hand, states the precondition for the State's taking of possession

of the landowner's property and the cancellation of the landowner's title, thus paving the way for the eventual redistribution of the land to qualified beneficiaries: *payment* of the compensation (if the landowner already accepts the offer of the DAR/LBP) **or** *deposit* of the provisional compensation (if the landowner rejects or fails to respond to the offer of the DAR/LBP). Indeed, the CARP Law conditions the transfer of possession and ownership of the land to the government on receipt by the landowner of the corresponding payment *or* the deposit of the compensation in cash or LBP bonds with an accessible bank.[11]

It was thus erroneous for the CA to conclude that the provisional compensation required to be deposited as provided in Section 16 (e) is the sum determined by the DARAB/PARAD/RARAD in a summary administrative proceeding merely because the word "deposit" appeared for the first time in the sub-paragraph immediately succeeding that sub-paragraph where the administrative proceeding is mentioned (sub-paragraph d). On the contrary, sub-paragraph (e) should be related to sub-paragraphs (a), (b) and (c) considering that the taking of possession by the State of the private agricultural land placed under the CARP is the next step *after* the DAR/LBP has complied with notice requirements which include the *offer* of just compensation *based on the initial valuation by LBP*. To construe sub-paragraph (e) as the appellate court did would hamper the land redistribution process because the government still has to wait for the termination of the summary administrative proceeding before it can take possession of the lands. Contrary to the CA's view, the deposit of provisional compensation is made even before the summary administrative proceeding commences, or at least simultaneously with it, once the landowner rejects the initial valuation ("offer") by the LBP. Such deposit results from his rejection of the DAR offer (based on the LBP's initial valuation). Both the conduct of summary administrative proceeding and deposit of provisional compensation follow as

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[11] See *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform,* G.R. Nos. 78742, 79310, 79744 & 79777, July 14, 1989, 175 SCRA 343, 391.

a consequence of the landowner's rejection under both the compulsory acquisition and VOS. This explains why the words "rejection or failure to reply" and "rejection or no response from the landowner" are found in sub-paragraphs (d) and (e). Such "rejection"/ "response from the landowner" could not possibly refer to the award of just compensation in the summary administrative proceeding considering that the succeeding sub-paragraph (f) states that the landowner who *disagrees* with the same is granted the right to petition in court for final determination of just compensation. As it is, the CA's interpretation would have loosely interchanged the terms "rejected the offer" and "disagrees with the decision," which is far from what the entire provision plainly conveys.

We also find the CA's conclusion that petitioner's interpretation of Section 16 (e) would render unnecessary the filing of an administrative proceeding before the deposit is made, as untenable. Said court raised a perceived inconsistency or contradiction not found in the law. Precisely, the deposit of provisional compensation is required to be made because the landowner has rejected the initial valuation or amount offered by the DAR, which is then mandated to conduct a summary administrative proceeding for preliminary determination of just compensation. It may be that the confusion in reading the provision stems from the words "offer of the DAR"/ "rejection or acceptance of the offer" used in Section 16 (b) and (c), which seemingly leaves out the active role of the LBP at the early stage of the land acquisition procedure, whether under compulsory acquisition or VOS.

Section 18 of R.A. No. 6657 provides:

SECTION 18. *Valuation and Mode of Compensation.* — The LBP shall compensate the landowner in such amount as may be agreed upon by the landowner and the DAR and the LBP, in accordance with the criteria provided for in Sections 16 and 17, and other pertinent provisions hereof, or as may be finally determined by the court, as the just compensation for the land.

x x x x x x x x x

Under the law, the LBP is charged with the initial responsibility of determining the value of lands placed under land reform and the compensation to be paid for their taking.[12] Once an expropriation proceeding or the acquisition of private agricultural lands is commenced by the DAR, the indispensable role of LBP begins. EO No. 405, issued on June 14, 1990, provides that the DAR is required to make use of the determination of the land valuation and compensation by the LBP as the latter is primarily responsible for the determination of the land valuation and compensation. In fact, the LBP can disagree with the decision of the DAR in the determination of just compensation, and bring the matter to the RTC designated as SAC for final determination of just compensation.[13]

The amount of "offer" which the DAR gives to the landowner as compensation for his land, as mentioned in Section 16 (b) and (c), is based on the initial valuation by the LBP.[14] This then is the amount which may be accepted or rejected by the landowner under the procedure established in Section 16. Perforce, such initial valuation by the LBP also becomes the basis of the deposit of provisional compensation pending final determination of just compensation, in accordance with sub-paragraph (e).

The procedure for the determination of compensation cases under Republic Act No. 6657, as devised by this Court, commences with the valuation by the LBP of the lands taken by the State from private owners under the land reform program. **Based on the valuation of the land by the LBP, the DAR makes an offer to the landowner through a written notice.** In case the landowner rejects the offer, a summary administrative proceeding is held and, afterwards, depending on the value of the land, the Provincial Agrarian Reform Adjudicator (PARAD), the Regional Agrarian Reform Adjudicator

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[12] *Republic v. Court of Appeals,* G.R. No. 122256, October 30, 1996, 263 SCRA 758, 764.

[13] *Gabatin v. Land Bank of the Philippines,* G.R. No. 148223, November 25, 2004, 444 SCRA 176, 187, citing *Landbank of the Philippines v. Banal,* G.R. No. 143276, July 20, 2004, 434 SCRA 543, 548-549; *Land Bank of the Philippines v. Wycoco,* G.R. Nos. 140160 and 146733, January 13, 2004, 419 SCRA 67, 76; and *Republic v. Court of Appeals, supra* at 764.

[14] See *Landbank of the Philippines v. Banal*, *supra* at 548.

(RARAD), or the DARAB, fixes the price to be paid for the said land. If the landowner still does not agree with the price so fixed, he may bring the matter to the RTC, acting as Special Agrarian Court.[15] [EMPHASIS SUPPLIED.]

DAR AO No. 02, series of 1996, "*Revised Rules and Procedures Governing the Acquisition of Agricultural Lands Subject of Voluntary Offer to Sell and Compulsory Acquisition Pursuant to Republic Act No. 6657*" reinforces the view that it is the initial valuation of the LBP which becomes the basis of the provisional compensation deposit. The following procedural steps on Valuation and Compensation under DAR AO No. 02 clearly show that such deposit of provisional compensation is to be made by LBP either before or simultaneously with the conduct of the summary administrative proceedings, without awaiting the termination of the proceedings or rendition of judgment/decision by the DARAB/RARAD/PARAD. Consequently, the amount of just compensation determined by the DARAB/RARAD/PARAD cannot be the deposit contemplated in Section 16 (e).

Steps	Responsible Agency/Unit	Activity	Forms/Documents (Requirements)
		D. Land Valuation and Compensation	
13	LBP-LVLCO	Receives and evaluates the CF for completeness, consistency and document sufficiency. Gathers additional valuation documents.	
14	LBP-LVLCO	Determine land valuation based on valuation inputs Note: CFs where the land valuation amounts to more than ₱3 million shall be forwarded to LBP-HO.	Claims Valuation and Processing Form (CVPF)

[15] *Land Bank of the Philippines v. Kumassie Plantation Company, Incorporated,* G.R. Nos. 177404 & 178097, June 25, 2009, 591 SCRA 1, 9.

15	LBP-LVLCO	Prepares and sends Memo of Valuation, Claim Folder Profile and Valuation Summary (MOV-CFPVS) to PARO	CARP Form No. 9 (Memorandum of Valuation and Claim Folder Profile and Valuation Summary)
16	DARPO	Receives LBP's MOV-CFPVS and ascertains the completeness of the data and information therein.	
17	DARPO	Sends Notice of Land Valuation and Acquisition to LO by personal delivery with proof of service or by registered mail with return card, attaching copy of MOV-CFPVS and inviting LO's attention to the submission of documents required for payment of claim.	CARP Form No.10 (Notice of Land Valuation and Acquisition)
18	DARPO	Posts a copy of the Notice of Land Valuation (NLVA) for at least seven (7) working days on the bulletin board of the provincial capitol, municipal and *barangay* halls where the property is located and issues a Certification of Posting Compliance.	CARP Form No. 11 (Certification of Posting Compliance)
19	LO	Replies to Notice of Land Valuation and Acquisition and submits documents required for payment of compensation claim. If LO accepts, proceed to D.1. If LO rejects or fails to reply, proceed to D.2.	
x x x		x x x	x x x

		D.2. Where LO rejects the Land Valuation	
20	DARPO	**If the LO rejects the offered price or fails to reply within thirty (30) days from receipt** of the Notice of Land Valuation and Acquisition, **forwards to LBP the Request to Deposit the compensation proceeds** in cash and in bonds in the name of the LO	CARP Form No. 10.a (LO's Reply to NLVA) CARP Form No. 15 (Request for Deposit)
21	DARPO	Requests the DARAB/ RARAD/ PARAD to conduct administrative proceedings pursuant to DARAB guidelines, as the case maybe, furnishing therein a copy each of the LO's Letter of Rejection, Notice of Land Valuation and Acquisition and LBP's Memorandum of Valuation.	CARP Form No. 14 Advice to DARAB/ RARAD/ PARAD
22	LBP-LVOLBP-**HO**	**Deposits the compensation proceeds in the name of the LO** and issues Certification of Deposit to DAR through the PARO, copy furnished the LO.	CARP Form No. 17 (Certification of Deposit)
		The entire deposit may be withdrawn by the LO; however, actual release of same shall be subject to LO's submission of all requirements for payment and execution of Confirmation of Coverage and Transfer.	CARP Form No. 17.a (Confirmation of Coverage and Transfer For Claims of Individual LOs – Still Pending with DARAB)

			CARP Form No. 17.b (Confirmation of Coverage and Transfer For Claims of Corporate LOs – Still Pending with DARAB)
23	DARPO	Upon receipt of the Certification of Deposit from LBP, transmits the same to the Register of Deeds concerned, including the approved segregation/subdivision plan of subject property, if partially covered and simultaneously requests the ROD to issue TCT in the name of RP.	CARP Form No. 18 (Request to Issue TCT in the name of RP)
24	ROD	Issues new TCT in the name of RP and forwards owner's duplicate certificate of title in the name of RP to LBP-LVO which furnishes the PARO a certified xerox copy of the same.	New TCT in the name of RP and owner's duplicate copy of title in the name of RP.
25	DARAB/ RARAD PARAD	Simultaneously with Activity Nos. 22-24 above, the DARAB/ RARAD/ PARAD conducts summary administrative proceedings, renders decision and informs parties concerned of the same.	
26	DARPO	**Upon receipt of the Certificate of Finality of the DARAB Order, requests LBP to pay the LO in accordance with the DARAB decision**; requests LBP to prepare Confirmation of Coverage and Transfer for LO to accomplish. Thereafter,	CARP Form No. 17.c (Confirmation of Coverage and Transfer For Claims of Individual LOs – Already decided by DARAB) CARP Form No. 17.d (Confirmation

	LBP follows Activity Nos. 25-26 under D.1. In case the LO still rejects DARAB decision, he may go to the Special Agrarian Reform Court (SAC) for the final determination of just compensation.	of Coverage and Transfer) For Claims of Corporate LOs – Already decided by DARAB)

It must also be noted that under the DARAB 2003 Rules of Procedure, there is no requirement of delivery or deposit of provisional compensation based on the judgment or award by the PARAD/RARAD or DARAB. Section 10, Rule XIX of the DARAB 2003 Rules only allows execution of judgments for compensation which have become final and executory.[16] This only underscores the primary responsibility of the LBP to submit an initial valuation at which DAR would offer to purchase the land, and to deposit said amount after the landowner has rejected the offer.

There is still another reason why we cannot agree with the appellate court's interpretation of Section 16, R.A. No. 6657. Petitioner had assumed a more significant role as financial intermediary for the CARP after 1989, primarily due to scandals and anomalies, which stalled its implementation during the Aquino administration, involving overvalued private *haciendas* voluntarily offered by big landowners in collusion with DAR officers and employees. The most notorious of these land scams even became the subject of a joint inquiry conducted by the Senate and House of Representatives committees on agrarian reform. With government acquisition of large landholdings at inflated prices,

[16] SECTION 10. *Execution of Judgments for Just Compensation which have become Final and Executory.* The Sheriff shall enforce a writ of execution of a final judgment for compensation by demanding for the payment of the amount stated in the writ of execution in cash and bonds against the Agrarian Reform Fund in the custody of the LBP in accordance with RA 6657, and the LBP shall pay the same in accordance with the final judgment and the writ of execution within five (5) days from the time the landowner accordingly executes and submits to the LBP the corresponding deed/s or transfer in favor of the government and surrenders the muniments of title to the property in accordance with Section 16 (c) of R.A. 6657.

the farmers are at a losing end, as they can hardly afford the overpriced land.[17]

Against this backdrop of exposed irregularities and to ensure the success of the CARP, former President Corazon C. Aquino issued EO No. 405 which transferred the primary responsibility of determining land valuation and compensation for all lands covered under CARP from the DAR to the LBP, a specialized government bank. The intent is to accelerate program implementation by tapping the LBP's professional expertise, as expressed in the EO's whereas clause:

> WHEREAS, the Land Bank of the Philippines employs commercial banking personnel whose professional expertise includes appraisal of agricultural properties for purposes of granting loans;
>
> WHEREAS, the implementation of the Comprehensive Agrarian Reform Program, particularly on the matter of acquisition and distribution of private agricultural lands, may be accelerated by streamlining certain administrative procedures in land valuation and compensation;
>
> NOW, THEREFORE, I, CORAZON C. AQUINO, President of the Philippines, by virtue of the powers vested in me by law, do hereby order:
>
> SECTION 1. The Land Bank of the Philippines shall be primarily responsible for the determination of the land valuation and compensation for all private lands suitable for agriculture under either the Voluntary Offer to Sell (VOS) or Compulsory Acquisition (CA) arrangements as governed by Republic Act No. 6657. **The**

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[17] See "The Garchitorena Land Scam" by GMA NewsTV at <*http://www.gmanews.tv/story/182211/the-garchitorena-land-scam*>. See also "Philippines: Over-valuation of Land Awarded Under Agrarian Reform Program" posted by Emergency Network at <*http://www.fian.org/cases/letter-campaigns/ philippines-over-valuation-of-land-awarded-under-agrarian-reform-program?set_language=en*>; Not "the biggest distribution in history" by Albert M. Lagliva, published in the July 2002 issue of the Intersect, article posted at <*http://www.jesuits.ph/ignaciana/Ministries/FINAL%20ICSI%20WEB/agri-cont.htm*>; and "Land Reform for the Elite: Voluntary Offers to Sell" by David Wurfel, University of Windsor, posted at <*http://davidwurfel.ca/philippines/land-reform-for-the-elite-voluntary-offers-to-sell-under-carp*>.

Department of Agrarian Reform shall make use of the determination of the land valuation and compensation by the Land Bank of the Philippines, in the performance of [its] functions.

The objective of the procedures on land valuation provided by the Comprehensive Agrarian Reform Law (CARL) as amplified by the issuances of the DAR/DARAB is to enforce the constitutional guarantee of just compensation for the taking of private agricultural lands placed under the CARP. It must be stressed that the DAR's authority to determine just compensation is merely preliminary. On the other hand, under Section 1 of EO No. 405, series of 1990, the LBP is charged with the initial responsibility of determining the value of lands placed under land reform and the just compensation to be paid for their taking.

In both voluntary and compulsory acquisitions, wherein the landowner rejects the offer, the DAR opens an account in the name of the landowner and conducts a summary administrative proceeding. If the landowner disagrees with the valuation, the matter may be brought to the RTC, acting as a special agrarian court. But as with the DAR-awarded compensation, LBP's valuation of lands covered by CARL is considered only as an initial determination, which is not conclusive, as it is the RTC, sitting as a Special Agrarian Court, that should make the final determination of just compensation, taking into consideration the factors enumerated in Section 17 of R.A. No. 6657 and the applicable DAR regulations.[18] It is now settled that the valuation of property in eminent domain is essentially a judicial function which is vested with the RTC acting as Special Agrarian Court. The same cannot be lodged with administrative agencies and may not be usurped by any other branch or official of the government.[19]

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[18] See *Land Bank of the Philippines v. Luciano*, G.R. No. 165428, November 25, 2009, 605 SCRA 426, 439.

[19] *Apo Fruits Corporation v. Court of Appeals,* G.R. No. 164195, February 6, 2007, 514 SCRA 537, 560, citing *Land Bank of the Phils. v. Wycoco*, 464 Phil. 83, 94 (2004); *Export Processing Zone Authority v. Dulay,* No. 59603, April 29, 1987, 149 SCRA 305, 316; *Belen v. Court of Appeals,*

Although under the CARL of 1988, the landowners are entitled to withdraw the amount deposited in their behalf pending the final resolution of the case involving the final valuation of his property,[20] the SAC may not, as in this case, order the petitioner to deposit or deliver the much higher amount adjudged by the RARAD considering that it already complied with the deposit of provisional compensation by depositing the amount of its initial valuation which was rejected by the respondent. And while the DARAB Rules of Procedure provides for execution pending appeal upon "meritorious grounds,"[21] respondent has not established such meritorious reasons for allowing execution of the RARAD decision pending final determination of just compensation by the court.

As the Court had previously declared, the LBP is primarily responsible for the valuation and determination of compensation for all private lands. It has the discretion to approve or reject the land valuation and just compensation for a private agricultural land placed under the CARP. In case the LBP disagrees with the valuation of land and determination of just compensation by a party, the DAR, or even the courts, the LBP not only has the right, but the duty, to challenge the same, by appeal to the CA or to this Court, if appropriate.[22] Both LBP and respondent filed petitions before the SAC disputing the RARAD judgment awarding compensation in the amount of ₱10,294,721.00. In view of the substantial difference in the valuations — the initial valuation by the LBP being only ₱1,145,806.06 — the more prudent course is to await the final resolution of the issue of just compensation already filed with said court.

No. L-45390, April 15, 1988, 160 SCRA 291, 295; *Land Bank of the Philippines v. Natividad,* G.R. No. 127198, May 16, 2005, 458 SCRA 441, 451; *Phil. Veterans Bank v. Court of Appeals,* 379 Phil. 141, 147 (2000) and *Association of Small Landowners in the Philippines, Inc. v. Secretary of Agrarian Reform,* G.R. Nos. 78742, 79310, 79744 & 79777, July 14, 1989, 175 SCRA 343, 376.

[20] See *Land Bank of the Philippines v. Court of Appeals,* G.R. Nos. 118712 & 118745, October 6, 1995, 249 SCRA 149, 160.

[21] Sec. 2, Rule XX, 2003 DARAB Rules of Procedure.

[22] *Land Bank of the Philippines v. AMS Farming Corporation,* G.R. No. 174971, October 15, 2008, 569 SCRA 154, 177.

Lastly, the Court finds no merit in the contention of respondent that the RARAD's decision had already become final due to failure of the petitioner to appeal the same to the Board, in accordance with Section 5, Rule XIX of the 2003 DARAB Rules of Procedure. It must be noted that said Rules was adopted only on January 17, 2003. Section 1, Rule XXIV of the 2003 DARAB Rules explicitly states that:

SECTION 1. *Transitory Provisions*. These rules shall govern all cases filed on or after its effectivity. All cases pending with the Board and the Adjudicators, prior to the date of effectivity of these Rules, shall be governed by the DARAB Rules prevailing at the time of their filing.

The applicable rule is Section 2, Rule XIV (Judicial Review) of the Revised Rules of the Department of Agrarian Reform Adjudication Board which provides:

Section 2. *Just Compensation Cases to the Special Agrarian Courts.* — The decision, resolution or order of the Adjudicator or the Board on land valuation or determination of just compensation, may be brought to the proper Special Agrarian Court for final judicial determination.

WHEREFORE, the petition is *GRANTED*. The assailed Decision dated August 8, 2003 of the Court of Appeals in CA-G.R. SP No. 76572 is hereby *REVERSED and SET ASIDE.* The Land Bank of the Philippines is hereby declared to have duly complied with the requirement of deposit of provisional compensation under Section 16 (e) of R.A. No. 6657 and DAR AO No. 02, series of 1996.

No costs.

SO ORDERED.

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

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[*] Designated additional member per Special Order No. 843 dated May 17, 2010.

THIRD DIVISION

[G.R. No. 162291. August 11, 2010]

BANK OF THE PHILIPPINE ISLANDS, *petitioner, vs.* **SHEMBERG BIOTECH CORPORATION and BENSON DAKAY,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; MOOT AND ACADEMIC CASES; WHEN ISSUE BECOMES MOOT; APPLICABLE.—** [E]ven as we say that the imputation against the RTC has no basis, we are also in agreement that the CA has sufficient basis to rule that this case is already moot. An issue is said to have become moot when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value. In this case, a ruling on the propriety of the RTC's directive in its October 12, 2001 Order that the Rehabilitation Receiver submit his recommendation would have no more practical value since the recommendation was already submitted. Similarly, a ruling on the propriety of the RTC's statement that it will reflect on the issue of viability of the rehabilitation plan upon receipt of the receiver's recommendation would also have no more practical value since the RTC had already considered the recommendation in rendering its Decision dated April 22, 2002 in Civil Case No. CEB-26481-SRC.

2. **ID.; ID.; CONSTITUTIONAL ISSUES BELATEDLY RAISED WILL NOT BE ENTERTAINED; POWER OF JUDICIAL REVIEW, WHEN MAY BE EXERCISED TO RESOLVE CONSTITUTIONAL ISSUES.—** [T]he challenge on the constitutionality of the Interim Rules is a new and belated theory that we should not even entertain. It was not raised before the CA. Well settled is the rule that issues not previously ventilated cannot be raised for the first time on appeal. Relatedly, the constitutional question was not raised at the earliest opportunity. The rule is that when issues of constitutionality are raised, the Court can exercise its power of judicial review only if the following requisites are present: (1) the existence of an actual and appropriate case; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest possible opportunity;

and (4) the constitutional question is the *lis mota* of the case. In *Umali v. Guingona, Jr.*, the constitutionality of the creation of the Presidential Commission on Anti-Graft and Corruption was raised in the motion for reconsideration of the RTC's decision. This Court did not entertain the constitutional issue because it was belatedly raised at the RTC.

3. **COMMERCIAL LAW; CORPORATIONS; CORPORATE REHABILITATION; DISMISSAL OF THE PETITION FOR REHABILITATION, UNWARRANTED.—** [W]e cannot grant BPI's prayer that the petition for rehabilitation be ordered dismissed and terminated. To dismiss the petition for rehabilitation would be to reverse improperly the final course of that petition: the petition was granted by the RTC; the RTC decision was affirmed with finality; and the rehabilitation plan is now being implemented.

4. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEWING ERRORS OF LAW.—** And while the Interim Rules and the new Rules of Procedure on Corporate Rehabilitation contain provisions on termination of the corporate rehabilitation proceedings, neither the RTC nor the CA ruled on this point. In fact, BPI did not ask the CA to terminate the rehabilitation proceedings. Aside from being another new issue, its resolution involves factual matters such as: (1) whether there was failure to achieve the desired targets or goals as set forth in the rehabilitation plan; (2) whether there was failure of the debtor (SBC) to perform its obligations under the plan; (3) whether the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions or assumptions; or (4) whether there was successful implementation of the rehabilitation plan. We are not at liberty to consider these factual matters for the first time. This Court is not a trier of facts and our role in a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure is limited to reviewing or reversing errors of law. The Rule 45 petition itself must raise only questions of law.

APPEARANCES OF COUNSEL

Yap-Siton Law Office for petitioner.

Alvarez Nuez Galang Espina & Lopez Law Offices for respondents.

Puyat Jacinto & Santos for movant IPFI.

DECISION

VILLARAMA, JR., *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure, as amended, of the Decision[1] dated September 24, 2003 and Resolution[2] dated February 3, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 69461. The CA had dismissed the petition assailing the October 12, 2001 and December 26, 2001 Orders[3] of the Regional Trial Court (RTC) of Cebu City, Branch 11, in Civil Case No. CEB-26481-SRC.

The proceedings antecedent to this case are as follows:

Respondent Shemberg Biotech Corporation (SBC), a domestic corporation which manufactures carrageenan from seaweeds, filed a petition[4] for the approval of its rehabilitation plan and appointment of a rehabilitation receiver before the RTC. The RTC issued a stay order,[5] and petitioner Bank of the Philippine Islands (BPI) filed its opposition[6] to SBC's petition.

After initial hearings, the RTC issued the assailed October 12, 2001 Order[7] which gave due course to SBC's petition; referred the rehabilitation plan to the Rehabilitation Receiver for evaluation; ordered the Rehabilitation Receiver to submit his recommendation; recalled the appointment of the first Rehabilitation Receiver; and appointed Atty. Pio Y. Go as new Rehabilitation Receiver. The RTC found that SBC complied with the conditions necessary to give due course to its petition for rehabilitation. The RTC was also satisfied of the merit of SBC's

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[1] *Rollo*, pp. 645-653. Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Bienvenido L. Reyes and Arsenio J. Magpale, concurring.

[2] *Id.* at 694-695.

[3] *Id.* at 580-581 & 603.

[4] *Id.* at 171-190.

[5] *Id.* at 376-377.

[6] *Id.* at 378-397.

[7] *Id.* at 580-581.

petition and noted that SBC's business appears viable since it has a market for its product. A sufficient breathing spell, according to the RTC, may help SBC settle its debts. The RTC further said that it will reflect on the issue raised by SBC's creditors that the rehabilitation plan is not feasible, upon submission by the Rehabilitation Receiver of his recommendation.

BPI filed a motion for reconsideration[8] which the RTC denied in its Order[9] dated December 26, 2001.

Consequently, BPI filed a petition for *certiorari*, prohibition and *mandamus*[10] before the CA.

In its assailed decision, the CA dismissed the petition. The CA ruled that the RTC's Decision[11] dated April 22, 2002 in Civil Case No. CEB-26481-SRC, which approved with modification SBC's rehabilitation plan, rendered the petition moot. The CA also ruled that the issues raised against the rehabilitation plan should be raised in BPI's appeal from the said RTC Decision. The CA found that the RTC did not commit an error or grave abuse of discretion in issuing the October 12, 2001 and December 26, 2001 Orders.

On February 3, 2004, BPI's motion for reconsideration was denied by the CA. Hence, BPI filed the present petition.

BPI laments that the CA focused its discussion on the procedural matters, *i.e.*, on the propriety of the petition for *certiorari,* rather than on the substantial and jurisdictional issues raised.[12]

BPI also contends that the rehabilitation plan does not require "infusion of new capital from its guarantors and sureties"[13] and that forcing creditors to transform their debt to equity amounts to taking private property without just compensation and due process of law.[14]

[8] *Id.* at 582-595.

[9] *Id.* at 603.

[10] *Id.* at 77-167.

[11] *Id.* at 918-931.

[12] *Id.* at 1119.

[13] *Id.* at 1142.

[14] *Id.* at 1146.

BPI further contends that the RTC exercised its rehabilitation power "whimsically, arbitrarily and despotically by eliminating penalties and reducing interests amounting to millions." Such exercise of power, BPI contends, also amounts to taking of property without just compensation and due process of law that could not be justified under the police power. BPI adds that the Interim Rules of Corporate Recovery is unconstitutional insofar as it alters or modifies and expands the existing law on rehabilitation contrary to the principle that rules of procedure cannot modify or affect substantive rights.[15]

BPI prays that the Interim Rules of Procedure on Corporate Rehabilitation[16] be declared unconstitutional; that the order approving the rehabilitation plan be declared unconstitutional and void; and that the petition for rehabilitation be ordered dismissed and terminated.[17]

We find the petition bereft of merit.

We will address BPI's contentions *seriatim*.

First, BPI is mistaken in asserting that the CA focused on procedural matters because the CA actually ruled that the RTC did not commit grave abuse of discretion in issuing the October 12, 2001 and December 26, 2001 Orders. Before the CA, BPI raised questions about the viability of the rehabilitation plan. BPI said that SBC supports its rehabilitation plan with a shift to low-grade carrageenan to offset a lower volume of purchase by Colgate-Palmolive. BPI questions this plan and doubts how it can help SBC's recovery considering that it will result in a lower profit margin.[18] We also note that the other matters raised by BPI, *i.e.*, new capital infusion and debt-to-equity conversion, are matters directly concerning the merit of the rehabilitation plan. The RTC, however, has yet to fully consider the rehabilitation plan at the time it issued the October 12,

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[15] *Id.* at 1126-1127.

[16] A.M. No. 00-8-10-SC which took effect on December 15, 2000.

[17] *Rollo*, pp. 1187-1188.

[18] *Id.* at 120-121.

2001 Order. It did not approve any rehabilitation plan in the assailed orders. As stated by the RTC, it will reflect on the issue of viability of the rehabilitation plan upon submission by the Rehabilitation Receiver of his recommendation. BPI and its counsels readily imputed grave abuse of discretion on the part of the RTC when such imputation had no basis at all.

Second, even as we say that the imputation against the RTC has no basis, we are also in agreement that the CA has sufficient basis to rule that this case is already moot. An issue is said to have become moot when it ceases to present a justiciable controversy so that a declaration on the issue would be of no practical use or value.[19] In this case, a ruling on the propriety of the RTC's directive in its October 12, 2001 Order that the Rehabilitation Receiver submit his recommendation would have no more practical value since the recommendation was already submitted. Similarly, a ruling on the propriety of the RTC's statement that it will reflect on the issue of viability of the rehabilitation plan upon receipt of the receiver's recommendation would also have no more practical value since the RTC had already considered the recommendation in rendering its Decision dated April 22, 2002 in Civil Case No. CEB-26481-SRC.

Third, BPI's contention that forcing debt-to-equity conversion is constitutionally infirm is way out of order as the RTC did not approve debt-to-equity conversion in its October 12, 2001 and December 26, 2001 Orders. Nor did the CA approve debt-to-equity conversion in the assailed decision and resolution. In fact, the RTC did not even order conversion of debt-to-equity in its decision approving with modification SBC's rehabilitation plan.[20]

Fourth, BPI's contention that the RTC exercised its rehabilitation power arbitrarily and BPI's prayer that the order approving the rehabilitation plan be declared unconstitutional are improper attempts to appeal again the RTC Decision dated April 22, 2002. We will see no end to litigations if we grant

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[19] *King v. Court of Appeals*, G.R. No. 158195, December 16, 2005, 478 SCRA 275, 280.

[20] *Rollo*, pp. 930-931.

BPI's wish. Said RTC decision was affirmed by the CA in BPI's appeal docketed as CA-G.R. CV No. 75781.[21] In G.R. No. 175359, we denied BPI's petition for review of the decision and resolution of the CA in CA-G.R. CV No. 75781.[22] Our denial of BPI's petition in G.R. No. 175359 has become final and entry of judgment has been made. BPI has even admitted that the rehabilitation plan is already being implemented.[23]

Fifth, on the question of the constitutionality of the Interim Rules of Procedure on Corporate Rehabilitation, BPI failed in its burden of clearly and unequivocally proving its assertion. Its failure to so prove defeats the challenge.[24] We even note that BPI itself opposes its own stand by invoking Section 27,[25] Rule 4 of the Interim Rules to support its prayer that the rehabilitation proceedings be declared terminated.[26] BPI also impliedly invoked the Interim Rules before the CA in seeking a modified rehabilitation plan considering that SBC's petition for approval of its rehabilitation plan had been filed under the Interim Rules.

In addition, the challenge on the constitutionality of the Interim Rules is a new and belated theory that we should not even entertain. It was not raised before the CA. Well settled is the rule that issues not previously ventilated cannot be raised

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[21] *Id.* at 1760-1777.

[22] See *rollo* of G.R. No. 175359, p. 758.

[23] *Rollo*, p. 1117.

[24] *Atitiw v. Zamora*, G.R. No. 143374, September 30, 2005, 471 SCRA 329, 337.

[25] **SEC. 27**. ***Termination of Proceedings***. — In case of the failure of the debtor to submit the rehabilitation plan, or the disapproval thereof by the court, or the failure of the rehabilitation of the debtor because of failure to achieve the desired targets or goals as set forth therein, or the failure of the said debtor to perform its obligations under the said plan, or a determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions, or assumptions, the court shall upon motion, *motu proprio*, or upon the recommendation of the Rehabilitation Receiver, terminate the proceedings. The proceedings shall also terminate upon the successful implementation of the rehabilitation plan.

[26] *Rollo*, pp. 1187-1188.

for the first time on appeal.[27] Relatedly, the constitutional question was not raised at the earliest opportunity. The rule is that when issues of constitutionality are raised, the Court can exercise its power of judicial review only if the following requisites are present: (1) the existence of an actual and appropriate case; (2) a personal and substantial interest of the party raising the constitutional question; (3) the exercise of judicial review is pleaded at the earliest possible opportunity; and (4) the constitutional question is the *lis mota* of the case.[28] In *Umali v. Guingona, Jr.*,[29] the constitutionality of the creation of the Presidential Commission on Anti-Graft and Corruption was raised in the motion for reconsideration of the RTC's decision. This Court did not entertain the constitutional issue because it was belatedly raised at the RTC.

Sixth, we cannot grant BPI's prayer that the petition for rehabilitation be ordered dismissed and terminated. To dismiss the petition for rehabilitation would be to reverse improperly the final course of that petition: the petition was granted by the RTC; the RTC decision was affirmed with finality; and the rehabilitation plan is now being implemented. And while the Interim Rules[30] and the new Rules of Procedure on Corporate Rehabilitation[31] contain provisions on termination of the corporate

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[27] *Rasdas v. Estenor*, G.R. No. 157605, December 13, 2005, 477 SCRA 538, 551.

[28] *Philippine Constitution Association v. Enriquez*, G.R. Nos. 113105, 113174, 113766, and 113888, August 19, 1994, 235 SCRA 506, 518-519.

[29] G.R. No. 131124, March 29, 1999, 305 SCRA 533, 542.

[30] *Supra* note 16.

[31] A.M. No. 00-8-10-SC, approved on December 2, 2008.

RULE 3, SEC. 23. *Termination of Proceedings*. — The court shall, upon motion or upon recommendation of the rehabilitation receiver, terminate the proceedings in any of the following cases:

(a) Dismissal of the petition;

(b) Failure of the debtor to submit the rehabilitation plan;

(c) Disapproval of the rehabilitation plan by the court;

(d) Failure to achieve the desired targets or goals as set forth in the rehabilitation plan;

rehabilitation proceedings, neither the RTC nor the CA ruled on this point. In fact, BPI did not ask the CA to terminate the rehabilitation proceedings.[32] Aside from being another new issue, its resolution involves factual matters such as: (1) whether there was failure to achieve the desired targets or goals as set forth in the rehabilitation plan; (2) whether there was failure of the debtor (SBC) to perform its obligations under the plan; (3) whether the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions or assumptions; or (4) whether there was successful implementation of the rehabilitation plan. We are not at liberty to consider these factual matters for the first time. This Court is not a trier of facts and our role in a petition for review on *certiorari* under Rule 45 of the 1997 Rules of Civil Procedure is limited to reviewing or reversing errors of law.[33] The Rule 45 petition itself must raise only questions of law.[34]

On another matter, we received a motion for substitution[35] by Investments 2234 Philippines Fund I (SPV-AMC), Inc. with prayer that it be substituted as new party-petitioner in this case. Subsequently, however, Investments 2234 informed us that the RTC has already substituted Investments 2234 for BPI in the rehabilitation proceedings. We see no need to further duplicate the action of the RTC.

WHEREFORE, the petition is *DENIED* for lack of merit. The assailed Decision dated September 24, 2003, and resolution dated February 3, 2004 of the Court of Appeals in CA-G.R. SP No. 69461 are *AFFIRMED.*

(e) Failure of the debtor to perform its obligations under the plan;

(f) Determination that the rehabilitation plan may no longer be implemented in accordance with its terms, conditions, restrictions or assumptions; or

(g) Successful implementation of the rehabilitation plan.

[32] *Rollo*, pp. 162-164.

[33] *Quimpo, Sr. v. Abad Vda. de Beltran*, G.R. No. 160956, February 13, 2008, 545 SCRA 174, 180-181.

[34] RULES OF COURT, Rule 45, Section 1.

[35] *Rollo*, pp. 1789-1792.

With costs against the petitioner.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 165950. August 11, 2010]

EQUITABLE PCI BANK, INC., *petitioner, vs.* **OJ-MARK TRADING, INC. and SPOUSES OSCAR AND EVANGELINE MARTINEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; TWIN REQUIREMENTS OF A VALID INJUNCTION.— [A] writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown. A writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action.

2. ID.; ID.; ID.; ISSUANCE THEREOF IS GENERALLY NOT INTERFERED WITH EXCEPT IN CASES OF MANIFEST ABUSE; ABSENT A CLEAR LEGAL RIGHT, THE ISSUANCE OF THE WRIT CONSTITUTES GRAVE ABUSE OF

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[*] Designated additional member per Special Order No. 843 dated May 17, 2010.

DISCRETION.— The issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and is generally not interfered with except in cases of manifest abuse. For the issuance of the writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage. In the absence of a clear legal right, the issuance of a writ of injunction constitutes grave abuse of discretion.

3. **ID.; ID.; ID.; THE APPLICANT FOR AN INJUNCTIVE WRIT MUST ESTABLISH HIS CLEAR AND UNMISTAKABLE RIGHT THERETO.—** The possibility of irreparable damage without proof of actual existing right is no ground for an injunction. Hence, it is not sufficient for the respondents to simply harp on the serious damage they stand to suffer if the foreclosure sale is not stayed. They must establish such clear and unmistakable right to the injunction. In *Duvaz Corporation v. Export and Industry Bank*, we emphasized that it is necessary for the petitioner to establish in the main case its rights on an alleged *dacion en pago* agreement before those rights can be deemed actual and existing, which would justify the injunctive writ.

4. **CIVIL LAW; SPECIAL CONTRACTS; MORTGAGE; FORECLOSURE OF MORTGAGE IS A NECESSARY CONSEQUENCE OF NON-PAYMENT OF A MORTGAGE INDEBTEDNESS.—** [R]espondents failed to show that they have a right to be protected and that the acts against which the writ is to be directed are violative of the said right. On the face of their clear admission that they were unable to settle their obligations which were secured by the mortgage, petitioner has a clear right to foreclose the mortgage. Foreclosure is but a necessary consequence of non-payment of a mortgage indebtedness. In a real estate mortgage when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation.

5. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; ISSUANCE OF THE WRIT TO ENJOIN AN EXTRAJUDICIAL FORECLOSURE OF A MORTGAGE DUE TO DEBTORS' NON-PAYMENT OF THEIR OBLIGATION IS**

IMPROPER.— This Court has denied the application for a Writ of Preliminary Injunction that would enjoin an extrajudicial foreclosure of a mortgage, and declared that foreclosure is proper when the debtors are in default of the payment of their obligation. Where the parties stipulated in their credit agreements, mortgage contracts and promissory notes that the mortgagee is authorized to foreclose the mortgaged properties in case of default by the mortgagors, the mortgagee has a clear right to foreclosure in case of default, making the issuance of a Writ of Preliminary Injunction improper. In these cases, unsubstantiated allegations of denial of due process and prematurity of a loan are not sufficient to defeat the mortgagee's unmistakable right to an extrajudicial foreclosure.

6. **CIVIL LAW; SPECIAL CONTRACTS; SALES; *DACION EN PAGO*; NEGOTIATIONS FOR SETTLEMENT OF THE MORTGAGE DEBT BY *DACION EN PAGO* DO NOT EXTINGUISH THE SAME NOR FORESTALL THE CREDITOR-MORTGAGEE'S EXERCISE OF ITS RIGHT TO FORECLOSE AS PROVIDED IN THE MORTGAGE CONTRACT.—** Requests by debtors-mortgagors for extensions to pay and proposals for restructuring of the loans, without acceptance by the creditor-mortgagee, remain as that. Without more, those proposals neither novated the parties' mortgage contract nor suspended its execution. In the same vein, negotiations for settlement of the mortgage debt by *dacion en pago* do not extinguish the same nor forestall the creditor-mortgagee's exercise of its right to foreclose as provided in the mortgage contract.

7. **ID.; ID.; ID.; ID.; EXPLAINED.—** As we held in *Tecnogas Philippines Manufacturing Corporation v. Philippine National Bank — Dacion en pago* is a special mode of payment whereby the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding obligation. The undertaking is really one of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. It is only when the thing offered as an equivalent is accepted by the creditor that novation takes place, thereby, totally extinguishing the debt.

8. **REMEDIAL LAW; PROVISIONAL REMEDIES; PRELIMINARY INJUNCTION; APPLICATION FOR INJUNCTIVE RELIEF IS**

CONSTRUED STRICTLY AGAINST THE PLEADER.— Respondent-spouses' alleged "proprietary right" in the mortgaged condominium unit appears to be based merely on respondents' averment that respondent OJ-Mark Trading, Inc. is a family corporation. However, there is neither allegation nor evidence to show *prima facie* that such purported right, whether as majority stockholder or creditor, was superior to that of petitioner as creditor-mortgagee. The rule requires that in order for a preliminary injunction to issue, the application should clearly allege facts and circumstances showing the existence of the requisites. It must be emphasized that an application for injunctive relief is construed strictly against the pleader.

9. **CIVIL LAW; FAMILY CODE; FAMILY HOME; EXECUTION OR FORCED SALE OF A FAMILY HOME IS ALLOWED FOR DEBTS SECURED BY MORTGAGES ON THE PREMISES BEFORE OR AFTER SUCH CONSTITUTION.—** We note that the claim of exemption under Art. 153 of the Family Code, thereby raising issue on the mortgaged condominium unit being a family home and not corporate property, is entirely inconsistent with the clear contractual agreement of the REM. Assuming *arguendo* that the mortgaged condominium unit constitutes respondents' family home, the same will not exempt it from foreclosure as Article 155 (3) of the same Code allows the execution or forced sale of a family home "for debts secured by mortgages on the premises before or after such constitution." Respondents thus failed to show an *ostensible right* that needs protection of the injunctive writ. Clearly, the appellate court seriously erred in sustaining the trial court's orders granting respondents' application for preliminary injunction.

10. **COMMERCIAL LAW; BANKS AND BANKING; GENERAL BANKING LAW OF 2000; DEFAULTING MORTGAGOR'S RIGHT TO REDEEM THE PROPERTY FORECLOSED BY THE CREDITOR-MORTGAGEE, DISCUSSED.—** Anent the grave and irreparable injury which respondents alleged they will suffer if no preliminary injunction is issued, this Court has previously declared that all is not lost for defaulting mortgagors whose properties were foreclosed by creditors-mortgagees, *viz:* In any case, petitioners will not be deprived outrightly of their property. Pursuant to Section 47 of the General Banking Law of 2000, mortgagors who have judicially or extrajudicially sold their real property for the full or partial payment of their obligation have

the right to redeem the property within one year after the sale. They can redeem their real estate by paying the amount due, with interest rate specified, under the mortgage deed; as well as all the costs and expenses incurred by the bank. Moreover, in extrajudicial foreclosures, petitioners have the right to receive any surplus in the selling price. This right was recognized in *Sulit v. CA,* in which the Court held that "if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply gives the mortgagor a cause of action to recover such surplus.

APPEARANCES OF COUNSEL

Divina & Uy Law Office for petitioner.
De Jesus Manimtim & Peran for respondents.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us is a petition for review on *certiorari* filed by petitioner under Rule 45 of the 1997 Rules of Civil Procedure, as amended, praying for the reversal of the Decision[1] dated October 29, 2004 of the Court of Appeals (CA) in CA-G.R. SP No. 77703, which denied its petition for *certiorari* assailing the trial court's orders granting respondents' application for a writ of preliminary injunction.

The factual antecedents:

Respondent-spouses Oscar and Evangeline Martinez obtained loans from petitioner Equitable PCI Bank, Inc. in the aggregate amount of Four Million Forty-Eight Thousand Eight Hundred Pesos (₱4,048,800.00). As security for the said amount, a Real Estate Mortgage (REM) was executed over a condominium unit in San Miguel Court, Valle Verde 5, Pasig City, Metro

[1] *Rollo*, pp. 102-111. Penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justice (now Presiding Justice) Andres B. Reyes, Jr. and Associate Justice Rosmari D. Carandang.

Manila where the spouses are residing. Respondent Oscar Martinez signed the REM both as principal debtor and as President of the registered owner and third-party mortgagor, respondent OJ-Mark Trading, Inc. The REM was annotated on Condominium Certificate of Title No. PT-21363 of the Registry of Deeds of Pasig City.[2]

Respondent-spouses defaulted in the payment of their outstanding loan obligation, which as of October 31, 2002 stood at ₱4,918,160.03.[3] In a letter dated May 15, 2002, they offered to settle their indebtedness "with the assignment to the Bank of a commercial lot of corresponding value" and also requested for recomputation at a lower interest rate and condonation of penalties.[4] While petitioner's officers held a meeting with respondent Oscar Martinez, the latter however failed to submit the required documents such as certificates of title and tax declarations so that the bank can evaluate his proposal to pay the mortgage debt via *dacion en pago*.[5] Consequently, petitioner initiated the extrajudicial foreclosure of the real estate mortgage by filing an *ex parte* petition before the Office of the Executive Judge, Regional Trial Court (RTC) of Pasig City.[6]

On January 23, 2003, respondents filed Civil Case No. 69294 for "Temporary Restraining Order ('TRO'), Injunction and Annulment of Extrajudicial Foreclosure Sale" in the RTC of Pasig City. On January 27, 2003, the trial court granted a TRO effective for twenty (20) days.

In their Complaint With Application for Temporary Restraining Order,[7] respondents sought to enjoin the impending foreclosure sale alleging that the same was hasty, premature, unreasonable and unwarranted, and also claiming defects in the execution

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[2] *Id.* at 53-56, 323-325.

[3] *Id.* at 57.

[4] *Id.* at 322.

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

[6] *Id.* at 57-59.

[7] *Id.* at 60-96.

of the REM. Respondents imputed bad faith on the part of petitioner who did not officially inform them of the denial or disapproval of their proposal to settle the loan obligation by "*dacion* via assignment of a commercial property." Respondents maintained that aside from the REM being illegally notarized, incomplete and unenforceable, the obligation subject thereof had been extinguished by the *dacion* proposal considering that the value of the property offered was more than sufficient to pay for the mortgage debt. It was further averred that the subject property is being used and occupied by respondent-spouses as a family home.

In his Order dated February 17, 2003, Judge Mariano M. Singzon, Jr. granted the application for a writ of preliminary injunction.[8] Petitioner filed a motion for reconsideration which was denied under the Order dated April 21, 2003.[9]

Petitioner questioned the issuance of preliminary injunction before the CA arguing that the respondents are not entitled to injunctive relief after having admitted that they were unable to settle their loan obligations. By Decision dated October 29, 2004, the appellate court sustained the assailed orders, holding that:

> ...respondent spouses have sufficiently shown that they have a right over the condominium unit which is subject of the mortgage. This proprietary right over the condominium is what they are trying to protect when they applied for preliminary injunction. As respondent spouses have alleged in their complaint, the issuance of notice of foreclosure sale is at most premature as there are still several factual issues that need to be resolved before a foreclosure can be effected. Such already constitute the ostensible right which respondent spouses possess in order for the foreclosure sale to be temporarily enjoined.[10]

Hence, this petition raising the following grounds:

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THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN HOLDING THAT THE TRIAL COURT DID

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

[9] *Id.* at 100-101.

[10] *Id.* at 108-109.

NOT COMMIT GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN ISSUING THE ASSAILED WRIT OF PRELIMINARY INJUNCTION

II

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN HOLDING THAT INDIVIDUAL RESPONDENTS SPS. MARTINEZ HAVE PROPRIETARY RIGHT OVER THE MORTGAGED CONDOMINIUM UNIT

III

THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE REVERSIBLE ERROR IN HOLDING THAT SUCH PURPORTED PROPRIETARY RIGHT OF RESPONDENTS SPS. MARTINEZ DESERVES THE PROTECTIVE MANTLE OF A WRIT OF PRELIMINARY INJUNCTION DESPITE THEIR CLEAR AND UNEQUIVOCAL ADMISSION OF THE OUTSTANDING LOANS AND THEIR DELINQUENCY

IV

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THERE ARE STILL SEVERAL FACTUAL ISSUES TO BE RESOLVED IN A FULL-BLOWN TRIAL BEFORE PETITIONER EPCIB COULD EXERCISE ITS STATUTORY AND EQUITABLE RIGHT TO FORECLOSE[11]

The sole issue to be resolved is whether or not the respondents have shown a clear legal right to enjoin the foreclosure and public auction of the third-party mortgagor's property while the case for annulment of REM on said property is being tried.

Petitioner argued that the appellate court's conclusion that respondents possess proprietary right over the mortgaged property subject of foreclosure is utterly baseless, for the following reasons: *first,* while the condominium unit is supposedly a family home, it is admittedly owned by respondent corporation and not by the conjugal partnership or absolute community of respondent-spouses; and *second,* even assuming that OJ-Mark Trading, Inc. is a family corporation, respondents' stance

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[11] *Id.* at 27-28.

contravenes the established rule that properties registered in the name of the corporation are owned by it as an entity separate and distinct from its members or stockholders.[12]

As to the alleged proposal of respondent Oscar Martinez to assign commercial lots by *dacion en pago* to settle their loan obligations, petitioner pointed out that the properties offered for *dacion* are not owned, and much less to be owned by him, but purportedly owned by another corporation (developer), the president of which supposedly owes him a sum of money. Respondent Oscar Martinez likewise admitted during the hearings before the trial court his unpaid loan with petitioner. Moreover, with the filing of a petition for extrajudicial foreclosure of the real estate mortgage by petitioner, it serves more than a formal rejection of respondents' *dacion en pago* offer.[13]

On their part, the respondents contended that the petition raises factual issues not proper in an appeal by *certiorari* under Rule 45. They asserted that the trial court correctly found sufficient legal basis to grant the writ of preliminary injunction after conducting a summary hearing in which both parties actively participated and submitted oral and documentary evidence. Such evidence adduced by respondents, as well as the Affidavit dated January 24, 2003 of Atty. Oscar Martinez (adopted in the February 7, 2003 hearing) fully supported their application and hence the trial court did not act precipitately or arbitrarily in granting injunctive relief.[14]

Respondents argued that they appear to be entitled to the relief demanded by their Complaint "because petitioner was in bad faith when it proceeded to foreclose while there was still a pending written proposal to pay." They stand to lose a prime property, and thus made a serious and sincere offer by way of *dacion en pago*. To show good faith and as required by petitioner to continue the negotiations for *dacion*, respondent Atty. Oscar Martinez even paid ₱100,000.00 in October 2002,

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[12] *Id.* at 30-33.

[13] *Id.* at 34-40.

[14] *Id.* at 130-152, 202-212.

which petitioner accepted. But petitioner maliciously, fraudulently and hastily proceeded to foreclose the renovated mortgaged property, apparently motivated by its discovery after re-appraisal that the floor area of the townhouse and number of its rooms had doubled (from 180.750 sq. m. with three [3] bedrooms, it is now 350 sq. m. with six [6] bedrooms). Respondents contended that as creditor, it was petitioner's duty not to sit on respondents' *dacion* offer and should have informed them in writing that said offer is rejected. By hanging on the *dacion* talks, petitioner thus prevented the respondents' repayment of the loan, in malicious haste to acquire the condominium unit as asset.[15]

Respondents further claimed that the extrajudicial foreclosure will cause grave injustice and irreparable injury to respondent-spouses and their four (4) young children because their family home, in which they were residing since 1997, at least insofar as the unencumbered area in excess of 180.750 sq. m., is exempt from forced sale or execution under Article 155 of the Family Code. Petitioner, on the other hand, will not suffer any loss if the foreclosure will not proceed.[16]

With respect to the commercial lots offered in *dacion*, respondents fault the petitioner in deliberately ignoring the fact that the Blue Mountains Subdivision located at Antipolo City was already approved by the Land Registration Authority; although the subdivided lots have already been applied, the individual titles had not yet been issued. It was therefore impossible for respondents to deliver these titles to petitioner by October 21, 2002 considering the normal time it takes to secure land titles. Respondents deplored the sudden filing of the petition for extrajudicial foreclosure, which was unfair as the negotiations had already reached the stage when petitioner scheduled an ocular inspection for the appraisal of the lots. However, for unknown reasons, petitioner did not push through with the inspection.[17]

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[15] *Id.* at 166-167, 212-224.

[16] *Id.* at 223-227.

[17] *Id.* at 228-230.

We grant the petition.

Section 3, Rule 58 of the Rules of Court provides that:

SEC. 3. *Grounds for issuance of preliminary injunction.*—A preliminary injunction may be granted when it is established:

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

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

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

As such, a writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. The twin requirements of a valid injunction are the existence of a right and its actual or threatened violations. Thus, to be entitled to an injunctive writ, the right to be protected and the violation against that right must be shown.[18] A writ of preliminary injunction may be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action.[19]

The issuance of a preliminary injunction rests entirely within the discretion of the court taking cognizance of the case and is generally not interfered with except in cases of manifest abuse.[20]

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[18] *Borromeo v. Court of Appeals,* G.R. No. 169846, March 28, 2008, 550 SCRA 269, 280-281, citing *Lim v. Court of Appeals,* G.R. No. 134617, February 13, 2006, 482 SCRA 326, 331.

[19] *Lim v. Court of Appeals, supra.*

[20] *Reyes v. Court of Appeals,* G.R. No. 129750, December 21, 1999, 321 SCRA 368, 374, citing *Saulog v. Court of Appeals,* G.R. No. 119769, September 18, 1996, 262 SCRA 51, 59 and *Inter-Asia Services Corp.*

For the issuance of the writ of preliminary injunction to be proper, it must be shown that the invasion of the right sought to be protected is material and substantial, that the right of complainant is clear and unmistakable and that there is an urgent and paramount necessity for the writ to prevent serious damage. In the absence of a clear legal right, the issuance of a writ of injunction constitutes grave abuse of discretion.[21]

The possibility of irreparable damage without proof of actual existing right is no ground for an injunction.[22] Hence, it is not sufficient for the respondents to simply harp on the serious damage they stand to suffer if the foreclosure sale is not stayed. They must establish such clear and unmistakable right to the injunction. In *Duvaz Corporation v. Export and Industry Bank*,[23] we emphasized that it is necessary for the petitioner to establish in the main case its rights on an alleged *dacion en pago* agreement before those rights can be deemed actual and existing, which would justify the injunctive writ. Thus:

> In *Almeida v. Court of Appeals*, the Court stressed how important it is for the applicant for an injunctive writ to establish his right thereto by competent evidence:
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>> Thus, the petitioner, as plaintiff, was burdened to adduce testimonial and/or documentary evidence to establish her right to the injunctive writs. It must be stressed that injunction is not designed to protect contingent or future rights, and, as such, **the possibility of irreparable damage without proof of actual existing right is no ground for an injunction. A clear and positive right especially calling for judicial protection must be established.** Injunction is not a remedy to protect or enforce contingent, abstract, or future rights; it will not issue to protect a right not *in esse* and which may never arise, or to restrain an action which did not give

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(International) v. Court of Appeals, G.R. No. 106427, October 21, 1996, 263 SCRA 408, 415.

[21] *Suico Industrial Corporation v. CA,* 361 Phil. 160, 169 (1999); *Sps. Arcega v. CA,* 341 Phil. 166, 171 (1997), citing *Syndicated Media Access Corp. v. CA,* G.R. No. 106982, March 11, 1993, 219 SCRA 794, 797 and *Vinzons-Chato v. Natividad,* G.R. No. 113843, June 2, 1995, 244 SCRA 787, 794-795.

[22] *Sps. Arcega v. CA, supra.*

[23] G.R. No. 163011, June 7, 2007, 523 SCRA 405.

> rise to a cause of action. **There must be an existence of an actual right. Hence, where the plaintiff's right or title is doubtful or disputed, injunction is not proper.**
>
> An injunctive remedy may only be resorted to when there is a pressing necessity to avoid injurious consequences which cannot be remedied under any standard compensation. The possibility of irreparable damage without proof of an actual existing right would not justify injunctive relief in his favor.
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> x x x. **In the absence of a clear legal right, the issuance of the injunctive writ constitutes grave abuse of discretion**. As the Court had the occasion to state in *Olalia v. Hizon,* 196 SCRA 665 (1991):
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> It has been consistently held that there is no power the exercise of which is more delicate, which requires greater caution, deliberation and sound discretion, or more dangerous in a doubtful case, than the issuance of an injunction. It is the strong arm of equity that should never be extended unless to cases of great injury, where courts of law cannot afford an adequate or commensurate remedy in damages.
>
> Every court should remember that an injunction is a limitation upon the freedom of action of the defendant and should not be granted lightly or precipitately**. It should be granted only when the court is fully satisfied that the law permits it and the emergency demands it**….

We are in full accord with the CA when it struck down, for having been issued with grave abuse of discretion, the RTC's Order of September 25, 2002, granting petitioner's prayer for a writ of preliminary injunction during the pendency of the main case, Civil Case No. 02-1029. The reason therefor is that the right sought to be protected by the petitioner in this case through the writ of preliminary injunction is merely contingent and not *in esse*. It bears stressing that **the existing written contract between petitioner and respondent was admittedly one of loan restructuring; there is no mention whatsoever or even a slightest reference in that written contract to a supposed agreement of *dacion en pago*. In fine, it is still necessary for petitioner to establish in the main case its rights on the alleged *dacion en pago* before those rights become *in esse* or actual and existing. Only then can the injunctive writ be properly**

issued. It cannot be the other way around. Otherwise, it will be like putting the cart before the horse.[24] [EMPHASIS SUPPLIED.]

In the case at bar, respondents failed to show that they have a right to be protected and that the acts against which the writ is to be directed are violative of the said right. On the face of their clear admission that they were unable to settle their obligations which were secured by the mortgage, petitioner has a clear right to foreclose the mortgage.[25] Foreclosure is but a necessary consequence of non-payment of a mortgage indebtedness.[26] In a real estate mortgage when the principal obligation is not paid when due, the mortgagee has the right to foreclose the mortgage and to have the property seized and sold with the view of applying the proceeds to the payment of the obligation.[27]

This Court has denied the application for a Writ of Preliminary Injunction that would enjoin an extrajudicial foreclosure of a mortgage, and declared that foreclosure is proper when the debtors are in default of the payment of their obligation. Where the parties stipulated in their credit agreements, mortgage contracts and promissory notes that the mortgagee is authorized to foreclose the mortgaged properties in case of default by the mortgagors, the mortgagee has a clear right to foreclosure in case of default, making the issuance of a Writ of Preliminary Injunction improper.[28] In these cases, unsubstantiated allegations

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[24] *Id.* at 413-415.

[25] *Equitable PCI Bank, Inc. v. Fernandez,* G.R. No. 163117, December 18, 2009, 608 SCRA 433, 441, citing *China Banking Corporation v. Court of Appeals,* G.R. No. 121158, December 5, 1996, 265 SCRA 327, 343.

[26] *Producers Bank of the Philippines v. Court of Appeals,* G.R. No. 111584, September 17, 2001, 365 SCRA 326, 335.

[27] *Equitable PCI Bank v. Fernandez, supra* note 25, citing *Union Bank of the Philippines v. Court of Appeals,* 370 Phil. 837 (1999).

[28] *Borromeo v. Court of Appeals, supra* note 18 at 284, citing *Bank of the Philippine Islands v. Court of Appeals,* G.R. No. 142731, June 8, 2006, 490 SCRA 168; *Selegna Management and Development Corporation v. United Coconut Planters Bank,* G.R. No. 165662, May 3, 2006, 489 SCRA 125, 138; *Lim v. Court of Appeals, supra*; and *PNB v. Ritratto Group, Inc.*, 414 Phil. 494, 507-508 (2001).

of denial of due process and prematurity of a loan are not sufficient to defeat the mortgagee's unmistakable right to an extrajudicial foreclosure.[29]

We cannot agree with respondents' position that petitioner's act of initiating extrajudicial foreclosure proceeding while they negotiated for a *dacion en pago* was illegal and done in bad faith. As respondent-spouses themselves admitted, they failed to comply with the documentary requirements imposed by the petitioner for proper evaluation of their proposal. In any event, petitioner had found the subdivision lots offered for *dacion* as unacceptable, not only because the lots were not owned by respondents – as in fact, the lots were not yet titled – but also for the reason that respondent Oscar Martinez' claimed right therein was doubtful or inchoate, and hence not *in esse*.

Requests by debtors-mortgagors for extensions to pay and proposals for restructuring of the loans, without acceptance by the creditor-mortgagee, remain as that. Without more, those proposals neither novated the parties' mortgage contract nor suspended its execution.[30] In the same vein, negotiations for settlement of the mortgage debt by *dacion en pago* do not extinguish the same nor forestall the creditor-mortgagee's exercise of its right to foreclose as provided in the mortgage contract.

As we held in *Tecnogas Philippines Manufacturing Corporation v. Philippine National Bank*[31] —

> *Dacion en pago* is a special mode of payment whereby the debtor offers another thing to the creditor who accepts it as equivalent of payment of an outstanding obligation. The undertaking is really one of sale, that is, the creditor is really buying the thing or property of the debtor, payment for which is to be charged against the debtor's debt. As such, the essential elements of a contract of sale, namely, consent, object certain, and cause or consideration must be present. It is only when the thing offered as an equivalent is accepted by the

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[29] *Selegna Management and Development Corporation v. United Coconut Planters Bank, supra* at 127.

[30] *Lim v. Court of Appeals, supra* note 18.

[31] G.R. No. 161004, April 14, 2008, 551 SCRA 183, 189.

creditor that novation takes place, thereby, totally extinguishing the debt.

On the first issue, **the Court of Appeals did not err in ruling that Tecnogas has no clear legal right to an injunctive relief because its proposal to pay by way of *dacion en pago* did not extinguish its obligation.** Undeniably, Tecnogas' proposal to pay by way of *dacion en pago* was not accepted by PNB. Thus, **the unaccepted proposal neither novates the parties' mortgage contract nor suspends its execution as there was no meeting of the minds between the parties on whether the loan will be extinguished by way of *dacion en pago.*** Necessarily, upon Tecnogas' default in its obligations, the foreclosure of the REM becomes a matter of right on the part of PNB, for such is the purpose of requiring security for the loans. [EMPHASIS SUPPLIED.]

Respondent-spouses' alleged "proprietary right" in the mortgaged condominium unit appears to be based merely on respondents' averment that respondent OJ-Mark Trading, Inc. is a family corporation. However, there is neither allegation nor evidence to show *prima facie* that such purported right, whether as majority stockholder or creditor, was superior to that of petitioner as creditor-mortgagee. The rule requires that in order for a preliminary injunction to issue, the application should clearly allege facts and circumstances showing the existence of the requisites. It must be emphasized that an application for injunctive relief is construed strictly against the pleader.[32]

We note that the claim of exemption under Art. 153 of the Family Code, thereby raising issue on the mortgaged condominium unit being a family home and not corporate property, is entirely inconsistent with the clear contractual agreement of the REM.[33] Assuming *arguendo* that the mortgaged condominium unit constitutes respondents' family home, the same will not exempt it from foreclosure as Article 155 (3) of the same Code allows the execution or forced sale

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[32] *Marquez v. Presiding Judge (Hon. Ismael B. Sanchez), RTC Br. 58, Lucena City,* G.R. No. 141849, February 13, 2007, 515 SCRA 577, 594, citing *Sales v. Securities and Exchange Commission,* G.R. No. 54330, January 13, 1989, 169 SCRA 109, 127 and 43 C.J.S. 867.

[33] See *Marquez v. The Presiding Judge, (Hon. Ismael B. Sanchez), RTC Br. 58, Lucena City, supra* at 596.

of a family home "for debts secured by mortgages on the premises before or after such constitution." Respondents thus failed to show an *ostensible right* that needs protection of the injunctive writ. Clearly, the appellate court seriously erred in sustaining the trial court's orders granting respondents' application for preliminary injunction.

Anent the grave and irreparable injury which respondents alleged they will suffer if no preliminary injunction is issued, this Court has previously declared that all is not lost for defaulting mortgagors whose properties were foreclosed by creditors-mortgagees, *viz:*

> In any case, petitioners will not be deprived outrightly of their property. Pursuant to Section 47 of the General Banking Law of 2000, mortgagors who have judicially or extrajudicially sold their real property for the full or partial payment of their obligation have the right to redeem the property within one year after the sale. They can redeem their real estate by paying the amount due, with interest rate specified, under the mortgage deed; as well as all the costs and expenses incurred by the bank.
>
> Moreover, in extrajudicial foreclosures, petitioners have the right to receive any surplus in the selling price. This right was recognized in *Sulit v. CA,* in which the Court held that "if the mortgagee is retaining more of the proceeds of the sale than he is entitled to, this fact alone will not affect the validity of the sale but simply gives the mortgagor a cause of action to recover such surplus.[34]

WHEREFORE, the petition is *GRANTED.* The Decision dated October 29, 2004 of the Court of Appeals in CA-G.R. SP No. 77703 is hereby *REVERSED* and *SET ASIDE.* Respondents' application for a writ of preliminary injunction is *DENIED.*

No costs.

SO ORDERED.

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[34] *Selegna Management and Development Corporation v. United Coconut Planters Bank, supra* note 28 at 146, citing Republic Act No. 8791, approved on May 23, 2000; J. Feria and M.C. Noche, *Civil Procedure Annotated*, Vol. 2, 577 (2001); and *Sulit v. Court of Appeals,* 335 Phil. 914, 931 (1997).

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

SECOND DIVISION

[G.R. No. 167606. August 11, 2010]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **FORT BONIFACIO DEVELOPMENT CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; RIGHT TO APPEAL; FAILURE TO COMPLY WITH THE REQUIREMENTS OF THE RULES OFTEN LEADS TO THE LOSS OF THE RIGHT.—** The right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.

2. **ID.; ID.; PERFECTION OF; FAILURE TO TIMELY PERFECT AN APPEAL CANNOT BE DISMISSED AS MERE TECHNICALITY FOR IT IS JURISDICTIONAL; EXPLAINED.—** The failure to timely perfect an appeal cannot simply be dismissed as a mere technicality, for it is jurisdictional. Thus: Nor can petitioner invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of

[*] Designated additional member per Special Order No. 843 dated May 17, 2010.

technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a **jurisdictional** problem as it deprives the appellate court of jurisdiction over the appeal. **The failure to file the notice of appeal within the reglementary period is akin to the failure to pay the appeal fee within the prescribed period. In both cases, the appeal is not perfected in due time**.

3. ID.; ID.; ID.; THE COURT CANNOT ALWAYS RULE IN FAVOR OF THE GOVERNMENT WHERE THE SAME FAILED TO SUFFICIENTLY EXPLAIN ITS FAILURE TO OBSERVE THE RULES.— As to the claim that the government would suffer loss of substantial amount if not allowed to recover the tax refund in the amount of more than ₱15M, the Court is of the view that said problem has been caused by petitioner's own doing or undoing. While We understand its counsel's predicament of being burdened with a heavy case load, We cannot always rule in favor of the Government. In this case, petitioner even failed to sufficiently explain its failure to observe the Rules. Petitioner merely pointed out that due to plain oversight, the motions for extension of time and the petition for review that it filed were erroneously titled as *"Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue"* when it should have been *"Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation";* that "on the assumption that it was respondent which filed the motion, the Court of Appeals, in its Resolution dated January 29, 2002, denied the motion for extension of time to file petition for review on the ground of failure to pay docket and other legal fees"; that respondent filed a manifestation stating that the case was incorrectly titled as it was not the one who appealed the CTA decision to the CA; and that in order to rectify the error, petitioner filed an Amended Petition for Review. To recognize the foregoing statements would render the mandatory rule on appeals meaningless and nugatory.

4. ID.; ID.; ID.; FAILURE TO TIMELY PERFECT AN APPEAL AS REQUIRED BY THE RULES, EFFECT THEREOF; RIGHT TO APPEAL, A STATUTORY PRIVILEGE, NOT A NATURAL RIGHT.— It bears emphasizing that the dismissal of the petition for review and the denial of the amended petition were premised

rather on: ***(1)*** the late filing of the original petition for review by the CIR; ***(2)*** the absence of a motion for reconsideration of the January 29, 2002 Resolution; and ***(3)*** lack of authority of Atty. Alberto R. Bomediano, Jr., legal officer of the BIR Region 8, Makati City, to pursue the case on behalf of petitioner CIR. It has been ruled that **perfection of an appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.

5. ID.; ID.; ID.; FAILURE TO MEET THE REQUIREMENTS OF AN APPEAL DEPRIVES THE APPELLATE COURT OF JURISDICTION TO ENTERTAIN ANY APPEAL; RELAXATION OF THE RULE, NOT JUSTIFIED.— Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite time fixed by law. Such rules are necessary incidents to the proper, efficient and orderly discharge of judicial functions. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the fruits of his victory. Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal. Undeniably, there are exceptions to this rule. Petitioner, however, did not present any circumstances that would justify the relaxation of said rule.

6. ID.; ID.; ID.; STATUTORY REQUIREMENT FOR PERFECTING AN APPEAL WITHIN THE REGLEMENTARY PERIOD MUST BE STRICTLY FOLLOWED.— It need not be overemphasized that it is the responsibility of the counsel to check and keep track of the period of time left to file an appeal. He cannot escape from the inflexible observance of this rule which is jurisdictional. The rules, particularly on the statutory requirement

for perfecting an appeal within the reglementary period provided, must be strictly followed. If an appeal is not taken within the period prescribed therefor, the judgment becomes final and the court loses all jurisdiction over the case.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Estelito P. Mendoza and *Lorenzo G. Timbol* for respondent.

D E C I S I O N

MENDOZA, *J.*:

At bar is a petition for review under Rule 45 of the Rules of Court, filed by the Commissioner of Internal Revenue *(CIR)* against Fort Bonifacio Development Corporation *(FBDC),* challenging the Resolutions of the Court of Appeals *(CA)* dated: ***(1)*** January 27, 2003,[1] *denying* the prayer of petitioner CIR and the Revenue District Officer, Revenue District No. 44, Taguig and Pateros, Bureau of Internal Revenue *(BIR),* to admit the Amended Petition for Review; and ***(2)*** March 18, 2005,[2] *denying* their motion for the reconsideration thereof.

In its decision[3] dated December 7, 2001, the Court of Tax Appeals *(CTA)* granted the petition of FBDC and ordered the CIR and the Revenue District Officer, Revenue District No. 44, Taguig and Pateros, BIR, to *refund* or *issue a Tax Credit Certificate* in the total amount of ₱15,036,891.26 in favor of FBDC for the fourth quarter of taxable year 1997.

The CIR sought to appeal the CTA decision to the CA. The appeal was docketed as CA-G.R. SP No. UDK-4443. On December 28, 2001, petitioner filed, by registered mail, a

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[1] *Rollo*, pp. 17-23. Penned by Associate Justice Bienvenido L. Reyes with Associate Justice Romeo A. Brawner and Associate Justice Danilo B. Pine, concurring.

[2] *Id.* at 11-16.

[3] *Id.* at 210-229.

motion[4] praying for an extension of fifteen (15) days from December 28, 2001, the last day for filing the petition for review, or **until January 12, 2002** within which to file the petition.

On **January 21, 2002**, the petitioner filed a Motion for Re-Extension of Time to File Petition for Review praying for another extension of fifteen (15) days or until **January 27, 2002**.[5]

On **January 29, 2002**, the Court of Appeals, acting on the first motion for extension, issued a Resolution[6] dismissing the petition for non-payment of docket and other legal fees pursuant to Section 1 (c) Rule 50 of the 1997 Rules of Civil Procedure. Notably, it was FBDC, and not CIR, that was designated as petitioner in the latter's Motion for Extension of Time to File Petition for Review.[7] FBDC is not exempt from the payment of docket and other legal fees.

In its Manifestation[8] dated February 7, 2002, FBDC pointed out the defects in the motion filed by the CIR. Thus:

> 1.00. On February 1, 2002, the undersigned counsel received a copy of the Resolution of this Honorable Court dated January 29, 2002, denying the "MOTION FOR EXTENSION OF TIME TO FILE PETITION FOR REVIEW" (dated December 21, 2001) filed by the Commissioner of Internal Revenue ("Commissioner") as well as the Petition for Review.
>
> 1.01. The title of the above-entitled case is wrong. The petitioner should be the Commissioner of Internal Revenue. The decision of the Court of Tax Appeals ("CTA") in CTA Case No. 5962 subject of the above-entitled case is favorable to FBDC and the latter is not appealing said decision to this Court.

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[4] CA *rollo,* pp. 1-2.

[5] *Rollo*, p. 18, cited in CA Resolution dated January 23, 2003.

[6] CA *rollo*, pp. 5-6.

[7] *Rollo*, p. 18.

[8] CA *rollo*, pp. 7-11.

2.00. Earlier, on January 17, 2002, undersigned counsel received a copy of the Commissioner's "MOTION FOR RE-EXTENSION OF TIME TO FILE PETITION FOR REVIEW" dated January 14, 2002.

> 2.01. It will be noted that in the aforesaid second motion for extension, the Commissioner prayed for "an extension of fifteen (15) days from January 12, 2002 or until January 27, 2002." Thus, when the Commissioner filed his motion for second extension, dated January 14, 2002, the first extension prayed for had already expired.
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> 2.02. Moreover, the second motion for extension does not show that there is a "most compelling reason" for the second extension prayed for. Section 4 of Rule 9 of the Revised Internal Rules of the Court of Appeals ("RIRCA") provides that "No further extension shall be granted except for the most compelling reason and in no case to exceed fifteen (15) days." An identical provision is found in the 1997 Rules of Civil Procedure ("RCP") (Sec. 4, Rule 43).

3.00. On February 5, 2002, undersigned counsel received a copy of the Commissioner's "PETITION FOR REVIEW," dated January 28, 2002. The following has been noted in said Petition:

> 3.01. It is not "accompanied by a clearly legible duplicate original or a certified true copy of the award, judgment, final order or resolution appealed from, together with certified true copies of such material portions of the record referred to therein and other supporting papers" (Sec. 6[c], Rule 9, RIRCA; Sec. 6, Rule 43, RCP).
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> 3.02. The Petition does not "[s]tate the specific material dates showing that it was filed within the period fixed herein" (Sec. 6[e], Rule 9, RIRC; Sec. 6, Rule 43, RCP).
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> 3.03. It is not accompanied by proof of service of a copy of the Petition on the Court of Tax Appeals (Sec. 5, RCP).

On June 10, 2002, the CIR and the Revenue District Officer filed a Manifestation[9] dated May 16, 2002 acknowledging their inadvertence in failing to correct the title of the petition where

[9] *Id.* at 75-78.

FBDC was designated as petitioner and attaching a copy of the Amended Petition for Review.[10]

FBDC then filed a Counter-Manifestation[11] insisting on the denial of the admission of petitioners' amended petition on the same grounds stated in its February 7, 2002 Manifestation. It further argued that the original petition for review[12] could no longer be amended as the same was only filed on January 31, 2002, or past the deadline of January 27, 2002, as prayed for in the second motion for extension. FBDC further stressed that the CA Resolution dated January 29, 2002, denying the "Motion for Extension of Time to File Petition for Review" and dismissing the petition, had already become final and executory for the CIR's failure to file a motion for reconsideration.[13]

In its assailed **January 27, 2003** Resolution, the CA *denied* the prayer of petitioners to admit the amended petition for review, thus, reiterating the dismissal of the petition for review. The CA gave the following reasons:

> **1)** The dismissal of the petition for review and denial of the amended petition are premised on: ***(a)*** the late filing of the original petition for review earlier filed by the petitioner CIR *et al.*; ***(b)*** the absence of a motion for reconsideration of the Resolution dated January 29, 2002;[14] and ***(c)*** lack of authority of Atty. Alberto R. Bomediano, Jr., legal officer of the BIR Region 8, Makati City, to pursue the case on behalf of the petitioner CIR.
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> **2)** It should be noted that the first extension to file petition for review prayed for a period of fifteen (15) days from December 28, 2001 or until **January 12, 2002**. The second motion for extension prayed for an extension of another fifteen (15) days from January

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[10] *Id.* at 79-95.

[11] *Id.* at 96-100.

[12] *Id.* at 12-30.

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

[14] *Rollo*, pp. 154-155; By mere oversight however, the CA, in its January 27, 2003 Resolution, mentioned January 7, 2002 (*Rollo*, p. 20).

12, 2002 or until January 27, 2002. The second motion was dated **January 14, 2002**. Clearly, the *second motion for extension dated January 14, 2002 was filed after the expiration of the first extension on January 12, 2002*, hence, *there was no more period to extend*. There was no reason for the petitioners to assume that the motion for re-extension of time would be granted.

3) The last day of filing of the petition for review was on January 12, 2002. The filing of the petition for review on January 31, 2002 was definitely beyond the extension prayed for. The timeliness of the appeal is a *jurisdictional caveat*.

4) When petitioners received the Resolution dated January 29, 2002, denying the motion for extension of time to file petition, thus, dismissing the petition for review on February 4, 2002, they did not file a motion for reconsideration. Said resolution, therefore, had already become final and executory.

5) The proper officer that should have filed the case was the Solicitor General, citing the case of *CIR v. La Suerte Cigar and Cigarette Factory*,[15] not an officer of the BIR.

Petitioners, this time through the Office of the Solicitor General *(OSG),* filed a *Motion for Reconsideration (Re: Resolution dated January 27, 2003)*[16] but it was denied by the CA in a Resolution[17] dated March 18, 2005. The CA stated that it would have been more sympathetic to the pleas of the petitioner had the procedural flaws been isolated and non-jurisdictional.

Aggrieved, petitioner CIR seeks relief from this Court *via* this petition for review anchored on the following:

I

THE COURT OF APPEALS ERRED IN DISMISSING THE AMENDED PETITION FOR REVIEW DATED MAY 16, 2002 ON PURE TECHNICALITY AND IN NOT ADJUDICATING THE CASE ON THE MERITS CONSIDERING ITS IMPORTANCE AS IT INVOLVES AN

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[15] Citing G.R. No. 144942, June 28, 2001 (the date of the citation should have been July 4, 2002).

[16] CA *rollo*, pp. 138-147.

[17] *Id.* at 155-160.

ENORMOUS AMOUNT OF MONEY WHICH THE GOVERNMENT STANDS TO LOSE SHOULD THE PETITION BE DISMISSED OUTRIGHT.

II

THE COURT OF APPEALS ERRED IN HASTILY DISMISSING THE AMENDED PETITION FOR REVIEW CONSIDERING THAT THE PETITIONER HAS MERITORIOUS GROUNDS SHOWING WANT OF BASIS OF RESPONDENT'S CLAIM FOR REFUND IN THE AMOUNT OF ₱15,036,891.26, THEREBY DEPRIVING THE GOVERNMENT OT ITS RIGHT TO DUE PROCESS.[18]

On February 22, 2006, the Court resolved to give due course to the petition and directed the parties to submit their respective memoranda within thirty (30) days from notice.[19]

Petitioner and respondent filed their respective memoranda.[20]

It appears that the only issue to be resolved by this Court is *whether or not the Court of Appeals correctly dismissed the original Petition for Review, and denied admission of the Amended Petition for Review.*

We resolve the issue in the affirmative.

The then applicable rule, Rule 43 of the Rules of Court,[21] provided:

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, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority,

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[18] *Rollo*, p. 39.

[19] *Id.* at 275-276.

[20] *Id.* at 289-352, 422-460.

[21] Appeals from the Court of Tax Appeals and Quasi-Judicial Agencies to the Court of Appeals.

Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law. (n)

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SEC. 3. *Where to appeal.*—An appeal under this Rule may be taken to the Court of Appeals within the period and in the manner herein provided, whether the appeal involves questions of fact, of law, or mixed questions of fact and law. (n)

SEC. 4. *Period of appeal.*—The appeal shall be taken within fifteen (15) days from notice of the award, judgment, final order or resolution, or from the date of its last publication, if publication is required by law for its effectivity, or of the denial of petitioner's motion for new trial or reconsideration duly filed in accordance with the governing law of the court or agency *a quo.* Only one (1) motion for reconsideration shall be allowed. Upon proper motion and the payment of the full amount of the docket fee 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. (n)

The right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law. Thus, one who seeks to avail of the right to appeal must comply with the requirements of the Rules. Failure to do so often leads to the loss of the right to appeal.[22]

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[22] *Neypes v. Court of Appeals*, 506 Phil. 613, 621 (2005).

The failure to timely perfect an appeal cannot simply be dismissed as a mere technicality, for it is jurisdictional.[23] Thus:

> Nor can petitioner invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a **jurisdictional** problem as it deprives the appellate court of jurisdiction over the appeal. **The failure to file the notice of appeal within the reglementary period is akin to the failure to pay the appeal fee within the prescribed period. In both cases, the appeal is not perfected in due time**.[24] [Emphases supplied]

As to the claim that the government would suffer loss of substantial amount if not allowed to recover the tax refund in the amount of more than ₱15M, the Court is of the view that said problem has been caused by petitioner's own doing or undoing. While We understand its counsel's predicament of being burdened with a heavy case load, We cannot always rule in favor of the Government. In this case, petitioner even failed to sufficiently explain its failure to observe the Rules.

Petitioner merely pointed out that due to plain oversight, the motions for extension of time and the petition for review that it filed were erroneously titled as *"Fort Bonifacio Development Corporation v. Commissioner of Internal Revenue"* when it should have been *"Commissioner of Internal Revenue v. Fort Bonifacio Development Corporation";*[25] that "on the assumption that it was respondent which filed the motion, the Court of Appeals, in its Resolution dated January 29, 2002, denied the motion for extension of time to file petition for review

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[23] *Nuñez v. GSIS Family Bank*, G.R. No. 163988, November 17, 2005, 475 SCRA 305, 320.

[24] *Supra* note 22, citing *Republic v. Court of Appeals*, 379 Phil. 92, 100-101 (2000).

[25] *Rollo*, p. 35.

on the ground of failure to pay docket and other legal fees";[26] that respondent filed a manifestation stating that the case was incorrectly titled as it was not the one who appealed the CTA decision to the CA;[27] and that in order to rectify the error, petitioner filed an Amended Petition for Review.[28] To recognize the foregoing statements would render the mandatory rule on appeals meaningless and nugatory.

The point of reference of Our discussion is not the CA's Resolution dated January 29, 2002 but its **January 27, 2003** Resolution. Records bear out that the assailed January 27, 2003 Resolution reiterated the dismissal of the petition for review and thus denied the admission of the amended petition but NOT on the basis of the earlier (January 29, 2002) resolution dismissing the petition for non-payment of docket and other legal fees as there was clearly an error in the designation of FBDC as petitioner in the first motion for extension of time filed by the CIR. Indeed, the CIR is exempted from payment of docket and other legal fees, as a government official representing the BIR.

It bears emphasizing that the dismissal of the petition for review and the denial of the amended petition were premised rather on: ***(1)*** the late filing of the original petition for review by the CIR; ***(2)*** the absence of a motion for reconsideration of the January 29, 2002 Resolution; and ***(3)*** lack of authority of Atty. Alberto R. Bomediano, Jr., legal officer of the BIR Region 8, Makati City, to pursue the case on behalf of petitioner CIR.[29]

It has been ruled that **perfection of an appeal** in the manner and within the period laid down by law is **not only mandatory but also jurisdictional**. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. At the risk of being repetitious, We

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[26] *Id.* at 36.

[27] *Id.*

[28] *Id.*

[29] *Id.* at 20.

declare that the right to appeal is not a natural right nor a part of due process. It is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law.

Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite time fixed by law. Such rules are necessary incidents to the proper, efficient and orderly discharge of judicial functions. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the fruits of his victory. Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal.[30] Undeniably, there are exceptions to this rule. Petitioner, however, did not present any circumstances that would justify the relaxation of said rule.

It need not be overemphasized that it is the responsibility of the counsel to check and keep track of the period of time left to file an appeal. He cannot escape from the inflexible observance of this rule which is jurisdictional. The rules, particularly on the statutory requirement for perfecting an appeal within the reglementary period provided, must be strictly followed. If an appeal is not taken within the period prescribed therefor, the judgment becomes final and the court loses all jurisdiction over the case.

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

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

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[30] *In the matter of the Heirship (Intestate Estates) of the late Hermogenes Rodriquez v. Robles*, G.R. No. 182645, December 4, 2009, 607 SCRA 770.

[*] Designated as additional member in lieu of Justice Antonio Eduardo B. Nachura per raffle dated August 9, 2010.

SECOND DIVISION

[G.R. No. 168842. August 11, 2010]

VICENTE GO, *petitioner, vs.* **METROPOLITAN BANK AND TRUST CO.,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; NEGOTIABLE INSTRUMENTS LAW; CROSSED CHECKS; EXPLAINED; EFFECTS THEREOF.— A check is a bill of exchange drawn on a bank payable on demand. There are different kinds of checks. In this case, crossed checks are the subject of the controversy. A crossed check is one where two parallel lines are drawn across its face or across the corner thereof. It may be crossed generally or specially. A check is crossed specially when the name of a particular banker or a company is written between the parallel lines drawn. It is crossed generally when only the words "and company" are written or nothing is written at all between the parallel lines, as in this case. It may be issued so that presentment can be made only by a bank. In order to preserve the credit worthiness of checks, jurisprudence has pronounced that crossing of a check has the following effects: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once — to one who has an account with a bank; and (c) the act of crossing the check serves as warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose, otherwise, he is not a holder in due course.

2. ID.; ID.; ID.; A WARNING THAT THE CHECK SHOULD BE DEPOSITED ONLY IN THE PAYEE'S ACCOUNT; DUTY OF THE COLLECTING BANK.— The Court has taken judicial cognizance of the practice that a check with two parallel lines in the upper left hand corner means that it could only be deposited and not converted into cash. The effect of crossing a check, thus, relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, *i.e.*, the payee named therein. The crossing of a check is a warning that the check should be deposited only in the account of the payee. Thus, it is the duty of the collecting bank to

ascertain that the check be deposited to the payee's account only.

3. ID.; ID.; ID.; AN INDORSEMENT IS NECESSARY FOR THE PROPER NEGOTIATION OF CHECKS ESPECIALLY IF THE PAYEE NAMED THEREIN OR HOLDER THEREOF IS NOT THE ONE DEPOSITING OR ENCASHING IT.— [W]e affirm the finding of the RTC that respondent bank was negligent in permitting the deposit and encashment of the crossed checks without the proper indorsement. An indorsement is necessary for the proper negotiation of checks specially if the payee named therein or holder thereof is not the one depositing or encashing it. Knowing fully well that the subject checks were crossed, that the payee was not the holder and that the checks contained no indorsement, respondent bank should have taken reasonable steps in order to determine the validity of the representations made by Chua. Respondent bank was amiss in its duty as an agent of the payee. Prudence dictates that respondent bank should not have merely relied on the assurances given by Chua.

4. ID.; BANKS AND BANKING; ACCEPTING FOR DEPOSIT THE CROSSED CHECKS WITHOUT INDORSEMENT AND FAILURE TO VERIFY THE AUTHENTICITY OF THE NEGOTIATION OF THE CHECKS CONSTITUTE NEGLIGENCE; COLLECTING BANK IS REQUIRED TO EXERCISE EXTRAORDINARY DILIGENCE TO SCRUTINIZE CHECKS DEPOSITED WITH IT TO DETERMINE THEIR GENUINENESS AND REGULARITY; AWARD OF MORAL DAMAGES, WARRANTED.— Negligence was committed by respondent bank in accepting for deposit the crossed checks without indorsement and in not verifying the authenticity of the negotiation of the checks. The law imposes a duty of extraordinary diligence on the collecting bank to scrutinize checks deposited with it, for the purpose of determining their genuineness and regularity. As a business affected with public interest and because of the nature of its functions, the banks are under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of the relationship. The fact that this arrangement had been practiced for three years without Mr. Go/Hope Pharmacy raising any objection does not detract from the duty of the bank to exercise extraordinary

diligence. Thus, the Decision of the RTC, as affirmed by the CA, holding respondent bank liable for moral damages is sufficient to remind it of its responsibility to exercise extraordinary diligence in the course of its business which is imbued with public interest.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioner.
E.F. Rosello & Associates Law Office 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 May 27, 2005 and the Resolution[2] dated August 31, 2005 of the Court of Appeals (CA) in CA-G.R. CV No. 63469.

The Facts

The facts of the case are as follows:

Petitioner filed two separate cases before the Regional Trial Court (RTC) of Cebu. Civil Case No. CEB-9713 was filed by petitioner against Ma. Teresa Chua (Chua) and Glyndah Tabañag (Tabañag) for a sum of money with preliminary attachment. Civil Case No. CEB-9866 was filed by petitioner for a sum of money with damages against herein respondent Metropolitan Bank and Trust Company (Metrobank) and Chua.[3]

In both cases, petitioner alleged that he was doing business under the name "Hope Pharmacy" which sells medicine and other pharmaceutical products in the City of Cebu. Petitioner

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[1] Penned by Associate Justice Vicente L. Yap, with Associate Justices Isaias P. Dicdican and Enrico A. Lanzanas, concurring; CA *rollo*, pp. 184-195.

[2] *Id.* at 226-228.

[3] *Id.* at 52.

had in his employ Chua as his pharmacist and trustee or caretaker of the business; Tabañag, on the other hand, took care of the receipts and invoices and assisted Chua in making deposits for petitioner's accounts in the business operations of Hope Pharmacy.[4]

In CEB-9713, petitioner claimed that there were unauthorized deposits and encashments made by Chua and Tabañag in the total amount of One Hundred Nine Thousand Four Hundred Thirty-three Pesos and Thirty Centavos (₱109,433.30). He questioned particularly the following:

(1) FEBTC Check No. 251111 dated April 29, 1990 in the amount of ₱22,635.00 which was issued by plaintiff's [petitioner's] customer Loy Libron in payment of the stocks purchased was deposited under Metrobank Savings Account No. 420-920-6 belonging to the defendant Ma. Teresa Chua;

(2) RCBC Checks Nos. 330958 and 294515, which were in blank but pre-signed by him (plaintiff [petitioner] Vicente Go) for convenience and intended for payment to plaintiff's [petitioner's] suppliers, were filled up and dated September 22, 1990 and September 7, 1990 in the amount of ₱30,000.00 and ₱50,000.00 respectively, and were deposited with defendant Chua's aforestated account with Metrobank;

(3) PBC Check No. 005874, drawn by Elizabeth Enriquez payable to the Hope Pharmacy in the amount of ₱6,798.30 was encashed by the defendant Glyndah Tabañag;

(4) There were unauthorized deposits and encashments in the total sum of ₱109,433.30[5];

In CEB-9866, petitioner averred that there were thirty-two (32) checks with Hope Pharmacy as payee, for varying sums, amounting to One Million Four Hundred Ninety-Two Thousand Five Hundred Ninety-Five Pesos and Six Centavos (₱1,492,595.06), that were not endorsed by him but were deposited under the personal account of Chua with respondent bank,[6] and these are the following:

[4] *Id.*

[5] *Id.* at 52-53.

[6] *Id.* at 53.

CHECK NO.	DATE	AMOUNT
FEBTC 251166	5-23-90	₱ 65,214.88
FEBTC 239399	5-08-90	24,917.75
FEBTC 251350	7-24-90	212,326.56
PBC 279887	6-27-90	2,000.00
PBC 162387	1-24-90	6,300.00
PBC 162317	12-22-89	3,300.00
PBC 279881	6-23-90	7,650.00
PBC 009005	7-21-89	3,584.00
PBC 279771	5-14-90	3,600.00
PBC 279726	4-25-90	2,000.00
PBC 168004	3-22-90	2,800.00
PBC 167963	3-07-90	1,700.00
FEBTC 267793	8-20-90	80,085.66
FEBTC 267761	7-21-90	45,304.63
FEBTC 251252	6-03-90	64,000.00
FEBTC 267798	8-15-90	40,078.67
PBC 367292	8-06-90	2,100.00
PBC 376445	9-26-90	1,125.00
PBC 009056	8-07-89	2,500.00
PBC 376402	9-12-90	12,105.40
BPI 197074	7-17-90	5,240.00
BPI 197051	7-06-90	1,350.00
BPI 204358	9-19-90	5,402.60
BPI 204252	7-31-90	6,715.60
FEBTC 251171	6-27-90	83,175.54
FEBTC 251165	6-28-90	231,936.10
FEBTC 251251	6-30-90	47,087.25
FEBTC 251163	6-21-90	170,600.85
FEBTC 251170	5-23-90	16,440.00
FEBTC 251112	5-31-90	211,592.69
FEBTC 239400	6-15-90	47,664.03
FEBTC 251162	6-22-90	82,697.85
		₱1,492,595.06[7]

Petitioner claimed that the said checks were crossed checks payable to Hope Pharmacy only; and that without the participation and connivance of respondent bank, the checks could not have been accepted for deposit to any other account, except petitioner's account.[8]

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[7] *Id.*

[8] *Id.*

Thus, in CEB-9866, petitioner prayed that Chua and respondent bank be ordered, jointly and severally, to pay the principal amount of ₱1,492,595.06, plus interest at 12% from the dates of the checks, until the obligation shall have been fully paid; moral damages of Five Hundred Thousand Pesos (₱500,000.00); exemplary damages of ₱500,000.00; and attorney's fees and costs in the amount of ₱500,000.00.[9]

On February 23, 1995, the RTC rendered a Joint Decision,[10] the dispositive portion of which reads:

> WHEREFORE, premises considered, the Court hereby renders judgment dismissing plaintiff Vicente Go's complaint against the defendant Ma. Teresa Chua and Glyndah Tabañag in Civil Case No. CEB-9713, as well as plaintiff's complaint against the same defendant Ma. Teresa Chua in Civil Case No. CEB-9866.
>
> Plaintiff Vicente Go is moreover sentenced to pay ₱50,000.00 in attorney's fees and litigation expenses to the defendants Ma. Teresa Chua and Glyndah Tabañag in Civil Case No. CEB-9713.
>
> Defendant Metrobank in Civil Case No. CEB-9866 is hereby condemned to pay unto plaintiff Vicente Go/Hope Pharmacy the amount of ₱50,000.00 as moral damages, and attorney's fees and litigation expenses in the aggregate sum of ₱25,000.00.
>
> The defendant Metrobank's crossclaim against its co-defendant Ma. Teresa Chua in Civil Case No. CEB-9866 is dismissed for lack of merit.
>
> No special pronouncement as to costs in both instances.
>
> SO ORDERED.[11]

In striking down the complaint of the petitioner against Chua and Tabañag in CEB-9713, the RTC made the following findings:

> (1) FEBTC Check No. 251111, dated April 29, 1990, in the amount of ₱22,635.00 payable to cash, was drawn by Loy Libron in payment of her purchases of medicines and other drugs which Ma.

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[9] *Id.* at 54.

[10] Penned by Judge Renato C. Dacudao; *id.* at 68.

[11] *Id.*

Teresa Chua was selling side by side with the medicines and drugs of the Hope Pharmacy, for which she (Maritess) was granted permission by its owner, Mr. Vicente Chua. These medicines and drugs from Thailand were Maritess' sideline, and were segregated from the stocks of Hope Pharmacy; x x x.

(2) RCBC Check Nos. 294519 and 330958 were checks belonging to plaintiff Vicente Go payable to cash x x x; these checks were replacements of the sums earlier advanced by Ma. Teresa Chua, but which were deposited in the account of Vicente Go with RCBC, as shown by the deposit slips x x x, and confirmed by the statement of account of Vicente Go with RCBC.

(3) Check No. PCIB 005374 drawn by Elizabeth Enriquez payable to Hope Pharmacy/Cash in the amount of ₱6,798.30 dated September 6, 1990, was admittedly encashed by the defendant, Glyndah Tabañag. As per instruction by Vicente Go, Glyndah requested the drawer to insert the word "Cash," so that she could encash the same with PCIB, to meet the Hope Pharmacy's overdraft.

The listings x x x, made by Glyndah Tabañag and Flor Ouano will show that the corresponding amounts covered thereby were in fact deposited to the account of Mr. Vicente Go with RCBC; the Bank Statement of Mr. Go x x x, confirms defendants' claim independently of the deposit slip[s] x x x.[12]

The trial court absolved Chua in CEB-9866 because of the finding that the subject checks in CEB-9866 were payments of petitioner for his loans or borrowings from the parents of Ma. Teresa Chua, through Ma. Teresa, who was given the total discretion by petitioner to transfer money from the offices of Hope Pharmacy to pay the advances and other obligations of the drugstore; she was also given the full discretion where to source the funds to cover the daily overdrafts, even to the extent of borrowing money with interest from other persons.[13]

While the trial court exonerated Chua in CEB-9866, it however declared respondent bank liable for being negligent in allowing the deposit of crossed checks without the proper indorsement.

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[12] *Id.* at 64-65.

[13] *Id.* at 66.

Petitioner filed an appeal before the CA. On May 27, 2005, the CA rendered a Decision,[14] the *fallo* of which reads:

WHEREFORE, except for the award of attorney's fees and litigation expenses in favor of defendants Chua and Tabañag which is hereby deleted, the decision of the lower court is hereby **AFFIRMED**.

SO ORDERED.[15]

Hence, this petition.

The Issue

Petitioner presented this sole issue for resolution:

The Court of Appeals Erred In Not Holding Metrobank Liable For Allowing The Deposit, Of Crossed Checks Which Were Issued In Favor Of And Payable To Petitioner And Without Being Indorsed By The Petitioner, To The Account Of Maria Teresa Chua.[16]

The Ruling of the Court

A check is a bill of exchange drawn on a bank payable on demand.[17] There are different kinds of checks. In this case, crossed checks are the subject of the controversy. A crossed check is one where two parallel lines are drawn across its face or across the corner thereof. It may be crossed generally or specially.[18]

A check is crossed specially when the name of a particular banker or a company is written between the parallel lines drawn. It is crossed generally when only the words "and company"

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[14] *Supra* note 1, at 195.

[15] *Id.*

[16] *Rollo*, p. 10.

[17] Sec. 185, Negotiable Instruments Law.

[18] *Bataan Cigar and Cigarette Factory, Inc. v. Court of Appeals*, G.R. No. 93048, March 3, 1994, 230 SCRA 643, 647; citing *Associated Bank v. Court of Appeals*, G.R. No. 89802, May 7, 1992, 208 SCRA 465; *State Investment House v. Intermediate Appellate Court*, G.R. No. 72764, 175 SCRA 310; and *Vicente B. de Ocampo & Co. v. Gatchalian*, 113 Phil. 574 (1961).

are written or nothing is written at all between the parallel lines, as in this case. It may be issued so that presentment can be made only by a bank.[19]

In order to preserve the credit worthiness of checks, jurisprudence has pronounced that crossing of a check has the following effects: (a) the check may not be encashed but only deposited in the bank; (b) the check may be negotiated only once — to one who has an account with a bank; and (c) the act of crossing the check serves as warning to the holder that the check has been issued for a definite purpose so that he must inquire if he has received the check pursuant to that purpose, otherwise, he is not a holder in due course.[20]

The Court has taken judicial cognizance of the practice that a check with two parallel lines in the upper left hand corner means that it could only be deposited and not converted into cash. The effect of crossing a check, thus, relates to the mode of payment, meaning that the drawer had intended the check for deposit only by the rightful person, *i.e.*, the payee named therein.[21] The crossing of a check is a warning that the check should be deposited only in the account of the payee. Thus, it is the duty of the collecting bank to ascertain that the check be deposited to the payee's account only.[22]

In the instant case, there is no dispute that the subject 32 checks with the total amount of ₱1,492,595.06 were crossed checks with petitioner as the named payee. It is the submission of petitioner that respondent bank should be held accountable for the entire amount of the checks because it accepted the checks for deposit under Chua's account despite the fact that the checks were crossed and that the payee named therein was not Chua.

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[19] *Id.*

[20] *Bataan Cigar and Cigarette Factory, Inc. v. Court of Appeals*, *supra* note 18, at 648.

[21] *Yang v. Court of Appeals*, 456 Phil. 378, 381-382 (2003).

[22] *Philippine Commercial International Bank v. Court of Appeals*, 403 Phil. 361, 364 (2001).

In its defense, respondent bank countered that petitioner is not entitled to reimbursement of the total sum of ₱1,492,595.06 from either Maria Teresa Chua or respondent bank because petitioner was not damaged thereby.[23]

Respondent bank's contention is meritorious. Respondent bank should not be held liable for the entire amount of the checks considering that, as found by the RTC and affirmed by the CA, the checks were actually given to Chua as payments by petitioner for loans obtained from the parents of Chua. Furthermore, petitioner's non-inclusion of Chua and Tabañag in the petition before this Court is, in effect, an admission by the petitioner that Chua, in representation of her parents, had rightful claim to the proceeds of the checks, as payments by petitioner for money he borrowed from the parents of Chua. Therefore, petitioner suffered no pecuniary loss in the deposit of the checks to the account of Chua.

However, we affirm the finding of the RTC that respondent bank was negligent in permitting the deposit and encashment of the crossed checks without the proper indorsement. An indorsement is necessary for the proper negotiation of checks specially if the payee named therein or holder thereof is not the one depositing or encashing it. Knowing fully well that the subject checks were crossed, that the payee was not the holder and that the checks contained no indorsement, respondent bank should have taken reasonable steps in order to determine the validity of the representations made by Chua. Respondent bank was amiss in its duty as an agent of the payee. Prudence dictates that respondent bank should not have merely relied on the assurances given by Chua.

Respondent presented Jonathan Davis as its witness in the trial before the RTC. He was the officer-in-charge and ranked second to the assistant vice president of the bank at the time material to this case. Davis' testimony was summarized by the RTC as follows:

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[23] *Rollo*, p. 46.

Davis also testified that he allowed Ma. Teresa Chua to deposit the checks subject of this litigation which were payable to Hope Pharmacy. According to him, it was a privilege given to valued customers on a highly selective case to case basis, for marketing purposes, based on trust and confidence, because Ma. Teresa [Chua] told him that those checks belonged to her as payment for the advances she extended to Mr. Go/Hope Pharmacy. x x x

Davis stressed that Metrobank granted the privilege to Ma. Teresa Chua that for every check she deposited with Metrobank, the same would be credited outright to her account, meaning that she could immediately make use of the amount credited; this arrangement went on for about three years, without any complaint from Mr. Go/Hope Pharmacy, and Ma. Teresa Chua made warranty that she would reimburse Metrobank if Mr. Go complained. He did not however call or inform Mr. Go about this arrangement, because their bank being a Chinese bank, transactions are based on trust and confidence, and for him to inform Mr. Vicente Go about it, was tantamount to questioning the integrity of their client, Ma. Teresa Chua. Besides, this special privilege or arrangement would not bring any monetary gain to the bank.[24]

Negligence was committed by respondent bank in accepting for deposit the crossed checks without indorsement and in not verifying the authenticity of the negotiation of the checks. The law imposes a duty of extraordinary diligence on the collecting bank to scrutinize checks deposited with it, for the purpose of determining their genuineness and regularity.[25] As a business affected with public interest and because of the nature of its functions, the banks are under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of the relationship.[26] The fact that this arrangement had been practiced for three years without Mr. Go/Hope Pharmacy raising any objection does not detract from the duty of the bank to exercise extraordinary diligence. Thus,

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[24] CA *rollo*, p. 64.

[25] *Philippine National Bank v. Rodriguez,* G.R. No. 170325, September 26, 2008, 566 SCRA 513, 518; *Associated Bank v. Court of Appeals*, *supra* note 18.

[26] *Philippine Commercial International Bank v. Court of Appeals*, *supra* note 22.

the Decision of the RTC, as affirmed by the CA, holding respondent bank liable for moral damages is sufficient to remind it of its responsibility to exercise extraordinary diligence in the course of its business which is imbued with public interest.

WHEREFORE, the Decision dated May 27, 2005 and the Resolution dated August 31, 2005 of the Court of Appeals in CA-G.R. CV No. 63469 are hereby *AFFIRMED.*

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 170830. August 11, 2010]

PHIMCO INDUSTRIES, INC., *petitioner, vs.* **PHIMCO INDUSTRIES LABOR ASSOCIATION (PILA), and ERLINDA VAZQUEZ, RICARDO SACRISTAN, LEONIDA CATALAN, MAXIMO PEDRO, NATHANIELA DIMACULANGAN,* RODOLFO MOJICO, ROMEO CARAMANZA, REYNALDO GANITANO, ALBERTO BASCONCILLO,** and RAMON FALCIS, in their capacity as officers of PILA, and ANGELITA BALOSA,*** DANILO BANAAG, ABRAHAM CADAY, ALFONSO CLAUDIO, FRANCISCO DALISAY,**** ANGELITO DEJAN, ***** PHILIP GARCES, NICANOR ILAGAN, FLORENCIO**

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* Spelled as "Nathaniel Dimaculangan" in other parts of the record.

** Spelled as "Alberto Basconillo" and "Alberto Basconilo" in other parts of the record.

*** Spelled as "Angelito Balosa" in other parts of the record.

**** Known as "Francisco Dalisay, Jr." in other parts of the record.

***** Spelled as "Angelito Dizon" in other parts of the record.

LIBONGCOGON,**** NEMESIO MAMONONG, TEOFILO MANALILI, ALFREDO PEARSON,******* MARIO PEREA,******** RENATO RAMOS, MARIANO ROSALES, PABLO SARMIENTO, RODOLFO TOLENTINO, FELIPE VILLAREAL, ARSENIO ZAMORA, DANILO BALTAZAR, ROGER CABER,********* REYNALDO CAMARIN, BERNARDO CUADRA,********** ANGELITO DE GUZMAN, GERARDO FELICIANO, *********** ALEX IBAÑEZ, BENJAMIN JUAN, SR., RAMON MACAALAY, GONZALO MANALILI, RAUL MICIANO, HILARIO PEÑA, TERESA PERMOCILLO,************ ERNESTO RIO, RODOLFO SANIDAD, RAFAEL STA. ANA, JULIAN TUGUIN and AMELIA ZAMORA, as members of PILA,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATIONS; LABOR RELATIONS; STRIKE; TO BE LEGITIMATE, THE SAME SHOULD NOT BE ANTITHETICAL TO PUBLIC WELFARE, AND MUST BE PURSUED WITHIN LEGAL BOUNDS; ELABORATED.—** A strike is the most powerful weapon of workers in their struggle with management in the course of setting their terms and conditions of employment. Because it is premised on the concept of economic war between labor and management, it is a weapon that can either breathe life to or destroy the union and its members, and one that must also necessarily affect management and its members. In light of these effects, the

****** Spelled as "Glorencio Liboncogon" in other parts of the record.

******* Spelled as "Alfredo Peason" in other parts of the record.

******** Spelled as "Mario Pedro" in other parts of the record.

********* Spelled as "Roger Cabu" in other parts of the record.

********** Spelled as "Fernando Cuadra" in other parts of the record.

*********** Spelled as "Genaro Felicario" and "Genaro Feliciano" in other parts of the record.

************ Spelled as "Theresa Permocillo" in other parts of the record.

decision to declare a strike must be exercised responsibly and must always rest on rational basis, free from emotionalism, and unswayed by the tempers and tantrums of hot heads; it must focus on legitimate union interests. To be legitimate, a strike should not be antithetical to public welfare, and must be pursued within legal bounds. The right to strike as a means of attaining social justice is never meant to oppress or destroy anyone, least of all, the employer.

2. **ID.; ID.; ID.; REQUISITES TO BE VALID; FAILURE OF THE UNION TO COMPLY THEREWITH RENDERS THE STRIKE ILLEGAL.—** Since strikes affect not only the relationship between labor and management but also the general peace and progress of the community, the law has provided limitations on the right to strike. Procedurally, for a strike to be valid, it must comply with Article 263 of the Labor Code, which requires that: (a) a notice of strike be filed with the Department of Labor and Employment (*DOLE*) 30 days before the intended date thereof, or 15 days in case of unfair labor practice; (b) a strike vote be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in a meeting called for that purpose; and (c) a notice be given to the DOLE of the results of the voting at least seven days before the intended strike. These requirements are mandatory, and the union's failure to comply renders the strike illegal.

3. **ID.; ID.; ID.; ID.; COOLING-OFF PERIOD, PURPOSE OF; SEVEN-DAY STRIKE BAN, PURPOSE OF; PROCEDURAL REQUIREMENTS COMPLIED WITH.—** The 15 to 30-day cooling-off period is designed to afford the parties the opportunity to amicably resolve the dispute with the assistance of the NCMB conciliator/mediator, while the seven-day strike ban is intended to give the DOLE an opportunity to verify whether the projected strike really carries the imprimatur of the majority of the union members. In the present case, the respondents fully satisfied the legal procedural requirements; a strike notice was filed on March 9, 1995; a strike vote was reached on March 16, 1995; notification of the strike vote was filed with the DOLE on March 17, 1995; and the actual strike was launched only on April 25, 1995.

4. **ID.; ID.; ID.; CONSIDERED ILLEGAL WHERE THE MEANS EMPLOYED ARE ILLEGAL; BLOCKING OF THE FREE**

INGRESS TO AND EGRESS FROM THE EMPLOYER'S PREMISES IS PROHIBITED.— Despite the validity of the purpose of a strike and compliance with the procedural requirements, a strike may still be held illegal where the ***means employed*** are illegal. The means become illegal when they come within the prohibitions under Article 264(e) of the Labor Code which provides: No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares. **Based on our examination of the evidence which the LA viewed differently from the NLRC and the CA, we find the PILA strike illegal.** We intervene and rule even on the evidentiary and factual issues of this case as both the NLRC and the CA grossly misread the evidence, leading them to inordinately incorrect conclusions, both factual and legal. While the strike undisputably had not been marred by actual violence and patent intimidation, the picketing that respondent PILA officers and members undertook as part of their strike activities effectively blocked the free ingress to and egress from PHIMCO's premises, thus preventing non-striking employees and company vehicles from entering the PHIMCO compound. In this manner, the picketers violated Article 264(e) of the Labor Code.

5. ID.; ID.; ID.; DISTINGUISHED FROM PICKETING.— To strike is to withhold or to stop work by the concerted action of employees as a result of an industrial or labor dispute. The work stoppage may be accompanied by picketing by the striking employees outside of the company compound. While a strike focuses on stoppage of work, picketing focuses on publicizing the labor dispute and its incidents to inform the public of what is happening in the company struck against. A picket simply means to march to and from the employer's premises, usually accompanied by the display of placards and other signs making known the facts involved in a labor dispute. It is a strike activity separate and different from the actual stoppage of work.

6. ID.; ID.; ID.; PICKET; TAINTED WITH ILLEGALITY EVEN IF IT WAS MOVING, PEACEFUL AND NOT ATTENDED BY VIOLENCE, WHERE THE SAME EFFECTIVELY BLOCKED ENTRY TO AND EXIT FROM THE COMPANY PREMISES.— While the right of employees to publicize their dispute falls within the protection of freedom of expression and the right

to peaceably assemble to air grievances, these rights are by no means absolute. Protected picketing does not extend to blocking ingress to and egress from the company premises. That the picket was moving, was peaceful and was not attended by actual violence may not free it from taints of illegality if the picket effectively blocked entry to and exit from the company premises.

7. ID.; ID.; ID.; ID.; MAY NOT AGGRESSIVELY INTERFERE WITH THE RIGHT OF PEACEFUL INGRESS TO AND EGRESS FROM THE EMPLOYER'S SHOP OR OBSTRUCT PUBLIC THOROUGHFARES.— With a virtual human blockade and real physical obstructions (benches and makeshift structures both outside and inside the gates), it was pure conjecture on the part of the NLRC to say that "[t]he non-strikers and their vehicles were x x x free to get in and out of the company compound undisturbed by the picket line." Notably, aside from non-strikers who wished to report for work, company vehicles likewise could not enter and get out of the factory because of the picket and the physical obstructions the respondents installed. The blockade went to the point of causing the build up of traffic in the immediate vicinity of the strike area, as shown by photographs. This, by itself, renders the picket a prohibited activity. Pickets may not aggressively interfere with the right of peaceful ingress to and egress from the employer's shop or obstruct public thoroughfares; picketing is not peaceful where the sidewalk or entrance to a place of business is obstructed by picketers parading around in a circle or lying on the sidewalk.

8. ID.; ID.; ID.; ID.; NOT CONSIDERED AN INSIGNIFICANT OBSTRUCTIVE ACT WHERE THE PHYSICAL OBSTRUCTIONS AND HUMAN BLOCKADE OF THE ENTRY AND EXIT POINTS OF THE COMPANY PREMISES PARALYZED THE OPERATIONS OF THE COMPANY.— The "peaceful moving picket" that the NLRC noted, influenced apparently by the certifications (Mayor delos Reyes, Fr. Adeviso, Fr. Fausto and *Barangay* Secretary Gesmundo, presented in evidence by the respondents, was "peaceful" only because of the absence of violence during the strike, but the obstruction of the entry and exit points of the company premises caused by the respondents' picket was by no means a "petty blocking act" or an "insignificant obstructive act." As we have stated, while the picket was moving, the

movement was in circles, very close to the gates, with the strikers in a hand-to-shoulder formation without a break in their ranks, thus preventing non-striking workers and vehicles from coming in and getting out. Supported by actual blocking benches and obstructions, what the union demonstrated was a very persuasive and quietly intimidating strategy whose chief aim was to paralyze the operations of the company, not solely by the work stoppage of the participating workers, but by excluding the company officials and non-striking employees from access to and exit from the company premises. No doubt, the strike caused the company operations considerable damage, as the NLRC itself recognized when it ruled out the reinstatement of the dismissed strikers.

9. **ID.; ID.; ID.; ID.; CONSIDERED UNLAWFUL WHERE THE SAME WAS CARRIED ON WITH VIOLENCE, COERCION OR INTIMIDATION; ELABORATED.—** Article 264(e) of the Labor Code tells us that picketing carried on with violence, coercion or intimidation is unlawful. According to American jurisprudence, what constitutes unlawful intimidation depends on the totality of the circumstances. Force threatened is the equivalent of force exercised. There may be unlawful intimidation without direct threats or overt acts of violence. Words or acts which are calculated and intended to cause an ordinary person to fear an injury to his person, business or property are equivalent to threats. The manner in which the respondent union officers and members conducted the picket in the present case had created such an intimidating atmosphere that non-striking employees and even company vehicles did not dare cross the picket line, even with police intervention. Those who dared cross the picket line were stopped. The compulsory arbitration hearings bear this out.

10. **ID.; ID.; ID.; ID.; WHILE THE LAW PROTECTS THE RIGHTS OF THE LABORER, IT AUTHORIZES NEITHER THE OPPRESSION NOR THE DESTRUCTION OF THE EMPLOYER.—** The photographs of the strike scene, also on record, depict the true character of the picket; while moving, it, in fact, constituted a human blockade, obstructing free ingress to and egress from the company premises, reinforced by benches planted directly in front of the company gates. The photographs do not lie – these photographs clearly show that the picketers were going in circles, without any break in their

ranks or closely bunched together, right in front of the gates. Thus, company vehicles were unable to enter the company compound, and were backed up several meters into the street leading to the company gates. Despite all these clear pieces of evidence of illegal obstruction, the NLRC looked the other way and chose not to see the unmistakable violations of the law on strikes by the union and its respondent officers and members. Needless to say, while the law protects the rights of the laborer, it authorizes neither the oppression nor the destruction of the employer. For grossly ignoring the evidence before it, the NLRC committed grave abuse of discretion; for supporting these gross NLRC errors, the CA committed its own reversible error.

11. **ID.; ID.; ID.; EFFECTS OF ILLEGAL STRIKES ON THE PARTICIPATING WORKERS AND UNION OFFICERS.—** We explained in *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.* that the effects of illegal strikes, outlined in Article 264 of the Labor Code, make a distinction between participating workers and union officers. The services of an ordinary striking worker cannot be terminated for mere participation in an illegal strike; proof must be adduced showing that he or she committed illegal acts during the strike. The services of a participating union officer, on the other hand, may be terminated, not only when he actually commits an illegal act during a strike, but also if he knowingly participates in an illegal strike.

12. **ID.; ID.; ID.; ID.; THE STRIKER MUST BE IDENTIFIED BY SUBSTANTIAL EVIDENCE TO JUSTIFY THE IMPOSITION OF THE PENALTY OF DISMISSAL.—** In all cases, the striker must be identified. But proof beyond reasonable doubt is not required; substantial evidence, available under the attendant circumstances, suffices to justify the imposition of the penalty of dismissal on participating workers and union officers as above described.

13. **ID.; ID.; ID.; ID.; IMPOSITION OF THE PENALTY OF DISMISSAL UPON THE UNION OFFICERS AND MEMBERS WHO COMMITTED ILLEGAL ACTS IN THE CONDUCT OF THE UNION'S STRIKE, WARRANTED.—** In the present case, respondents Erlinda Vazquez, Ricardo Sacristan, Leonida Catalan, Maximo Pedro, Nathaniela Dimaculangan, Rodolfo Mojico, Romeo Caramanza, Reynaldo Ganitano, Alberto

Basconcillo, and Ramon Falcis *stand to be dismissed as **participating union officers***, pursuant to Article 264(a), paragraph 3, of the Labor Code. This provision imposes the penalty of dismissal on "any union officer who knowingly participates in an illegal strike." The law grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment. PHIMCO was able to individually identify the ***participating union members*** thru the affidavits of PHIMCO employees Martimer Panis and Rodrigo A. Ortiz, and Personnel Manager Francis Ferdinand Cinco, and the photographs of Joaquin Aguilar. xxx. For participating in illegally blocking ingress to and egress from company premises, these union members stand to be dismissed for their illegal acts in the conduct of the union's strike.

14. **ID.; ID.; TERMINATION OF EMPLOYMENT; DUE PROCESS REQUIREMENT; TWO-NOTICE REQUIREMENT.—** We find, however, that PHIMCO violated the requirements of due process of the Labor Code when it dismissed the respondents. Under Article 277(b) of the Labor Code, the employer must send the employee, who is about to be terminated, a written notice stating the cause/s for termination and must give the employee the opportunity to be heard and to defend himself. We explained in *Suico v. National Labor Relations Commission,* that Article 277(b), in relation to Article 264(a) and (e) of the Labor Code recognizes the right to due process of all workers, without distinction as to the cause of their termination, even if the cause was their supposed involvement in strike-related violence prohibited under Article 264(a) and (e) of the Labor Code. To meet the requirements of due process in the dismissal of an employee, an employer must furnish him or her with two (2) written notices: (1) a written notice specifying the grounds for termination and *giving the employee a reasonable opportunity to explain his side* and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee.

15. **ID.; ID.; ID.; ID.; ID.; THE EMPLOYEES DISMISSED FOR JUST CAUSE ARE ENTITLED TO AN AWARD OF NOMINAL DAMAGES FOR THE VIOLATION OF THEIR RIGHT TO STATUTORY DUE PROCESS.—** Under the

circumstances, where evidence sufficient to justify the penalty of dismissal has been adduced but the workers concerned were not accorded their essential due process rights, our ruling in *Agabon v. NLRC* finds full application; the employer, despite the just cause for dismissal, must pay the dismissed workers nominal damages as indemnity for the violation of the workers' right to statutory due process. Prevailing jurisprudence sets the amount of nominal damages at ₱30,000.00, which same amount we find sufficient and appropriate in the present case.

APPEARANCES OF COUNSEL

King Capuchino Tan & Associates for petitioner.
Amoroso Amoroso & Associates Law Office for respondents.

D E C I S I O N

BRION, *J*.:

Before us is the petition for review on *certiorari*[1] filed by petitioner Phimco Industries, Inc. (*PHIMCO*), seeking to reverse and set aside the decision,[2] dated February 10, 2004, and the resolution,[3] dated December 12, 2005, of the Court of Appeals (*CA*) in CA-G.R. SP No. 70336. The assailed CA decision dismissed PHIMCO's petition for *certiorari* that challenged the resolution, dated December 29, 1998, and the decision, dated February 20, 2002, of the National Labor Relations Commission (*NLRC*); the assailed CA resolution denied PHIMCO's subsequent motion for reconsideration.

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

[2] Penned by Associate Justice Juan Q. Enriquez, Jr., with the concurrence of Associate Justices Roberto A. Barrios and Arsenio J. Magpale; *rollo*, pp. 8-15.

[3] Penned by Associate Justice Roberto A. Barrios, with the concurrence of Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso; *id.* at 17-19.

FACTUAL BACKGROUND

The facts of the case, gathered from the records, are briefly summarized below.

PHIMCO is a corporation engaged in the production of matches, with principal address at Phimco Compound, Felix Manalo St., Sta. Ana, Manila. Respondent Phimco Industries Labor Association (*PILA*) is the duly authorized bargaining representative of PHIMCO's daily-paid workers. The 47 individually named respondents are PILA officers and members.

When the last collective bargaining agreement was about to expire on December 31, 1994, PHIMCO and PILA negotiated for its renewal. The negotiation resulted in a deadlock on economic issues, mainly due to disagreements on salary increases and benefits.

On March 9, 1995, PILA filed with the National Conciliation and Mediation Board (*NCMB)* a Notice of Strike on the ground of the bargaining deadlock. Seven (7) days later, or on March 16, 1995, the union conducted a strike vote; a majority of the union members voted for a strike as its response to the bargaining impasse. On March 17, 1995, PILA filed the strike vote results with the NCMB. Thirty-five (35) days later, or on April 21, 1995, PILA staged a strike.

On May 3, 1995, PHIMCO filed with the NLRC a petition for preliminary injunction and temporary restraining order (*TRO*), to enjoin the strikers from preventing – through force, intimidation and coercion – the ingress and egress of non-striking employees into and from the company premises. On May 15, 1995, the NLRC issued an *ex-parte* TRO, effective for a period of twenty (20) days, or until June 5, 1995.

On June 23, 1995, PHIMCO sent a letter to thirty-six (36) union members, directing them to explain within twenty-four (24) hours why they should not be dismissed for the illegal acts they committed during the strike. Three days later, or on June 26, 1995, the thirty-six (36) union members were informed of their dismissal.

On July 6, 1995, PILA filed a complaint for unfair labor practice and illegal dismissal (*illegal dismissal case*) with the NLRC. The case was docketed as NLRC NCR Case No. 00-07-04705-95, and raffled to Labor Arbiter (*LA*) Pablo C. Espiritu, Jr.

On July 7, 1995, then Acting Labor Secretary Jose S. Brillantes assumed jurisdiction over the labor dispute, and ordered all the striking employees (except those who were handed termination papers on June 26, 1995) to return to work within twenty-four (24) hours from receipt of the order. The Secretary ordered PHIMCO to accept the striking employees, under the same terms and conditions prevailing prior to the strike.[4] On the same day, PILA ended its strike.

On August 28, 1995, PHIMCO filed a Petition to Declare the Strike Illegal (*illegal strike case*) with the NLRC, with a prayer for the dismissal of PILA officers and members who knowingly participated in the illegal strike. PHIMCO claimed that the strikers prevented ingress to and egress from the PHIMCO compound, thereby paralyzing PHIMCO's operations. The case was docketed as NLRC NCR Case No. 00-08-06031-95, and raffled to LA Jovencio Ll. Mayor.

On March 14, 1996, the respondents filed their Position Paper in the illegal strike case. They countered that they complied with all the legal requirements for the staging of the strike, they put up no barricade, and conducted their strike peacefully, in an orderly and lawful manner, without incident.

LA Mayor decided the case on February 4, 1998,[5] and found the strike illegal; the respondents committed prohibited acts

[4] In *Phimco Industries, Inc. v. Actg. Sec. of Labor Brillantes* (364 Phil. 402, 410 [1999]), we held that the labor secretary acted with grave abuse of discretion in assuming jurisdiction over a labor dispute without any showing that the disputants were engaged in an industry indispensable to national interest; PHIMCO, a match factory, though of value, can hardly be considered as an industry "indispensable to the national interest" as it cannot be in the same category as "generation or distribution of energy, or those undertaken by banks, hospitals, and export-oriented industries."

[5] *Rollo,* pp. 60-80.

during the strike by blocking the ingress to and egress from PHIMCO's premises and preventing the non-striking employees from reporting for work. He observed that it was not enough that the picket of the strikers was a moving picket, since the strikers should allow the free passage to the entrance and exit points of the company premises. Thus, LA Mayor declared that the respondent employees, PILA officers and members, have lost their employment status.

On March 5, 1998, PILA and its officers and members appealed LA Mayor's decision to the NLRC.

THE NLRC RULING

The NLRC decided the appeal on December 29, 1998, and set aside LA Mayor's decision.[6] The NLRC did not give weight to PHIMCO's evidence, and relied instead on the respondents' evidence showing that the union conducted a peaceful moving picket.

On January 28, 1999, PHIMCO filed a motion for reconsideration in the illegal strike case.[7]

In a parallel development, LA Espiritu decided the union's illegal dismissal case on March 2, 1999. He ruled the respondents' dismissal as illegal, and ordered their reinstatement with payment of backwages. PHIMCO appealed LA Espiritu's decision to the NLRC.

Pending the resolution of PHIMCO's motion for reconsideration in the illegal strike case and the appeal of the illegal dismissal case, PHIMCO moved for the consolidation of the two (2) cases. The NLRC acted favorably on the motion and consolidated the two (2) cases in its Order dated August 5, 1999.

On February 20, 2002, the NLRC rendered its Decision in the consolidated cases, ruling totally in the union's favor.[8] It dismissed the appeal of the illegal dismissal case, and denied

[6] *Id.* at 81-101.

[7] *Id.* at 102-137.

[8] *Id.* at 138-177.

PHIMCO's motion for reconsideration in the illegal strike case. The NLRC found that the picket conducted by the striking employees was not an illegal blockade and did not obstruct the points of entry to and exit from the company's premises; the pictures submitted by the respondents revealed that the picket was moving, not stationary. With respect to the illegal dismissal charge, the NLRC observed that the striking employees were not given ample opportunity to explain their side after receipt of the June 23, 1995 letter. Thus, the NLRC affirmed the Decision of LA Espiritu with respect to the payment of backwages until the promulgation of the decision, plus separation pay at one (1) month salary per year of service in lieu of reinstatement, and 10% of the monetary award as attorney's fees. It ruled out reinstatement because of the damages sustained by the company brought about by the strike.

On March 14, 2002, PHIMCO filed a motion for reconsideration of the consolidated decision.

On April 26, 2002, without waiting for the result of its motion for reconsideration, PHIMCO elevated its case to the CA through a petition for *certiorari* under Rule 65 of the Rules of Court.[9]

THE CA RULING

In a Decision[10] promulgated on February 10, 2004, the CA dismissed PHIMCO's petition for *certiorari*. The CA noted that the NLRC findings, that the picket was peaceful and that PHIMCO's evidence failed to show that the picket constituted an illegal blockade or that it obstructed the points of entry to and exit from the company premises, were supported by substantial evidence.

PHIMCO came to us through the present petition after the CA denied[11] PHIMCO's motion for reconsideration.[12]

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[9] *Id.* at 178-202.

[10] *Supra* note 2.

[11] *Supra* note 3.

[12] *Rollo*, pp. 204-214.

THE PETITION

The petitioner argues that the strike was illegal because the respondents committed the prohibited acts under Article 264(e) of the Labor Code, such as blocking the ingress and egress of the company premises, threat, coercion, and intimidation, as established by the evidence on record.

THE CASE FOR THE RESPONDENTS

The respondents, on the other hand, submit that the issues raised in this case are factual in nature that we cannot generally touch in a petition for review, unless compelling reasons exist; the company has not shown any such compelling reason as the picket was peaceful and uneventful, and no human barricade blocked the company premises.

THE ISSUE

In *Montoya v. Transmed Manila Corporation*,[13] we laid down the basic approach that should be followed in the review of CA decisions in labor cases, thus:

> In a Rule 45 review, we consider the correctness of the assailed CA decision, in contrast with the review for jurisdictional error that we undertake under Rule 65. Furthermore, Rule 45 limits us to the review of questions of law raised against the assailed CA decision. In ruling for legal correctness, we have to view the CA decision in the same context that the petition for *certiorari* it ruled upon was presented to it; we have to examine the CA decision from the prism of whether it correctly determined the presence or absence of grave abuse of discretion in the NLRC decision before it, not on the basis of whether the NLRC decision on the merits of the case was correct. In other words, we have to be keenly aware that the CA undertook a Rule 65 review, not a review on appeal, of the NLRC decision challenged before it. This is the approach that should be basic in a Rule 45 review of a CA ruling in a labor case. In question form, the question to ask is: Did the CA correctly determine whether the NLRC committed grave abuse of discretion in ruling on the case?

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[13] G.R. No. 183329, August 27, 2009, 597 SCRA 334.

In this light, the core issue in the present case is whether the CA correctly ruled that the NLRC did not act with grave abuse of discretion in ruling that the union's strike was legal.

OUR RULING

We find the petition partly meritorious.

Requisites of a valid strike

A strike is the most powerful weapon of workers in their struggle with management in the course of setting their terms and conditions of employment. Because it is premised on the concept of economic war between labor and management, it is a weapon that can either breathe life to or destroy the union and its members, and one that must also necessarily affect management and its members.[14]

In light of these effects, the decision to declare a strike must be exercised responsibly and must always rest on rational basis, free from emotionalism, and unswayed by the tempers and tantrums of hot heads; it must focus on legitimate union interests. To be legitimate, a strike should not be antithetical to public welfare, and must be pursued within legal bounds. The right to strike as a means of attaining social justice is never meant to oppress or destroy anyone, least of all, the employer.[15]

Since strikes affect not only the relationship between labor and management but also the general peace and progress of the community, the law has provided limitations on the right to strike. Procedurally, for a strike to be valid, it must comply with Article 263[16] of the Labor Code, which requires that: (a)

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[14] *Lapanday Workers Union v. NLRC*, G.R. Nos. 95494-97, September 7, 1995, 248 SCRA 95, 104-105.

[15] *Asso. of Independent Unions in the Phil. v. NLRC*, 364 Phil. 697, 707 (1999).

[16] Art. 263. *Strikes, picketing, and lockouts*. x x x

(c) In cases of bargaining deadlocks, the duly certified or recognized bargaining agent may file a notice of strike or the employer may file a notice of lockout with the [Department] at least 30 days before the intended date thereof. In cases of unfair labor practice, the period of notice shall be 15 days and in the absence of a duly certified or recognized bargaining agent,

a notice of strike be filed with the Department of Labor and Employment (*DOLE*) 30 days before the intended date thereof, or 15 days in case of unfair labor practice; (b) a strike vote be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in a meeting called for that purpose; and (c) a notice be given to the DOLE of the results of the voting at least seven days before the intended strike.

These requirements are mandatory, and the union's failure to comply renders the strike illegal.[17] The 15 to 30-day cooling-off period is designed to afford the parties the opportunity to amicably resolve the dispute with the assistance of the NCMB conciliator/mediator, while the seven-day strike ban is intended

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the notice of strike may be filed by any legitimate labor organization in behalf of its members. However, in case of dismissal from employment of union officers duly elected in accordance with the union constitution and by-laws, which may constitute union busting where the existence of the union is threatened, the 15-day cooling-off period shall not apply and the union may take action immediately.

(d) The notice must be in accordance with such implementing rules and regulations as the [Secretary] of Labor and Employment may promulgate.

(e) During the cooling-off period, it shall be the duty of the [Department] to exert all efforts at mediation and conciliation to effect a voluntary settlement. Should the dispute remain unsettled until the lapse of the requisite number of days from the mandatory filing of the notice, the labor union may strike or the employer may declare a lockout.

(f) A decision to declare a strike must be approved by a majority of the total union membership in the bargaining unit concerned, obtained by secret ballot in meetings or referenda called for that purpose. A decision to declare a lockout must be approved by a majority of the board of directors of the corporation or association or of the partners in a partnership, obtained by secret ballot in a meeting called for that purpose. The decision shall be valid for the duration of the dispute based on substantially the same grounds considered when the strike or lockout vote was taken. The [Department] may at its own initiative or upon the request of any affected party, supervise the conduct of the secret balloting. In every case, the union or the employer shall furnish the [Department] the results of the voting at least seven days before the intended strike or lockout, subject to the cooling-off period herein provided.

[17] *Piñero v. National Labor Relations Commission,* 480 Phil. 534, 542 (2004); *Grand Boulevard Hotel v. GLOWHRAIN*, 454 Phil. 463, 488 (2003).

to give the DOLE an opportunity to verify whether the projected strike really carries the imprimatur of the majority of the union members.[18]

In the present case, the respondents fully satisfied the legal procedural requirements; a strike notice was filed on March 9, 1995; a strike vote was reached on March 16, 1995; notification of the strike vote was filed with the DOLE on March 17, 1995; and the actual strike was launched only on April 25, 1995.

Strike may be illegal for commission of prohibited acts

Despite the validity of the purpose of a strike and compliance with the procedural requirements, a strike may still be held illegal where the ***means employed*** are illegal.[19] The means become illegal when they come within the prohibitions under Article 264(e) of the Labor Code which provides:

> No person engaged in picketing shall commit any act of violence, coercion or intimidation or obstruct the free ingress to or egress from the employer's premises for lawful purposes, or obstruct public thoroughfares.

Based on our examination of the evidence which the LA viewed differently from the NLRC and the CA, we find the PILA strike illegal. We intervene and rule even on the evidentiary and factual issues of this case as both the NLRC and the CA grossly misread the evidence, leading them to inordinately incorrect conclusions, both factual and legal. While the strike undisputably had not been marred by actual violence and patent intimidation, the picketing that respondent PILA officers and members undertook as part of their strike activities effectively blocked the free ingress to and egress

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[18] *Capitol Medical Center, Inc. v. NLRC*, 496 Phil. 707, 717 (2005), citing Primer on Strike, Picketing and Lockout, National Conciliation and Mediation Board – Department of Labor and Employment, Intramuros, Manila, 1996 ed., p. 6.

[19] *Sukhothai Cuisine and Restaurant v. Court of Appeals,* G.R. No. 150437, July 17, 2006, 495 SCRA 336; *Asso. of Independent Unions in the Philippines v. NLRC, supra* note 15.

from PHIMCO's premises, thus preventing non-striking employees and company vehicles from entering the PHIMCO compound. In this manner, the picketers violated Article 264(e) of the Labor Code.

The Evidence

We gather from the case record the following pieces of relevant evidence adduced in the compulsory arbitration proceedings.[20]

For the Company

1. Pictures taken during the strike, showing that the respondents prevented free ingress to and egress from the company premises;[21]

2. Affidavit of PHIMCO Human Resources Manager Francis Ferdinand Cinco, stating that he was one of the employees prevented by the strikers from entering the PHIMCO premises;[22]

3. Affidavit of Cinco, identifying Erlinda Vazquez, Ricardo Sacristan, Leonida Catalan, Maximo Pedro, Nathaniela R. Dimaculangan, Rodolfo Mojico, Romeo Caramanza, Reynaldo Ganitano, Alberto Basconcillo, and Ramon Falcis as PILA officers;[23]

4. Affidavit of Cinco identifying other members of PILA;[24]

5. Folder 1, containing pictures taken during the strike identifying and showing Leonida Catalan, Renato Ramos, Arsenio Zamora, Reynaldo Ganitano, Amelia Zamora, Angelito Dejan, Teresa Permocillo, and Francisco Dalisay as the persons preventing Cinco and his group from entering the company premises;[25]

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[20] *Rollo*, pp. 67-74; LA decision, pp. 8-15.

[21] Exhibits "A" to "A-105".

[22] Exhibit "D".

[23] Exhibit "D-2".

[24] Exhibit "D-3".

[25] Exhibits "F" to "F-7".

6. Folder 2, with pictures taken on May 30, 1995, showing Cinco, together with non-striking PHIMCO employees, reporting for work but being refused entry by strikers Teofilo Manalili, Nathaniela Dimaculangan, Bernando Cuadra, Maximo Pedro, Nicanor Ilagan, Julian Tuguin, Nemesio Mamonong, Abraham Caday, Ernesto Rio, Benjamin Juan, Sr., Ramon Macaalay, Gerardo Feliciano, Alberto Basconcillo, Rodolfo Sanidad, Mariano Rosales, Roger Caber, Angelito de Guzman, Angelito Balosa and Philip Garces who blocked the company gate;[26]

7. Folder 3, with pictures taken on May 30, 1995, showing the respondents denying free ingress to and egress from the company premises;[27]

8. Folder 4, with pictures taken during the strike, showing that non-striking employees failed to enter the company premises as a result of the respondents' refusal to let them in;[28]

9. Affidavit of Joaquin Aguilar stating that the pictures presented by Cinco were taken during the strike;[29]

10. Pictures taken by Aguilar during the strike, showing non-striking employees being refused entry by the respondents;[30]

11. Joint affidavit of Orlando Marfil and Rodolfo Digo, identifying the pictures they took during the strike, showing that the respondents blocked ingress to and egress from the company premises;[31] and,

12. Testimonies of PHIMCO employees Rodolfo Eva, Aguilar and Cinco, as well as those of PILA officers Maximo Pedro and Leonida Catalan.

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[26] Exhibits "G" to "G-4".

[27] Exhibits "H" to "H-12".

[28] Exhibits "I" to "I-3".

[29] Exhibit "J".

[30] Exhibits "K" and "K-1".

[31] Exhibit "L".

For the Respondents

1. Affidavit of Leonida Catalan, stating that the PILA strike complied with all the legal requirements, and the strike/picket was conducted peacefully with no incident of any illegality;[32]

2. Affidavit of Maximo Pedro, stating that the strike/picket was conducted peacefully; the picket was always moving with no acts of illegality having been committed during the strike;[33]

3. Certification of Police Station Commander Bienvenido de los Reyes that during the strike there was no report of any untoward incident;[34]

4. Certification of Rev. Father Erick Adeviso of Dambanang Bayan Parish Church that the strike was peaceful and without any untoward incident;[35]

5. Certification of Priest-In-Charge Angelito Fausto of the Philippine Independent Church in Punta, Santa Ana, that the strike complied with all the requirements for a lawful strike, and the strikers conducted themselves in a peaceful manner;[36]

6. Clearance issued by *Punong Barangay* Mario O. dela Rosa and *Barangay* Secretary Pascual Gesmundo, Jr. that the strike from April 21 to July 7, 1995 was conducted in an orderly manner with no complaints filed;[37] and,

7. Testimonies at the compulsory arbitration proceedings.

In its resolution of December 29, 1998,[38] the NLRC declared that "the string of proofs" the company presented was "overwhelmingly counterbalanced by the numerous pieces of evidence adduced by respondents x x x all depicting a common

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[32] Exhibits "1", "1-A", & "1-B".

[33] Exhibits "10" and "10-A".

[34] Exhibit "11".

[35] Exhibit "12".

[36] Exhibit "13".

[37] Exhibit "14".

[38] *Supra* note 6.

story that respondents put up a peaceful moving picket, and did not commit any illegal acts x x x specifically obstructing the ingress to and egress from the company premises[.]"[39]

We disagree with this finding as the purported "peaceful moving picket" upon which the NLRC resolution was anchored was not an innocuous picket, contrary to what the NLRC said it was; the picket, under the evidence presented, did effectively obstruct the entry and exit points of the company premises on various occasions.

To strike is to withhold or to stop work by the concerted action of employees as a result of an industrial or labor dispute.[40] The work stoppage may be accompanied by picketing by the striking employees outside of the company compound. While a strike focuses on stoppage of work, picketing focuses on publicizing the labor dispute and its incidents to inform the public of what is happening in the company struck against. A picket simply means to march to and from the employer's premises, usually accompanied by the display of placards and other signs making known the facts involved in a labor dispute.[41] It is a strike activity separate and different from the actual stoppage of work.

While the right of employees to publicize their dispute falls within the protection of freedom of expression[42] and the right

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[39] *Rollo*, p. 92; NLRC resolution, p. 12, par. 1.

[40] Article 212(o), Labor Code.

[41] *Santa Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils., Inc.,* G.R. Nos. 164302-03, January 24, 2007, 512 SCRA 437, 454; *Ilaw at Buklod ng Manggagawa (IBM) v. NLRC*, G.R. No. 91980, June 27, 1991, 198 SCRA 586, 594.

[42] CONSTITUTION, Art. III, Sec. 4; *Gonzales v. Commission on Elections*, 137 Phil. 471 (1969); *The Insular Life Assurance Co., Ltd. Employees Association-NATU v. The Insular Life Assurance Co., Ltd.*, 147 Phil. 194 (1971); *Zaldivar v. Sandiganbayan*, 243 Phil. 988 (1988); *ABS-CBN Broadcasting Corporation v. Commission on Elections*, 380 Phil. 780 (2000); *Chavez v. Secretary Gonzalez*, G.R. No. 168337, February 15, 2008, 545 SCRA 441; *Schenck v. United States*, 249 U.S. 47 (1919); *Near v. Minnesota*, 283 U.S. 697 (1931); *New York Times v. United States*, 403 U.S. 713 (1971).

to peaceably assemble to air grievances,[43] these rights are by no means absolute. Protected picketing does not extend to blocking ingress to and egress from the company premises.[44] That the picket was moving, was peaceful and was not attended by actual violence may not free it from taints of illegality if the picket effectively blocked entry to and exit from the company premises.

In this regard, PHIMCO employees Rodolfo Eva and Joaquin Aguilar, and the company's Human Resources Manager Francis Ferdinand Cinco testified during the compulsory arbitration hearings:

> ATTY. REYES: This incident on May 22, 1995, when a coaster or bus attempted to enter PHIMCO compound, you mentioned that it was refused entry. Why was this (sic) it refused entry?
>
> WITNESS: Because at that time, there was a moving picket at the gate that is why the bus was not able to enter.[45]
>
> x x x x x x x x x
>
> Q: Despite this TRO, which was issued by the NLRC, were you allowed entry by the strikers?
>
> A: We made several attempts to enter the compound, I remember on May 7, 1995, we tried to enter the PHIMCO compound but we were not allowed entry.
>
> Q: Aside from May 27, 1995, were there any other instances wherein you were not allowed entry at PHIMCO compound?
>
> A: On May 29, I recall I was riding with our Production Manager with the Pick-up. We tried to enter but we were not allowed by the strikers.[46]

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[43] CONSTITUTION, Art. III, Sec. 4; *Philippine Blooming Mills Employees Association v. Philippine Blooming Mills*, 151-A Phil. 656 (1973); *J.B.L. Reyes v. Mayor Bagatsing*, 210 Phil. 457 (1983); *De la Cruz v. Court of Appeals*, 364 Phil. 786 (1999); *Acosta v. Court of Appeals*, 389 Phil. 829 (2000); *Bayan v. Ermita*, G.R. No. 169838, April 25, 2006, 488 SCRA 1.

[44] 48 Am. Jur. 2d, Sec. 3562, p. 623, citing *I.T.O. Corp. of Baltimore* (1981) 255 NLRB 1050, 107 BNA LRRM 1035, 1980-81 CCH NLRB, par. 18055. See also 48 Am. Jur. 2d, Sec. 739, p. 456, citing Ark C 5-71-214.

[45] TSN dated June 28, 1995, testimony of Rodolfo Eva, a union officer.

[46] TSN dated August 27, 1996, p. 8, testimony of Francis Ferdinand Cinco.

x x x x x x x x x

ARBITER MAYOR: How did the strikers block the ingress of the company?

A: They hold around, joining hands, moving picket.[47]

x x x x x x x x x

ARBITER MAYOR: Reform the question, and because of that moving picket conducted by the strikers, no employees or vehicles can come in or go out of the premises?

A: None, sir.[48]

These accounts were confirmed by the admissions of respondent PILA officers Maximo Pedro and Leonida Catalan that the strikers prevented non-striking employees from entering the company premises. According to these union officers:

ATTY. CHUA: Mr. witness, do you recall an incident when a group of managers of PHIMCO, with several of the monthly paid employees who tried to enter the PHIMCO compound during the strike?

MR. PEDRO: Yes, sir.

ATTY. CHUA: Can you tell us if these (sic) group of managers headed by Francis Cinco entered the compound of PHIMCO on that day, when they tried to enter?

MR. PEDRO: No, sir. They were not able to enter.[49]

x x x x x x x x x

ATTY. CHUA: Despite having been escorted by police Delos Reyes, you still did not give way, and instead proceeded with your moving picket?

MR. PEDRO: Yes, sir.

ATTY. CHUA: In short, these people were not able to enter the premises of PHIMCO, Yes or No.

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[47] TSN dated February 11, 1997, p. 12, testimony of Joaquin Aguilar.

[48] TSN dated March 3, 1997, p. 33, testimony of Joaquin Aguilar.

[49] TSN dated July 30, 1997, pp. 5-8, testimony of Maximo Pedro.

MR. PEDRO: Yes, sir. [50]

x x x x x x x x x

ATTY. CHUA: Madam witness, even if Major Delos Reyes instructed you to give way so as to allow the employees and managers to enter the premises, you and your co-employees did not give way?

MS. CATALAN: No sir.

ATTY. CHUA: The managers and the employees were not able to enter the premises?

MS. CATALAN: Yes, sir.[51]

The NLRC resolution itself noted the above testimonial evidence, "all building up a scenario that the moving picket put up by [the] respondents obstructed the ingress to and egress from the company premises[,]"[52] yet it ignored the clear import of the testimonies as to the true nature of the picket. Contrary to the NLRC characterization that it was a "peaceful moving picket," it stood, in fact, as an obstruction to the company's points of ingress and egress.

Significantly, the testimonies adduced were validated by the photographs taken of the strike area, capturing the strike in its various stages and showing how the strikers actually conducted the picket. While the picket was moving, it was maintained *so close to the company gates* that it virtually constituted an obstruction, especially when the strikers joined hands, as described by Aguilar, or were moving in circles, hand-to-shoulder, as shown by the photographs, that, for all intents and purposes, blocked the free ingress to and egress from the company premises. In fact, on closer examination, it could be seen that *the respondents were conducting the picket right at the company gates*.[53]

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[50] *Id.* at 15-17.

[51] TSN dated August 13, 1997, p. 30, testimony of Leonida Catalan.

[52] *Rollo*, p. 92; NLRC resolution, p. 12, first paragraph, last sentence.

[53] *Id.* at 117,119,120,123,126 and 127.

The obstructive nature of the picket was aggravated by the *placement of benches*, with strikers standing on top, directly in front of the open wing of the company gates, *clearly obstructing the entry and exit points of the company compound*.[54]

With a virtual human blockade and real physical obstructions (benches and makeshift structures both outside and inside the gates),[55] it was pure conjecture on the part of the NLRC to say that "[t]he non-strikers and their vehicles were x x x free to get in and out of the company compound undisturbed by the picket line."[56] Notably, aside from non-strikers who wished to report for work, company vehicles likewise could not enter and get out of the factory because of the picket and the physical obstructions the respondents installed. The blockade went to the point of causing the build up of traffic in the immediate vicinity of the strike area, as shown by photographs.[57] This, by itself, renders the picket a prohibited activity. Pickets may not aggressively interfere with the right of peaceful ingress to and egress from the employer's shop or obstruct public thoroughfares; picketing is not peaceful where the sidewalk or entrance to a place of business is obstructed by picketers parading around in a circle or lying on the sidewalk.[58]

What the records reveal belies the NLRC observation that "the evidence x x x tends to show that what respondents actually did was walking or patrolling to and fro within the company vicinity and by word of mouth, banner or placard, informing the public concerning the dispute."[59]

The "peaceful moving picket" that the NLRC noted, influenced apparently by the certifications (Mayor delos Reyes, Fr. Adeviso, Fr. Fausto and *Barangay* Secretary Gesmundo presented in

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[54] *Id.* at 118.

[55] *Id.* at 121-124.

[56] *Id.* at 94; NLRC resolution, p.14, par.1.

[57] *Id.* at 124.

[58] 2 C.A. Azucena, *The Labor Code, with Comment and Cases*, p. 612 (2007), citing 31 Am. Jur. 249, p. 955.

[59] *Rollo,* p. 94; NLRC resolution, p. 14, par. 2.

evidence by the respondents, was "peaceful" only because of the absence of violence during the strike, but the obstruction of the entry and exit points of the company premises caused by the respondents' picket was by no means a "petty blocking act" or an "insignificant obstructive act."[60]

As we have stated, while the picket was moving, the movement was in circles, very close to the gates, with the strikers in a hand-to-shoulder formation without a break in their ranks, thus preventing non-striking workers and vehicles from coming in and getting out. Supported by actual blocking benches and obstructions, what the union demonstrated was a very persuasive and quietly intimidating strategy whose chief aim was to paralyze the operations of the company, not solely by the work stoppage of the participating workers, but by excluding the company officials and non-striking employees from access to and exit from the company premises. No doubt, the strike caused the company operations considerable damage, as the NLRC itself recognized when it ruled out the reinstatement of the dismissed strikers.[61]

Intimidation

Article 264(e) of the Labor Code tells us that picketing carried on with violence, coercion or intimidation is unlawful.[62] According to American jurisprudence, what constitutes unlawful intimidation depends on the totality of the circumstances.[63] Force threatened is the equivalent of force exercised. There may be unlawful intimidation without direct threats or overt acts of violence. Words or acts which are calculated and intended to cause an ordinary person to fear an injury to his person, business or property are equivalent to threats.[64]

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[60] *Id.* at 95-96; NLRC resolution, pp. 15-16, last paragraph.

[61] *Id.* at 176; NLRC decision, p. 39, par. 2.

[62] See also Section 13, Rule XXII, Book V, Rules to Implement the Labor Code, as amended by Department Order No. 40-03, series of 2003, February 17, 2003.

[63] 48 Am. Jur. 2d, Sec. 2461, p. 1263.

[64] 48-A Am. Jur. 2d, Sec. 2059, pp. 427-428.

The manner in which the respondent union officers and members conducted the picket in the present case had created such an intimidating atmosphere that non-striking employees and even company vehicles did not dare cross the picket line, even with police intervention. Those who dared cross the picket line were stopped. The compulsory arbitration hearings bear this out.

Maximo Pedro, a PILA officer, testified, on July 30, 1997, that a group of PHIMCO managers led by Cinco, together with several monthly-paid employees, tried to enter the company premises on May 27, 1995 with police escort; even then, the picketers did not allow them to enter.[65]Leonida Catalan, another union officer, testified that she and the other picketers did not give way despite the instruction of Police Major de los Reyes to the picketers to allow the group to enter the company premises.[66] (To be sure, police intervention and participation are, as a rule, prohibited acts in a strike, but we note this intervention solely as indicators of how far the union and its members have gone to block ingress to and egress from the company premises.)

Further, PHIMCO employee Rodolfo Eva testified that on May 22, 1995, a company coaster or bus attempted to enter the PHIMCO compound but it was refused entry by the "moving picket."[67] Cinco, the company personnel manager, also testified that on May 27, 1995, *when the NLRC TRO was in force*, he and other employees tried to enter the PHIMCO compound, but they were not allowed entry; on May 29, 1995, Cinco was with the PHIMCO production manager in a pick-up and they tried to enter the company compound but, again, they were not allowed by the strikers.[68] Another employee, Joaquin Aguilar, when asked how the strikers blocked the ingress of the company, replied that the strikers "hold around, joining hands, moving

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[65] *Supra* note 46.

[66] *Supra* note 32.

[67] *Supra* note 45.

[68] *Supra* note 46.

picket" and, because of the moving picket, no employee or vehicle could come in and go out of the premises.[69]

The evidence adduced in the present case cannot be ignored. On balance, it supports the company's submission that the respondent PILA officers and members committed acts during the strike prohibited under Article 264(e) of the Labor Code. The testimonies of non-striking employees, who were prevented from gaining entry into the company premises, and confirmed no less by two officers of the union, are on record.

The photographs of the strike scene, also on record, depict the true character of the picket; while moving, it, in fact, constituted a human blockade, obstructing free ingress to and egress from the company premises, reinforced by benches planted directly in front of the company gates. The photographs do not lie – these photographs clearly show that the picketers were going in circles, without any break in their ranks or closely bunched together, right in front of the gates. Thus, company vehicles were unable to enter the company compound, and were backed up several meters into the street leading to the company gates.

Despite all these clear pieces of evidence of illegal obstruction, the NLRC looked the other way and chose not to see the unmistakable violations of the law on strikes by the union and its respondent officers and members. Needless to say, while the law protects the rights of the laborer, it authorizes neither the oppression nor the destruction of the employer.[70] For grossly ignoring the evidence before it, the NLRC committed grave abuse of discretion; for supporting these gross NLRC errors, the CA committed its own reversible error.

Liabilities of union officers and members

In the determination of the liabilities of the individual respondents, the applicable provision is Article 264(a) of the Labor Code:

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[69] *Supra* notes 47 and 48.

[70] *Colgate-Palmolive Philippines, Inc. v. Ople*, 246 Phil. 331(1988).

Art. 264. *Prohibited activities.* – (a) x x x

xxx x x x xxx

Any union officer who knowingly participates in an illegal strike and any worker or union officer who knowingly participates in the commission of illegal acts during a strike may be declared to have lost his employment status: Provided, That mere participation of a worker in a lawful strike shall not constitute sufficient ground for termination of his employment, even if a replacement had been hired by the employer during such lawful strike.

We explained in *Samahang Manggagawa sa Sulpicio Lines, Inc.-NAFLU v. Sulpicio Lines, Inc.*[71] that the effects of illegal strikes, outlined in Article 264 of the Labor Code, make a distinction between participating workers and union officers. The services of an ordinary striking worker cannot be terminated for mere participation in an illegal strike; proof must be adduced showing that he or she committed illegal acts during the strike. The services of a participating union officer, on the other hand, may be terminated, not only when he actually commits an illegal act during a strike, but also if he knowingly participates in an illegal strike.[72]

In all cases, the striker must be identified. But proof beyond reasonable doubt is not required; substantial evidence, available under the attendant circumstances, suffices to justify the imposition of the penalty of dismissal on participating workers and union officers as above described.[73]

In the present case, respondents Erlinda Vazquez, Ricardo Sacristan, Leonida Catalan, Maximo Pedro, Nathaniela Dimaculangan, Rodolfo Mojico, Romeo Caramanza, Reynaldo Ganitano, Alberto Basconcillo, and Ramon Falcis *stand to be dismissed as* ***participating union officers***, pursuant to Article 264(a), paragraph 3, of the Labor Code. This provision imposes the penalty of dismissal on "any union officer who knowingly

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[71] G.R. No. 140992, March 25, 2004, 426 SCRA 319.

[72] *Id.* at 328.

[73] *Asso. of Independent Unions in the Phils. v. NLRC*, *supra* note 15, at 709.

participates in an illegal strike." The law grants the employer the option of declaring a union officer who participated in an illegal strike as having lost his employment.[74]

PHIMCO was able to individually identify the ***participating union members*** thru the affidavits of PHIMCO employees Martimer Panis[75] and Rodrigo A. Ortiz,[76] and Personnel Manager Francis Ferdinand Cinco,[77] and the photographs[78] of Joaquin Aguilar. Identified were respondents Angelita Balosa, Danilo Banaag, Abraham Caday, Alfonso Claudio, Francisco Dalisay, Angelito Dejan, Philip Garces, Nicanor Ilagan, Florencio Libongcogon, Nemesio Mamonong, Teofilo Manalili, Alfredo Pearson, Mario Perea, Renato Ramos, Mariano Rosales, Pablo Sarmiento, Rodolfo Tolentino, Felipe Villareal, Arsenio Zamora, Danilo Baltazar, Roger Caber, Reynaldo Camarin, Bernardo Cuadra, Angelito de Guzman, Gerardo Feliciano, Alex Ibañez, Benjamin Juan, Sr., Ramon Macaalay, Gonzalo Manalili, Raul Miciano, Hilario Peña, Teresa Permocillo, Ernesto Rio, Rodolfo Sanidad, Rafael Sta. Ana, Julian Tuguin and Amelia Zamora as the union members who actively participated in the strike by blocking the ingress to and egress from the company premises and preventing the passage of non-striking employees. For participating in illegally blocking ingress to and egress from company premises, these union members stand to be dismissed for their illegal acts in the conduct of the union's strike.

PHIMCO failed to observe due process

We find, however, that PHIMCO violated the requirements of due process of the Labor Code when it dismissed the respondents.

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[74] *Santa Rosa Coca-Cola Plant Employees Union v. Coca-Cola Bottlers Phils., Inc., supra* note 41 at 458-459; *Gold City Integrated Port Service, Inc. v. NLRC,* G.R. No. 103560, July 6, 1995, 245 SCRA 627, 641.

[75] Exhibit "36".

[76] Exhibit "38".

[77] Exhibit "5".

[78] Exhibits "6" to "6-M", "37" to "37-M", "39" to "40-A".

Under Article 277(b)[79] of the Labor Code, the employer must send the employee, who is about to be terminated, a written notice stating the cause/s for termination and must give the employee the opportunity to be heard and to defend himself.

We explained in *Suico v. National Labor Relations Commission,*[80] that Article 277(b), in relation to Article 264(a) and (e) of the Labor Code recognizes the right to due process of all workers, without distinction as to the cause of their termination, even if the cause was their supposed involvement in strike-related violence prohibited under Article 264(a) and (e) of the Labor Code.

To meet the requirements of due process in the dismissal of an employee, an employer must furnish him or her with two (2) written notices: (1) a written notice specifying the grounds for termination and *giving the employee a reasonable opportunity to explain his side* and (2) another written notice indicating that, upon due consideration of all circumstances, grounds have been established to justify the employer's decision to dismiss the employee.[81]

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[79] ART. 277. Miscellaneous provisions. –

x x x x x x 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 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 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.

[80] G.R. No. 146762, January 30, 2007, 513 SCRA 325, 342. See also *Stamford Marketing Corp. v. Julian*, 468 Phil. 34, 52-53 (2004).

[81] Omnibus Rules Implementing the Labor Code, Book VI, Rule 1, Sec. 2(a) and (c).

In the present case, PHIMCO sent a letter, on June 23, 1995, to thirty-six (36) union members, generally directing them to explain within twenty-four (24) hours why they should not be dismissed for the illegal acts they committed during the strike; three days later, or on June 26, 1995, the thirty-six (36) union members were informed of their dismissal from employment.

We do not find this company procedure to be sufficient compliance with the due process requirements that the law guards zealously. It does not appear from the evidence that the union officers were specifically informed of the charges against them and given the chance to explain and present their side. Without the specifications they had to respond to, they were arbitrarily separated from work in total disregard of their rights to due process and security of tenure.

As to the union members, only thirty-six (36) of the thirty-seven (37) union members included in this case were notified of the charges against them thru the letters dated June 23, 1995, but they were not given an ample opportunity to be heard and to defend themselves; the notice of termination came on June 26, 1995, only three (3) days from the first notice — a perfunctory and superficial attempt to comply with the notice requirement under the Labor Code. The short interval of time between the first and second notice speaks for itself under the circumstances of this case; mere token recognition of the due process requirements was made, indicating the company's intent to dismiss the union members involved, without any meaningful resort to the guarantees accorded them by law.

Under the circumstances, where evidence sufficient to justify the penalty of dismissal has been adduced but the workers concerned were not accorded their essential due process rights, our ruling in *Agabon v. NLRC*[82] finds full application; the employer, despite the just cause for dismissal, must pay the dismissed workers nominal damages as indemnity for the violation of the workers' right to statutory due process. Prevailing jurisprudence sets the amount of nominal damages at ₱30,000.00,

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[82] 485 Phil. 248 (2004).

which same amount we find sufficient and appropriate in the present case.[83]

WHEREFORE, in light of all the foregoing, we hereby *REVERSE* and *SET ASIDE* the decision dated February 10, 2004 and the resolution dated December 12, 2005 of the Court of Appeals in CA-G.R. SP No. 70336, upholding the rulings of the National Labor Relations Commission.

The Decision, dated February 4, 1998, of Labor Arbiter Jovencio Ll. Mayor should prevail and is *REINSTATED* with the *MODIFICATION* that Erlinda Vazquez, Ricardo Sacristan, Leonida Catalan, Maximo Pedro, Nathaniela Dimaculangan, Rodolfo Mojico, Romeo Caramanza, Reynaldo Ganitano, Alberto Basconcillo, Ramon Falcis, Angelita Balosa, Danilo Banaag, Abraham Caday, Alfonso Claudio, Francisco Dalisay, Angelito Dejan, Philip Garces, Nicanor Ilagan, Florencio Libongcogon, Nemesio Mamonong, Teofilo Manalili, Alfredo Pearson, Mario Perea, Renato Ramos, Mariano Rosales, Pablo Sarmiento, Rodolfo Tolentino, Felipe Villareal, Arsenio Zamora, Danilo Baltazar, Roger Caber, Reynaldo Camarin, Bernardo Cuadra, Angelito de Guzman, Gerardo Feliciano, Alex Ibañez, Benjamin Juan, Sr., Ramon Macaalay, Gonzalo Manalili, Raul Miciano, Hilario Peña, Teresa Permocillo, Ernesto Rio, Rodolfo Sanidad, Rafael Sta. Ana, Julian Tuguin, and Amelia Zamora are each awarded nominal damages in the amount of ₱30,000.00. No pronouncement as to costs.

SO ORDERED.

Carpio Morales (Chairperson), Bersamin, Abad,[*************] and *Villarama, Jr., JJ.,* concur.

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[83] *Ancheta v. Destiny Financial Plans, Inc*., G.R. No. 179702, February 16, 2010; *RTG Construction, Inc. v. Facto*, G.R. No. 163872, December 21, 2009; *Formantes v. Duncan Pharmaceuticals, Phils., Inc*., G.R. No.170661, December 4, 2009, 607 SCRA 268, 287; *Jose, Jr. v. Michaelmar Phils., Inc*., G.R. No. 169606, November 27, 2009, 606 SCRA 116, 136; *Faeldonia v. Tong Yak Groceries*, G.R. No. 182499, October 2, 2009. See also *Suico v. National Labor Relations Commission*, G.R. Nos. 146762, 153584 & 163793, January 30, 2007, 513 SCRA 325, 347.

[*************] 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.

SECOND DIVISION

[G.R. No. 172880. August 11, 2010]

CHINA BANKING CORPORATION, *petitioner, vs.* **CEBU PRINTING AND PACKAGING CORPORATION,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW BEFORE THE COURT OF APPEALS; PROPER MODE OF APPEALS IN CASES INVOLVING CORPORATE REHABILITATION; FILING OF NOTICE OF APPEAL AND RECORD ON APPEAL NOT REQUIRED; EXPLAINED.—** [T]his Court issued A.M. No. 04-9-07-SC as a clarification on the proper mode of appeal of cases which were formerly under the jurisdiction of the Securities and Exchange Commission, such as those cases involving corporate rehabilitation. Now, there is no more need to file a notice of appeal and record on appeal. An appeal may now be perfected by filing a petition for review within fifteen (15) days from notice of the decision or final order of the trial court, directly to the CA under Rule 43 of the Rules of Court. xxx The resolution emphasizes the need to perfect an appeal within the given period which is fifteen (15) days by specifically stating that Rule 43 of the Rules of Court is the mode of appeal that is applicable for those appealing or assailing the decisions and/or final orders of the RTC. Thus, when it is mentioned in paragraph 4 (c) of A.M. No. 04-9-07-SC that *in case a petition appealing or assailing the decision and/or final order is filed directly with the Court of Appeals within the reglementary period, such petition shall be considered a petition for review under Rule 43*, it is presumed that the mode of appeal resorted to was an ordinary appeal and not a special civil action. Otherwise, the Resolution should have categorically included *certiorari* under Rule 65 as among those that should be considered as a petition for review under Rule 43 of the Rules of Court. Again, Rule 43 of the Rules of Court pertains to an ordinary mode of appeal, whereas CEPRI availed of Rule 65, a special civil action.

2. **ID.; ID.; ID.; ID.; FIFTEEN (15) DAYS REGLEMENTARY PERIOD**

WITHIN WHICH TO PERFECT AN APPEAL MUST BE OBSERVED.— In *New Frontier Sugar Corporation v. RTC, Branch 39, Iloilo City,* this Court already ruled that the proper mode of appeal in cases of corporate rehabilitation is through a petition for review under Rule 43 of the Rules of Court to be filed within fifteen (15) days from notice of the decision or final order of the RTC. As ruled: However, it should be noted that the Court issued A.M. No. 04-9-07-SC on September 14, 2004, clarifying the proper mode of appeal in cases involving corporate rehabilitation and intra-corporate controversies. It is provided therein that all decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealed to the CA through a petition for review under Rule 43 of the Rules of Court to be filed **within fifteen (15) days from notice of the decision or final order of the RTC**. Through the above decision of this Court, it can be gleaned that the reglementary period of fifteen (15) days from notice of the decision or final order of the RTC within which to file an appeal is of utmost importance.

3. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; CANNOT BE A SUBSTITUTE FOR AN APPEAL WHERE THE LATTER REMEDY IS AVAILABLE; DEVIATION FROM THE STRICT RULE OF PROCEDURE ALLOWED UNDER CERTAIN EXCEPTIONAL CIRCUMSTANCES; NOT PRESENT.—** In reversing its original ruling that CEPRI availed of wrong mode of appeal, the CA in its Amended Decision reasoned out that although the petition for *certiorari* was an incorrect remedy, it allowed the treatment of such petition as a petition for review based on earlier rulings of this Court. While it may be true that this Court, in various cases, has treated a petition for *certiorari* under Rule 65 as a petition for review, it does not follow that the appellate courts should subscribe to those rulings as a general rule. In those decisions, certain exceptional circumstances were present which necessitated the relaxing of the rule. Highly instructive is this Court's ruling in *Tagle v. Equitable PCI Bank*: xxx It is true that in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, this Court has, before, treated a petition for *certiorari* as a petition for review on *certiorari,* particularly **(1) if the petition for *certiorari* was filed within the**

reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules. With the above-cited ruling of this Court in mind, the Amended Decision, as well as the records and the antecedent circumstances of the present case are devoid of any justification that would merit the deviation from the strict rule of procedure. The fact still remains that CEPRI had chosen to file an inappropriate mode of appeal and regardless of the reason behind it, whether it was to substitute a lost appeal or merely through plain negligence, such can no longer be corrected. It is elementary that the special civil action of *certiorari* is not and cannot be a substitute for an appeal, where the latter remedy is available, as it was in this case. A special civil action under Rule 65 of the Rules of Court will not be a cure for failure to timely file an appeal under Rule 43 of the Rules of Court. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, especially if such loss or lapse was occasioned by one's own neglect or error in the choice of remedies.

4. **REMEDIAL LAW; EVIDENCE; THE TRIAL COURT'S FINDINGS OF FACT ARE GENERALLY ACCORDED RESPECT, IF NOT FINALITY; THE TRIAL COURT HAS AUTHORITY TO DISMISS A PETITION FOR REHABILITATION AFTER HEARING, OR EVEN AFTER DUE CONSIDERATION OF THE PLEADINGS FILED BEFORE IT.—** Notwithstanding the error committed by the CA in disregarding the proper mode of appeal or even under the presumption that it committed no mistake in treating the petition for *certiorari* under Rule 65 as a petition for review, the CA was still amiss in disregarding the factual findings of the RTC. The RTC found CEPRI to be in the state of insolvency which precludes it from being entitled to rehabilitation. The findings of fact of the RTC must be given respect as it is clear and categorical in ruling that CEPRI is not merely in the state of illiquidity, but in an apparent state of insolvency. [T]his Court finds no reason to disturb the RTC's findings of fact, and neither should the CA. It must be remembered that the trial court has the authority to dismiss a petition for rehabilitation after hearing, or even after due consideration of the pleadings filed before it. This is in accord with the trial court's authority to give due course to the petition or not under Rule 4, Section 9 of the Interim Rules. The trial

court, acting in its capacity as a commercial court, has the expertise and knowledge over matters under its jurisdiction and is in a better position to pass judgment thereon. It is no different than that of administrative departments and, as such, its findings of fact are generally accorded respect, if not finality.

APPEARANCES OF COUNSEL

Lim Vigilia Alcala Dumlao Alameda & Casiding for petitioner.
Girlie Young for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court which seeks to annul and set aside the Amended Decision[2] dated March 3, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 71017.

The facts, as shown in the records, are the following:

On January 29, 2002, Cebu Printing and Packaging Corporation (CEPRI) filed a Petition for Rehabilitation[3] with the Regional Trial Court (RTC) of Cebu City, Branch 11.[4] Finding the petition sufficient in form and substance, the RTC issued a Stay Order[5] dated February 11, 2002: staying enforcement of all claims against CEPRI, its guarantors and sureties; appointing Mr. Sergio D. Lim, Jr. as rehabilitation receiver and fixing his bond at ₱100,000.00; directing CEPRI to publish said Order in a

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[1] *Rollo*, pp. 46-679.

[2] Penned by Associate Justice Arsenio J. Magpale, with Associate Justices Vicente L. Yap and Enrico A. Lanzanas, concurring; *id.* at 10-27.

[3] *Rollo*, pp. 254-445.

[4] A specially designated corporate court, pursuant to Section 5.2 of R.A. 8799.

[5] *Rollo*, pp. 446-447.

newspaper of general circulation in the Philippines once a week for two (2) consecutive weeks; fixing the initial hearing on the petition on March 21, 2002; and directing all creditors and all interested parties (including the Securities and Exchange Commission) to file and serve on CEPRI a verified comment on or opposition to the petition, with supporting affidavits and documents, not later than ten (10) days before March 21, 2002, and putting them on notice that their failure to do so will bar them from participating in the proceedings, among others.

After due publication of the Stay Order, only China Banking Corporation (Chinabank) filed a Comment/Opposition[6] dated March 8, 2002.

After the initial hearing, the RTC issued the Order[7] dated April 30, 2002 denying due course to the petition for rehabilitation. The Order reads in part:

WHEREFORE, in view of the foregoing premises, this Court hereby does not give due course to the petition for rehabilitation filed in this case.

Accordingly, the Court lifts the stay order issued in this case on February 11, 2002 and recalls the appointment of Mr. Carlos G. Co as rehabilitation receiver.

IT IS SO ORDERED.

CEPRI received the Order of the RTC on May 8, 2002, and filed an Urgent Motion for Reconsideration[8] on May 14, 2002, which the court, in an Order[9] dated May 23, 2002, desisted from taking cognizance because such motion is a prohibited pleading. Thus:

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[6] *Id.* at 448-458, with a Supplemental Comment/Opposition dated April 12, 2002, *id.* at 459-466.

[7] *Rollo*, pp. 145-147.

[8] *Id.* at 467-485.

[9] *Id.* at 486. (Emphasis supplied.)

The Court hereby desists from taking cognizance of the petitioner's urgent motion for reconsideration of the order issued in this case on April 30, 2002 because **a motion for reconsideration of an order is a prohibited pleading under Section 1 of Rule 3 of the Interim Rules of Procedure on Corporate Rehabilitation.**

On June 4, 2002, or past the period within which to file an appeal, CEPRI filed with the CA a Petition for *Certiorari*[10] which the court denied, and affirmed *in toto* the Order dated April 30, 2002 of the RTC, the dispositive portion of which reads:

WHEREFORE, premises considered, the Petition is hereby DENIED. Accordingly, the Orders dated April 30, 2002 and May 23, 2002 are AFFIRMED *in toto*.

SO ORDERED.[11]

Aggrieved, CEPRI filed a Motion for Reconsideration[12] dated September 27, 2005 which the CA granted in its Amended Decision[13] dated March 3, 2006, the dispositive portion of which reads as follows:

WHEREFORE, premises considered, the Petition is hereby GRANTED. The Orders dated April 30, 2002 and May 23, 2002 are REVERSED, and the case is remanded to the lower court. The Stay Order issued by the public respondent is REINSTATED, and the appointment of the Rehabilitation Receiver, Mr. Carlos G. Co, is RESTORED. The Petition for Rehabilitation is given DUE COURSE, and the petition is referred to the Rehabilitation Receiver for the evaluation of the rehabilitation plan. The Rehabilitation Receiver is given ONE HUNDRED TWENTY (120) days from receipt of this Amended Decision to submit his recommendations to the lower court for the proper disposition thereof.

SO ORDERED.

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[10] *Id.* at 487-533.

[11] *Id.* at 36.

[12] *Id.* at 621-631.

[13] *Id.* at 10-27.

Due to the above ruling, Chinabank filed a motion for reconsideration[14] dated March 23, 2006, which was denied by the CA in its Resolution[15] dated May 29, 2006.

Hence, the present petition with the following issues raised:

A –

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT RULED THAT EVEN A PETITION FOR *CERTIORARI* UNDER RULE 65 OF THE RULES OF COURT IS EMBRACED UNDER A.M. NO. 04-9-07-SC PROMULGATED ON SEPTEMBER 14, 2004 AND TOOK EFFECT ON OCTOBER 15, 2004, GOVERNING APPEALS IN CORPORATE REHABILITATION CASES.

B –

THE HONORABLE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT CONVENIENTLY DISREGARDED THE FACTUAL FINDINGS OF THE COMMERCIAL COURT, AND SUBSTITUTED THE SAME WITH ITS OWN JUDGMENT, BY MERELY RELYING ON THE OPINION OF AN AUTHOR IN CORPORATE REHABILITATION, WHOSE EXPERTISE IN THE FIELD IS NOT EVEN WELL ESTABLISHED.

C –

THE ASSAILED AMENDED DECISION REINSTATING THE REHABILITATION CASE HAD UNWITTINGLY SANCTIONED THE DESPICABLE PRACTICE OF FORUM SHOPPING BY THE RESPONDENT AND ITS COUNSEL, WHEREBY THERE ARE NOW TWO (2) CASES PENDING, ONE FOR CORPORATE REHABILITATION UNDER SRC CASE NO. 001-CEB, AND THE OTHER, FOR ANNULMENT OF LOANS AND MORTGAGE CONTRACTS, AMONG OTHERS, UNDER CIVIL CASE NO. MAN-4372, PRESENTLY PURSUED SIMULTANEOUSLY BY THE RESPONDENT, EACH ASKING FOR RELIEF INCOMPATIBLE WITH THE OTHER.[16]

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[14] *Id.* at 1169-1208.

[15] *Id.* at 38-39.

[16] *Id.* at 71-72.

In its Comment[17] dated October 23, 2006, CEPRI argued that the CA did not commit any reversible error when it ruled that even a petition for *certiorari* under Rule 65 of the Rules of Court is embraced under A.M. No. 04-9-07-SC promulgated on September 14, 2004 and took effect on October 15, 2004, governing appeals in corporate rehabilitation cases. It further claimed that the CA did not err in disregarding the factual findings of the RTC. It also pointed out that the issue on forum shopping should not have been raised in this Court, because the said issue had already been addressed by the CA.

The petition is impressed with merit.

Petitioner contends that a special civil action under Rule 65 of the 1997 Rules of Civil Procedure is not a remedy for the failure to timely file a petition for review under Rule 45. It adds that Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, especially if such loss or lapse was occasioned by one's own negligence or error in the choice of remedies. It also claims that CEPRI was prompted to file the petition for *certiorari* not because of its firm conviction that grave abuse of discretion attended the issuance of the commercial court's Order dated April 30, 2002, denying due course on the petition for rehabilitation, but in a bid to make up for the lost remedy of appeal.

Nevertheless, the CA, in its Amended Decision dated March 3, 2006, treated the petition for *certiorari* as a petition for review citing several decisions[18] of this Court. The CA went on to state that the petition for *certiorari* filed by CEPRI was pursuant to A.M. No. 04-9-07-SC which treats the said petition as a petition for review under Rule 43. This is an error on the part of the CA.

The foremost issue to be resolved is whether or not CEPRI availed of the proper remedy. This Court rules in the negative.

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[17] *Id.* at 693-732.

[18] *Cando v. NLRC*, G.R. No. 91344, September 14, 1990, 189 SCRA 666; *Royal Crown Internationale v. NLRC*, G.R. No. 78085, October 16, 1989, 178 SCRA 569; *People v. Ferrer*, 150-C Phil. 551 (1972); *Universal*

Section 5,[19] Rule 3 of the Interim Rules of Procedure on Corporate Rehabilitation provides:

> Sec. 5. *Executory Nature of Orders*. — Any order issued by the court under these Rules is immediately executory. **A petition for review or an appeal therefrom shall not stay the execution of the order unless restrained or enjoined by the appellate court. The review of any order or decision of the court or an appeal therefrom shall be in accordance with the Rules of Court**: *Provided, however*, that the reliefs ordered by the trial or appellate courts shall take into account the need for resolution of proceedings in a just, equitable, and speedy manner.

As correctly argued by petitioner, the proceedings for corporate rehabilitation is categorized as a special proceeding; hence, as supplied in A.M. 00-8-10-SC:

> Following the discussion above, the period of appeal provided in Section 3, Rule 41[20] of the 1997 Rules of Civil Procedure for ordinary civil actions shall apply to cases involving intra-corporate disputes. Corollarily, the period of appeal provided in paragraph 19 (b) of the Interim Rules Relative to the Implementation of B.P. Blg. 129 for special proceedings shall apply to petitions for rehabilitation.

However, this Court issued A.M. No. 04-9-07-SC[21] as a clarification on the proper mode of appeal of cases which were

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Textile Mills, Inc. v. C. I. R., 146 Phil. 1101 (1970); *Shugo Noda & Co., Ltd. v. CA*, G.R. No. 107404, March 30, 1994, 231 SCRA 620; *Commission on Elections v. CA*, G.R. No. 108120, January 26, 1994, 229 SCRA 501; *Estrada v. Domingo*, 139 Phil. 158 (1969); *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co., Inc.*, G.R. No. L-31195, June 5, 1973, 51 SCRA 189.

[19] A.M. No. 00-8-10-SC. (Emphasis supplied.)

[20] Sec. 3. *Period of ordinary appeal*. — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or the final order. x x x

The period of appeal shall be interrupted by a timely motion for new commercial or reconsideration. No motion for extension of time to file a motion for new commercial or reconsideration shall be allowed.

[21] Re: Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission.

formerly under the jurisdiction of the Securities and Exchange Commission, such as those cases involving corporate rehabilitation. Now, there is no more need to file a notice of appeal and record on appeal. An appeal may now be perfected by filing a petition for review within fifteen (15) days from notice of the decision or final order of the trial court, directly to the CA under Rule 43 of the Rules of Court. As stated:

> WHEREFORE, the Court Resolves:
>
> 1. All decisions and final orders in cases falling under the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court.
>
> 2. The petition for review shall be taken within fifteen (15) days from notice of the decision or final order of the Regional Commercial Court. Upon proper motion and the payment of the full amount of the legal fee prescribed in Rule 141, as amended before the expiration of the reglementary period, the Court of Appeals may grant an additional period of fifteen (15) days within which to file the petition for review. No further extension shall be granted except for the most compelling reasons and in no case to exceed fifteen (15) days.
>
> 3. This Resolution shall apply to all pending appeals filed within the reglementary period from decisions and final orders in cases falling under the Interim Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799, regardless of the mode of appeal or petition resorted to by the appellant.
>
> 4. These pending appeals or petitions shall be treated in the following manner:
>
> > a. In case a notice of appeal and/or record on appeal was filed with the Regional Commercial Court within the period provided in A.M. No. 00-8-10-SC, and the original record or the approved record on appeal has not been transmitted to the Court of Appeals, the appealing party shall have fifteen (15) days from the effectivity of this Resolution to file a petition for review under Rule 43 with the Court of Appeals, without prejudice to filing a motion for extension in accordance with 1 hereof.
> >
> > The notice of appeal and/or record on appeal shall remain in the original record but the Regional Commercial Court and/

> or its clerk shall not transmit the original record or the approved record on appeal to the Court of Appeals anymore.
>
> An appealing party who fails to file a petition for review with the Court of Appeals within the prescribed period shall not be deemed to have abandoned his appeal, in which case the appeal shall run its due course.
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> b. In case a notice of appeal and/or record on appeal was filed with the Regional Commercial Court within the period provided in A.M. No. 00-8-10-SC, and the original record or the approved record on appeal has been transmitted to the Court of Appeals, the case shall continue as an appeal.
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> **c. In case a petition appealing or assailing the decision and/or final order is filed directly with the Court of Appeals within the reglementary period, such petition shall be considered a petition for review under Rule 43.**
>
> d. In case a notice of appeal and/or record on appeal is filed with the Regional Commercial Court and a petition appealing or assailing the decision and/or final order is likewise filed with the Court of Appeals, the cases shall be consolidated and treated as a petition for review under Rule 43. (Emphasis supplied.)

The above resolution emphasizes the need to perfect an appeal within the given period which is fifteen (15) days by specifically stating that Rule 43 of the Rules of Court is the mode of appeal that is applicable for those appealing or assailing the decisions and/or final orders of the RTC. Thus, when it is mentioned in paragraph 4 (c) of A.M. No. 04-9-07-SC that *in case a petition appealing or assailing the decision and/or final order is filed directly with the Court of Appeals within the reglementary period, such petition shall be considered a petition for review under Rule 43*, it is presumed that the mode of appeal resorted to was an ordinary appeal and not a special civil action. Otherwise, the Resolution should have categorically included *certiorari* under Rule 65 as among those that should be considered as a petition for review under Rule 43 of the Rules of Court. Again, Rule 43 of the Rules of Court pertains to an ordinary mode of appeal, whereas CEPRI availed of Rule 65, a special civil action.

In *New Frontier Sugar Corporation v. RTC, Branch 39, Iloilo City,*[22] this Court already ruled that the proper mode of appeal in cases of corporate rehabilitation is through a petition for review under Rule 43 of the Rules of Court to be filed within fifteen (15) days from notice of the decision or final order of the RTC. As ruled:

> However, it should be noted that the Court issued A.M. No. 04-9-07-SC on September 14, 2004, clarifying the proper mode of appeal in cases involving corporate rehabilitation and intra-corporate controversies. It is provided therein that all decisions and final orders in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealed to the CA through a petition for review under Rule 43 of the Rules of Court to be filed **within fifteen (15) days from notice of the decision or final order of the RTC**.[23]

Through the above decision of this Court, it can be gleaned that the reglementary period of fifteen (15) days from notice of the decision or final order of the RTC within which to file an appeal is of utmost importance.

In reversing its original ruling that CEPRI availed of wrong mode of appeal, the CA in its Amended Decision reasoned out that although the petition for *certiorari* was an incorrect remedy, it allowed the treatment of such petition as a petition for review based on earlier rulings of this Court. While it may be true that this Court, in various cases, has treated a petition for *certiorari* under Rule 65 as a petition for review, it does not follow that the appellate courts should subscribe to those rulings as a general rule. In those decisions, certain exceptional circumstances were present which necessitated the relaxing of the rule. Highly instructive is this Court's ruling in *Tagle v. Equitable PCI Bank*:[24]

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[22] G.R. No. 165001, January 31, 2007, 513 SCRA 601.

[23] *Id.* at 611. (Emphasis supplied.)

[24] G.R. No. 172299, April 22, 2008, 552 SCRA 424.

The remedies of appeal in the ordinary course of law and that of *certiorari* under Rule 65 of the Revised Rules of Court are mutually exclusive and not alternative or cumulative. Time and again, this Court has reminded members of the bench and bar that the special civil action of *Certiorari* cannot be used as a substitute for a lost appeal where the latter remedy is available; especially if such loss or lapse was occasioned by one's own negligence or error in the choice of remedies.

To be sure, once again, we take this opportunity to distinguish between a Petition for Review on *Certiorari* (an appeal by *certiorari*) and a Petition for *Certiorari* (a special civil action/an original action for *Certiorari*), under Rules 45 and 65, respectively, of the Revised Rules of Court. *Madrigal Transport Inc. v. Lapanday Holdings Corporation* summarizes the distinctions between these two remedies, to wit:

> *As to the Purpose*. *Certiorari* is a remedy designed for the correction of errors of jurisdiction, not errors of judgment. In *Pure Foods Corporation v. NLRC*, we explained the simple reason for the rule in this light:
>
> > When a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correct[a]ble through the original civil action of *certiorari.*
>
> The supervisory jurisdiction of a court over the issuance of a writ of *certiorari* cannot be exercised for the purpose of reviewing the intrinsic correctness of a judgment of the lower court — on the basis either of the law or the facts of the case, or of the wisdom or legal soundness of the decision. Even if the findings of the court are incorrect, as long as it has jurisdiction over the case, such correction is normally beyond the province of *certiorari*. Where the error is not one of jurisdiction, but of an error of law or fact— a mistake of judgment—appeal is the remedy.

As to the Manner of Filing. Over an appeal, the CA exercises its appellate jurisdiction and power of review. Over a *certiorari,* the higher court uses its original jurisdiction in accordance with its power of control and supervision over the proceedings of lower courts. An appeal is thus a continuation of the original suit, while a petition for *certiorari* is an original and independent action that was not part of the trial that had resulted in the rendition of the judgment or order complained of. The parties to an appeal are the original parties to the action. In contrast, the parties to a petition for *certiorari* are the aggrieved party (who thereby becomes the petitioner) against the lower court or quasi-judicial agency, and the prevailing parties (the public and the private respondents, respectively).

As to the Subject Matter. Only judgments or final orders and those that the Rules of Court so declared are appealable. Since the issue is jurisdiction, an original action for *certiorari* may be directed against an interlocutory order of the lower court prior to an appeal from the judgment; or where there is no appeal or any plain, speedy or adequate remedy.

As to the Period of Filing. Ordinary appeals should be filed within fifteen days from the notice of judgment or final order appealed from. Where a record on appeal is required, the appellant must file a notice of appeal and a record on appeal within thirty days from the said notice of judgment or final order. A petition for review should be filed and served within fifteen days from the notice of denial of the decision, or of the petitioner's timely filed motion for new trial or motion for reconsideration. In an appeal by *certiorari*, the petition should be filed also within fifteen days from the notice of judgment or final order, or of the denial of the petitioner's motion for new trial or motion for reconsideration.

On the other hand, a petition for *certiorari* should be filed not later than sixty days from the notice of judgment, order, or resolution. If a motion for new trial or motion for reconsideration was timely filed, the period shall be counted from the denial of the motion.

As to the Need for a Motion for Reconsideration. A motion for reconsideration is generally required prior to the filing of a petition for *certiorari,* in order to afford the tribunal an opportunity to correct the alleged errors. Note also that this

motion is a plain and adequate remedy expressly available under the law. Such motion is not required before appealing a judgment or final order.

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It is true that in accordance with the liberal spirit pervading the Rules of Court and in the interest of substantial justice, this Court has, before, treated a petition for *certiorari* as a petition for review on *certiorari,* particularly **(1) if the petition for *certiorari* was filed within the reglementary period within which to file a petition for review on *certiorari*; (2) when errors of judgment are averred; and (3) when there is sufficient reason to justify the relaxation of the rules.**[25]

This Court was also liberal in its treatment of a wrong mode of appeal in *Land Bank of the Philippines v. CA,*[26] wherein it was ruled that:

x x x However, there are cases where the cert writ may still issue even if the aggrieved party has a remedy of appeal in the ordinary course of law. Thus, **where the exigencies of the case are such that the ordinary methods of appeal may not prove adequate either in point of promptness or completeness so that a partial or total failure of justice may result, a cert writ may issue.**

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[25] *Id.* at 434-444, citing *Cathay Pacific Steel Corp. v. Court of Appeals,* 500 SCRA 226, 236 (2006); *Land Bank of the Philippines v. Continental Watchman Agency Incorporated*, 465 Phil. 607, 615 (2004); *Land Bank of the Philippines v. Court of Appeals*, 456 Phil. 755, 784 (2003); *Madrigal Transport Inc. v. Lapanday Holdings Corporation,* 436 SCRA 123, 134-136 (2004); *Oaminal v. Sps. Castillo*, 459 Phil. 542, 556 (2003); *Republic v. Court of Appeals*, 379 Phil. 92, 98 (2000); *Eternal Gardens Memorial Park Corp. v. Court of Appeals*, 347 Phil. 232, 256 (1997); *Delsan Transport Lines, Inc. v. Court of Appeals*, 335 Phil. 1066, 1075 (1997); *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, 389 Phil. 644 (2000); *Bank of America, NT & SA v. Gerochi, Jr.,* 230 SCRA 9, 15 (2004), citing *Alto Sales Corp. v. Intermediate Appellate Court,* 274 Phil. 914 (1991); *Filcon Manufacturing Corp. v. National Labor Relations Commission,* 199 SCRA 814 (1999); and *Kabushi Kaisha Isetan v. Intermediate Appellate Court,* 203 SCRA 583 (1991). (Emphasis supplied.)

[26] 456 Phil. 755, 786 (2003), citing *State v. Guinotte*, 57 S.W. 281 (1900). (Emphasis supplied.)

The same was also applied in *Leyte IV Electric Cooperative, Inc. v. LEYECO IV Employees Union-ALU*,[27] thus:

> In addition, while the settled rule is that an independent action for *certiorari* may be availed of only when there is no appeal or any plain, speedy and adequate remedy in the ordinary course of law and *certiorari* is not a substitute for the lapsed remedy of appeal, there are a few significant exceptions when the extraordinary remedy of *certiorari* may be resorted to despite the availability of an appeal, namely: **(a) when public welfare and the advancement of public policy dictate; (b) when the broader interests of justice so require; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority**.[28]

With the above-cited rulings of this Court in mind, the Amended Decision, as well as the records and the antecedent circumstances of the present case are devoid of any justification that would merit the deviation from the strict rule of procedure. The fact still remains that CEPRI had chosen to file an inappropriate mode of appeal and regardless of the reason behind it, whether it was to substitute a lost appeal or merely through plain negligence, such can no longer be corrected. It is elementary that the special civil action of *certiorari* is not and cannot be a substitute for an appeal, where the latter remedy is available, as it was in this case.[29] A special civil action under Rule 65 of the Rules of Court will not be a cure for failure to timely file an appeal under Rule 43 of the Rules of Court. Rule 65 is an independent action that cannot be availed of as a substitute for the lost remedy of an ordinary appeal, especially if such

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[27] G.R. No. 157775, October 19, 2007, 537 SCRA 154.

[28] *Id.* at 166, citing 1997 Rules of Civil Procedure, Rule 65, Sec. 1; *Madrigal Transport, Inc. v. Lapanday Holdings Corporation, supra* note 23, at 127; *Madriaga v. Court of Appeals,* G.R. No. 142001, July 14, 2005, 463 SCRA 298; *Martillano v. Court of Appeals,* G.R. No. 148277, June 29, 2004, 433 SCRA 195; *Heirs of Lourdes Padilla v. Court of Appeals*, 469 Phil. 296, 204 (2004); *Metropolitan Manila Development Authority v. JANCOM Environmental Corp*., 425 Phil. 961, 974 (2002); *Uy Chua v. Court of Appeals*, 398 Phil. 17, 30 (2000). (Emphasis supplied.)

[29] See *Badiola v. Court of Appeals*, G.R. No. 170691, April 23, 2008, 552 SCRA 562, 583.

loss or lapse was occasioned by one's own neglect or error in the choice of remedies.[30]

Notwithstanding the error committed by the CA in disregarding the proper mode of appeal or even under the presumption that it committed no mistake in treating the petition for *certiorari* under Rule 65 as a petition for review, the CA was still amiss in disregarding the factual findings of the RTC.

The RTC found CEPRI to be in the state of insolvency which precludes it from being entitled to rehabilitation. The findings of fact of the RTC must be given respect as it is clear and categorical in ruling that CEPRI is not merely in the state of illiquidity, but in an apparent state of insolvency. There is nothing more detailed than the contents of the said Order, which reads, in part:

After the aforesaid initial hearing, this Court made a careful and judicious scrutiny and evaluation as to whether the petition for rehabilitation filed by the petitioner is impressed with merit or not. Up to this time, this Court is not satisfied that there is merit in the said petition.

Foremost of all, it appears that the petitioner does not really have enough assets, net worth and earning to meet and settle its outstanding liabilities. As stated by it in paragraph 7.8 of the petition, it has outstanding liabilities in the aggregate sum of ₱69,539,903.57 to the Bank of Philippine Islands and China Banking Corporation. These major liabilities are broken down as follows: ₱20,230,000.00 to BPI and ₱49,309,903.57 to China Banking Corporation as of December 31, 2001. There is a strong probability that these may still increase substantially after December 31, 2001. However, the petitioner has relatively less assets to answer for these liabilities. As historically shown by its audited financial statements, the petitioner's assets from 1990 to 2000 were only worth as follows: ₱352,222.40 in 1990 (Exhibit K), ₱452,723.33 in 1991 (Exhibit K), ₱569,948.19 in 1992 (Exhibit L), ₱787,300.65 in 1993 (Exhibit M), ₱761,310.69 in 1994 (Exhibit N), ₱3,042,411.81 in 1995 (Exhibit O), ₱5,608,866.70 in 1996 (Exhibit P), ₱8,100,022.81 in 1997 (Exhibit Q), ₱10,007,490.26 in 1998 (Exhibit R), ₱10,905,649.83 in 1999 (Exhibit S) and ₱11,615,251.75 in 2000 (Exhibit T). Of course, there is a sudden

[30] *Id.*

and tremendous supposed increase or leap of the worth of petitioner's assets as of December 31, 2001, as shown by Annex A of the petition, from ₱11,615,251.75 as of December 31, 2000 to ₱65,766,094.28 as of December 31, 2001. But this is actually of no moment. The fact is that the petitioner booked as its assets certain properties not actually belonging to it, like the parcels of land covered by Transfer Certificates of Title Nos. 34039, 34040, 34041 and 30696 in the name of Rolando S. Go. The petitioner, through its counsel, admitted this fact during the hearing on its petition. And so, the balance sheet of the petitioner as of December 31, 2001 is not really a faithful one. The revaluation increments stated or indicated therein are questionable. For all intents and purposes, it can thus be said that the petitioner was not actually better off in terms of its assets and equity in 2001 than in 2000. **In view thereof, this Court concurs with the oppositor, China Banking Corporation, that the petitioner is actually now in a state of insolvency, not illiquidity.** In other words, it cannot be the proper subject of rehabilitation.

Secondly, this Court is not really prepared to give full faith to the financial projections of the petitioner (Annex H-1 of the petition). The assumption that petitioner's gross sales will increase by 25% to 30% within the next five years is without adequate basis. It is too speculative and unrealistic. It is not borne by petitioner's historical operations. Neither is it borne by an objective industry forecast. It is even belied by the Packaging Industry Profile prepared by the DTI Cebu Provincial Office which the petitioner submitted to this Court (Exhibit U). In said Packaging Industry Profile, it is categorically and explicitly stated that "packaging demand is projected by the Strategic Industry Research and Analysis (SIRA) to increase only by around 4.7% compound per annum over the period 1997-2003." And so, there is actually no faithful and adequate showing by the petitioner that it has ample capacity to pay its outstanding and overdue loans to its major creditors such as the BPI and China Banking Corporation, even if it be given a breathing spell.

In the third place, the petitioner has not met all the conditions which are required or necessary to place it under rehabilitation. It has not been shown categorically and specifically by the petitioner that its stockholders had irrevocably approved and/or consented to all actions or matters necessary and desirable to rehabilitate it, such as amending its articles of incorporation and by-laws, increasing or decreasing its authorized capital stock, its issuing bonded indebtedness, alienating or encumbering its assets and modifying

the rights of its shareholders. Such is not specifically shown in Annex L of the petition and Exhibits J and J-1 for the petitioner. In the absence of it, this Court cannot be in a position to approve the petitioner's proposed rehabilitation plan.[31]

Based on the above Order of the RTC, this Court finds no reason to disturb the RTC's findings of fact, and neither should the CA. It must be remembered that the trial court has the authority to dismiss a petition for rehabilitation after hearing, or even after due consideration of the pleadings filed before it.[32] This is in accord with the trial court's authority to give due course to the petition or not under Rule 4,[33] Section 9 of the Interim Rules.[34] The trial court, acting in its capacity as a commercial court, has the expertise and knowledge over matters under its jurisdiction and is in a better position to pass judgment thereon. It is no different than that of administrative departments and, as such, its findings of fact are generally accorded respect, if not finality.

Anent the issue of forum shopping, the resolution of the first two issues renders it inconsequential.

In summary, had the CA not reversed its original decision, which was more in tune with the law and the prevailing jurisprudence, the simple issues presented before this Court would have been settled expeditiously.

WHEREFORE, the petition for review dated July 18, 2006 of China Banking Corporation is hereby *GRANTED*. The

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[31] *Rollo*, pp. 145-16. (Emphasis supplied.)

[32] See *New Frontier Sugar Corporation v. RTC, Branch 39, Iloilo City, et al.*, *supra* note 21.

[33] x x x

(4) Initial hearing on any matter relating to the petition or on any comment and/or opposition filed in connection therewith. If the trial court is satisfied that there is merit in the petition, it shall give due course to the petition;

x x x

[34] *New Frontier Sugar Corporation v. RTC, Branch 39, Iloilo City, et al.*, *supra* note 21.

Amended Decision dated March 3, 2006 of the Court of Appeals in CA-G.R. SP No. 71017 is hereby *ANNULLED* and *SET ASIDE*. Consequently, the Order dated April 30, 2002 of the Regional Trial Court, Branch 11, Cebu City is hereby *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. Nos. 173219-20. August 11, 2010]

ALC INDUSTRIES, INC., *petitioner, vs.* **DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; CONTRACTS; RESPONDENT'S RESCISSION OF ITS CONTRACT WITH THE PETITIONER FOR THE LATTER'S SUBSTANTIVE AND FUNDAMENTAL BREACH THEREOF, JUSTIFIED.— ALC undertook in the agreement to accomplish 43.91% of the reduced project by the end of December 1998. The RISA's threshold was, therefore, 39.52%. But ALC was only able to accomplish 30.80% which was only 70.14% of the schedule, well below the 90% progress required by Clause 10. And even if delay due to bad weather could be factored in, ALC would still fall below the 90% target. On this score alone rescission was still justified. The 90% progress is a requirement imposed by the parties to the RISA. As a contractual obligation, this supersedes the threshold imposed by law. Since the parties entered into the RISA primarily due to initial delays in the project, the timetable instituted in it became an integral part of the agreement, an

assurance that the project would be completed on time. ALC's failure to keep up with the rate of progress as contractually mandated is a substantial and fundamental breach which would defeat the very purpose of the RISA. Thus, the DPWH was entitled to terminate the project and expel ALC from it.

2. ID.; ID.; ID.; MONETARY CLAIMS OF THE PETITIONER AGAINST THE RESPONDENT DEEMED WAIVED WHEN THE PARTIES AGREED TO ENTER INTO THE REDUCTION IN SCOPE AGREEMENT (RISA).— The Court agrees with the CA's ruling that ALC should be deemed to have already waived whatever rights or interests it may have been entitled to as a result of DPWH's shortcomings by virtue of entering into the RISA. The parties executed the RISA so the work on the project could continue despite the initial setbacks. Admittedly, both sides incurred some delays. Instead of seeking redress for such delays, each side waived whatever claims it had against the other arising from such delays as a major consideration for their agreeing to enter into the RISA. For, if this was not the case, the parties "should have included the payment [of stand by costs in the RISA] as what they did with the other monetary claims of ALC." Besides, ALC created its own problem when it decided to mobilize in July 1996. As ALC pointed out in its letter to the DPWH dated October 28, 1996, the contract had not yet been signed by then and this was essential to the issuance of the Notice to Proceed. ALC unnecessarily put itself in a position where it would incur stand by costs. While the DPWH gave ALC the authority to mobilize, this came about because ALC asked for it.

3. ID.; ID.; ID.; RECOVERY OF STAND BY COSTS INCURRED DUE TO INCLEMENT WEATHER, UNWARRANTED; RULE THAT EACH PARTY SHALL BEAR HIS OWN LOSS, APPLIED TO CASE AT BAR.— While Clause 44, unlike Clause 12.2, allows for time extensions due to weather delays, the same is silent on the recovery of costs. Indeed, ALC could not point to any provision in the contract specifically allowing it to recover stand by costs incurred due to inclement weather. Besides, such costs were incurred without any fault or negligence on the part of the DPWH. Certainly, such weather conditions are to be considered fortuitous events. And in such cases, the general rule is that each party shall bear his own loss.

APPEARANCES OF COUNSEL

Reyno Tiu Domingo & Santos for petitioner.
Zosimo C. Culla for respondent.

D E C I S I O N

ABAD, *J.*:

On May 29, 1996 respondent Department of Public Works and Highways (DPWH) awarded to petitioner ALC Industries, Inc. (ALC) the construction of a 105-kilometer section of the Davao-Bukidnon Road from Calinan to Maramag. The parties signed the covering contract, Contract Package 09B, on January 28, 1997. ALC began work after receipt on March 3, 1997 of the notice to proceed. Subsequently, however, the parties discovered that the original design plans and drawings failed to reflect actual ground levels. Thus, they undertook a full-scale redesign of the project.

Because ALC had fallen behind schedule, it agreed with DPWH to reduce the scope of works by executing about a year later on July 17, 1998 a Reduction in Scope Agreement (RISA),[1] shrinking the project from 105 kilometers to 46.2 kilometers and from a contract price of ₱396,336,381.48 to ₱194,802,386.89. But, despite the reduction in scope of work, ALC continued to fall behind schedule. On August 7, 1998 the DPWH warned ALC about it, followed on August 13, 1998 by another warning from the project consultant, and a third warning from the DPWH on September 3, 1998.

But with the delay unabated, in March 1999 the DPWH proposed to ALC a Supplemental Agreement which required ALC, among other things, to pay the DPWH about ₱30 million to enable it to recoup its advances to ALC based on the original scope of the project. But ALC rejected the proposed supplemental agreement. This prompted the DPWH to send it another letter

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[1] CA *rollo* (CA-G.R. SP 74839), Vol. I, pp. 337-339.

dated April 19, 1999, rescinding its contract with ALC on the ground that it had incurred a negative slippage in excess of 15%, the threshold set under Presidential Decree (P.D.) 1870.

ALC sought reconsideration, claiming that what essentially delayed the project were actually the errors in the original design plans and drawings. It took the DPWH resident engineer eight months to approve the first sheet of the redesigned plans and drawings that covered a five-kilometer stretch of the project. Then it still had to be approved by the DPWH Bureau of Construction. ALC alleged that it in fact got no approved construction plan even after the rescission of the project. The delay of 14 months in the issuance of the notice to proceed and the inclement weather at the project site compounded the causes of the delay.

Since the DPWH did not act on its request for reconsideration, ALC submitted the matter for arbitration by the Construction Industry Arbitration Commission (CIAC).[2] Appallingly, the DPWH did not adequately respond to the action. It did not file an answer, seek modification of the Terms of Reference, file its memorandum, or submit the required draft decision, despite several extensions and postponements. It also neither presented a witness nor cross-examined ALC's witnesses.

At any rate, ALC claimed that the target accomplishment of the project for December 1998 was 39.52% and it finished 30.80%. ALC pointed out that its negative slippage was, therefore, only 8.72%, which was still below the negative slippage threshold of 15%. But the CIAC had a different computation of the slippage. It reached 22.06% because ALC accomplished only 77.94% of the project as scheduled (30.80 divided by 39.52).

Surprisingly, despite this finding in the rate of ALC's negative slippage, the CIAC voided DPWH's order of rescission on the ground that, factoring in the delays attributable to bad weather, the slippage should be adjusted to 12.85% only. Further, the CIAC found that, while ALC was guilty of breach of contract, the DPWH was not without fault. It failed to give ALC the opportunity to refute its finding of negative slippage. It had moreover been shown

[2] Docketed as CIAC Case 27-2000.

that other contractors had incurred negative slippages of more than 15%, yet the DPWH did not resort to rescission. Thus, the CIAC modified the rescission to a mutual termination.

Out of the ₱655,647,869.82 that ALC originally claimed, the CIAC ruled that ALC was entitled only to ₱136,105,236.25. On ALC's urgent motion for partial correction, the CIAC modified its decision and increased the award to ₱190,355,820.84. From this amount, however, the CIAC offset ₱64,732,536.75 representing payments that the DPWH already made or advanced, resulting in a net award of ₱125,623,284.09 to ALC.

Both ALC and the DPWH appealed the decision of the CIAC to the Court of Appeals (CA).[3] In a decision, the CA agreed with the CIAC that ALC's negative slippage did not exceed the 15% threshold. The CA, however, upheld the DPWH rescission order based on the ALC's other contractual breaches.

Regarding the monetary awards, the CA affirmed nearly all that the CIAC provided but eliminated its award for stand by costs for equipment and manpower that ALC allegedly incurred on account of the DPWH's late issuance of the notice to proceed. The CA also denied ALC's additional claims for stand by costs due to the redesign works and bad weather conditions. Ultimately, the CA reduced the award to ALC from ₱190,355,820.84 to ₱45,687,595.25. But, offsetting prior payments that the DPWH already made, the CA ordered ALC to instead return ₱19,044,941.50 to the DPWH.[4] With the denial of its motion for reconsideration, ALC filed the present petition for review on *certiorari*.

<u>The Issues Presented</u>

The issues presented in this case are:

1. Whether or not the CA erred in failing to dismiss the DPWH's appeal on the ground that it was filed beyond the reglementary period;

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[3] Docketed as CA-G.R. SP 74463 and 74839.

[4] In its decision dated December 16, 2005, penned by Associate Justice Josefina Guevara-Salonga and concurred in by Associate Justices Eliezer R. de los Santos and Fernanda Lampas Peralta, *rollo*, pp. 55-69.

2. Whether or not the CA erred in upholding the DPWH's rescission of its contract with ALC; and

3. Whether or not the CA erred in not allowing ALC to recover stand by costs for equipment and manpower.

The Court's Rulings

One. ALC claims that the DPWH received, through the Office of the Solicitor General (OSG), copy of the CIAC decision on November 29, 2002, hence, it needed to perfect its appeal on or before December 13, 2002. But, as the CA found, the OSG received the CIAC decision only on December 2, 2002.[5] The DPWH filed a motion for extension of 15 days within which to file its petition for review on December 17, 2002 and a second motion for extension also of 15 days on December 27, 2002. The CA granted both motions and the DPWH filed its petition within the last extension asked for.

Two. ALC insists that the DPWH premised its rescission of the contract solely on the basis of ALC's negative slippage. Since both the CIAC and the CA found ALC's negative slippage to be below the 15% threshold provided by P.D. 1870, the CA had no basis for affirming the DPWH's rescission order. ALC points out that the CA erred when it considered other factors supposedly constituting breach of the agreement other than the negative slippage.

But the DPWH rescission order did not cite only the negative slippage as ground for its action. The pertinent portion of its order of April 19, 1999 reads:

> **In view of your failure to comply with Clause 10 of the Reduction of Scope Agreement x x x and your continuing commission of acts amounting to breach of contract resulting to a negative slippage of twenty six point sixty nine (26.69%) percent to protect the interest of the Government we hereby forfeit/rescind your contract for the above-mentioned project pursuant to Clause 63.1 of the conditions of Contract (International) for Works of Civil Engineering Construction and Presidential Decree 1870.**[6]

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[5] CA *rollo* (CA-G.R. SP 74463), pp. 163, 164 and 194.

[6] CA *rollo* (CA-G.R. SP 74839), Vol. I, p. 352.

Clearly, the DPWH gave two reasons for the rescission: 1) ALC's failure to comply with Clause 10 of the RISA; and 2) its continuing commission of acts amounting to breaches of contract, resulting in negative slippage in its performance.

The negative slippage, an evidence of the breach, is not itself the cause of the delay in the project but an evidence of it. And what were the acts that amounted to breaches of the contract? The CA found, based on a DPWH memorandum dated February 15, 1999, that ALC failed to perform several obligations that the RISA required of it. Specifically, ALC failed to: 1) submit a program of work; 2) submit its month-by-month cash flow summary; 3) complete the verification survey; 4) complete and maintain facilities for the resident engineer; 5) provide data for the resident engineer to process orders for power generators; 6) provide a service vehicle; and 7) delegate the necessary technical, financial and administrative authority to the Project Manager.

ALC argues that, in considering these breaches, the CA violated its right to due process since the DPWH did not specify them in its rescission order and since the same were not raised as issues on appeal. But these breaches of the contract were mentioned as the cause of the negative slippage. Since the parties raised this negative slippage as an issue between them, the breaches that caused the slippage are necessarily a part of that issue.

In any case, aside from those breaches of the contract, the DPWH based its rescission of the same on ALC's failure to comply with Clause 10 of the RISA, which provides:

> **10. The Contractor agrees that should he fail to achieve 90% of the progress shown on the bar chart programme given on Attachment 4 for the period up to end December 1998, then the Employer has the right to enter upon the site and expel the Contractor therefrom in accordance with Conditions of Contract Clause 63.**[7]

ALC undertook in the agreement to accomplish 43.91% of the reduced project by the end of December 1998.[8] The RISA's

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[7] *Id.* at 338.

[8] *Rollo*, pp. 22 and 77..

threshold was, therefore, 39.52%. But ALC was only able to accomplish 30.80% which was only 70.14% of the schedule, well below the 90% progress required by Clause 10. And even if delay due to bad weather could be factored in, ALC would still fall below the 90% target.[9]

On this score alone rescission was still justified. The 90% progress is a requirement imposed by the parties to the RISA. As a contractual obligation, this supersedes the threshold imposed by law. Since the parties entered into the RISA primarily due to initial delays in the project, the timetable instituted in it became an integral part of the agreement, an assurance that the project would be completed on time. ALC's failure to keep up with the rate of progress as contractually mandated is a substantial and fundamental breach which would defeat the very purpose of the RISA. Thus, the DPWH was entitled to terminate the project and expel ALC from it.

Three. ALC seeks to recover the stand by costs of its equipment and manpower as a result of 1) delays in the issuance of the notice to proceed; 2) the late submittal of the redesign works; and 3) the inclement weather that impeded work.

ALC claims that it placed its equipment and personnel on stand by at the project site for 10 months while awaiting the issuance of the notice to proceed, thus it incurred expenses for them and lost earning that it would have made had it devoted those resources to some other project. Indeed, the CIAC held that ALC was entitled to recover ₱144,668,225.59 for these expenses and loses. On appeal, however, the CA held that ALC already waived whatever right it had to recover these costs.

The Court agrees with the CA's ruling that ALC should be deemed to have already waived whatever rights or interests it may have been entitled to as a result of DPWH's shortcomings

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[9] ALC claims that there were 37 non-workable days from July to December1998 due to bad weather. ALC's average accomplishment per month is only 3.34%. Following the computation of the CIAC (*rollo*, p. 149), a time extension for 37 days would reduce the December target by 4.18%. Thus the scheduled accomplishment for December could be reduced to 39.73%. Unfortunately for ALC, 30.80% out of 39.73% is only 77.52%.

by virtue of entering into the RISA. The parties executed the RISA so the work on the project could continue despite the initial setbacks. Admittedly, both sides incurred some delays. Instead of seeking redress for such delays, each side waived whatever claims it had against the other arising from such delays as a major consideration for their agreeing to enter into the RISA. For, if this was not the case, the parties "should have included the payment [of stand by costs in the RISA] as what they did with the other monetary claims of ALC."[10]

Besides, ALC created its own problem when it decided to mobilize in July 1996. As ALC pointed out in its letter to the DPWH dated October 28, 1996,[11] the contract had not yet been signed by then and this was essential to the issuance of the Notice to Proceed. ALC unnecessarily put itself in a position where it would incur stand by costs. While the DPWH gave ALC the authority to mobilize, this came about because ALC asked for it.

As for the delay caused by the redesign works, the CIAC awarded costs equivalent to 50 days totaling ₱15,000,722.93.[12] ALC mistakenly claims that the CA deleted this award based on a waiver contained in the RISA. The truth, however, is that the CA affirmed the CIAC award for these costs. What the CA denied was ALC's prayer to increase the amount of damages. While ALC asks this Court to increase this award to ₱146,106,944.00, it gave no justification for the same.

Finally, due to incessant rains at the project site, the parties considered a number of non-workable days. ALC claims that it should be able to recover the expenses it incurred as a result of these non-workable days. Both the CIAC and the CA held that ALC was not entitled to recover such supposed expenses. Clause 12.2 of the Conditions of Contract provides for conditions under which ALC may be entitled to an extension of time or to recover costs. The provision refers to physical obstructions

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[10] CA *rollo* (CA-G.R. SP 74463), p. 655.

[11] CA *rollo* (CA-G.R. SP 74839), Vol. I, p. 496.

[12] *Rollo*, p. 160.

or conditions at the site "other than climatic conditions." While this seems to exclude delays due to weather conditions, ALC claims otherwise, if read in relation to Clause 44:

> **44.1 In the event of:**
>
> **x x x x x x x x x**
>
> **(c) exceptionally adverse climatic conditions, or**
>
> **x x x x x x x x x**
>
> **being such as fairly to entitle the Contractor to an extension of the Time for Completion of the Works, or any Section or part thereof, the Engineer shall, after due consultation with the Employer and the Contractor, determine the amount of such extension and shall notify the Contractor accordingly, with a copy to the Employer.**[13]

While Clause 44, unlike Clause 12.2, allows for time extensions due to weather delays, the same is silent on the recovery of costs. Indeed, ALC could not point to any provision in the contract specifically allowing it to recover stand by costs incurred due to inclement weather. Besides, such costs were incurred without any fault or negligence on the part of the DPWH. Certainly, such weather conditions are to be considered fortuitous events. And in such cases, the general rule is that each party shall bear his own loss.[14]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. SP 74463 and 74839 is hereby *AFFIRMED in toto*.

SO ORDERED.

Carpio, Nachura, Bersamin,[*] and *Mendoza, JJ.,* concur.

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[13] CA *rollo* (CA-G.R. SP 74463), p. 571.

[14] New Civil Code, Article 1174.

[*] Designated as additional member in lieu of Associate Justice Diosdado M. Peralta, per raffle dated July 28, 2010.

SECOND DIVISION

[G.R. No. 174806. August 11, 2010]

SOLOIL, INC., *petitioner, vs.* **PHILIPPINE COCONUT AUTHORITY,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; ACTIONS; CAUSE OF ACTION; ESSENTIAL ELEMENTS.—** The essential elements of a cause of action are (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.

2. **ID.; ID.; ID.; COMPLAINT STATES A CAUSE OF ACTION; FOCUS IS ON THE SUFFICIENCY, NOT THE VERACITY OF THE MATERIAL ALLEGATIONS; APPLICATION.—** In determining whether a complaint states a cause of action, the trial court can consider all the pleadings filed, including annexes, motions, and the evidence on record. The focus is on the sufficiency, not the veracity, of the material allegations. Moreover, the complaint does not have to establish facts proving the existence of a cause of action at the outset; this will have to be done at the trial on the merits of the case. The fact that the complaint specifically mentioned assessed PCA fees due on Soloil's domestic sale of coconut products did not preclude a cause of action for PCA fees due on Soloil's export sale of coconut products. PCA sufficiently alleged on paragraph 4 of the complaint that PCA fees attached upon purchase of copra by copra exporters, such as Soloil, whether for domestic or for export sale of coconut products.

3. **POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 1468 (REVISED COCONUT INDUSTRY CODE); GRANTED THE PHILIPPINE COCONUT AUTHORITY (PCA) THE POWER TO IMPOSE AND COLLECT FEES TO DEFRAY ITS OPERATING**

EXPENSES.— Presidential Decree No. 1468, otherwise known as the Revised Coconut Industry Code, granted PCA the power to impose and collect PCA fees to defray its operating expenses. x x x Sec. 3. *Power*. – In the implementation of the declared national policy, the Authority [PCA] shall have the following powers and functions: x x x k) **To impose and collect, under such rules that it may promulgate, a fee of ten centavos for every one hundred kilos of** desiccated coconut, to be paid by the desiccating factory, coconut oil to be paid by the oil mills, and **copra to be paid by the exporters**, which shall be used exclusively to defray its operating expenses.

4. **ID.; ID.; PRESIDENTIAL DECREE NO. 1854 (LAW AUTHORIZING AN ADJUSTMENT OF THE FUNDING OF THE PHILIPPINE COCONUT AUTHORITY AND INSTITUTING A PROCEDURE FOR THE MANAGEMENT OF SUCH FUND); THE PHILIPPINE COCONUT AUTHORITY (PCA) FEES AUTOMATICALLY ATTACH UPON PURCHASE OF COPRA BY COPRA EXPORTERS, WHETHER FOR DOMESTIC OR FOR EXPORT SALE OF COCONUT PRODUCTS.—** Presidential Decree No. 1854, otherwise known as the Law Authorizing an Adjustment of the Funding Support of the Philippine Coconut Authority and Instituting a Procedure for the Management of such Fund, increased such PCA fees to three centavos per kilo of copra or husked nuts or their equivalent in other coconut products delivered to and/or purchased by copra exporters, oil millers, desiccators, and other end-users of coconut products. x x x Under P.D. 1854, PCA fees automatically attach upon purchase of copra by copra exporters, such as Soloil in this case. The law does not distinguish whether the purchase of copra is for domestic or for export sale of coconut products. When the law does not distinguish, neither should we. However, the law expressly requires that the PCA fees "shall be paid by said copra exporters" for copra "purchased by copra exporters."

5. **REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; DISPUTABLE PRESUMPTION; THE SUMMARY OF OUTSTANDING PCA FEE OBLIGATIONS ENJOYS THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF OFFICIAL DUTIES, ABSENT ANY EVIDENCE THAT IT WAS MADE IN VIOLATION OF LAW OR REGULATION.—** The Summary of Outstanding PCA Fee

Obligations, attached as Annex "A" of the complaint, contains itemized schedules of Soloil's outstanding PCA fee obligations in the total amount of ₱403,543.29 as of 31 December 1994. It was duly prepared by Trade Control Examiner Victoria Evangelista, reviewed by Trade Control Examiner II Sylvia Carpio, certified correct by Supervising Trade Industry and Development Specialist Jennifer Lumawag, and finally noted by Manager Zenaida Leoncio. Under Section 3 paragraph (m), Rule 131 of the Rules of Court, the Summary of Outstanding PCA Fee Obligations enjoys the presumption of regularity in the performance of official duties absent any evidence that it was made in violation of any relevant law or regulation.

6. **CIVIL LAW; INTEREST; PENALTY OF 14% INTEREST FOR LATE PAYMENT OF PCA FEES, PROPER.—** As to the appropriate penalty for late payment of PCA fees, P.D. 1468 and P.D. 1854 authorized PCA to collect PCA fees under such rules as it may promulgate. Pursuant to this mandate, PCA issued Administrative Order No. 001, Series of 1983 fixing the interest rate for PCA fees paid after the due date at 14% per annum, thus: Sec. 6 *Sanctions.* – For any violation of the provisions of these Rules, the Authority [PCA] may impose any or all of the following sanctions: 1. Interest equal to fourteen percent (14%) per annum of the PCA Fee paid after the due date thereof; Fully supported as it is by law and the evidence on record, we find no reason to disturb the appellate court's Decision ordering Soloil to pay PCA the amount of ₱403,543.29 representing PCA fees as of 31 December 1994 with interest at the rate of 14% per annum beginning January 1995, when final demand was made, until fully paid.

7. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCY; PHILIPPINE COCONUT AUTHORITY (PCA); IMPOSITION OF PCA FEES, PURPOSE THEREOF; COPRA EXPORTER CANNOT EVADE ITS LEGAL OBLIGATION TO PAY THE PCA FEES.—** P.D. 1468 and P.D. 1854 enabled PCA to have a self-sustaining funding system precisely to allow it to defray its own operating expenses without regular financial support from the government. The imposition of PCA fees is intended to provide PCA with adequate financial resources to carry out its mandate of promoting the rapid growth of the country's coconut industry while making coconut farmers direct beneficiaries of this growth. Soloil, as a copra exporter,

cannot evade its legal obligation to pay PCA fees on the lame pretext that it never engaged in domestic sale of coconut products or worse, that the complaint for collection of PCA fees failed to state a cause of action.

APPEARANCES OF COUNSEL

Yumang Muñoz Uy Palma & Associates for petitioner.
Ma. Dolores M. Rigonan for respondent.

D E C I S I O N

CARPIO, *J*.:

The Case

This is a petition for review[1] of the 12 May 2006 Decision[2] and the 10 October 2006 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 69629. The 12 May 2006 Decision vacated the 29 September 2000 Decision[4] of the Regional Trial Court (Branch 84) of Quezon City in Civil Case No. Q-95-25834. The 10 October 2006 Resolution denied petitioner's motion for reconsideration.

The Antecedent Facts

Petitioner Soloil, Inc. (Soloil) is a domestic corporation engaged in the exportation of copra, crude coconut oil, and other coconut products.[5] Respondent Philippine Coconut Authority (PCA) is a government owned and controlled corporation created under Presidential Decree No. 232, otherwise known as the Law Creating

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

[2] *Rollo*, pp. 19-29. Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Rosalinda Asuncion-Vicente and Arturo G. Tayag, concurring.

[3] *Id.* at 35.

[4] CA *rollo*, pp. 33-36.

[5] Records, p. 28.

A Philippine Coconut Authority,[6] mandated to promote the rapid development of the coconut and palm oil industry in the country.

In January 1995, the Office of the Government Corporate Counsel sent by registered mail a final demand letter[7] addressed to Soloil for the payment of the latter's overdue fees to PCA for the domestic sale of coconut products. Soloil still did not pay the fees.

On 6 December 1995, PCA filed in the Regional Trial Court (Branch 84) of Quezon City a complaint[8] alleging that Soloil refused to pay the PCA fees. PCA further claimed that as of 31 December 1994, Soloil's overdue account had reached ₱403,543.29.[9]

In its answer,[10] Soloil raised the defense that PCA's demand for the payment of PCA fees based on domestic sales had no factual basis as Soloil never engaged in the domestic sale of coconut products.

The case was set for pre-trial. However, for failure of the parties to settle the case amicably, pre-trial was terminated. Trial on the merits ensued.

PCA presented its lone witness, Trade Control Examiner Victoria Evangelista. Evangelista testified[11] that she was in charge of monitoring Soloil's export sales transactions and that she was the one who prepared Soloil's Summary of Outstanding PCA Fee Obligations[12] attached as Annex "A" of the complaint. PCA then presented itemized schedules[13] of Soloil's outstanding

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[6] Effective 30 June 1973.

[7] Records, p. 6.

[8] *Id.* at 1-4.

[9] *Id.* at 5.

[10] *Id.* at 27-30.

[11] *Id.* at 154-162.

[12] *Id.* at 98.

[13] *Id.*

PCA fee obligations as well as certified reports[14] of the marine cargo surveyor showing that Soloil made export shipments[15] without paying the requisite PCA fees.

On the other hand, Soloil presented its sole witness, Assistant Vice-President for Trading and Administration Fernando Uy. Uy testified that Soloil had no record of any domestic sale of coconut products. On cross-examination, Uy admitted Soloil purchased copra in the course of its business of exporting coconut products.[16]

In their respective memoranda, the parties raised the following issues: (1) whether the complaint stated a cause of action; and (2) if so, whether Soloil was liable to pay PCA fees in the amount of ₱403,543.29.

The Ruling of the RTC

In its 29 September 2000 Decision, the RTC ruled PCA failed to prove that the claimed amount of unpaid PCA fees was from Soloil's domestic sale of coconut products. The RTC held that only the amount of ₱509.66 with interest of ₱147.23 was duly proven to be from Soloil's domestic sale of coconut products.[17] The decretal portion of the RTC Decision reads:

> WHEREFORE, in view of the foregoing, judgment is rendered ordering the defendant Southern Leyte Oil Mill, Inc. to pay to plaintiff the amount of ₱509.66 plus interest of ₱147.23 as of November 30, 1993 plus interest of 14% per annum until fully paid.
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> SO ORDERED.[18]

PCA appealed to the Court of Appeals insisting that Soloil was liable to pay PCA fees on its purchases of copra for both domestic and export sale of coconut products.

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[14] *Id.* at 89-97.

[15] On 29 October, 26 November, and 6 December 1988.

[16] Records, pp. 205-207.

[17] *Id.* at 71, 88.

[18] CA *rollo*, p. 36.

The Ruling of the Court of Appeals

The appellate court held that PCA fees attached upon purchase of copra by copra exporters. The Court of Appeals pointed out that there was no distinction whether the purchase was for domestic or for export sale of coconut products. In its 12 May 2006 Decision,[19] the Court of Appeals granted PCA's appeal. The dispositive portion of the Decision of the Court of Appeals reads:

WHEREFORE, the instant appeal is GRANTED. The Decision of September 29, 2000 of the Regional Trial Court of Quezon City, Branch 84 in Civil Case No. Q-95-25834 is deemed VACATED and a new one ENTERED ordering the defendant-appellee to pay the plaintiff-appellant the amount of ₱403,543.29 representing PCA fees as of December 31, 1994 with interest of 14% per annum beginning January 1995 until fully paid. Costs of suit against the defendant-appellee.

SO ORDERED.[20]

Soloil filed a motion for reconsideration,[21] which the Court of Appeals denied for lack of merit in its 10 October 2006 Resolution.[22]

Hence, the instant petition for review.

The Issues

The issues for resolution are (1) whether the complaint, alleging non-payment of PCA fees due on Soloil's domestic sale of coconut products, sufficiently stated a cause of action when evidence adduced during trial consisted of Soloil's export sale of coconut products; and (2) if so, whether Soloil was liable for the amount of ₱403,543.29 representing PCA fees as of 31 December 1994.

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[19] *Rollo*, pp. 19-29.

[20] *Id.* at 28.

[21] *Id.* at 30-33.

[22] *Id.* at 35.

The Court's Ruling

The petition has no merit.

Petitioner Soloil belabors the fact that the complaint alleged non-payment of PCA fees on Soloil's domestic sale of coconut products while the attached annexes showing Soloil's unpaid PCA fees did not indicate whether the amounts due were from domestic or from export sale of coconut products. Soloil maintains it never had any domestic sale of coconut products as its sales were all for export. Soloil argues that the complaint should have been dismissed for lack of cause of action and the RTC should not have allowed PCA, despite Soloil's vehement objection, to adduce evidence pertaining to export sales.

Respondent PCA counters that the complaint sufficiently established that PCA was mandated by law to impose and collect PCA fees for every kilo of copra purchased by copra exporters such as Soloil. PCA insists that PCA fees attached upon Soloil's purchase of copra whether such purchase was for domestic or for export sale of coconut products.

Rule 2 of the Rules of Court defines a cause of action as:

Sec. 2. *Cause of action, defined.* – A cause of action is the act or omission by which a party violates a right of another.

The essential elements of a cause of action are (1) a right in favor of the plaintiff by whatever means and under whatever law it arises or is created; (2) an obligation on the part of the named defendant to respect or not to violate such right; and (3) an act or omission on the part of such defendant in violation of the right of the plaintiff or constituting a breach of the obligation of the defendant to the plaintiff for which the latter may maintain an action for recovery of damages or other appropriate relief.[23]

The complaint in this case, paragraph 4 in particular, contained the following averments:

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[23] *Philippine Daily Inquirer v. Alameda*, G.R. No. 160604, 28 March 2008, 550 SCRA 199.

4. To defray its operating expenses **plaintiff is authorized under P.D. 1854** entitled Authorizing An Adjustment of the Funding Support of the Philippine Coconut Authority and Instituting a Procedure for the Management of Such Fund **to impose and collect a fee of three centavos for every kilo of copra** or its equivalent in copra terms of other coconut products delivered to and/or **purchased by copra exporters**, oil millers, desiccators, and other end-users of coconut products. This fee is otherwise known as PCA fee;[24] (Emphasis supplied)

This portion of the complaint together with the attached annexes[25] showing Soloil's unpaid PCA fees sufficiently constituted a cause of action in this case, namely (1) under P.D. 1854, PCA has a right to collect PCA fees in the amount of three centavos for every kilo of copra purchased by copra exporters; (2) Soloil, as a copra exporter, is legally bound to pay PCA fees; and (3) Soloil's non-payment of PCA fees is in violation of PCA's right to collect the same.

In determining whether a complaint states a cause of action, the trial court can consider all the pleadings filed, including annexes, motions, and the evidence on record.[26] The focus is on the sufficiency, not the veracity, of the material allegations.[27] Moreover, the complaint does not have to establish facts proving the existence of a cause of action at the outset; this will have to be done at the trial on the merits of the case.[28]

The fact that the complaint specifically mentioned assessed PCA fees due on Soloil's domestic sale of coconut products did not preclude a cause of action for PCA fees due on Soloil's export sale of coconut products. PCA sufficiently alleged on

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[24] Records, pp. 1-2.

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

[26] *Cañete v. Genuino Ice Company, Inc.*, G.R. No. 154080, 22 January 2008, 542 SCRA 206.

[27] *Philippine Crop Insurance Corporation v. Court of Appeals*, G.R. No. 169558, 29 September 2008, 567 SCRA 1.

[28] *Pioneer Concrete Philippines, Inc. v. Todaro*, G.R. No. 154830, 8 June 2007, 524 SCRA 153.

paragraph 4 of the complaint that PCA fees attached upon purchase of copra by copra exporters, such as Soloil, whether for domestic or for export sale of coconut products.

Presidential Decree No. 1468, otherwise known as the Revised Coconut Industry Code,[29] granted PCA the power to impose and collect PCA fees to defray its operating expenses, thus:

Sec. 3. *Power*. – In the implementation of the declared national policy, the Authority [PCA] shall have the following powers and functions:

x x x x x x x x x

k) **To impose and collect, under such rules that it may promulgate, a fee of ten centavos for every one hundred kilos of** desiccated coconut, to be paid by the desiccating factory, coconut oil to be paid by the oil mills, and **copra to be paid by the exporters**, which shall be used exclusively to defray its operating expenses; (Emphasis supplied)

Presidential Decree No. 1854, otherwise known as the Law Authorizing an Adjustment of the Funding Support of the Philippine Coconut Authority and Instituting a Procedure for the Management of such Fund,[30] increased such PCA fees to three centavos per kilo of copra or husked nuts or their equivalent in other coconut products delivered to and/or purchased by copra exporters, oil millers, desiccators, and other end-users of coconut products, to wit:

Section 1. **The PCA fee** imposed and collected pursuant to the provisions of R.A. No. 1145[31] and Sec. 3(k), Article II of P.D. 1468, **is hereby increased to three centavos per kilo of copra** or husked nuts or their equivalent in other coconut products delivered to and/ or **purchased by copra exporters**, oil millers, desiccators, and other end-users of coconut products. **The fee shall be collected**

[29] Effective 11 June 1978.

[30] Effective 21 December 1982.

[31] An Act Creating the Philippine Coconut Administration, Prescribing its Powers, Functions, and Duties, and Providing for the Raising of the Necessary Funds for its Operation. Effective 17 June 1954.

under such rules that PCA may promulgate, and shall be paid by said copra exporters, oil millers, desiccators, and other end-users of coconut products, receipt of which shall be remitted to the National Treasury on a quarterly basis. (Emphasis supplied)

Under P.D. 1854, PCA fees automatically attach upon purchase of copra by copra exporters, such as Soloil in this case. The law does not distinguish whether the purchase of copra is for domestic or for export sale of coconut products. When the law does not distinguish, neither should we.[32] However, the law expressly requires that the PCA fees "shall be paid by said copra exporters" for copra "purchased by copra exporters."

The Summary of Outstanding PCA Fee Obligations,[33] attached as Annex "A" of the complaint, contains itemized schedules of Soloil's outstanding PCA fee obligations in the total amount of ₱403,543.29 as of 31 December 1994. It was duly prepared by Trade Control Examiner Victoria Evangelista, reviewed by Trade Control Examiner II Sylvia Carpio, certified correct by Supervising Trade Industry and Development Specialist Jennifer Lumawag, and finally noted by Manager Zenaida Leoncio. Under Section 3 paragraph (m), Rule 131[34] of the Rules of Court, the Summary of Outstanding PCA Fee Obligations enjoys the presumption of regularity in the performance of official duties absent any evidence that it was made in violation of any relevant law or regulation.[35]

As to the appropriate penalty for late payment of PCA fees, P.D. 1468 and P.D. 1854 authorized PCA to collect PCA fees

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[32] *Secretary of Finance v. Ilarde,* 497 Phil. 544 (2005).

[33] Records, p. 98.

[34] Sec. 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted by other evidence:

xxx xxx xxx

(m) That official duty has been regularly performed;

[35] *Oroport Cargohandling Services, Inc. v. Phividec Industrial Authority*, G.R. No. 166785, 28 July 2008, 560 SCRA 197; *JG Summit Holdings, Inc. v. Court of Appeals*, 458 Phil. 581 (2003).

under such rules as it may promulgate.[36] Pursuant to this mandate, PCA issued Administrative Order No. 001, Series of 1983[37] fixing the interest rate for PCA fees paid after the due date at 14% per annum, thus:

Sec. 6 *Sanctions.* – For any violation of the provisions of these Rules, the Authority [PCA] may impose any or all of the following sanctions:

1. Interest equal to fourteen percent (14%) per annum of the PCA Fee paid after the due date thereof;

Fully supported as it is by law and the evidence on record, we find no reason to disturb the appellate court's Decision ordering Soloil to pay PCA the amount of ₱403,543.29 representing PCA fees as of 31 December 1994 with interest at the rate of 14% per annum beginning January 1995, when final demand[38] was made, until fully paid.

P.D. 1468 and P.D. 1854 enabled PCA to have a self-sustaining funding system precisely to allow it to defray its own operating expenses without regular financial support from the government.[39] The imposition of PCA fees is intended to provide PCA with adequate financial resources to carry out its mandate of promoting the rapid growth of the country's coconut industry while making coconut farmers direct beneficiaries of this growth.[40] Soloil, as

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[36] P.D. 1468. Sec. 3. *Power*. — In the implementation of the declared national policy, the Authority [PCA] shall have the following powers and functions:

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k) To impose and collect, under such rules that it may promulgate, . . .

P.D. No. 1854. Section 1. . . . The fee shall be collected under such rules that PCA may promulgate, . . .

[37] Effective 1 February 1983. CA *rollo*, pp. 50-54.

[38] Records, p. 6.

[39] Preamble of P.D. No. 1854.

[40] Presidential Decree No. 961, otherwise known as *An Act to Codify the Laws Dealing with the Development of the Coconut and other Palm Oil Industry and for Other Purposes.* Effective 14 July 1976.

a copra exporter, cannot evade its legal obligation to pay PCA fees on the lame pretext that it never engaged in domestic sale of coconut products or worse, that the complaint for collection of PCA fees failed to state a cause of action.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 12 May 2006 Decision and the 10 October 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 69629.

Costs against petitioner.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 174979. August 11, 2010]

BONIFACIO SANZ MACEDA, JR., *petitioner, vs.* **DEVELOPMENT BANK OF THE PHILIPPINES,** *respondent.*

[G.R. No. 175010. August 11, 2010]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **BONIFACIO SANZ MACEDA, JR.,** *respondent.*

Sec. 2. *Declaration of Policy*. It is hereby declared to be the policy of the State to promote the rapid integrated development and growth of the coconut and other palm oil industry in all its aspects and to ensure that the coconut farmers become direct participants in, and beneficiaries of, such development and growth.

SYLLABUS

1. **REMEDIAL LAW; APPEALS; FINDINGS OF THE APPELLATE COURT BY ITSELF, AND WHICH ARE SUPPORTED BY SUBSTANTIAL EVIDENCE, ARE ALMOST BEYOND THE POWER OF REVIEW.—** Conclusions and findings of fact of the lower courts are entitled to great weight on appeal and will not be disturbed except for strong and cogent reasons. It is not the function of this Court to analyze or weigh such evidence all over again. Indeed, the findings of the appellate court by itself, and which are supported by substantial evidence, are almost beyond the power of review by this Court.

2. **ID.; ACTIONS; ACTION FOR SPECIFIC PERFORMANCE; THE PARTY AT FAULT WILL BE REQUIRED TO PERFORM ITS UNDERTAKING UNDER THE CONTRACT; APPLICATION.—** Maceda filed the present complaint for specific performance so he could finish the construction of the hotel. In an action for specific performance, the party at fault will be required to perform its undertaking under the contract. In this case, the trial court and the appellate court should have required DBP, as creditor under the loan agreement, **to lend** (and not to pay) Maceda the amount needed to finish the construction of the hotel. The trial court and the appellate court thus erred in requiring DBP to pay Maceda ₱17,547,510.90 to finish the construction of the hotel.

3. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; BREACH OF OBLIGATION; THE AGGRIEVED PARTY MAY CHOOSE BETWEEN SPECIFIC PERFORMANCE AND RESCISSION WITH DAMAGES IN EITHER CASE; THE COURT MAY ORDER RESCISSION WITH DAMAGES TO THE INJURED PARTY WHERE THE SPECIFIC PERFORMANCE BECOMES IMPRACTICAL OR IMPOSSIBLE; APPLIED.—** Maceda put in cash equity worth ₱6,153,398.05 as of 31 July 1980. Under Article 1191 of the Civil Code, the aggrieved party has a choice between specific performance and rescission with damages in either case. However, we have ruled that if specific performance becomes impractical or impossible, the court may order rescission with damages to the injured party. After the lapse of more than 30 years, it is now impossible to implement the loan agreement as it was written, considering the absence of evidence as to the rising costs of construction, as well as the

obvious changes in market conditions on the viability of the operations of the hotel. We deem it equitable and practicable to rescind the obligation of DBP to deliver the balance of the loan proceeds to Maceda. In exchange, we order DBP to pay Maceda the value of Maceda's cash equity of ₱6,153,398.05 by way of actual damages, plus the applicable interest rate. The present ruling comes within the purview of Maceda's and DBP's prayers for "other reliefs, just or equitable under the premises."

4. **ID.; DAMAGES; AWARD OF MORAL, EXEMPLARY, AND TEMPERATE DAMAGES AND ATTORNEY'S FEES, APPROPRIATE.—** The trial court also awarded the following amounts: ₱700,000 as moral damages; ₱150,000 as exemplary damages; ₱500,000 as temperate damages; and ₱100,000 as attorney's fees. We find these amounts appropriate under the circumstances, and not unconscionable or exorbitant.

5. **ID.; ID.; INTEREST; 6% INTEREST PER ANNUM, RECKONED FROM THE TIME OF THE FILING OF THE COMPLAINT, SHALL BE IMPOSED WHERE THE CASE INVOLVES A BREACH OF OBLIGATION, NOT A LOAN OR FORBEARANCE OF MONEY.—** In accordance with our ruling in *Sta. Lucia Realty and Development v. Spouses Buenaventura*, the applicable interest rate on the ₱6,153,398.05 to be paid by DBP to Maceda is 6% per annum, to be reckoned from the time of the filing of the complaint on 15 October 1984, because the case at bar involves a breach of obligation and not a loan or forbearance of money. We guide ourselves with the rules of thumb established in *Eastern Shipping Lines, Inc. v. Court of Appeals.* xxx. Pursuant to these rules, the interest rate of 12% per annum shall apply from the finality of judgment until the total amount awarded is fully paid. The imposition of interest already takes into account the passage of time, and is meant to compensate Maceda for any further delays in payment by DBP.

APPEARANCES OF COUNSEL

Office of the Legal Counsel (DBP) for DBP.
Eddie Tamondong for B. Maceda, Jr.

DECISION

CARPIO, *J.*:

G.R. Nos. 174979 and 175010 are petitions for review[1] assailing the Decision[2] promulgated on 2 July 2004 by the Court of Appeals (appellate court) as well as the Resolution[3] promulgated on 9 October 2006 in CA-G.R. CV No. 69823. In G.R. No. 174979, the petitioner is Bonifacio Sanz Maceda, Jr. (Maceda) while Development Bank of the Philippines (DBP) is the respondent. In G.R. No. 175010, DBP is the petitioner and Maceda is the respondent.

In CA-G.R. CV No. 69823, the appellate court dismissed the petitions filed by Maceda and DBP. The appellate court affirmed the decision in Civil Case No. 8737 of the Regional Trial Court of Makati City, Branch 134 (trial court) dated 25 February 1997 as well as the 2 October 1997 Order which amended the 25 February 1997 Decision.

The Facts

The appellate court narrated the facts as follows:

> It appears that on July 28, 1976 plaintiff Bonifacio Maceda, Jr. (Maceda) obtained a loan from the defendant DBP in the amount of ₱7.3 million to finance the expansion of the Old Gran Hotel in Leyte. Upon approval of said loan, plaintiff Maceda executed a promissory note and a mortgage of real estate. Project cost of the New Gran Hotel was ₱10.5M. DBP fixed a debt-equity ratio of 70%-30%, corresponding to DBP and Maceda's respective infusion in the hotel project. Maceda's equity infusion was ₱2.93M, or 30% of ₱10.5M.

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

[2] *Rollo* (G.R. No. 174979), pp. 30-38; *rollo* (G.R. No. 175010), pp. 8-16. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Mariano C. Del Castillo (now an Associate Justice of this Court) and Hakim S. Abdulwahid, concurring.

[3] *Rollo* (G.R. No. 174979), pp. 40-43; *rollo* (G.R. No. 175010), pp. 18-21. Penned by Associate Justice Elvi John S. Asuncion, with Associate Justices Mariano C. Del Castillo (now an Associate Justice of this Court) and Hakim S. Abdulwahid, concurring.

The DBP Governor at that time, Recio Garcia, in-charge of loans for hotels, allegedly imposed the condition that DBP would choose the building contractor, namely, Moreman Builders Co. (Moreman). The contractor would directly receive the loan releases from DBP, after verification by DBP of the construction progress. The period of loan availment was 360 days from date of initial release of the loan. Similarly, suppliers of equipment and furnishings for the hotel were also to be paid directly by DBP. The construction deadline was set for December 22, 1977.

Maceda filed a complaint for Rescission of the building contract with Damages against the contractor Moreman, before the then Manila Court of First Instance Branch 39, which was docketed as Civil Case No. 113498. In its decision dated November 28, 1978, the CFI rescinded the building contract, suspended the period of availment, allowed Maceda to himself take over construction, and directed DBP to release to Maceda the sum of ₱1.003M, which had previously been approved for release in January 1978. The DBP was further ordered to give plaintiff Maceda such other amounts still pending release. Moreman filed an appeal which was subsequently dismissed in 1990 by the Supreme Court. Entry of judgment on this case was issued on April 23, 1990.

In the meantime, Maceda also instituted the case *a quo* for Specific Performance with Damages against defendant DBP before the Makati RTC in 1984. The Manila CFI's November 28, 1978 Decision and the factual findings therein contained became part of the evidence submitted before the Makati RTC as Exh. "D". In essence, Maceda's complaint before the Makati RTC alleged that DBP conspired with the contractor, Moreman, by approving anomalous loan releases to the latter despite exaggerated charges and valuation made by said contractor on the hotel project. In effect, it was alleged that despite only a 15% accomplishment which should have cost only ₱700,000.00, the contractor, thru the active connivance of the DBP, was able to rake in a total of ₱3,174,358.38 or 60% of the cost of the projected hotel building. When plaintiff Maceda himself tried to resume the completion and construction of the hotel project, after the building contract with Moreman was already rescinded by the CFI Manila, defendant allegedly blocked efforts of the plaintiff by delaying the release of funds from his loan with the DBP and imposing onerous conditions which made it difficult for plaintiff to pursue the construction of the New Gran Hotel. It was further alleged that due to such delays on the part of the DBP, the period

of availment of the loan expired without the plaintiff's [sic] having availed of the total approved amount of their loan. The construction of the hotel was never finished. Worse, due to interests and penalties, the obligation of the plaintiff has ballooned to ₱11,817,365.90 as of January 31, 1984, not to mention the amount of ₱810,702.68 supposedly representing interests and charges for the period of February 1, 1978 to October 1979. Finally, DBP allegedly threatened to foreclose the mortgaged properties of the plaintiff.[4]

The Trial Court's Ruling

On 25 February 1997, the trial court promulgated its Decision in favor of Maceda. The dispositive portion of the Decision reads as follows:

WHEREFORE, in view of all the foregoing premises, the Court renders judgment, to wit:

1. The preliminary injunction issued on December 12, 1984 is hereby made permanent;

2. Defendant Development Bank of the Philippines is ordered, to wit:

(a) To immediately release in favor of Plaintiff Bonifacio Maceda, Jr. the unreleased loan balance of ₱1,952,489.10. In addition, as to the portion thereof amounting to ₱1.003M, DBP is further directed to pay interest thereon at the rate of 12% per annum beginning and counted from January, 1978;

(b) To immediately return to plaintiff Bonifacio Maceda, Jr. the sum of ₱797,988.95 representing the interest/other charges for the period October 31, 1979 to April 1, 1980;

(c) To pay Plaintiff Bonifacio Maceda, Jr. the sum of Five Hundred Thousand Pesos as moral damages;

(d) To pay plaintiff Bonifacio Maceda, Jr. the sum of One Hundred Thousand Pesos as exemplary damages;

(e) To pay plaintiff Bonifacio Maceda, Jr. the sum of ₱17,547,510.90 representing the additional cost to complete and finish the New Gran Hotel;

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[4] *Rollo* (G.R. No. 174979), pp. 32-33; *rollo* (G.R. No. 175010), pp. 10-11.

(f) To pay plaintiff Bonifacio Maceda, Jr. the sum of ₱100,000.00 as attorney's fees and litigation expense.

The counterclaims of defendants are hereby dismissed.

SO ORDERED.[5]

DBP filed a Notice of Appeal. Maceda, on the other hand, filed a Motion for Reconsideration of the trial court's Decision and sought to increase the awarded amounts. Maceda also filed a Motion for Partial Execution Pending Appeal and a Supplemental Motion for Partial Execution Pending Appeal to which DBP filed its Oppositions.

The trial court issued an Order dated 2 October 1997 and amended the dispositive portion of its 25 February 1997 Decision, thus:

WHEREFORE, in view of the foregoing and by way of recapitulation, the Court directs and orders that all other dispositions in the Decision dated February 25, 1997 are hereby maintained, except the dispositions under paragraph 2 (subparagraphs C, D, E) which are hereby amended as underlined, and paragraph G added hereunder in conformity with the guidelines in the case of *Eastern Shipping Lines, supra, p. 97*. The entire dispositive portion shall be as follows:

1. The preliminary injunction issued on December 12, 1984 is hereby made permanent;

2. Defendant Development Bank of the Philippines is ordered, to wit:

(a) To immediately release in favor of plaintiff Bonifacio Maceda, Jr. the unreleased loan balance of ₱1,952,489.10. In addition, as to the portion thereof amounting to ₱1.003M, DBP is further directed to pay interest thereon at the rate of 12% per annum beginning and counted from January 1978;

(b) To immediately return to plaintiff Bonifacio Maceda, Jr. the sum of ₱797,988.95 representing the interest/other charges for the period October 31, 1979 to April 1, 1980;

[5] Records, pp. 1351-1352.

(c) To pay plaintiff Bonifacio Maceda, Jr. the sum of Seven Hundred Thousand Pesos as moral damages;

(d) To pay plaintiff Bonifacio Maceda, Jr. the sum of One Hundred Fifty Thousand Pesos as exemplary damages; and the sum of Five Hundred Thousand Pesos as temperate damages;

(e) To pay plaintiff Bonifacio Maceda, Jr. the sum of ₱17,547,510.90 representing the additional cost to complete and finish the New Gran Hotel, plus six percent interest (6%) thereon effective as of the year 1987 until finality.

(f) To pay plaintiff Bonifacio Maceda, Jr. the sum of ₱100,000.00 as attorney's fees and litigation expense.

(g) After the finality of the Decision, all the foregoing monetary awards in their totality, including the interest imposed thereon as the case may be, shall earn 12% interest from date of such finality until satisfaction.

The counterclaims of defendants are hereby dismissed.

The Court further orders the execution pending appeal of the award under disposition 2(a), as maintained, without bond, and the award under disposition 2(e), as amended, to be covered by plaintiff's bond in the equivalent sum thereof, including the six percent interest (6%) thereon effective as of the year 1987 until date of the said bond.

SO ORDERED.[6] (Underlining in the original)

DBP filed a Petition for *Certiorari* as regards the execution pending appeal before the appellate court. The appellate court, in *DBP v. Hon. Ignacio Capulong*[7] granted DBP's petition and annulled the trial court's order of partial execution pending appeal. We affirmed the appellate court's Decision on 26 August 1999.[8]

On 5 November 1997, DBP filed a Notice of Appeal of the trial court's Decision dated 25 February 1997 as amended by

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[6] *Id*. at 1405-1406.

[7] CA-G.R. SP No. 47405 (14 August 1998).

[8] *Maceda, Jr. v. Development Bank of the Philippines*, 372 Phil. 107 (1999).

the Order dated 2 October 1997. Maceda and his sibling, Teresita Maceda-Docena, filed a Notice of Appeal before the appellate court. On 23 July 2002, the appellate court dismissed Teresita Maceda-Docena's appeal for her failure to file her Appellant's Brief.[9]

The Appellate Court's Ruling

On 2 July 2004, the appellate court rendered its Decision which affirmed the 2 October 1997 Order of the trial court.

> Thus, We find that the records support the ruling and conclusions made by the RTC in its assailed Decision. Conclusions and findings of fact by the lower courts are entitled to great weight on appeal and will not be disturbed except for strong and cogent reasons. (*Atlantic Gulf and Pacific Company of Manila, Inc. vs. Court of Appeals, 247 SCRA 606*)
>
> WHEREFORE, based on the foregoing premises, the appeal of plaintiff-appellant is DISMISSED for lack of merit. Likewise, defendant-appellant's appeal is DISMISSED. Accordingly, the assailed February 25, 1997 Decision of the Regional Trial Court of Makati City – Branch 134 in Civil Case No. 8737, and its October 2, 1997 Order which amended the said February 25, 1997 Decision, are AFFIRMED.
>
> SO ORDERED.[10]

The appellate court denied Maceda's and DBP's Motions for Reconsideration for lack of merit. Maceda's Motion for Execution Pending Appeal was likewise denied.[11]

Issues

In G.R. No. 174979, Maceda assigned a single error of the appellate court. Maceda submitted that "the granted awards are so unrealistic as to be pyrrhic. For example, even as both the Makati RTC and the Court of Appeals admit that the award of "₱17,547,510.90 representing the additional cost to complete

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[9] CA *rollo*, p. 204.

[10] *Rollo* (G.R. No. 174979), p. 38; *rollo* (G.R. No. 175010), p. 66.

[11] *Rollo* (G.R. No. 174979), pp. 40-43; *rollo* (G.R. No. 175010), pp. 68-71.

and finish the New Gran Hotel" reflects "only the cost estimate as of 1987," both courts felt there was no way to increase the award – except by imposing a "6% interest thereon effective as of the year 1987 until finality" — simply because, as both courts said, there were "no fresher data to guide it. In short, no evidence was submitted as to the construction cost in post-1987 years."[12]

In G.R. No. 175010, DBP enumerated the following grounds to support its Petition:

> I. Whether the Honorable Court of Appeals was correct in holding DBP liable for the acts of Moreman Builders;
>
> II. Whether the Honorable Court of Appeals was correct in upholding private respondent's contention that petitioner connived with Moreman Builders in the alleged anomalous releases;
>
> III. Whether there was reasonable ground for DBP to stop the loan releases;
>
> IV. Whether the Honorable Court of Appeals was correct in upholding the trial court:
>
> 1. In imposing interest on the unreleased portion of the loan;
>
> 2. For the return of interests paid on the loan already released to Maceda;
>
> V. Whether the damages awarded in favor of Maceda are unreasonable and excessive.[13]

The Court's Ruling

DBP's petition has merit. We affirm with modification the ruling of the appellate court.

The trial court and appellate court made the following findings:

> x x x We find credit in the finding that DBP actively connived with the contractor in the anomalous loan releases. DBP falsely argues that releases on the loan were coursed thru the plaintiff-appellant and the checks were drawn jointly in the names of Maceda

[12] *Rollo* (G.R. No. 174979), p. 9.

[13] *Rollo* (G.R. No. 175010), p. 34.

and Moreman. As found by the RTC, the records show that checks were drawn only in the name of Moreman and plaintiff's conformity to fund releases were solicited by DBP after the fact of release, not before. Direct releases to the plaintiff, instead of Moreman, began only after Moreman was discharged as contractor. Further, it was agreed that payment to Moreman Builders would be assessed against actual construction of the project upon DBP's verification. Thus, DBP contributed in the swindling perpetrated by Moreman against the plaintiff because it improperly discharged its duty as verifier of the construction project.

DBP was also at fault in not releasing the amount of ₱1.003 Million which had already been approved for release as early as January 1978. We agree with the RTC that it is apparent that such delay in the release of plaintiff's loan is directly attributable to DBP and contributed to the construction delay, such that radical rise in construction cost and prices of materials had already caught up with the hotel project. The ₱7.3 million loan is a "straight loan" as described in the document dated March 7, 1977 by A.S. Martinez, a DBP managerial officer. In releasing other sums but not the ₱1.003 million, and in failing to release the bigger sum of ₱1,952,489.10 which is the total unreleased balance of the loan, DBP treated its prestation according to its likes and dislikes.

As aptly observed by the RTC, "DBP never released the ₱1.003M. While DBP resumed releases on October 31, 1979 (Exh. "11"), this resumption of releases came more than three years counted from July 1976 when the loan was approved; nearly two years counted from the construction deadline of December 1977; and eleven months counted from plaintiff's letter request dated December 4, 1978. As already found, the fact is that the last resumed release was on October 10, 1980, but leaving out the ₱1.003 million which was already approved and scheduled for release in January 1978, and leaving ₱1.95M as the total unreleased balance." (*RTC Decision, February 25, 1997, p. 31*)

"Had defendant DBP voluntarily released the full loan long ago, (1) as scheduled by DBP itself in January 1978; or (2) as directed by the Manila CFI in the latter's own decision dated November 28, 1978; or (3) as requested by plaintiff in his letter dated December 4, 1978; or (4) as again promised by DBP in its letter dated July 19, 1979, obviously there would be no need for plaintiff to file the "Motion to Direct Defendant DBP to Release Balance of Loan." (*RTC Order*, *October 2, 1997, p. 10*)

x x x x x x x x x

We affirm the RTC in ruling that DBP was at fault when defendant-appellant DBP gave the impression to suppliers that it was not supporting the hotel project and verbally advised suppliers to pull out their units from the jobsite of the hotel. Moreover, when plaintiff-appellant Maceda personally took over the project after the contract with Moreman was rescinded, some suppliers who submitted their claims to DBP were refused payment by the defendant-appellant bank. Thus, said suppliers were constrained to file collection cases and replevin suits against herein plaintiff-appellant.[14]

Conclusions and findings of fact of the lower courts are entitled to great weight on appeal and will not be disturbed except for strong and cogent reasons. It is not the function of this Court to analyze or weigh such evidence all over again. Indeed, the findings of the appellate court by itself, and which are supported by substantial evidence, are almost beyond the power of review by this Court.[15]

DBP established a debt-equity ratio of 70%-30%, and asked Maceda for a collateral of 80%. DBP placed the project cost of the hotel at ₱10.5 million. DBP required Maceda to put up ₱2.93 million, part of which comprised land worth ₱326,900.00. As of 24 June 1977, Maceda paid Moreman ₱1,262,998.38 as his advance participation in the hotel. Moreman also received a total of ₱1,911,360.00 from DBP as of 29 November 1977. Moreman thus received a total of ₱3,174,358.38 from Maceda and DBP.[16] Over the years, DBP changed the debt-equity ratio. As of 31 July 1980, DBP's investment was ₱4,784,210.00 while Maceda's equity amounted to ₱6,480,298.05.[17] As of 27 June 1983, properties mortgaged to DBP to secure Maceda's loan amounted to ₱16,080,000.00, while DBP released only ₱5,347,510.90 out of the approved ₱7.3 million loan.[18]

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[14] *Rollo* (G.R. No. 174979), pp. 34-36; *rollo* (G.R. No. 175010), pp. 62-64.

[15] See *Atlantic Gulf and Pacific Co. of Manila, Inc. v. CA*, 317 Phil. 707 (1995).

[16] Records, pp. 1299-1302, 1319-1320, 1323.

[17] Records, pp. 902, 1305-1306.

[18] *Id.* at 1308.

Maceda filed the present complaint for specific performance so he could finish the construction of the hotel. In an action for specific performance, the party at fault will be required to perform its undertaking under the contract. In this case, the trial court and the appellate court should have required DBP, as creditor under the loan agreement, **to lend** (and not to pay) Maceda the amount needed to finish the construction of the hotel. The trial court and the appellate court thus erred in requiring DBP to pay Maceda ₱17,547,510.90 to finish the construction of the hotel.

Maceda put in cash equity worth ₱6,153,398.05 as of 31 July 1980.[19] Under Article 1191 of the Civil Code,[20] the aggrieved party has a choice between specific performance and rescission with damages in either case. However, we have ruled that if specific performance becomes impractical or impossible, the court may order rescission with damages to the injured party.[21] After the lapse of more than 30 years, it is now impossible to implement the loan agreement as it was written, considering the absence of evidence as to the rising costs of construction, as well as the obvious changes in market conditions on the viability of the operations of the hotel. We deem it equitable and practicable to rescind the obligation of DBP to deliver the

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[19] *Id*. at 902. Owner's equity of ₱6,480,298.05 less land worth ₱326,900.00.

[20] Article 1191 of the Civil Code of the Philippines reads:

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.

[21] *Sta. Lucia Realty & Development, Inc. v. Spouses Buenaventura*, G.R. No. 177113, 2 October 2009, 602 SCRA 463.

balance of the loan proceeds to Maceda. In exchange, we order DBP to pay Maceda the value of Maceda's cash equity of ₱6,153,398.05 by way of actual damages, plus the applicable interest rate. The present ruling comes within the purview of Maceda's and DBP's prayers for "other reliefs, just or equitable under the premises."

The trial court also awarded the following amounts: ₱700,000 as moral damages; ₱150,000 as exemplary damages; ₱500,000 as temperate damages; and ₱100,000 as attorney's fees. We find these amounts appropriate under the circumstances, and not unconscionable or exorbitant.

In accordance with our ruling in *Sta. Lucia Realty and Development v. Spouses Buenaventura*,[22] the applicable interest rate on the ₱6,153,398.05 to be paid by DBP to Maceda is 6% per annum, to be reckoned from the time of the filing of the complaint on 15 October 1984, because the case at bar involves a breach of obligation and not a loan or forbearance of money. We guide ourselves with the rules of thumb established in *Eastern Shipping Lines, Inc. v. Court of Appeals.*[23]

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 12% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.

2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded 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

[22] *Id*.

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

(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.[24]

Pursuant to these rules, the interest rate of 12% per annum shall apply from the finality of judgment until the total amount awarded is fully paid. The imposition of interest already takes into account the passage of time, and is meant to compensate Maceda for any further delays in payment by DBP.

WHEREFORE, we *GRANT* the petitions. We *AFFIRM with MODIFICATION* the Decision promulgated on 2 July 2004 by the Court of Appeals as well as the Resolution promulgated on 9 October 2006 in CA-G.R. CV No. 69823. The Development Bank of the Philippines is ordered to pay Bonifacio Sanz Maceda, Jr. ₱6,153,398.05 as actual damages, with interest at 6% per annum, to be reckoned from the time of the filing of the complaint. The Development Bank of the Philippines is further ordered to pay Bonifacio Sanz Maceda, Jr. ₱700,000 as moral damages; ₱150,000 as exemplary damages; ₱500,000 as temperate damages; and ₱100,000 as attorney's fees. The interest rate of 12% per annum shall apply from the finality of judgment until the total amount awarded is fully paid.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

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[24] *Id*. at 95-97.

SECOND DIVISION

[G.R. No. 175578. August 11, 2010]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **ZENAIDA GUINTO-ALDANA, in her own behalf as Attorney-in-fact of MA. AURORA GUINTO-COMISO, MA. LUISA GUINTO-DIONISIO, ALFREDO GUINTO, JR., PACITA R. GUINTO, ERNESTO R. GUINTO, NATIVIDAD R. GUINTO and ALBERTO R. GUINTO,** *respondents.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; THE PROPERTY REGISTRATION DECREE OF 1978 (P.D. NO. 1529), SECTION 17 THEREOF; RULE; SUBMISSION OF THE ORIGINAL OR DUPLICATE COPIES OF THE MUNIMENTS OF TITLE AND THE DULY APPROVED SURVEY PLAN OF THE LAND SOUGHT TO BE REGISTERED IS IMPERATIVE IN AN APPLICATION FOR ORIGINAL REGISTRATION.—** [Section 17 of P.D. No. 1529, otherwise known as The Property Registration Decree of 1978] denotes that it is imperative in an application for original registration that the applicant submit to the court, aside from the original or duplicate copies of the muniments of title, a copy of a duly approved survey plan of the land sought to be registered. The survey plan is indispensable as it provides a reference on the exact identity of the property. This begs the question in the instant case: Does the blueprint copy of the survey plan suffice for compliance with the requirement? In not so many cases, it was held that the non-submission, for any reason, of the original tracing cloth plan is fatal to the registration application, since the same is mandatory in original registration of title. xxx.

2. **ID.; ID.; ID.; ID.; ID.; SUBMISSION OF A DULY EXECUTED BLUEPRINT OF THE SURVEY PLAN AND TECHNICAL DESCRIPTION OF THE PROPERTY IS CONSIDERED SUBSTANTIAL COMPLIANCE WITH THE LEGAL REQUIREMENTS OF ASCERTAINING THE IDENTITY OF THE PROPERTIES APPLIED FOR REGISTRATION.—**

Yet if the reason for requiring an applicant to adduce in evidence the original tracing cloth plan is merely to provide a convenient and necessary means to afford certainty as to the exact identity of the property applied for registration and to ensure that the same does not overlap with the boundaries of the adjoining lots, there stands to be no reason why a registration application must be denied for failure to present the original tracing cloth plan, especially where it is accompanied by pieces of evidence—such as a duly executed blueprint of the survey plan and a duly executed technical description of the property—which may likewise substantially and with as much certainty prove the limits and extent of the property sought to be registered. Thus, sound is the doctrinal precept laid down in *Republic of the Philippines v. Court of Appeals,* and in the later cases of *Spouses Recto v. Republic of the Philippines* and *Republic of the Philippines v. Hubilla,* that while the best evidence to identify a piece of land for registration purposes is the original tracing cloth plan issued by the Bureau of Lands (now the Lands Management Services of the Department of Environment and Natural Resources [DENR]), blueprint copies and other evidence could also provide sufficient identification. xxx In the case at bar, we find that the submission of the blueprint of Plan Ccs-007601-000040-D, together with the technical description of the property, operates as substantial compliance with the legal requirement of ascertaining the identity of Lot Nos. 4 and 5 applied for registration.

3. **ID.; ID.; QUALIFICATION OF APPLICANT FOR ORIGINAL REGISTRATION OF TITLE; PHRASE "POSSESSION AND OCCUPATION," CONSTRUED.—** In an original registration of title under Section 14(1) P.D. No. 1529, the applicant for registration must be able to establish by evidence that he and his predecessor-in-interest have exercised acts of dominion over the lot under a *bona fide* claim of ownership since June 12, 1945 or earlier. He must prove that for at least 30 years, he and his predecessor have been in open, continuous, exclusive and notorious possession and occupation of the land. *Republic v. Alconaba* well explains possession and occupation of this character, thus: The law speaks of possession and occupation. Since these words are separated by the conjunction and, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law

adds the word occupation, it seeks to delimit the all-encompassing effect of constructive possession. **Taken together with the words open, continuous, exclusive and notorious, the word occupation serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of a land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property**. Proceeding from this fundamental principle, we find that indeed respondents have been in possession and occupation of Lot Nos. 4 and 5 under a *bona fide* claim of ownership for the duration required by law. This conclusion is primarily factual.

4. **ID.; ID.; TAX DECLARATION AND REALTY PAYMENT ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP BUT THEY ARE A GOOD INDICATION OF POSSESSION IN THE CONCEPT OF OWNER; EXPLAINED.—** Land registration proceedings are governed by the rule that while tax declarations and realty tax payment are not conclusive evidence of ownership, nevertheless, they are a good indication of possession in the concept of owner. These documents constitute at least proof that the holder has a claim of title over the property, for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property. It also announces his adverse claim against the state and all other parties who may be in conflict with his interest. More importantly, it signifies an unfeigned intention to contribute to government revenues—an act that strengthens one's *bona fide* claim of acquisition of ownership. Indeed, that respondents herein have been in possession of the land in the concept of owner—open, continuous, peaceful and without interference and opposition from the government or from any private individual—itself makes their right thereto unquestionably settled and, hence, deserving of protection under the law.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Roberto A. San Jose for respondents.

DECISION

PERALTA, *J.*:

In this petition for review under Rule 45 of the Rules of Court, the Republic of the Philippines, through the Office of the Solicitor General, assails the March 30, 2006 Decision[1] and the November 20, 2006 Resolution,[2] both of the Court of Appeals, in CA-G.R. CV No. 80500. The assailed decision reversed and set aside the July 10, 2003 judgment[3] of the Regional Trial Court of Las Piñas City, Branch 199 in LRC Case No. 02-0036, one for original registration of title, whereas the assailed Resolution denied reconsideration.

The facts follow.

On April 3, 2002, respondents Zenaida Guinto-Aldana[4] (Zenaida), Ma. Aurora Guinto-Comiso, Ma. Luisa Guinto-Dionisio, Alfredo Guinto, Jr., Pacita R. Guinto, Ernesto R. Guinto, Natividad R. Guinto and Alberto R. Guinto, filed with the Regional Trial Court (RTC) of Las Piñas City, Branch 199 an Application for Registration of Title[5] over two pieces of land in Talango, Pamplona Uno, Las Piñas City. These lands, identified as Lot No. 4 and Lot No. 5 in Conversion Consolidation Subdivision Plan Ccs-007601-000040-D,[6] measure 1,509 square meters and 4,640 square meters, respectively.[7] Respondents professed themselves to be co-owners of these lots, having

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[1] Penned by Associate Justice Bienvenido L. Reyes, with Associate Justices Arturo D. Brion (now a member of this Court) and Mariflor Punzalan Castillo, concurring; *rollo*, pp. 40-49.

[2] *Rollo*, pp. 50-51.

[3] The decision was signed by Judge Joselito Vibandor; records, pp. 556-561.

[4] Zenaida Guinto-Aldana was duly constituted as attorney-in-fact of and by herein co-respondents under a Special Power of Attorney dated January 30, 2002, with specific power to apply for registration of title; *id.* at 47-48.

[5] Records, pp. 1-4.

[6] *Id.* at 473.

[7] *Id.* at 474-475.

acquired them by succession from their predecessors Sergio Guinto (Sergio) and Lucia Rivera-Guinto (Lucia)—Zenaida's parents—who, in turn, had acquired the property under a 1969 document denominated as *"Kasulatan sa Paghahati ng Lupa na Labas sa Hukuman na may Pagpaparaya at Bilihan."* Under this document, Sergio and Lucia Guinto acquired for a consideration the respective shares on the property of Pastor Guinto, Dionisio Guinto, Potenciana Guinto and Marcelina Bernardo who, together with Luisa, had derived the same from Romulado Guinto.[8] Respondents also alleged that until the time of the application, they and their predecessors-in-interest have been in actual, open, peaceful, adverse, exclusive and continuous possession of these lots in the concept of owner and that they had consistently declared the property in their name for purposes of real estate taxation.[9]

In support of their application, respondents submitted to the court the blueprint of Plan Ccs-007601-000040-D,[10] as well as copies of the technical descriptions of each lot,[11] a certification from the geodetic engineer[12] and the pertinent tax declarations,[13] together with the receipts of payment therefor.[14] Expressly, they averred that the property's original tracing cloth plan had previously been submitted to the RTC of Las Piñas City, Branch 255 (Las Piñas RTC) in connection with the proceedings in LRC Case No. LP-128—a previous registration case involving the subject property which, however, had been dismissed without prejudice.[15]

The trial court found the application to be sufficient in form and substance; hence, it gave due course thereto and ordered

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[8] *Id.* at 477-478.

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

[10] *Id.* at 10.

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

[12] *Id.* at 13.

[13] *Id.* at 479-485.

[14] *Id.* at 487-497.

[15] *Id.* at 4.

compliance with the publication and notification requirements of the law.[16]

Opposing the application, petitioner, through the Office of the City Prosecutor of Las Piñas City, advanced that the lots sought to be registered were inalienable lands of the public domain; that neither respondents nor their predecessors-in-interest had been in prior possession thereof; and that the muniment of title and the tax declaration submitted to the court did not constitute competent and sufficient evidence of *bona fide* acquisition or of prior possession in the concept of owner.[17]

At the hearing, Zenaida identified her herein co-respondents to be her siblings, nephews and nieces. She likewise identified the adjoining lot owners named in the application and the supporting documents attached to the application as well. She testified that the subject lots had been surveyed at the instance of her family sometime between 1994 and 1995, and that said survey was documented in Plan Ccs-007601-000040-D and in the geodetic engineer's technical description of the lots. She implied that they did obtain the original tracing cloth plan of the property, but it was forwarded to the Land Registration Authority (LRA) by the Las Piñas RTC in connection with the proceedings in LRC Case No. LP-128. Notwithstanding this admission, and without objection from the oppositor, the blueprint of Plan Ccs-007601-000040-D and the technical description of the property were provisionally marked in evidence.[18]

Furthermore, Zenaida—61 years old at the time of her testimony—declared that she has known that the subject lots were owned by her family since she was 5 years old and from her earliest recollection, she narrated that her grandparents had lived in the subject lots until the death of her grandmother in 1961. She implied that aside from her predecessors there were other persons, caretakers supposedly, who had tilled the land and who had lived until sometime between 1980 and 1990.

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[16] Orders dated April 10, 2002 and June 3, 2002; *id.* at 15-16, 58-59.

[17] Records, pp. 135-138.

[18] TSN, February 5, 2003, p. 4.

She remembered her grandmother having constructed a house on the property, but the same had already been destroyed. Also, sometime in 1970, her family built an adobe fence around the perimeter of the lots and later, in the 1990s, they reinforced it with hollow blocks and concrete after an inundation caused by the flood.[19] She claimed that she and her father, Sergio, had been religious in the payment of real estate taxes as shown by the tax declarations and tax receipts which she submitted to the court and which, following identification, were forthwith marked in evidence.[20]

Zenaida's claim of prior, open, exclusive and continuous possession of the land was corroborated by Josefina Luna (Josefina), one of the adjoining lot owners. Josefina, then 73 years old, strongly declared that the subject lots were owned by Zenaida's parents, Sergio Guinto and Lucia Rivera, since she reached the age of understanding, and that she had not come to know of any instance where a third party had placed a claim on the property. When asked whether there was anyone residing in the property and whether there were improvements made thereon, she said there was no one residing therein and that there was nothing standing thereon except for a *nipa* hut. [21]

At the close of Josefina's testimony, respondents formally offered their exhibits without the oppositor placing any objection thereto.[22] After weighing the evidence, the trial court, on July 10, 2003, rendered its Decision denying the application for registration. It found that respondents were unable to establish with certainty the identity of the lots applied for registration, because of failure to submit to the court the original tracing cloth plan as mandated by Presidential Decree (P.D.) No. 1529. It likewise noted that the fact of adverse, continuous, open, public and peaceful possession in the concept of owner has not been proved by the evidence as Zenaida's and Josefina's

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[19] *Id.* at 16-25, 35.

[20] *Id.* at 12-17, 27-33.

[21] TSN, March 17, 2003, pp. 6-7, 12-13.

[22] Records, p. 498.

respective testimonies did not establish the nature of the possession of respondents' predecessors.[23] The dispositive portion of the Decision reads:

WHEREFORE, for failure of the applicants to comply with the requirements of Presidential Decree No. 1529, the Application for Original Registration of Title is hereby DENIED.

ORDERED.[24]

Aggrieved, respondents appealed to the Court of Appeals which, on March 30, 2006, issued the assailed Decision reversing the trial court as follows:

WHEREFORE, premises considered, the assailed decision is hereby REVERSED and SET ASIDE. Accordingly, the instant appeal is hereby GRANTED.

SO ORDERED.[25]

Petitioner's motion for reconsideration was denied.[26] Hence, it filed the instant petition which attributes error to the Court of Appeals in reversing the trial court's July 10, 2003 decision.

Petitioner principally posits that under Section 17 of P.D. No. 1529, the submission in court of the original tracing cloth plan of the property sought to be registered is a mandatory requirement in registration proceedings in order to establish the exact identity of the property. While respondents admitted that the original tracing cloth plan of Lot Nos. 4 and 5 in this case was in the custody of the LRA as a consequence of their first attempt to have the property registered, petitioner, invoking *Del Rosario v. Republic of the Philippines,*[27] believes that respondents, on that score alone, are not relieved of their procedural obligation to adduce in evidence the original copy

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[23] *Rollo,* pp. 84-89.

[24] *Id.* at 89.

[25] *Id.* at 50-51.

[26] CA *rollo*, pp. 141-142.

[27] 432 Phil. 824 (2002).

of the plan, because they could have easily retrieved it from the LRA and presented it in court.[28]

Furthermore, petitioner suggests that the blueprint of the subdivision plan submitted by respondents cannot approximate substantial compliance with the requirement of Section 17 of P.D. No. 1529. Again, relying on the aforementioned *Del Rosario* case, petitioner observes that the blueprint in this case, allegedly illegible and unreadable, does not even bear the certification of the Lands Management Bureau.[29] Lastly, petitioner attacks respondents' claim of prior possession. It notes that there is no clear and convincing evidence that respondents and their predecessors-in-interest have been in open, continuous, adverse, public and exclusive possession of Lot Nos. 4 and 5 for 30 years.[30]

Commenting on the petition, respondents observe that petitioner's arguments are mere reiterative theses on the issues that have already been addressed by the Court of Appeals in the assailed Decision and Resolution, and that there are no new matters raised which have not yet been previously passed upon. Accordingly, they prayed that the petition be denied.[31]

We find the petition to be unmeritorious.

Section 17 of P.D. No. 1529, otherwise known as *The Property Registration Decree of 1978,* materially provides:

Section 17. *What and where to file.*–The application for land registration shall be filed with the Court of First Instance of the province or city where the land is situated. The applicant shall file, together with the application, all original muniments of titles or copies thereof and a survey plan of the land approved by the Bureau of Lands.

The clerk of court shall not accept any application unless it is shown that the applicant has furnished the Director of Lands with a copy of the application and all annexes.

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[28] *Rollo,* pp. 19-21.

[29] *Id.* at 24-25.

[30] *Id.* at 28-30.

[31] *Id.* at 111-113.

The provision denotes that it is imperative in an application for original registration that the applicant submit to the court, aside from the original or duplicate copies of the muniments of title, a copy of a duly approved survey plan of the land sought to be registered. The survey plan is indispensable as it provides a reference on the exact identity of the property. This begs the question in the instant case: Does the blueprint copy of the survey plan suffice for compliance with the requirement? In not so many cases,[32] it was held that the non-submission, for any reason, of the original tracing cloth plan is fatal to the registration application, since the same is mandatory in original registration of title. For instance, in the *Del Rosario* case relied on by petitioner, the Court ruled that the submission of the original copy of the duly approved tracing cloth plan is a mandatory condition for land registration as it supplies the means by which to determine the exact metes and bounds of the property. The applicant in that case was unable to submit the original tracing cloth plan of the land he was claiming because apparently, as in the present case, it was previously transmitted by the clerk of court to the LRA. Yet the Court, deeming it the applicant's obligation to retrieve the plan himself and present it in evidence, denied the application, to wit:

The submission in evidence of the original tracing cloth plan, duly approved by the Bureau of Lands, in cases for application of original registration of land is a mandatory requirement. The reason for this rule is to establish the true identity of the land to ensure that it does not overlap a parcel of land or a portion thereof already covered by a previous land registration, and to forestall the possibility that it will be overlapped by a subsequent registration of any adjoining land. The failure to comply with this requirement is fatal to petitioner's application for registration.

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[32] *Del Rosario v. Republic of the Philippines, supra* note 27; *Director of Lands v. Intermediate Appellate Court,* G.R. No. 73246, March 2, 1993, 219 SCRA 339; *Director of Lands v. Intermediate Appellate Court*, G.R. No. 65663, October 16, 1992, 214 SCRA 604; *Director of Lands v. Reyes,* G.R. No. L-27594, November 28, 1975, 68 SCRA 177.

Petitioner contends, however, that he had submitted the original tracing cloth plan to the branch clerk of court, but the latter submitted the same to the LRA. This claim has no merit. Petitioner is duty bound to retrieve the tracing cloth plan from the LRA and to present it in evidence in the trial court. x x x[33]

Yet if the reason for requiring an applicant to adduce in evidence the original tracing cloth plan is merely to provide a convenient and necessary means to afford certainty as to the exact identity of the property applied for registration and to ensure that the same does not overlap with the boundaries of the adjoining lots, there stands to be no reason why a registration application must be denied for failure to present the original tracing cloth plan, especially where it is accompanied by pieces of evidence—such as a duly executed blueprint of the survey plan and a duly executed technical description of the property—which may likewise substantially and with as much certainty prove the limits and extent of the property sought to be registered.

Thus, sound is the doctrinal precept laid down in *Republic of the Philippines v. Court of Appeals,*[34] and in the later cases of *Spouses Recto v. Republic of the Philippines*[35]and *Republic of the Philippines v. Hubilla*[36] that while the best evidence to identify a piece of land for registration purposes is the original tracing cloth plan issued by the Bureau of Lands (now the Lands Management Services of the Department of Environment and Natural Resources [DENR]), blueprint copies and other evidence could also provide sufficient identification. Pertinently, the Court in *Hubilla,* citing *Recto,* pronounced:

While the petitioner correctly asserts that the submission in evidence of the original tracing cloth plan, duly approved by the Bureau of Lands, is a mandatory requirement, this Court has

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[33] *Del Rosario v. Republic of the Philippines*, *supra* note 27, at 834.

[34] G.R. No. 62680, November 9, 1988, 167 SCRA 150, 154, citing *Republic of the Philippines v. Intermediate Appellate Court*, 229 Phil. 20 (1986) and *Director of Lands v. Court of Appeals*, 158 SCRA 568 (1980).

[35] 483 Phil. 81, 91 (2004).

[36] 491 Phil. 371 (2005).

recognized instances of substantial compliance with this rule. In previous cases, this Court ruled that blueprint copies of the original tracing cloth plan from the Bureau of Lands and other evidence could also provide sufficient identification to identify a piece of land for registration purposes. x x x[37]

In the case at bar, we find that the submission of the blueprint of Plan Ccs-007601-000040-D, together with the technical description of the property, operates as substantial compliance with the legal requirement of ascertaining the identity of Lot Nos. 4 and 5 applied for registration. The blueprint, which is shown to have been duly executed by Geodetic Engineer Rolando Roxas (Roxas), attached to the application and subsequently identified, marked, and offered in evidence, shows that it proceeded officially from the Lands Management Services and, in fact, bears the approval of Surveys Division Chief Ernesto Erive. It also shows on its face that the survey of the property was endorsed by the Community Environment and Natural Resources Office of the DENR.[38] This, compounded by the accompanying technical description of Lot Nos. 4 and 5 duly executed and verified also by Roxas,[39] should substantially supply as it did the means by which the identity of Lot Nos. 4 and 5 may be ascertained.

Verily, no error can be attributed to the Court of Appeals when it ruled that respondents were able to approximate compliance with Section 17 of P.D. No. 1529. Also telling is the observation made by the Court of Appeals that there was no objection raised by the oppositor or by the LRA to the admission of the blueprint of Plan Ccs-007601-000040-D despite the fact that they were well-informed of the present proceedings, to wit:

In the instant case, the plaintiffs-appellants do not deny that only the blueprint copy of the plan of the subject lands (Exh. "J") and not the original tracing cloth plan thereof was submitted to the court *a quo* since they had previously submitted the original tracing cloth plan to the Land Registration Authority. However, despite the failure

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[37] *Id.* at 373.

[38] See Exhibit "J", records, p. 473.

[39] See Exhibits "K" and "L", *id.* at 474-475.

of the plaintiffs-appellants to present the original tracing cloth plan, neither the Land Registration Authority nor the oppositor-appellee question[ed] this deficiency. Likewise, when the blueprint copy of the plan (Exh. "J") was offered in evidence, the oppositor-apellee did not raise any objection thereto. Such silence on the part of the Land Registration [Authority] and the oppositor-appellee can be deemed as an implied admission that the original tracing cloth plan and the blueprint copy thereof (Exh. "J") are one and the same, free from all defects and clearly identify the lands sought to be registered. In this regard x x x, the blueprint copy of the plan (Exh. "J"), together with its technical descriptions (Exhs. "K" and "L"), is deemed tantamount to substantial compliance with the requirements of law.[40]

We now proceed to the issue of possession. Petitioner theorizes that not only were respondents unable to identify the lots applied for registration; it also claims that they have no credible evidence tending to establish that for at least 30 years they and their predecessors-in-interest have occupied and possessed the property openly, continuously, exclusively and notoriously under a *bona fide* claim of ownership since June 12, 1945 or earlier.[41] We do not agree.

In an original registration of title under Section 14(1)[42] P.D. No. 1529, the applicant for registration must be able to establish by evidence that he and his predecessor-in-interest have exercised acts of dominion over the lot under a *bona fide* claim of ownership since June 12, 1945 or earlier.[43] He must prove that for at

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[40] *Rollo*, p. 47.

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

[42] Section 14 (1) of Presidential Decree No. 1529 states:

Who may apply. – The following persons may file in the proper Court of First Instance an application for registration of title to land, whether personally or through their duly authorized representatives:

(1) Those who by themselves or through their predecessor-in-interest have been in open, continuous, exclusive and notorious possession and occupation of alienable and disposable lands of the public domain under a *bona fide* claim of ownership since June 12, 1945, or earlier.

[43] See *Republic of the Philippines v. Cayetano L. Serrano*, *et al*., G.R. No. 183063, February 24, 2010.

least 30 years, he and his predecessor have been in open, continuous, exclusive and notorious possession and occupation of the land. *Republic v. Alconaba*[44] well explains possession and occupation of this character, thus:

> The law speaks of possession and occupation. Since these words are separated by the conjunction and, the clear intention of the law is not to make one synonymous with the other. Possession is broader than occupation because it includes constructive possession. When, therefore, the law adds the word occupation, it seeks to delimit the all-encompassing effect of constructive possession. **Taken together with the words open, continuous, exclusive and notorious, the word occupation serves to highlight the fact that for an applicant to qualify, his possession must not be a mere fiction. Actual possession of a land consists in the manifestation of acts of dominion over it of such a nature as a party would naturally exercise over his own property**.[45]

Proceeding from this fundamental principle, we find that indeed respondents have been in possession and occupation of Lot Nos. 4 and 5 under a *bona fide* claim of ownership for the duration required by law. This conclusion is primarily factual.

From the records, it is clear that respondents' possession through their predecessor-in-interest dates back to as early as 1937. In that year, the subject property had already been declared for taxation by Zenaida's father, Sergio, jointly with a certain Toribia Miranda (Toribia).[46]Yet, it also can be safely inferred that Sergio and Toribia had declared the land for taxation even earlier because the 1937 tax declaration shows that it offsets a previous tax number.[47] The property was again declared in 1979,[48]1985[49]and 1994[50] by Sergio, Toribia and by Romualdo.

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[44] 471 Phil. 607 (2004).

[45] *Id.* at 620. (Emphasis supplied).

[46] Exhibit "O", records, p. 479.

[47] Exhibit "O-1", *id.* at 479 (the back page of the 1937 Tax Declaration).

[48] Exhibits "O-2" and "O-3", *id.* at 480-481.

[49] Exhibits "O-4" and "O-5", *id.* at 482-483.

[50] Exhibits "O-6" and "O-7", *id.* at 484-485.

Certainly, respondents could have produced more proof of this kind had it not been for the fact that, as certified by the Office of the Rizal Provincial Assessor, the relevant portions of the tax records on file with it had been burned when the assessor's office was razed by fire in 1997.[51] Of equal relevance is the fact that with these tax assessments, there came next tax payments. Respondents' receipts for tax expenditures on Lot Nos. 4 and 5 between 1977 and 2001 are likewise fleshed out in the records and in these documents, Sergio, Toribia and Romualdo are the named owners of the property with Zenaida being identified as the one who delivered the payment in the 1994 receipts.[52]

The foregoing evidentiary matters and muniments clearly show that Zenaida's testimony in this respect is no less believable. And the unbroken chain of positive acts exercised by respondents' predecessors, as demonstrated by these pieces of evidence, yields no other conclusion than that as early as 1937, they had already demonstrated an unmistakable claim to the property. Not only do they show that they had excluded all others in their claim but also, that such claim is in all good faith.

Land registration proceedings are governed by the rule that while tax declarations and realty tax payment are not conclusive evidence of ownership, nevertheless, they are a good indication of possession in the concept of owner. These documents constitute at least proof that the holder has a claim of title over the property, for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property. It also announces his adverse claim against the state and all other parties who may be in conflict with his interest. More importantly, it signifies an unfeigned intention to contribute to government revenues—an act that strengthens one's *bona fide* claim of acquisition of ownership.[53]

[51] Exhibit "P", *id.* at 486.

[52] Exhibits "Q" to "Q-11", *id.* at 487-497.

[53] See *Alonso v. Cebu Country Club, Inc.*, 426 Phil. 61 (2002); *Director*

Indeed, that respondents herein have been in possession of the land in the concept of owner—open, continuous, peaceful and without interference and opposition from the government or from any private individual—itself makes their right thereto unquestionably settled and, hence, deserving of protection under the law.

WHEREFORE, the petition is *DENIED*. The March 30, 2006 Decision and the November 20, 2006 Resolution of the Court of Appeals, in CA-G.R. CV No. 80500, are *AFFIRMED.*

SO ORDERED.

Carpio (Chairperson), Leonardo-de Castro,[*] *Abad,* and *Mendoza, JJ.,* concur.

FIRST DIVISION

[G.R. No. 176066. August 11, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ESTELA TUAN *y* BALUDDA,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; JUDGMENTS; DOUBLE JEOPARDY; A JUDGMENT ACQUITTING THE ACCUSED IS FINAL AND IMMEDIATELY EXECUTORY UPON ITS PROMULGATION AND THAT THE STATE MAY NOT SEEK ITS REVIEW

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of Lands v. Court of Appeals, 367 Phil. 597 (1999); *Republic v. Court of Appeals,* 325 Phil. 674 (1996); *Heirs of Placido Miranda v. Court of Appeals*, G.R. No. 109312, March 29, 1996, 255 SCRA 368; *Rivera v. Court of Appeals*, G.R. No. 107903, May 22, 1995, 244 SCRA 218; *Director of Lands v. Intermediate Appellate Court*, G.R. No. 70825, March 11, 1991, 195 SCRA 38.

[*] Designated as an additional member in lieu of Associate Justice Antonio Eduardo B. Nachura per raffle dated August 9, 2010.

WITHOUT PLACING THE ACCUSED IN DOUBLE JEOPARDY. — Given that accused-appellant was already acquitted of the charge of violation of Presidential Decree No. 1866 on the ground of reasonable doubt in **Criminal Case No. 17620-R**, her instant appeal relates only to her conviction for illegal possession of prohibited or regulated drugs in **Criminal Case No. 17619-R**. The Court can no longer pass upon the propriety of accused-appellant's acquittal in Criminal Case No. 17620-R because of the rule that a judgment acquitting the accused is final and immediately executory upon its promulgation, and that accordingly, the State may not seek its review without placing the accused in double jeopardy. Such acquittal is final and unappealable on the ground of double jeopardy whether it happens at the trial court or on appeal at the Court of Appeals.

2. **ID.; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT ARE ACCORDED RESPECT; EXCEPTIONS; NOT PRESENT. —** In a prosecution for violation of the Dangerous Drugs Law, such as Criminal Case No. 17619-R, a case becomes a contest of credibility of witnesses and their testimonies. In such a situation, this Court generally relies upon the assessment by the trial court, which had the distinct advantage of observing the conduct or demeanor of the witnesses while they were testifying. Hence, its factual findings are accorded respect — even finality — absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied. The Court finds no reason to deviate from the general rule in the case at bar.

3. **CRIMINAL LAW; THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED (R.A. NO. 6425); ILLEGAL POSSESSION OF PROHIBITED OR REGULATED DRUGS; ELEMENTS; PROVEN. —** Illegal possession of prohibited or regulated drugs is committed when the following elements 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. All the foregoing elements were duly proven to exist in Criminal Case No. 17619-R.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT IMPAIRED BY DISCREPANCIES AND INCONSISTENCIES IN THE TESTIMONIES OF WITNESSES REFERRING TO**

MINOR DETAILS, AND NOT IN ACTUALITY TOUCHING UPON THE CENTRAL FACT OF THE CRIME. — Accused-appellant challenges the judgment of the RTC, affirmed by the Court of Appeals, finding her guilty of illegal possession of marijuana, by pointing out certain inconsistencies in the testimonies of prosecution witnesses that supposedly manifested their lack of credibility, *i.e.*, the date of the test buy and the manner by which the doors of the rooms of the house were opened. These alleged inconsistencies and contradictions pertain to minor details and are so inconsequential that they do not in any way affect the credibility of the witnesses nor detract from the established fact of illegal possession of marijuana by accused-appellant at her house. The Court has previously held that discrepancies and inconsistencies in the testimonies of witnesses referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair their credibility. Testimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence. Inconsistencies as to minor details and collateral matters do not affect the credibility of the witnesses nor the veracity or weight of their testimonies. Such minor inconsistencies may even serve to strengthen their credibility as they negate any suspicion that the testimonies have been rehearsed.

5. **ID.; ID.; TRIAL; PRESENTATION OF WITNESSES; NON-PRESENTATION OF CORROBORATIVE WITNESSES DOES NOT CONSTITUTE SUPPRESSION OF EVIDENCE AND IS NOT FATAL. —** Accused-appellant further questions the non-presentation as witnesses of Lad-ing and Tudlong, the informants, and Pascual, the neighbor who supposedly witnessed the implementation of the Search Warrant, during the joint trial of Criminal Case Nos. 17619-R and 17620-R before the RTC. This Court though is unconvinced that such non-presentation of witnesses is fatal to Criminal Case No. 17619-R. The prosecution has the exclusive prerogative to determine whom to present as witnesses. The prosecution need not present each and every witness but only such as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. The testimonies of the other witnesses may, therefore, be dispensed with if they are merely corroborative in nature. The Court has ruled that the non-presentation of corroborative witnesses does not constitute

suppression of evidence and is not fatal to the prosecution's case.

6. ID.; CRIMINAL PROCEDURE; SEARCH AND SEIZURE; SEARCH WARRANT; FACTORS FOR A VALIDLY ISSUED SEARCH WARRANT; SECOND AND THIRD FACTORS, COMPLIED WITH. — [T]he validity of the issuance of a search warrant rests upon the following factors: (1) it must be issued upon probable cause; (2) the probable cause must be determined by the judge himself and not by the applicant or any other person; (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and (4) the warrant issued must particularly describe the place to be searched and persons or things to be seized. There is no dispute herein that the second and third factors for a validly issued search warrant were complied with, *i.e.*, personal determination of probable cause by Judge Cortes; and examination, under oath or affirmation, of SPO2 Fernandez and the two informants, Lad-ing and Tudlong, by Judge Cortes.

7. ID.; ID.; ID.; ID.; A MAGISTRATE'S DETERMINATION OF PROBABLE CAUSE FOR THE ISSUANCE THEREOF IS PAID GREAT DEFERENCE BY A REVIEWING COURT, AS LONG AS THERE WAS SUBSTANTIAL BASIS FOR THE DETERMINATION; EXPLAINED. — A magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court, as long as there was substantial basis for that determination. Substantial basis means that the questions of the examining judge brought out such facts and circumstances as would lead a reasonably discreet and prudent man to believe that an offense has been committed, and the objects in connection with the offense sought to be seized are in the place sought to be searched. Such substantial basis exists in this case.

8. ID.; ID.; ID.; ID.; DESCRIPTION OF THE PLACE TO BE SEARCHED, WHEN SUFFICIENT. — Equally without merit is accused-appellant's assertion that the Search Warrant did not describe with particularity the place to be searched. A description of the place to be searched is sufficient if the officer serving the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other

places in the community. A designation or description that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness. In the case at bar, the address and description of the place to be searched in the Search Warrant was specific enough. There was only one house located at the stated address, which was accused-appellant's residence, consisting of a structure with two floors and composed of several rooms.

9. **ID.; ID.; ID.; ID.; ITEMS SEIZED AS A RESULT OF THE SEARCH CONDUCTED BY VIRTUE OF A VALID SEARCH WARRANT MAY BE PRESENTED AS EVIDENCE AGAINST THE ACCUSED. —** [T]he Court upholds the validity of the Search Warrant for accused-appellant's house issued by MTCC Judge Cortes, and any items seized as a result of the search conducted by virtue thereof, may be presented as evidence against the accused-appellant.

10. **CRIMINAL LAW; THE DANGEROUS DRUGS ACT OF 1972, AS AMENDED (R.A. NO. 6425); ILLEGAL POSSESSION OF MARIJUANA; IMPOSABLE PENALTY. —** Pursuant to Article II, Section 8 of Republic Act No. 6425, as amended, illegal possession of 750 grams or more of the prohibited drug marijuana is punishable by *reclusion perpetua* to death. Accused-appellant had in her possession a total of **19,050 grams** of marijuana, for which she was properly sentenced to *reclusion perpetua* by the RTC, affirmed by the Court of Appeals. In the same vein, the fine of ₱500,000.00 imposed upon accused-appellant by the RTC, affirmed by the Court of Appeals, is also correct, as the same is still within the range of fines imposable on any person who possessed prohibited drugs without any authority, under Article II, Section 8 of Republic Act No. 6425, as amended.

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 September 21, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 00381, which affirmed with modification the Decision[2] dated April 9, 2002 of the Regional Trial Court (RTC), Branch 6, Baguio City, finding accused-appellant Estela Tuan *y* Baludda guilty in Criminal Case No. 17619-R, of illegal possession of marijuana under Article II, Section 8 of Republic Act No. 6425, otherwise known as "The Dangerous Drugs Act of 1972," as amended; and in Criminal Case No. 17620-R, of violating Presidential Decree No. 1866, otherwise known as the "Illegal Possession of Firearms," as amended.

On April 5, 2000, two separate Informations were filed before the RTC against accused-appellant for illegal possession of marijuana and illegal possession of firearm. The Informations read:

<u>Criminal Case No. 17619-R</u>

The undersigned Public Prosecutor accuses ESTELA TUAN *Y* BALUDDA of the crime of VIOLATION OF SEC. 8, ART. II OF REPUBLIC ACT 6425, AS AMENDED (Illegal Possession of Marijuana), committed as follows:

That on or about 24th day of January 2000, at Barangay Gabriela Silang, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully and unlawfully have in her possession, custody, and control the following, to wit:

a) Nine (9) bricks of dried Marijuana leaves with an approximate total weight of 18.750 kgs., and

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[1] Penned by Associate Justice Estela M. Perlas-Bernabe with Associate Justices Renato C. Dacudao and Rosmari D. Carandang, concurring; *rollo*, pp. 3-13.

[2] Penned by Judge Ruben C. Ayson (now Court of Appeals Justice); CA *rollo,* pp. 129-152.

b) One (1) plastic bag containing dried Marijuana leaves weighing approximately .3 kg.

without any authority of law to do so in violation of the above-cited provision of law.[3]

Criminal Case No. 17620-R

The undersigned Public Prosecutor accuses ESTELA TUAN *Y* BALUDDA of the crime of VIOLATION OF PRESIDENTIAL DECREE 1866, AS AMENDED (Illegal Possession of Firearm), committed as follows:

That on or about the 24th day of January 2000, at Barangay Gabriela Silang, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused did then and there willfully and unlawfully have in her possession, custody, and control one (1) Cal. .357 S & W revolver, a high-powered firearm, without any license, permit or authority duly issued by the government to possess or keep the same in violation of the above-cited law.[4]

Upon her arraignment on April 18, 2000, accused-appellant, assisted by her counsel *de parte*, pleaded "NOT GUILTY" to both charges.[5] Pre-trial and trial proper then ensued.

During trial, the prosecution presented four witnesses: Senior Police Officer (SPO) 1 Modesto F. Carrera (Carrera), Police Officer (PO) 2 Jaime Chavez (Chavez), SPO2 Fernando Fernandez (Fernandez), and Forensic Chemist II Marina Carina Madrigal (Madrigal).

The events, as recounted by the prosecution, are as follows:

At around nine o'clock in the morning on January 24, 2000, two male informants namely, Jerry Tudlong (Tudlong) and Frank Lad-ing (Lad-ing) arrived at the office of the 14th Regional CIDG (Criminal Investigation and Detention Group) at DPS Compound, Marcoville, Baguio City, and reported to SPO2 Fernandez, Chief of the Station Drug Enforcement Unit (SDEU),

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

[4] *Id.* at 16.

[5] Records, p. 11.

that a certain "Estela Tuan" had been selling marijuana at Barangay Gabriela Silang, Baguio City. Present at that time were Police Superintendent Isagani Neres, Regional Officer of the 14th Regional CIDG; Chief Inspector Reynaldo Piay, Deputy Regional Officer; and other police officers.[6]

SPO2 Fernandez set out to verify the report of Tudlong and Lad-ing. At around one o'clock in the afternoon of the same day, he gave Tudlong and Lad-ing ₱300.00 to buy marijuana, and then accompanied the two informants to the accused-appellant's house. Tudlong and Lad-ing entered accused-appellant's house, while SPO2 Fernandez waited at the adjacent house. After thirty minutes, Tudlong and Lad-ing came out of accused-appellant's house and showed SPO2 Fernandez the marijuana leaves they bought. After returning to the CIDG regional office, SPO2 Fernandez requested the laboratory examination of the leaves bought from accused-appellant. When said laboratory examination yielded positive results for marijuana, SPO2 Fernandez prepared an Application for Search Warrant for accused-appellant's house.

SPO2 Fernandez, together with Tudlong and Lad-ing, filed the Application for a Search Warrant before Judge Iluminada Cabato-Cortes (Judge Cortes) of the Municipal Trial Court in Cities (MTCC), Baguio City, Branch IV, at about one o'clock in the afternoon on January 25, 2000. Two hours later, at around three o'clock, Judge Cortes personally examined SPO2 Fernandez, Tudlong, and Lad-ing, after which, she issued a Search Warrant, being satisfied of the existence of probable cause. The Search Warrant read:

TO ANY PEACE OFFICER:
GREETINGS:

It appearing to the satisfaction of the undersigned of the existence of facts upon which the application for Search Warrant is based, after personally examining by searching questions under oath SPO2 Fernando V. Fernandez of the CAR Criminal Investigation and Detection Group with office address at DPS Compound, Utility Road,

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[6] TSN, September 29, 2000, p. 4.

Baguio City and his witnesses namely: Frank Lad-ing of Happy Hallow, Baguio City and Jerry Tudlong, of Barangay Kitma, Baguio City, after having been duly sworn to, who executed sworn statements and deposition as witneses (sic), that there is a probable cause to believe that a Violation of R.A. 6425 as amended by R.A. 7659 has been committed and that there are good and sufficient reasons to believe that Estela Tuan, has in her possession and control at her resident at Brgy. Gabriela Silang, Baguio City, the following:

-Undetermined Quantity of Marijuana Dried Leaves and/or Marijuana Hashish

x x x x x x x x x

which are subject of the offense which should be seized and brought to the undersigned.

You are hereby commanded to make an immediate search at anytime in the day the house of the accused Estela Tuan at Brgy. Gabriela Silang, Baguio City, and forthwith seize and take possession of the following:

-Undetermined Quantity of Marijuana Dried Leaves and/or Marijuana Hashish

x x x nothing follows x x x

and bring said items to the undersigned to be dealt with as the law directs.

This Search Warrant shall be valid for ten (10) days from date of issue, thereafter, it shall be void.

The officers must conduct the search and seize the above-mentioned personal items in the presence of the lawful occupant thereof or any member of her family or in the absence of the latter, in the presence of two witnesses of sufficient age and discretion residing in the same locality.

The officers seizing the items must give a detailed receipt for the same to the lawful occupant of the house in whose presence the search and seizure were made, or in the absence of such occupant, must, in the presence of the 2 witnesses mentioned, leave a receipt in the place in which the seized items were found; thereafter, deliver the items seized to the undersigned judge together with a true inventory thereof duly verified under oath.

Baguio City, Philippines, this 25th day of January, 2000.

(SGD)ILUMINADA CABATO-CORTES
Executive Judge
MTCC, Branch IV[7]

Upon receipt of the Search Warrant, SPO2 Fernandez, his team supervisor Police Senior Inspector Rodolfo Castel, SPO1 Carrera, Police Senior Inspector Ricarte Marquez and PO2 Chavez implemented the warrant. Before going to the accused-appellant's house, SPO2 Fernandez invited *barangay* officials to be present when the Search Warrant was to be served, but since no one was available, he requested one Eliza Pascual (Pascual), accused-appellant's neighbor, to come along.

The CIDG team thereafter proceeded to accused-appellant's house. Even though accused-appellant was not around, the CIDG team was allowed entry into the house by Magno Baludda (Magno), accused-appellant's father, after he was shown a copy of the Search Warrant. SPO2 Fernandez and Police Senior Inspector Ricarte Marquez guarded the surroundings of the house,[8] while SPO1 Carrera and PO2 Chavez searched inside.

SPO1 Carrera and PO2 Chavez began searching the rooms on the first floor in the presence of Magno and Pascual. They continued their search on the second floor. They saw a movable cabinet in accused-appellant's room, below which they found a brick of marijuana and a firearm. At around six o'clock that evening, accused-appellant arrived with her son. The police officers asked accused-appellant to open a built-in cabinet, in which they saw eight more bricks of marijuana.[9] PO2 Chavez issued a receipt for the items confiscated from accused-appellant[10] and a certification stating that the items were confiscated and recovered from the house and in accused-appellant's presence.

The nine bricks of marijuana were brought to the National Bureau of Investigation (NBI) for examination.

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[7] Records, pp. 80-81.

[8] TSN, September 29, 2000, p. 16.

[9] TSN, February 5, 2001, pp. 14-16.

[10] *Id.* at 19.

The defense, on the other hand, had an entirely different version of what transpired that day. It presented four witnesses, namely, accused-appellant herself; Beniasan Tuan (Beniasan), accused-appellant's husband; Magno, accused-appellant's father; and Mabini Maskay (Maskay), the *Barangay* Captain of Barangay Gabriela Silang.

In her testimony, accused-appellant declared that she worked as a vendor at Hangar Market. Sometime in January 2000, while she was selling vegetables at Hangar Market, her son arrived with two police officers who asked her to go home because of a letter from the court.[11] At about six o'clock in the afternoon, she and her husband Beniasan reached their residence and found a green paper bag with marijuana in their *sala*. According to the police officers, they got the bag from a room on the first floor of accused-appellant's house. Accused-appellant explained that the room where the bag of marijuana was found was previously rented by boarders. The boarders padlocked the room because they still had things inside and they had paid their rent up to the end of January 2000.[12] The police officers also informed accused-appellant that they got a gun from under a cabinet in the latter's room, which accused-appellant disputed since her room was always left open and it was where her children play.[13] Accused-appellant alleged that a Search Warrant was issued for her house because of a quarrel with her neighbor named Lourdes Estillore (Estillore). Accused-appellant filed a complaint for the demolition of Estillore's house which was constructed on the road.[14]

Beniasan supported the testimony of his wife, accused-appellant. He narrated that he and accused-appellant were at their Hangar Market stall when two police officers came and asked them to go home. Beniasan and accused-appellant arrived at their residence at around six o'clock in the evening and were shown the marijuana the police officers supposedly got

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[11] TSN, November 27, 2001, pp. 2-3.

[12] *Id.* at 4-5.

[13] *Id.* at 6.

[14] *Id.* at 9-11.

from the first floor of the house. The police officers then made Beniasan sign a certification of the list of items purportedly confiscated from the house. [15]

Magno testified that he resided at the first floor of accused-appellant's residence. He was present when the search was conducted but denied that the Search Warrant was shown to him.[16] He attested that the confiscated items were found from the vacant room at the first floor of accused-appellant's house which was previously occupied by boarders. Said room was padlocked but was forced open by the police officers. In the course of the police officers' search, they pulled something from under the bed that was wrapped in green cellophane, but Magno did not know the contents thereof.[17] The police officers also searched the rooms of accused-appellant and her children at the second floor of the house, during which they allegedly found a gun under the cabinet in accused-appellant's room. Magno claimed that he did not personally witness the finding of the gun and was merely informed about it by the police officers.[18]

Maskay, the *Barangay* Captain of Barangay Gabriela Silang, Baguio City, was the last to testify for the defense. He corroborated accused-appellant's allegation that the latter had a quarrel with Estillore, and this could be the reason behind the filing of the present criminal cases. He further remembered that the members of the CIDG went to his office on January 24, 2000 to ask about the location of accused-appellant's house.[19]

The RTC, in its Decision dated April 9, 2002, found accused-appellant guilty as charged and adjudged thus:

WHEREFORE, judgment is hereby rendered as follows:

1. In Criminal Case No. 17619-R, the Court finds the accused Estela Tuan guilty beyond reasonable doubt of the offense of illegal

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[15] TSN, September 26, 2001, pp. 3-10.

[16] TSN, October 25, 2001, p. 7.

[17] *Id.* at 9, 15.

[18] *Id.* at 10.

[19] TSN, January 21, 2002, p. 10.

possession of marijuana (nine [9] bricks of dried marijuana leaves with an approximate weight of 18.750 kilograms and the one [1] plastic bag containing the dried marijuana weighing about .3 kilograms) in violation of Section 8, Article II of Republic Act No. 6425 as amended by Section 13 of Republic Act 7659 as charged in the information and sentences her to the penalty of *reclusion perpetua* and to pay a fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency.

The nine (9) bricks of dried marijuana leaves with an approximate weight of 18.750 kilograms and one (1) plastic bag containing dried marijuana leaves weighing approximately .3 kilograms (Exhibit F, F-1, F-1-A to F-1-J) are ordered confiscated and forfeited in favor of the State to be destroyed immediately in accordance with law.

The accused Estela Tuan being a detention prisoner is entitled to be credited 4/5 of her preventive imprisonment in the service of her sentence in accordance with Article 29 of the Revised Penal Code; and

2. In Criminal Case No. 17620-R, the Court finds the accused Estela Tuan guilty beyond reasonable doubt of the offense of illegal possession of firearms (one [1] caliber .357 S & W revolver), a high powered firearm, without any license, permit or authority issued by the Government to keep the same in violation of Section 1, Republic Act No. 8294 which amended Section 1 of PD 1866 as charged in the information and hereby sentences her, applying the Indeterminate Sentence Law, to imprisonment ranging from 4 years 9 months and 10 days of *prision correccional* in its maximum period as Minimum to 6 years and 8 months of *prision mayor* in its minimum period as Maximum and a fine of ₱30,000.00 without subsidiary imprisonment in case of insolvency.

The firearm caliber .357 S & W revolver without serial number is ordered forfeited in favor of the State to be disposed of immediately in accordance with law.

The accused Estela Tuan being a detention prisoner is entitled to be credited 4/5 of her preventive imprisonment in the service of her sentence in accordance with Article 29 of the Revised Penal Code.[20]

The records of the two criminal cases were forwarded to this Court by the RTC, but the Court issued a

[20] CA *rollo,* pp. 150-152.

Resolution[21] dated October 13, 2004 transferring said records to the Court of Appeals pursuant to *People v. Mateo*.[22]

On September 21, 2006, the Court of Appeals promulgated its Decision.

The Court of Appeals held that the contested search and consequent seizure of the marijuana bricks were done pursuant to the Search Warrant validly issued by the MTCC. There was no showing of procedural defects or lapses in the issuance of said Search Warrant as the records support that the issuing judge determined probable cause only after conducting the searching inquiry and personal examination of the applicant and the latter's witnesses, in compliance with the requirements of the Constitution. Hence, the appellate court affirmed the conviction of accused-appellant for illegal possession of marijuana.

The Court of Appeals, however, modified the appealed RTC judgment by acquitting accused-appellant of the charge for illegal possession of firearm. According to the appellate court, the records were bereft of evidence that the gun supposedly confiscated from accused-appellant was unlicensed. The absence of a firearm license was simply presumed by the police officers because the gun was a defective *paltik* with no serial number. That the said condition of the gun did not dispense with the need for the prosecution to establish that it was unlicensed through the testimony or certification of the appropriate officer from the Board of the Firearms and Explosives Bureau of the Philippine National Police.

In the end, the Court of Appeals decreed:

> WHEREFORE, premises considered, the instant appeal is PARTLY GRANTED. The assailed Decision of the RTC of Baguio City, Branch 6, dated April 9, 2002, is hereby MODIFIED such that the conviction of accused-appellant for Violation of Section 8, Art. II, RA 6425, as amended, is AFFIRMED while her conviction for Violation of PD 1866, as amended, is REVERSED and SET ASIDE. Accused-appellant is accordingly ACQUITTED of the latter offense.[23]

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[21] *Rollo*, p. 106.

[22] G.R. Nos. 147678-87, July 7, 2004, 433 SCRA 640.

[23] *Rollo*, p. 12.

In its Resolution dated October 20, 2006, the Court of Appeals gave due course to accused-appellant's Partial Notice of Appeal and accordingly forwarded the records of the case to this Court.

This Court then issued a Resolution[24] dated February 28, 2007 directing the parties to file their respective supplemental briefs, if they so desired, within 30 days from notice. Accused-appellant[25] opted not to file a supplemental brief and manifested that she was adopting her arguments in the Appellant's Brief since the same had already assiduously discussed her innocence of the crime charged. The People[26] likewise manifested that it would no longer file a supplemental brief as the issues have all been addressed in its Appellee's Brief.

Accused-appellant raised the following assignment of errors in her Brief: [27]

THE TRIAL COURT GRAVELY ERRED IN GIVING FULL FAITH AND CREDENCE TO THE INCREDIBLE AND CONTRADICTORY TESTIMONIES OF THE POLICE OFFICERS.

THE TRIAL COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF THE CRIMES CHARGED DESPITE FAILURE OF THE PROSECUTION TO PROVE HER GUILT BEYOND REASONABLE DOUBT.

THE TRIAL COURT ERRED IN NOT CONSIDERING AS VOID THE SEARCH WARRANT ISSUED AGAINST THE ACCUSED-APPELLANT.

Given that accused-appellant was already acquitted of the charge of violation of Presidential Decree No. 1866 on the ground of reasonable doubt in **Criminal Case No. 17620-R**, her instant appeal relates only to her conviction for illegal possession of prohibited or regulated drugs in **Criminal Case No. 17619-R**. The Court can no longer pass upon the propriety of accused-appellant's acquittal in Criminal Case No. 17620-R

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[24] *Id.* at 14.

[25] *Id.* at 39-40.

[26] *Id.* at 17.

[27] *Id.* at 29-38.

because of the rule that a judgment acquitting the accused is final and immediately executory upon its promulgation, and that accordingly, the State may not seek its review without placing the accused in double jeopardy. Such acquittal is final and unappealable on the ground of double jeopardy whether it happens at the trial court or on appeal at the Court of Appeals.[28]

In a prosecution for violation of the Dangerous Drugs Law, such as Criminal Case No. 17619-R, a case becomes a contest of credibility of witnesses and their testimonies. In such a situation, this Court generally relies upon the assessment by the trial court, which had the distinct advantage of observing the conduct or demeanor of the witnesses while they were testifying. Hence, its factual findings are accorded respect – even finality – absent any showing that certain facts of weight and substance bearing on the elements of the crime have been overlooked, misapprehended or misapplied.[29]

The Court finds no reason to deviate from the general rule in the case at bar.

Illegal possession of prohibited or regulated drugs is committed when the following elements 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.[30]

All the foregoing elements were duly proven to exist in Criminal Case No. 17619-R. The search conducted by SPO1 Carrera and PO2 Chavez in accused-appellant's house yielded nine bricks of marijuana. Marijuana is a prohibited drug, thus, accused-appellant's possession thereof could not have been authorized by law in any way. Accused-appellant evidently possessed the marijuana freely and consciously, even offering the same for sale. The bricks of marijuana were found in accused-appellant's

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[28] *People v. Sandiganbayan*, G.R. Nos. 168188-89, June 16, 2006, 491 SCRA 185, 206.

[29] *People v. Corpuz*, 442 Phil. 405, 415 (2002).

[30] *People v. Lagata*, 452 Phil. 846, 853 (2003).

residence over which she had complete control. In fact, some of the marijuana were found in accused-appellant's own room.

Accused-appellant challenges the judgment of the RTC, affirmed by the Court of Appeals, finding her guilty of illegal possession of marijuana, by pointing out certain inconsistencies in the testimonies of prosecution witnesses that supposedly manifested their lack of credibility, *i.e.*, the date of the test buy and the manner by which the doors of the rooms of the house were opened.

These alleged inconsistencies and contradictions pertain to minor details and are so inconsequential that they do not in any way affect the credibility of the witnesses nor detract from the established fact of illegal possession of marijuana by accused-appellant at her house. The Court has previously held that discrepancies and inconsistencies in the testimonies of witnesses referring to minor details, and not in actuality touching upon the central fact of the crime, do not impair their credibility. Testimonies of witnesses need only corroborate each other on important and relevant details concerning the principal occurrence.[31]

Inconsistencies as to minor details and collateral matters do not affect the credibility of the witnesses nor the veracity or weight of their testimonies. Such minor inconsistencies may even serve to strengthen their credibility as they negate any suspicion that the testimonies have been rehearsed.[32]

Accused-appellant further questions the non-presentation as witnesses of Lad-ing and Tudlong, the informants, and Pascual, the neighbor who supposedly witnessed the implementation of the Search Warrant, during the joint trial of Criminal Case Nos. 17619-R and 17620-R before the RTC. This Court though is unconvinced that such non-presentation of witnesses is fatal to Criminal Case No. 17619-R.

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[31] *People v. Uy*, 392 Phil. 773, 787 (2000).

[32] *People v. Amazan*, 402 Phil. 247, 261 (2001).

The prosecution has the exclusive prerogative to determine whom to present as witnesses. The prosecution need not present each and every witness but only such as may be needed to meet the quantum of proof necessary to establish the guilt of the accused beyond reasonable doubt. The testimonies of the other witnesses may, therefore, be dispensed with if they are merely corroborative in nature. The Court has ruled that the non-presentation of corroborative witnesses does not constitute suppression of evidence and is not fatal to the prosecution's case.[33]

Although Criminal Case No. 17619-R involves illegal possession of marijuana, the following pronouncement of this Court in *People v. Salazar*,[34] relating to the illegal sale of the same drug, still rings true:

> Neither is her right to confront witnesses against her affected by the prosecution's failure to present the informer who pointed to her as a drug pusher. **The presentation of an informant in an illegal drugs case is not essential for conviction nor is it indispensable for a successful prosecution because his testimony would be merely corroborative and cumulative.** In a case involving the sale of illegal drugs, what should be proven beyond reasonable doubt is the fact of the sale itself. Hence, like the non-presentation of the marked money used in buying the contraband, the non-presentation of the informer on the witness stand would not necessarily create a hiatus in the prosecutions' evidence. (Emphasis ours.)

Lastly, accused-appellant insists that the items allegedly seized from her house are inadmissible as evidence because the Search Warrant issued for her house was invalid for failing to comply with the constitutional and statutory requirements. Accused-appellant specifically pointed out the following defects which made said Search Warrant void: (1) the informants, Lad-ing and Tudlong, made misrepresentation of facts in the Application for Search Warrant filed with the MTCC; (2) Judge Cortes of the MTCC failed to consider the informants' admission that they themselves were selling marijuana; and (3) the Search Warrant failed to particularly describe the place to be searched

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[33] *People v. Pidoy*, 453 Phil. 221, 228 (2003).

[34] 334 Phil. 556, 571 (1997).

because the house was a two-storey building composed of several rooms.

The right of a person against unreasonable searches and seizure is recognized and protected by no less than the Constitution, particularly, Sections 2 and 3(2) of Article III which provide:

SEC. 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.

SEC. 3. x x x

(2) Any evidence obtained in violation of this or the preceding section shall be **inadmissible** for any purpose in any proceeding. (Emphases ours.)

Accordingly, Sections 4 and 5, Rule 126 of the Revised Rules on Criminal Procedure laid down the following requisites for the issuance of a valid search warrant:

SEC. 4. *Requisites for issuing search warrant*. – A search warrant shall not issue except upon probable cause in connection with one specific offense 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 things to be seized which may be anywhere in the Philippines.

SEC. 5. *Examination of complainant; record*. – The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.

Therefore, the validity of the issuance of a search warrant rests upon the following factors: (1) it must be issued upon probable cause; (2) the probable cause must be determined by

the judge himself and not by the applicant or any other person; (3) in the determination of probable cause, the judge must examine, under oath or affirmation, the complainant and such witnesses as the latter may produce; and (4) the warrant issued must particularly describe the place to be searched and persons or things to be seized.[35]

There is no dispute herein that the second and third factors for a validly issued search warrant were complied with, *i.e.*, personal determination of probable cause by Judge Cortes; and examination, under oath or affirmation, of SPO2 Fernandez and the two informants, Lad-ing and Tudlong, by Judge Cortes. What is left for the Court to determine is compliance with the first and fourth factors, *i.e.*, existence of probable cause; and particular description of the place to be searched and things to be seized.

In *People v. Aruta*,[36] the Court defined probable cause as follows:

> Although probable cause eludes exact and concrete definition, it generally signifies a reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a cautious man to believe that the person accused is guilty of the offense with which he is charged. It likewise refers to the existence of such facts and circumstances which could lead a reasonably discreet and prudent man to believe that an offense has been committed and that the item(s), article(s) or object(s) sought in connection with said offense or subject to seizure and destruction by law is in the place to be searched.
>
> It ought to be emphasized that in determining probable cause, the average man weighs facts and circumstances without resorting to the calibrations of our rules of evidence of which his knowledge is technically nil. Rather, he relies on the calculus of common sense which all reasonable men have in abundance. The same quantum of evidence is required in determining probable cause relative to search. Before a search warrant can be issued, it must be shown by substantial evidence that the items sought are in fact seizable by virtue of being connected with criminal activity, and that the items will be found in the place to be searched.

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[35] *Romer Sy Tan v. Sy Tiong Gue*, G.R. No. 174570, February 22, 2010.

[36] 351 Phil. 868, 880 (1998).

A magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court, as long as there was substantial basis for that determination. Substantial basis means that the questions of the examining judge brought out such facts and circumstances as would lead a reasonably discreet and prudent man to believe that an offense has been committed, and the objects in connection with the offense sought to be seized are in the place sought to be searched.[37] Such substantial basis exists in this case.

Judge Cortes found probable cause for the issuance of the Search Warrant for accused-appellant's residence after said judge's personal examination of SPO2 Fernandez, the applicant; and Lad-ing and Tudlong, the informants.

SPO2 Fernandez based his Application for Search Warrant not only on the information relayed to him by Lad-ing and Tudlong. He also arranged for a test buy and conducted surveillance of accused-appellant. He testified before Judge Cortes:

COURT:

Q. You are applying for a Search Warrant and you alleged in your application that Estela Tuan of Brgy. Gabriela Silang, Baguio City, is in possession of dried marijuana leaves and marijuana hashish, how did you come to know about this matter?

A. Through the two male persons by the name of Frank Lad-ing and Jerry Tudlong, Your Honor.

Q. When did these two male persons report to your office?

A. January 22, Your Honor.

Q. This year?

A. Yes, your honor.

Q. To whom did they report?

A. To me personally, Your Honor.

Q. How did they report the matter?

A. They reported that a certain Estela Tuan is selling dried Marijuana leaves and marijuana hashish, Your Honor.

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[37] *People v. Tee*, 443 Phil. 521, 539-540 (2003).

Q. What else?

A. She is not only selling marijuana but also selling vegetables at the Trading Post in La Trinidad, Your Honor.

Q. They just told you, she is selling marijuana and selling vegetables, that is already sufficient proof or sufficient probable cause she is in possession of marijuana, what else did they report?

A. That they are also selling marijuana in large volume at their house.

Q. What did you do when you asked them regarding that matter?

A. They had a test buy and they were able to buy some commodities yesterday, Your honor.

Q. Who bought?

A. Tudlong and Lad-ing, Your Honor.

Q. How did you go about it?

A. I accompanied the said persons and kept watch over them and gave them money after which, they were able to purchase and when they purchased the said items or drugs, they were even informed that if you wanted to sell then you could come and get. Your Honor.

COURT:

Q. Where is that ₱300.00?

A. It is with them, Your Honor.

Q. You did not entrap her?

A. No, Your Honor, because it is only a test buy.

Q: And that was January 22. Why did you not apply immediately for search warrant?

A: Because we still have to look at the area and see to it that there are really some buyers or people who would go and leave the place, Your Honor.

Q: What did you observe?

A: Well, there are persons who would go inside and after going inside, they would come out bringing along with them something else.

Q: Did you not interview these people?

A: No, Your Honor. We did not bother.[38]

Lad-ing and Tudlong affirmed before Judge Cortes that they were the ones who informed SPO2 Fernandez that accused-appellant was keeping and selling marijuana at her house, and that they took part in the test buy.

Lad-ing narrated:

COURT:

Q: Mr. Lad-ing, you said that you are working at the Trading Post. What kind of work do you have there?

A: I am a middleman of the vegetable dealers, Your Honor.

COURT:

Q: Did you come to know of this person Estela Tuan?

A: Yes, Your Honor, because there was an incident wherein we were conducting our line of business when they came and joined us and we became partners, Your Honor.

Q: You said, they, how many of you?

A: A certain Jerry Tudlong, Estela Tuan and myself, Your Honor.

Q: In other words, Estela Tuan went with you and later on she became your partner in that business?

A: Yes, Your Honor.

Q: And so what happened when she became a partner of your business?

A: When we were about to divide our profit, we then went at their residence at Gabriela Silang, Baguio City, Your Honor.

Q: What happened?

A: While we then sitted ourselves at the sala, she told us that if we wanted to earn some more, she told us that she has in her possession marijuana which could be sold, Your Honor.

Q: And so, what happened?

A: After which, she showed the marijuana, Your Honor.

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[38] Records, pp. 71-72.

Q: Where was the marijuana?

A: It was placed in a cellophane, in a newspaper, Your Honor.

Q: How big?

A: A dimension of 10 x 4 inches, Your Honor.

Q: With that size, where did she show you the box of this cellophane?

A: At the place where we were sitted at the receiving room, Your Honor.

Q: In other words, she went to get it and then presented or showed it to you?

A: Yes, Your Honor.

Q: Where did she go, if you know?

A: Because at the sala, there is a certain room located at the side that is the place where she got the same, Your Honor.

Q: Where is this house of Estela Tuan located, is it along the road or inside the road or what?

A: It is near the road but you have to walk in a little distance, Your Honor.

Q: Will you describe the place where Estela Tuan is residing?

A: Well, it is a two storey house, the walls are made of galvanized iron Sheets, Your Honor.

COURT:

Q: Do you know who are staying there?

A: I do not know who is living with her, however, that is her residence, Your Honor.

Q: How many times did you go there?

A: It was my second time to go at that time we were sent by PO Fernandez to purchase marijuana, Your Honor.

Q: Where is the marijuana now?

A: It is in the possession of PO Fernandez, Your Honor.

Q: Where is the marijuana placed?

A: In a newspaper, Your Honor.

Q: What happened next?

A: We handed to her the amount of P300.00, your Honor.

Q: And she gave you that marijuana?

A: Yes, Your Honor.

x x x x x x x x x

Q: How many rooms are there in the first floor of the house of Estela Tuan?

A: Three rooms, Your Honor, it has a dining room and beside the place is the receiving room where we sitted ourselves, Your Honor.

Q: When you already bought marijuana from her, what did she tell you, if any?

A; Well, if we would be interested to buy more, I still have stocks here, Your Honor.[39]

Tudlong recounted in more detail what happened during the test buy:

COURT:

Q: My question is, when she told you that she has some substance for sale for profit and you mentioned marijuana, did you talk immediately with Frank or what did you do?

A: We reported the matter to the Criminal Investigation and Detection Group, your Honor.

x x x x x x x x x

Q: What time?

A: We went to the office at 9:00 – 9:30 o'clock in the morning, Your Honor.

Q: When you went there, what did you do?

A: The amount of ₱300.00 was given to Frank and we were instructed to purchase, Your Honor.

Q: Did you go?

A: Yes, Your Honor.

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[39] *Id.* at 72-74.

x x x x x x x x x

Q: Will you tell what happened when you went to the house of the woman?

A: Well, we were allowed to go inside the house after which, we were made to sit down at the receiving area or sala, Your Honor.

Q: When you went there, you were allowed to enter immediately?

A: Yes, Your Honor.

Q: Who allowed you to enter?

A: The female person, Your Honor.

Q: What happened when you were asked to be sitted?

A: During that time, Frank and the female person were the ones conferring, Your Honor.

Q: Did you hear what they were talking about?

A: That Frank was purchasing marijuana, Your Honor.

Q: What did the woman tell you?

A: After we handed the money, a plastic which was transparent, was then handed to Frank, it was a plastic and there was a newspaper inside, Your Honor.

x x x x x x x x x

Q: So, you did not actually see what is in the newspaper?

A: No, Your Honor, however, I know that that is marijuana.

Q: Why?

A: Because that was our purpose, to buy marijuana, Your Honor.

Q: And you have not gotten marijuana without Estela Tuan informing you?

A: Yes, Your Honor.

Q: Will you tell us what kind of materials were used in the house of Estela Tuan?

A: Two storey, the walls are made of GI sheets, Your Honor.

Q: Is the house beside the road or do you have to walk?

A: It is near the road. Upon reaching the road, you still have to walk a short distance, Your Honor.

Q: Where did Estela Tuan get the newspaper placed in a transparent plastic?

A: She got it from a room because were then made to wait at the sala, Your Honor.

Q: Did she tell you how much she can sell marijuana?

A: She told us, Your Honor.

Q: What?

A: Well, the marijuana that we purchased was worth ₱300.00[.] However, we could divide it into two small packs and we could sell it at ₱20.00 per piece so that you can also have some gain.

COURT:

Q: After that, to whom did you sell?

A: We did not sell the marijuana, Your Honor.

Q: I thought you are going to sell marijuana and so you went there?

A: We were just instructed by PO Fernandez to verify what we are telling him was true, Your Honor.[40]

Accused-appellant's contention that MTCC Judge Cortes failed to consider the informants' admission that they themselves were selling marijuana is utterly without merit. *First*, even after carefully reviewing the testimonies of Lad-ing and Tudlong before Judge Cortes, this Court did not find a categorical admission by either of the two informants that they themselves were selling marijuana. In fact, Tudlong expressly denied that he and Lad-ing sold the marijuana, having only bought the same from the accused-appellant for the test buy. Moreover, even if the informants were also selling marijuana, it would not have affected the validity of the Search Warrant for accused-appellant's house. The criminal liabilities of accused-appellant and the informants would be separate and distinct. The investigation and prosecution of one could proceed independently of the other.

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[40] *Id.* at 76-78.

Equally without merit is accused-appellant's assertion that the Search Warrant did not describe with particularity the place to be searched.

A description of the place to be searched is sufficient if the officer serving the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the community. A designation or description that points out the place to be searched to the exclusion of all others, and on inquiry unerringly leads the peace officers to it, satisfies the constitutional requirement of definiteness.[41] In the case at bar, the address and description of the place to be searched in the Search Warrant was specific enough. There was only one house located at the stated address, which was accused-appellant's residence, consisting of a structure with two floors and composed of several rooms.

In view of the foregoing, the Court upholds the validity of the Search Warrant for accused-appellant's house issued by MTCC Judge Cortes, and any items seized as a result of the search conducted by virtue thereof, may be presented as evidence against the accused-appellant.

Since it is beyond any cavil of doubt that the accused-appellant is, indeed, guilty of violation of Article II, Section 8 of Republic Act No. 6425, as amended, the Court shall now consider the appropriate penalty to be imposed upon her.

Article II, Section 8, in relation to Section 20(3), of Republic Act No. 6425, as amended, provides:

SEC. 8. *Possession or Use of Prohibited Drugs*.—The penalty of *reclusion perpetua* to death and a fine ranging from five hundred thousand pesos to ten million pesos shall be imposed upon any person who, unless authorized by law, shall possess or use any prohibited drug subject to the provisions of Section 20 hereof. (As amended by R.A. 7659)

Sec. 20. *Application of Penalties, Confiscation and Forfeiture of the Proceeds or Instruments of the Crime*. — The penalties for offenses under Sections 3, 4, 7, 8 and 9 of Article II and Sections

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[41] *People v. Tee*, *supra* note 37 at 541.

14, 14-A, 15 and 16 of Article III of this Act shall be applied if the dangerous drugs involved is in any of the following quantities:

1. 40 grams or more of opium;
2. 40 grams or more of morphine;
3. 200 grams or more of *shabu* or methylamphetamine hydrochloride;
4. 40 grams or more of heroin;
5. **750 grams or more of Indian hemp or marijuana;**
6. 50 grams or more of marijuana resin or marijuana resin oil;
7. 40 grams or more of cocaine or cocaine hydrocholoride; or
8. In the case of other dangerous drugs, the quantity of which is far beyond therapeutic requirements, as determined and promulgated by the Dangerous Drugs Board, after public consultations/hearings conducted for the purpose. (Emphasis supplied.)

Pursuant to Article II, Section 8 of Republic Act No. 6425, as amended, illegal possession of 750 grams or more of the prohibited drug marijuana is punishable by *reclusion perpetua* to death. Accused-appellant had in her possession a total of **19,050 grams** of marijuana, for which she was properly sentenced to *reclusion perpetua* by the RTC, affirmed by the Court of Appeals.

In the same vein, the fine of ₱500,000.00 imposed upon accused-appellant by the RTC, affirmed by the Court of Appeals, is also correct, as the same is still within the range of fines imposable on any person who possessed prohibited drugs without any authority, under Article II, Section 8 of Republic Act No. 6425, as amended.

WHEREFORE, premises considered, the Decision dated September 21, 2006 of the Court of Appeals in CA-G.R. CR.-H.C. No. 00381, is hereby *AFFIRMED in toto*. No costs.

SO ORDERED.

Corona, C.J. (Chairperson), Bersamin,[*] *del Castillo,* and *Perez, JJ.,* concur.

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[*] Per Special Order No. 876 dated August 2, 2010.

SECOND DIVISION

[G.R. No. 180665. August 11, 2010]

HEIRS OF PAULINO ATIENZA, namely, RUFINA L. ATIENZA, ANICIA A. IGNACIO, ROBERTO ATIENZA, MAURA A. DOMINGO, AMBROCIO ATIENZA, MAXIMA ATIENZA, LUISITO ATIENZA, CELESTINA A. GONZALES, REGALADO ATIENZA and MELITA A. DELA CRUZ, *petitioners, vs.* **DOMINGO P. ESPIDOL,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; ISSUES; NO QUESTION WILL BE ENTERTAINED ON APPEAL UNLESS IT WAS RAISED BEFORE THE COURT BELOW; NOT APPLIED TO CASE AT BAR; REASON.—** That the Atienzas brought up the illegality of their sale of subject land only when they filed their motion for reconsideration of the CA decision is not lost on this Court. As a rule, no question will be entertained on appeal unless it was raised before the court below. This is but a rule of fairness. Nonetheless, in order to settle a matter that would apparently undermine a significant policy adopted under the land reform program, the Court cannot simply shirk from the issue.

2. **LABOR AND SOCIAL LEGISLATIONS; AGRARIAN REFORM; EXECUTIVE ORDER 228 (DECLARING FULL LAND OWNERSHIP TO QUALIFIED FARMER BENEFICIARIES COVERED BY P.D. 27); LAND REFORM BENEFICIARIES WERE ALLOWED TO TRANSFER OWNERSHIP OF THEIR LANDS PROVIDED THEIR AMORTIZATIONS WITH THE LAND BANK OF THE PHILIPPINES HAVE BEEN PAID IN FULL; APPLIED.—** The Atienzas' title shows on its face that the government granted title to them on January 9, 1990 by virtue of P.D. 27. This law explicitly prohibits any form of transfer of the land granted under it except to the government or by hereditary succession to the successors of the farmer beneficiary. Upon the enactment of Executive Order 228 in 1987, however, the restriction ceased

to be absolute. Land reform beneficiaries were allowed to transfer ownership of their lands provided that their amortizations with the Land Bank of the Philippines (Land Bank) have been paid in full. In this case, the Atienzas' title categorically states that they have fully complied with the requirements for the final grant of title under P.D. 27. This means that they have completed payment of their amortization with Land Bank. Consequently, they could already legally transfer their title to another.

3. **CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT TO SELL; DISTINGUISHED FROM CONTRACT OF SALE.—** Regarding the right to cancel the contract for non-payment of an installment, there is need to initially determine if what the parties had was a contract of sale or a contract to sell. In a contract of sale, the title to the property passes to the buyer upon the delivery of the thing sold. In a contract to sell, on the other hand, the ownership is, by agreement, retained by the seller and is not to pass to the vendee until full payment of the purchase price. In the contract of sale, the buyer's non-payment of the price is a negative resolutory condition; in the contract to sell, the buyer's full payment of the price is a positive suspensive condition to the coming into effect of the agreement. In the first case, the seller has lost and cannot recover the ownership of the property unless he takes action to set aside the contract of sale. In the second case, the title simply remains in the seller if the buyer does not comply with the condition precedent of making payment at the time specified in the contract. Here, it is quite evident that the contract involved was one of a contract to sell since the Atienzas, as sellers, were to retain title of ownership to the land until respondent Espidol, the buyer, has paid the agreed price. Indeed, there seems no question that the parties understood this to be the case.

4. **ID.; ID.; ID.; ID.; THE SELLER CAN VALIDLY CANCEL THE CONTRACT TO SELL WHERE THE BUYER FAILED TO PAY THE INSTALLMENT ON A DAY CERTAIN FIXED IN THEIR AGREEMENT; REASON.—** [E]spidol was unable to pay the second installment of ₱1,750,000.00 that fell due in December 2002. That payment, said both the RTC and the CA, was a positive suspensive condition failure of which was not regarded a breach in the sense that there can be no rescission of an

obligation (to turn over title) that did not yet exist since the suspensive condition had not taken place. And this is correct so far. Unfortunately, the RTC and the CA concluded that should Espidol eventually pay the price of the land, though not on time, the Atienzas were bound to comply with their obligation to sell the same to him. But this is error. In the first place, since Espidol failed to pay the installment on a day certain fixed in their agreement, the Atienzas can afterwards validly cancel and ignore the contract to sell because their obligation to sell under it did not arise. Since the suspensive condition did not arise, the parties stood as if the conditional obligation had never existed.

5. **ID.; ID.; ID.; ID.; THE SELLER IS RELIEVED OF ANY OBLIGATION TO HOLD THE PROPERTY IN RESERVE FOR THE BUYER WHERE THE LATTER FAILED TO PAY THE PRICE OF THE PROPERTY WITHIN THE PERIOD PROVIDED IN THEIR AGREEMENT.—** [I]t was not a pure suspensive condition in the sense that the Atienzas made no undertaking while the installments were not yet due. Mr. Justice Edgardo L. Paras gave a fitting example of suspensive condition: "I'll buy your land for ₱1,000.00 if you pass the last bar examinations." This he said was suspensive for the bar examinations results will be awaited. Meantime the buyer is placed under no immediate obligation to the person who took the examinations. Here, however, although the Atienzas had no obligation as yet to turn over title pending the occurrence of the suspensive condition, it was implicit that they were under immediate obligation not to sell the land to another in the meantime. When Espidol failed to pay within the period provided in their agreement, the Atienzas were relieved of any obligation to hold the property in reserve for him.

6. **ID.; ID.; ID.; ID.; THE SELLER'S OBLIGATION TO TURNOVER THE OWNERSHIP TO THE BUYER MAY BE REGARDED AS NO LONGER EXISTING WHEN THE BUYER FAILED TO PAY THE INSTALLMENT WHEN IT WAS DUE; SELLER'S ACTION FOR JUDICIAL DECLARATION OF THE NON-EXISTENT STATUS OF THE CONTRACT TO SELL, NOT PREMATURE.—** Although the Atienzas filed their action with the RTC on February 21, 2003, four months before the last installment of ₱974,670.00 fell due in June 2003, it cannot be said that the action was premature. Given Espidol's failure to

pay the second installment of ₱1,750,000.00 in December 2002 when it was due, the Atienzas' obligation to turn over ownership of the property to him may be regarded as no longer existing. The Atienzas had the right to seek judicial declaration of such non-existent status of that contract to relieve themselves of any liability should they decide to sell the property to someone else. Parenthetically, Espidol never offered to settle the full amount of the price in June 2003, when the last installment fell due, or during the whole time the case was pending before the RTC.

7. **ID.; ID.; ID.; REALTY INSTALLMENT BUYER PROTECTION ACT (R.A. 6552); NOTICE OF CANCELLATION BY NOTARIAL ACT REQUIRED ONLY IN CASE OF EXTRAJUDICIAL CANCELLATION OF THE CONTRACT TO SELL; NOT APPLICABLE TO CASE AT BAR.—** Notice of cancellation by notarial act need not be given before the contract between the Atienzas and respondent Espidol may be validly declared non-existent. R.A. 6552 which mandated the giving of such notice does not apply to this case. The cancellation envisioned in that law pertains to extrajudicial cancellation or one done outside of court, which is not the mode availed of here. The Atienzas came to court to seek the declaration of its obligation under the contract to sell cancelled. Thus, the absence of that notice does not bar the filing of their action.

8. **ID.; ID.; ID.; ID.; ABSENT ANY STIPULATION, THE SELLER IS BOUND TO RETURN THE AMOUNT PAID BY THE BUYER, THE PURPOSE FOR WHICH IT WAS GIVEN NOT HAVING BEEN ATTAINED.—** Since the contract has ceased to exist, equity would, of course, demand that, in the absence of stipulation, the amount paid by respondent Espidol be returned, the purpose for which it was given not having been attained; and considering that the Atienzas have consistently expressed their desire to refund the ₱130,000.00 that Espidol paid.

APPEARANCES OF COUNSEL

Mario R. Benitez for petitioners.
Rodolfo C. Beltran for respondent.

DECISION

ABAD, *J.*:

This case is about the legal consequences when a buyer in a contract to sell on installment fails to make the next payments that he promised.

The Facts and the Case

Petitioner Heirs of Paulino Atienza, namely, Rufina L. Atienza, Anicia A. Ignacio, Roberto Atienza, Maura A. Domingo, Ambrocio Atienza, Maxima Atienza, Luisito Atienza, Celestina A. Gonzales, Regalado Atienza and Melita A. Dela Cruz (collectively, the Atienzas)[1] own a 21,959 square meters of registered agricultural land at Valle Cruz, Cabanatuan City.[2] They acquired the land under an emancipation patent[3] through the government's land reform program.[4]

On August 12, 2002 the Atienzas and respondent Domingo P. Espidol entered into a contract called *Kasunduan sa Pagbibili ng Lupa na may Paunang-Bayad* (contract to sell land with a down payment) covering the property.[5] They agreed on a price of ₱130.00 per square meter or a total of ₱2,854,670.00, payable in three installments: ₱100,000.00 upon the signing of the contract; ₱1,750,000.00 in December 2002, and the remaining ₱974,670.00 in June 2003. Respondent Espidol paid the Atienzas ₱100,000.00 upon the execution of the contract and paid ₱30,000.00 in commission to the brokers.

When the Atienzas demanded payment of the second installment of ₱1,750,000.00 in December 2002, however, respondent Espidol could not pay it. He offered to pay the

[1] Petitioners are the heirs of Paulino Atienza, the original plaintiff in this case, who died on September 7, 2007. Please see: Certificate of Death, *rollo*, p. 84 and October 13, 2008 Resolution of this Court, *id.* at 97.

[2] Covered by Transfer Certificate of Title T-3971.

[3] Emancipation Patent 416698.

[4] Records, pp. 73-74.

[5] *Id.* at 5-7.

Atienzas ₱500,000.00 in the meantime,[6] which they did not accept. Claiming that Espidol breached his obligation, on February 21, 2003 the Atienzas filed a complaint[7] for the annulment of their agreement with damages before the Regional Trial Court (RTC) of Cabanatuan City in Civil Case 4451.

In his answer,[8] respondent Espidol admitted that he was unable to pay the December 2002 second installment, explaining that he lost access to the money which he shared with his wife because of an injunction order issued by an American court in connection with a domestic violence case that she filed against him.[9] In his desire to abide by his obligation, however, Espidol took time to travel to the Philippines to offer ₱800,000.00 to the Atienzas.

Respondent Espidol also argued that, since their contract was one of sale on installment, his failure to pay the installment due in December 2002 did not amount to a breach. It was merely an event that justified the Atienzas' not to convey the title to the property to him. The non-payment of an installment is not a legal ground for annulling a perfected contract of sale. Their remedy was to bring an action for specific performance. Moreover, Espidol contended that the action was premature since the last payment was not due until June 2003.

In a decision[10] dated January 24, 2005, the RTC ruled that, inasmuch as the non-payment of the purchase price was not considered a breach in a contract to sell on installment but only an event that authorized the vendor not to convey title, the proper issue was whether the Atienzas were justified in refusing to accept respondent Espidol's offer of an amount lesser than that agreed upon on the second installment.

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[6] Respondent claimed that the amount offered was ₱800,000.00.

[7] *Rollo*, pp. 56-59.

[8] *Id.* at 60-66.

[9] TSN, June 4, 2004, pp. 7-8.

[10] *Rollo*, pp. 70-79.

The trial court held that, although respondent's legal problems abroad cannot justify his failure to comply with his contractual obligation to pay an installment, it could not be denied that he made an honest effort to pay at least a portion of it. His traveling to the Philippines from America showed his willingness and desire to make good on his obligation. His good faith negated any notion that he intended to renege on what he owed. The Atienzas brought the case to court prematurely considering that the last installment was not then due.

Furthermore, said the RTC, any attempt by the Atienzas to cancel the contract would have to comply with the provisions of Republic Act (R.A.) 6552 or the Realty Installment Buyer Protection Act (R.A. 6552), particularly the giving of the required notice of cancellation, that they omitted in this case. The RTC thus declared the contract between the parties valid and subsisting and ordered the parties to comply with its terms and conditions.

On appeal,[11] the Court of Appeals (CA) affirmed the decision of the trial court.[12] Not satisfied, the Atienzas moved for reconsideration.[13] They argued that R.A. 6552 did not apply to the case because the land was agricultural and respondent Espidol had not paid two years worth of installment that the law required for coverage. And, in an apparent shift of theory, the Atienzas now also impugn the validity of their contract to sell, claiming that, since the property was covered by an emancipation patent, its sale was prohibited and void. But the CA denied the motion for reconsideration, hence, the present petition.[14]

<u>Questions Presented</u>

The questions presented for resolution are:

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[11] Docketed as CA-G.R. CV 84953.

[12] *Rollo*, pp. 34-44. Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr., concurring.

[13] *Id.* at 45-51.

[14] *Id.* at 9-33.

1. Whether or not the Atienzas could validly sell to respondent Espidol the subject land which they acquired through land reform under Presidential Decree 27[15] (P.D. 27);

2. Whether or not the Atienzas were entitled to the cancellation of the contract to sell they entered into with respondent Espidol on the ground of the latter's failure to pay the second installment when it fell due; and

3. Whether or not the Atienzas' action for cancellation of title was premature absent the notarial notice of cancellation required by R.A. 6552.

The Court's Rulings

One. That the Atienzas brought up the illegality of their sale of subject land only when they filed their motion for reconsideration of the CA decision is not lost on this Court. As a rule, no question will be entertained on appeal unless it was raised before the court below. This is but a rule of fairness.[16]

Nonetheless, in order to settle a matter that would apparently undermine a significant policy adopted under the land reform program, the Court cannot simply shirk from the issue. The Atienzas' title shows on its face that the government granted title to them on January 9, 1990 by virtue of P.D. 27. This law explicitly prohibits any form of transfer of the land granted under it except to the government or by hereditary succession to the successors of the farmer beneficiary.

Upon the enactment of Executive Order 228[17] in 1987, however, the restriction ceased to be absolute. Land reform

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[15] Decreeing the Emancipation of Tenants From the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor.

[16] *Bacsasar v. Civil Service Commission*, G.R. No. 180853, January 20, 2009, 576 SCRA 787, 793; *Jacot v. Dal*, G.R. No. 179848, November 27, 2008, 572 SCRA 295, 311.

[17] Declaring Full Land Ownership to Qualified Farmer Beneficiaries Covered by P.D. 27: Determining the Value of Remaining Unvalued Rice and Corn Lands Subject to P.D. 27; and Providing for the Manner of Payment by the

beneficiaries were allowed to transfer ownership of their lands provided that their amortizations with the Land Bank of the Philippines (Land Bank) have been paid in full.[18] In this case, the Atienzas' title categorically states that they have fully complied with the requirements for the final grant of title under P.D. 27. This means that they have completed payment of their amortization with Land Bank. Consequently, they could already legally transfer their title to another.

Two. Regarding the right to cancel the contract for non-payment of an installment, there is need to initially determine if what the parties had was a contract of sale or a contract to sell. In a contract of sale, the title to the property passes to the buyer upon the delivery of the thing sold. In a contract to sell, on the other hand, the ownership is, by agreement, retained by the seller and is not to pass to the vendee until full payment of the purchase price. In the contract of sale, the buyer's non-payment of the price is a negative resolutory condition; in the contract to sell, the buyer's full payment of the price is a positive suspensive condition to the coming into effect of the agreement. In the first case, the seller has lost and cannot recover the ownership of the property unless he takes action to set aside the contract of sale. In the second case, the title simply remains in the seller if the buyer does not comply with the condition precedent of making payment at the time specified in the contract.[19] Here, it is quite evident that the contract involved was one of a contract to sell since the Atienzas, as sellers, were to retain title of ownership to the land until respondent Espidol, the buyer, has paid the agreed price. Indeed, there seems no question that the parties understood this to be the case.[20]

Farmer Beneficiary and Mode of Compensation to the Landowner, issued on July 17, 1987.

[18] Section 6, E.O. 228.

[19] *Lim v. Court of Appeals*, G.R. No. 85733, February 23, 1990, 182 SCRA 564, 570, citing *Sing Yee v. Santos*, 47 O.G. 6372; *Chua v. Court of Appeals*, 449 Phil. 25, 41-42 (2003).

[20] *Rollo*, p. 67.

Admittedly, Espidol was unable to pay the second installment of ₱1,750,000.00 that fell due in December 2002. That payment, said both the RTC and the CA, was a positive suspensive condition failure of which was not regarded a breach in the sense that there can be no rescission of an obligation (to turn over title) that did not yet exist since the suspensive condition had not taken place. And this is correct so far. Unfortunately, the RTC and the CA concluded that should Espidol eventually pay the price of the land, though not on time, the Atienzas were bound to comply with their obligation to sell the same to him.

But this is error. In the first place, since Espidol failed to pay the installment on a day certain fixed in their agreement, the Atienzas can afterwards validly cancel and ignore the contract to sell because their obligation to sell under it did not arise. Since the suspensive condition did not arise, the parties stood as if the conditional obligation had never existed.[21]

Secondly, it was not a pure suspensive condition in the sense that the Atienzas made no undertaking while the installments were not yet due. Mr. Justice Edgardo L. Paras gave a fitting example of suspensive condition: "I'll buy your land for ₱1,000.00 if you pass the last bar examinations." This he said was suspensive for the bar examinations results will be awaited. Meantime the buyer is placed under no immediate obligation to the person who took the examinations.[22]

Here, however, although the Atienzas had no obligation as yet to turn over title pending the occurrence of the suspensive condition, it was implicit that they were under immediate obligation not to sell the land to another in the meantime. When Espidol failed to pay within the period provided in their agreement, the Atienzas were relieved of any obligation to hold the property in reserve for him.

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[21] See: *Valenzuela v. Kalayaan Development & Industrial Corporation*, G.R. No. 163244, June 22, 2009, 590 SCRA 380, 389-390; *Ayala Life Assurance, Inc. v. Ray Burton Development Corporation*, G.R. No. 163075, January 23, 2006, 479 SCRA 462, 470.

[22] Paras IV, *CIVIL CODE OF THE PHILIPPINES ANNOTATED*, 179-180 (1994 Edition).

The ruling of the RTC and the CA that, despite the default in payment, the Atienzas remained bound to this day to sell the property to Espidol once he is able to raise the money and pay is quite unjustified. The total price was ₱2,854,670.00. The Atienzas decided to sell the land because petitioner Paulino Atienza urgently needed money for the treatment of his daughter who was suffering from leukemia.[23] Espidol paid a measly ₱100,000.00 in down payment or about 3.5% of the total price, just about the minimum size of a broker's commission. Espidol failed to pay the bulk of the price, ₱1,750,000.00, when it fell due four months later in December 2002. Thus, it was not such a small default as to justify the RTC and the CA's decision to continue to tie up the Atienzas to the contract to sell upon the excuse that Espidol tried his honest best to pay.

Although the Atienzas filed their action with the RTC on February 21, 2003, four months before the last installment of ₱974,670.00 fell due in June 2003, it cannot be said that the action was premature. Given Espidol's failure to pay the second installment of ₱1,750,000.00 in December 2002 when it was due, the Atienzas' obligation to turn over ownership of the property to him may be regarded as no longer existing.[24] The Atienzas had the right to seek judicial declaration of such non-existent status of that contract to relieve themselves of any liability should they decide to sell the property to someone else. Parenthetically, Espidol never offered to settle the full amount of the price in June 2003, when the last installment fell due, or during the whole time the case was pending before the RTC.

Three. Notice of cancellation by notarial act need not be given before the contract between the Atienzas and respondent Espidol may be validly declared non-existent. R.A. 6552 which mandated the giving of such notice does not apply to this case. The cancellation envisioned in that law pertains to extrajudicial

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[23] TSN, December 16, 2003, p. 36.

[24] See: *Ong v. Court of Appeals*, 369 Phil. 243, 253-254 (1999); *Cordero v. F.S. Management & Development Corporation*, G.R. No. 167213, October 31, 2006, 506 SCRA 451, 463.

cancellation or one done outside of court,[25] which is not the mode availed of here. The Atienzas came to court to seek the declaration of its obligation under the contract to sell cancelled. Thus, the absence of that notice does not bar the filing of their action.

Since the contract has ceased to exist, equity would, of course, demand that, in the absence of stipulation, the amount paid by respondent Espidol be returned, the purpose for which it was given not having been attained;[26] and considering that the Atienzas have consistently expressed their desire to refund the ₱130,000.00 that Espidol paid.[27]

WHEREFORE, the Court *GRANTS* the petition and *REVERSES* and *SETS ASIDE* the August 31, 2007 decision and November 5, 2007 resolution of the Court of Appeals in CA-G.R. CV 84953. The Court declares the *Kasunduan sa Pagbibili ng Lupa na may Paunang-Bayad* between petitioner Heirs of Paulino Atienza and respondent Domingo P. Espidol dated August 12, 2002 cancelled and the Heirs' obligation under it non-existent. The Court directs petitioner Heirs of Atienza to reimburse the ₱130,000.00 down payment to respondent Espidol.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Mendoza, JJ.,* concur.

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[25] *Pagtalunan v. Dela Cruz Vda. de Manzano*, G.R. No. 147695, September 13, 2007, 533 SCRA 242, 249, 253.

[26] See: *Manuel v. Rodriguez, Sr.*, 109 Phil. 1, 12 (1960).

[27] *Rollo*, pp. 17, 29; CA *rollo*, p. 26.

THIRD DIVISION

[G.R. No. 186571. August 11, 2010]

GERBERT R. CORPUZ, *petitioner, vs.* **DAISYLYN TIROL STO. TOMAS and The SOLICITOR GENERAL,** *respondents.*

SYLLABUS

1. CIVIL LAW; FAMILY CODE; MARRIAGE; DISSOLUTION OF MARRIAGE; THE SECOND PARAGRAPH OF ARTICLE 26 OF THE FAMILY CODE PROVIDED THE FILIPINO SPOUSE A SUBSTANTIVE RIGHT TO HAVE HIS OR HER MARRIAGE TO THE ALIEN SPOUSE CONSIDERED DISSOLVED, CAPACITATING HIM OR HER TO REMARRY; THE ALIEN SPOUSE CAN CLAIM NO RIGHT UNDER THIS PROVISION; EXPLAINED. — As the RTC correctly stated, the provision was included in the law "to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse." The legislative intent is for the benefit of the Filipino spouse, by clarifying his or her marital status, settling the doubts created by the divorce decree. **Essentially, the second paragraph of Article 26 of the Family Code provided the Filipino spouse a substantive right to have his or her marriage to the alien spouse considered as dissolved, capacitating him or her to remarry.** Without the second paragraph of Article 26 of the Family Code, the judicial recognition of the foreign decree of divorce, whether in a proceeding instituted precisely for that purpose or as a related issue in another proceeding, would be of no significance to the Filipino spouse since our laws do not recognize divorce as a mode of severing the marital bond; Article 17 of the Civil Code provides that the policy against absolute divorces cannot be subverted by judgments promulgated in a foreign country. The inclusion of the second paragraph in Article 26 of the Family Code provides the direct exception to this rule and serves as basis for recognizing the dissolution of the marriage between the Filipino spouse and his or her alien spouse. Additionally, an action based on the second paragraph of Article 26 of the Family Code is not limited

to the recognition of the foreign divorce decree. If the court finds that the decree capacitated the alien spouse to remarry, the courts can declare that the Filipino spouse is likewise capacitated to contract another marriage. No court in this jurisdiction, however, can make a similar declaration for the alien spouse (other than that already established by the decree), whose status and legal capacity are generally governed by his national law. Given the rationale and intent behind the enactment, and the purpose of the second paragraph of Article 26 of the Family Code, the RTC was correct in limiting the applicability of the provision for the benefit of the Filipino spouse. In other words, only the Filipino spouse can invoke the second paragraph of Article 26 of the Family Code; the alien spouse can claim no right under this provision.

2. ID.; ID.; ID.; EFFECT OF FOREIGN JUDGMENT; APPLICATION IN CASE AT BAR. — The unavailability of the second paragraph of Article 26 of the Family Code to aliens does not necessarily strip Gerbert of legal interest to petition the RTC for the recognition of his foreign divorce decree. The foreign divorce decree itself, after its authenticity and conformity with the alien's national law have been duly proven according to our rules of evidence, serves as a presumptive evidence of right in favor of Gerbert, pursuant to Section 48, Rule 39 of the Rules of Court which provides for the effect of foreign judgments. This Section states: SEC. 48. *Effect of foreign judgments or final orders.—***The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is** as follows: (a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title of the thing; and **(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.** In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact. To our mind, direct involvement or being the subject of the foreign judgment is sufficient to clothe a party with the requisite interest to institute an action before our courts for the recognition of the foreign judgment. In a divorce situation, we have declared, no less, that the divorce obtained by an alien abroad may be recognized

in the Philippines, provided the divorce is valid according to his or her national law.

3. ID.; ID.; ID.; RECOGNITION OF FOREIGN JUDGMENT; EXPLAINED. — The starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. Justice Herrera explained that, as a rule, "no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country." This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself. The recognition may be made in an action instituted specifically for the purpose or in another action where a party invokes the foreign decree as an integral aspect of his claim or defense. In Gerbert's case, since both the foreign divorce decree and the national law of the alien, recognizing his or her capacity to obtain a divorce, purport to be official acts of a sovereign authority, Section 24, Rule 132 of the Rules of Court comes into play. This Section requires proof, either by (1) official publications or (2) copies attested by the officer having legal custody of the documents. If the copies of official records are not kept in the Philippines, these must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office. x x x A remand, at the same time, will allow other interested parties to oppose the foreign judgment and overcome a petitioner's presumptive evidence of a right by proving want of jurisdiction, want of notice to a party, collusion, fraud, or clear mistake of law or fact. Needless to state, every precaution must be taken to ensure conformity with our laws before a recognition is made, as the foreign judgment, once recognized, shall have the effect of *res judicata* between the parties, as provided in Section 48, Rule 39 of the Rules of Court.

4. ID.; LAW ON REGISTRY OF CIVIL STATUS; A JUDGMENT OF DIVORCE IS A JUDICIAL DECREE AFFECTING A PERSON'S LEGAL CAPACITY AND STATUS THAT MUST BE RECORDED; REQUIREMENT FOR REGISTRATION. — Article 407 of the Civil Code states that "[a]cts, events and

judicial decrees concerning the civil status of persons shall be recorded in the civil register." The law requires the entry in the civil registry of judicial decrees that produce legal consequences touching upon a person's legal capacity and status, *i.e.*, those affecting "all his personal qualities and relations, more or less permanent in nature, not ordinarily terminable at his own will, such as his being legitimate or illegitimate, or *his being married or not.*" A judgment of divorce is a judicial decree, although a foreign one, affecting a person's legal capacity and status that must be recorded. In fact, Act No. 3753 or the Law on Registry of Civil Status specifically requires the registration of divorce decrees in the civil registry: Sec. 1. *Civil Register*. – **A civil register is established for recording the civil status of persons, in which shall be entered:** (a) births; (b) deaths; (c) marriages; (d) annulments of marriages; **(e) divorces;** (f) legitimations; (g) adoptions; (h) acknowledgment of natural children; (i) naturalization; and (j) changes of name. x x x Sec. 4. *Civil Register Books.* — The local registrars shall keep and preserve in their offices the following books, in which they shall, respectively make the proper entries concerning the civil status of persons: (1) Birth and death register; **(2) Marriage register, in which shall be entered** not only the marriages solemnized but also **divorces and dissolved marriages.** (3) Legitimation, acknowledgment, adoption, change of name and naturalization register. But while the law requires the entry of the divorce decree in the civil registry, the law and the submission of the decree by themselves do not *ipso facto* authorize the decree's ***registration***. The law should be read in relation with the requirement of a judicial recognition of the foreign judgment before it can be given *res judicata* effect. In the context of the present case, no judicial order as yet exists recognizing the foreign divorce decree. Thus, the Pasig City Civil Registry Office acted totally out of turn and without authority of law when it annotated the Canadian divorce decree on Gerbert and Daisylyn's marriage certificate, on the strength alone of the foreign decree presented by Gerbert. Evidently, the Pasig City Civil Registry Office was aware of the requirement of a court recognition, as it cited NSO Circular No. 4, series of 1982, and Department of Justice Opinion No. 181, series of 1982– both of which required a final order from a competent Philippine court *before* a foreign judgment, dissolving a marriage, can be registered in the civil

registry, but it, nonetheless, allowed the registration of the decree. For being contrary to law, the registration of the foreign divorce decree without the requisite judicial recognition is patently void and cannot produce any legal effect.

5. **REMEDIAL LAW; SPECIAL PROCEEDINGS; CANCELLATION OR CORRECTION OF ENTRY; PROCEDURE TO EFFECT REGISTRATION OF A FOREIGN DIVORCE DECREE IN THE CIVIL REGISTRY; WHEN APPLICABLE. —** Article 412 of the Civil Code declares that "no entry in a civil register shall be changed or corrected, without judicial order." The Rules of Court supplements Article 412 of the Civil Code by specifically providing for a special remedial proceeding by which entries in the civil registry may be judicially cancelled or corrected. Rule 108 of the Rules of Court sets in detail the jurisdictional and procedural requirements that must be complied with before a judgment, authorizing the cancellation or correction, may be annotated in the civil registry. It also requires, among others, that the verified petition must be filed with the RTC of the province where the corresponding civil registry is located; that the civil registrar and all persons who have or claim any interest must be made parties to the proceedings; and that the time and place for hearing must be published in a newspaper of general circulation. As these basic jurisdictional requirements have not been met in the present case, we cannot consider the petition Gerbert filed with the RTC as one filed under Rule 108 of the Rules of Court. We hasten to point out, however, that this ruling should not be construed as requiring two separate proceedings for the registration of a foreign divorce decree in the civil registry – one for recognition of the foreign decree and another specifically for cancellation of the entry under Rule 108 of the Rules of Court. The recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact. Moreover, Rule 108 of the Rules of Court can serve as the appropriate adversarial proceeding by which the applicability of the foreign judgment can be measured and tested in terms of jurisdictional infirmities, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

APPEARANCES OF COUNSEL

Gilbert U. Medrano for petitioner.

De Guzman San Diego Mejia & Hernandez Law Offices for private respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is a direct appeal from the decision[1] of the Regional Trial Court (*RTC*) of Laoag City, Branch 11, elevated *via* a petition for review on *certiorari*[2] under Rule 45 of the Rules of Court (present petition).

Petitioner Gerbert R. Corpuz was a former Filipino citizen who acquired Canadian citizenship through naturalization on November 29, 2000.[3] On January 18, 2005, Gerbert married respondent Daisylyn T. Sto. Tomas, a Filipina, in Pasig City.[4] Due to work and other professional commitments, Gerbert left for Canada soon after the wedding. He returned to the Philippines sometime in April 2005 to surprise Daisylyn, but was shocked to discover that his wife was having an affair with another man. Hurt and disappointed, Gerbert returned to Canada and filed a petition for divorce. The Superior Court of Justice, Windsor, Ontario, Canada granted Gerbert's petition for divorce on December 8, 2005. The divorce decree took effect a month later, on January 8, 2006.[5]

Two years after the divorce, Gerbert has moved on and has found another Filipina to love. Desirous of marrying his new Filipina fiancée in the Philippines, Gerbert went to the Pasig

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[1] Dated October 30, 2008, penned by Judge Perla B. Querubin; *rollo*, pp. 24-31.

[2] *Id.* at 3-20.

[3] *Id.* at 27.

[4] Marriage Certificate, *id.* at 37.

[5] Certificate of Divorce, *id.* at 38.

City Civil Registry Office and registered the Canadian divorce decree on his and Daisylyn's marriage certificate. Despite the registration of the divorce decree, an official of the National Statistics Office (*NSO*) informed Gerbert that the marriage between him and Daisylyn still subsists under Philippine law; to be enforceable, the foreign divorce decree must first be judicially recognized by a competent Philippine court, pursuant to NSO Circular No. 4, series of 1982.[6]

Accordingly, **Gerbert filed a petition for judicial recognition of foreign divorce and/or declaration of marriage as dissolved** (*petition*) with the RTC. Although summoned, Daisylyn did not file any responsive pleading but submitted instead a notarized letter/manifestation to the trial court. She offered no opposition to Gerbert's petition and, in fact, alleged her desire to file a similar case herself but was prevented by financial and personal circumstances. She, thus, requested that she be considered as a party-in-interest with a similar prayer to Gerbert's.

In its October 30, 2008 decision,[7] the **RTC denied Gerbert's petition**. The RTC concluded that Gerbert was *not the proper party* to institute the action for judicial recognition of the foreign divorce decree as he is a naturalized Canadian citizen. It ruled that *only the Filipino spouse can avail of the remedy, under the second paragraph of Article 26 of the Family Code,*[8] in order for him or her to be able to remarry under Philippine law.[9] Article 26 of the Family Code reads:

Art. 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country,

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[6] *Id.* at 47-50; the pertinent portion of NSO Circular No. 4, series of 1982, states:

It would therefore be premature to register the decree of annulment in the Register of Annulment of Marriages in Manila, unless and until final order of execution of such foreign judgment is issued by competent Philippine court.

[7] *Supra* note 1.

[8] Executive Order No. 209, enacted on July 6, 1987.

[9] *Rollo*, p. 31.

except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.

This conclusion, the RTC stated, is consistent with the legislative intent behind the enactment of the second paragraph of Article 26 of the Family Code, as determined by the Court in *Republic v. Orbecido III;*[10] the provision was enacted to "avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse."[11]

THE PETITION

From the RTC's ruling,[12] Gerbert filed the present petition.[13]

Gerbert asserts that his petition before the RTC is essentially for declaratory relief, similar to that filed in *Orbecido*; he, thus, similarly asks for a determination of his rights under the second paragraph of Article 26 of the Family Code. Taking into account the rationale behind the second paragraph of Article 26 of the Family Code, he contends that the provision applies as well to the benefit of the alien spouse. He claims that the RTC ruling unduly stretched the doctrine in *Orbecido* by limiting the standing to file the petition only to the Filipino spouse – an interpretation he claims to be contrary to the essence of the second paragraph of Article 26 of the Family Code. He considers himself as a proper party, vested with sufficient legal interest, to institute the case, as there is a possibility that he might be prosecuted for bigamy if he marries his Filipina fiancée in the Philippines

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[10] G.R. No. 154380, October 5, 2005, 472 SCRA 114.

[11] *Id.* at 121.

[12] Gerbert's motion for reconsideration of the RTC's October 30, 2008 decision was denied in an order dated February 17, 2009; *rollo,* p. 32.

[13] *Supra* note 2.

since two marriage certificates, involving him, would be on file with the Civil Registry Office. The Office of the Solicitor General and Daisylyn, in their respective Comments,[14] both support Gerbert's position.

Essentially, the petition raises the issue of ***whether the second paragraph of Article 26 of the Family Code extends to aliens the right to petition a court of this jurisdiction for the recognition of a foreign divorce decree.***

THE COURT'S RULING

The alien spouse can claim no right under the second paragraph of Article 26 of the Family Code as the substantive right it establishes is in favor of the Filipino spouse

The resolution of the issue requires a review of the legislative history and intent behind the second paragraph of Article 26 of the Family Code.

The Family Code recognizes only two types of defective marriages – void[15] and voidable[16] marriages. In both cases, the basis for the judicial declaration of absolute nullity or annulment of the marriage exists *before* or *at the time of* the marriage. Divorce, on the other hand, contemplates the dissolution of the lawful union for cause arising *after* the marriage.[17] Our family laws do not recognize absolute divorce between Filipino citizens.[18]

Recognizing the reality that divorce is a possibility in marriages between a Filipino and an alien, President Corazon C. Aquino,

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[14] *Rollo*, pp. 79-87 and 125-142, respectively.

[15] The void marriages are those enumerated under Articles 35, 36, 37, 38, 40, 41, 44, and 53 in relation to Article 52 of the Family Code.

[16] The voidable marriages are those enumerated under Article 45 of the Family Code.

[17] *Garcia v. Recio*, G.R. No. 138322, October 2, 2001, 366 SCRA 437, 452.

[18] *Ibid.* See A. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines, Volume One, with the Family Code of the Philippines* (2004 ed.), p. 262.

in the exercise of her legislative powers under the Freedom Constitution,[19] enacted Executive Order No. (*EO*) 227, amending Article 26 of the Family Code to its present wording, as follows:

Art. 26. All marriages solemnized outside the Philippines, in accordance with the laws in force in the country where they were solemnized, and valid there as such, shall also be valid in this country, except those prohibited under Articles 35(1), (4), (5) and (6), 36, 37 and 38.

Where a marriage between a Filipino citizen and a foreigner is validly celebrated and a divorce is thereafter validly obtained abroad by the alien spouse capacitating him or her to remarry, the Filipino spouse shall likewise have capacity to remarry under Philippine law.

Through the second paragraph of Article 26 of the Family Code, EO 227 effectively incorporated into the law this Court's holding in *Van Dorn v. Romillo, Jr.*[20] and *Pilapil v. Ibay-Somera*.[21] In both cases, the Court refused to acknowledge the alien spouse's assertion of marital rights after a foreign court's divorce decree between the alien and the Filipino. The Court, thus, recognized that the foreign divorce had already severed the marital bond between the spouses. The Court reasoned in *Van Dorn v. Romillo* that:

To maintain x x x that, under our laws, [the Filipino spouse] has to be considered still married to [the alien spouse] and still subject to a wife's obligations x x x cannot be just. [The Filipino spouse] should not be obliged to live together with, observe respect and fidelity, and render support to [the alien spouse]. The latter should not continue to be one of her heirs with possible rights to conjugal property. **She should not be discriminated against in her own country if the ends of justice are to be served.**[22]

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[19] Proclamation No. 3, issued on March 25, 1996.

[20] G.R. No. 68470, October 8, 1985, 139 SCRA 139.

[21] G.R. No. 80116, June 30, 1989, 174 SCRA 653.

[22] *Van Dorn v. Romillo, supra* note 20 at 144.

As the RTC correctly stated, the provision was included in the law "to avoid the absurd situation where the Filipino spouse remains married to the alien spouse who, after obtaining a divorce, is no longer married to the Filipino spouse."[23] The legislative intent is for the benefit of the Filipino spouse, by clarifying his or her marital status, settling the doubts created by the divorce decree. **Essentially, the second paragraph of Article 26 of the Family Code provided the Filipino spouse a substantive right to have his or her marriage to the alien spouse considered as dissolved, capacitating him or her to remarry.**[24] Without the second paragraph of Article 26 of the Family Code, the judicial recognition of the foreign decree of divorce, whether in a proceeding instituted precisely for that purpose or as a related issue in another proceeding, would be of no significance to the Filipino spouse since our laws do not recognize divorce as a mode of severing the marital bond;[25] Article 17 of the Civil Code provides that the policy against absolute divorces cannot be subverted by judgments promulgated in a foreign country. The inclusion of the second paragraph in Article 26 of the Family Code provides the direct exception to this rule and serves as basis for recognizing the dissolution of the marriage between the Filipino spouse and his or her alien spouse.

Additionally, an action based on the second paragraph of Article 26 of the Family Code is not limited to the recognition of the foreign divorce decree. If the court finds that the decree

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[23] *Republic v. Orbecido*, *supra* note 10 at 121.

[24] The capacity of the Filipino spouse to remarry, however, depends on whether the foreign divorce decree capacitated the alien spouse to do so.

[25] See Article 17 in relation to Article 15 of the Civil Code:

Art. 15. Laws relating to family rights and duties, or to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad.

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Art. 17. x x x Prohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments promulgated, or by determinations or conventions agreed upon in a foreign country.

capacitated the alien spouse to remarry, the courts can declare that the Filipino spouse is likewise capacitated to contract another marriage. No court in this jurisdiction, however, can make a similar declaration for the alien spouse (other than that already established by the decree), whose status and legal capacity are generally governed by his national law.[26]

Given the rationale and intent behind the enactment, and the purpose of the second paragraph of Article 26 of the Family Code, the RTC was correct in limiting the applicability of the provision for the benefit of the Filipino spouse. In other words, only the Filipino spouse can invoke the second paragraph of Article 26 of the Family Code; the alien spouse can claim no right under this provision.

The foreign divorce decree is presumptive evidence of a right that clothes the party with legal interest to petition for its recognition in this jurisdiction

We qualify our above conclusion – *i.e.*, that the second paragraph of Article 26 of the Family Code bestows no rights in favor of aliens – with the complementary statement that this conclusion is not sufficient basis to dismiss Gerbert's petition before the RTC. In other words, the unavailability of the second paragraph of Article 26 of the Family Code to aliens does not necessarily strip Gerbert of legal interest to petition the RTC for the recognition of his foreign divorce decree. The foreign divorce decree itself, after its authenticity and conformity with the alien's national law have been duly proven according to our rules of evidence, serves as a presumptive evidence of right in favor of Gerbert, pursuant to Section 48, Rule 39 of the Rules of Court which provides for the effect of foreign judgments. This Section states:

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[26] Parenthetically, we add that an alien's legal capacity to contract is evidenced by a certificate issued by his or her respective diplomatic and consular officials, which he or she must present to secure a marriage license (Article 21, Family Code). The Filipino spouse who seeks to remarry, however, must still resort to a judicial action for a declaration of authority to remarry.

SEC. 48. *Effect of foreign judgments or final orders.—***The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is** as follows:

(a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title of the thing; and

(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

To our mind, direct involvement or being the subject of the foreign judgment is sufficient to clothe a party with the requisite interest to institute an action before our courts for the recognition of the foreign judgment. In a divorce situation, we have declared, no less, that the divorce obtained by an alien abroad may be recognized in the Philippines, provided the divorce is valid according to his or her national law.[27]

The starting point in any recognition of a foreign divorce judgment is the acknowledgment that our courts do not take judicial notice of foreign judgments and laws. Justice Herrera explained that, as a rule, "no sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country."[28] This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien's applicable national law to show the effect of the judgment on the alien himself or herself.[29]

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[27] *Garcia v. Recio, supra* note 17 at 447; citing *Van Dorn v. Romillo, supra* note 20.

[28] *Remedial Law, Volume II, Rules 23-56* (2007 ed.), p. 529.

[29] *Republic v. Orbecido III, supra* note 10 at 123 and *Garcia v. Recio, supra* note 17 at 448; see also *Bayot v. Court of Appeals*, G.R. No. 155635, November 7, 2008, 570 SCRA 472.

The recognition may be made in an action instituted specifically for the purpose or in another action where a party invokes the foreign decree as an integral aspect of his claim or defense.

In Gerbert's case, since both the foreign divorce decree and the national law of the alien, recognizing his or her capacity to obtain a divorce, purport to be official acts of a sovereign authority, Section 24, Rule 132 of the Rules of Court comes into play. This Section requires proof, either by (1) official publications or (2) copies attested by the officer having legal custody of the documents. If the copies of official records are not kept in the Philippines, these must be (a) accompanied by a certificate issued by the proper diplomatic or consular officer in the Philippine foreign service stationed in the foreign country in which the record is kept and (b) authenticated by the seal of his office.

The records show that Gerbert attached to his petition a copy of the divorce decree, as well as the required certificates proving its authenticity,[30] but failed to include a copy of the Canadian law on divorce.[31] Under this situation, we can, at this point, simply dismiss the petition for insufficiency of supporting evidence, unless we deem it more appropriate to remand the case to the RTC to determine whether the divorce decree is consistent with the Canadian divorce law.

We deem it more appropriate to take this latter course of action, given the Article 26 interests that will be served and the Filipina wife's (Daisylyn's) obvious conformity with the petition. A remand, at the same time, will allow other interested parties to oppose the foreign judgment and overcome a petitioner's presumptive evidence of a right by proving want of jurisdiction, want of notice to a party, collusion, fraud, or clear mistake of law or fact. Needless to state, every precaution must be taken to ensure conformity with our laws before a recognition is made, as the foreign judgment, once recognized, shall have the effect

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[30] *Rollo*, pp. 38-41.

[31] The foreign divorce decree only stated that the marriage between Gerbert and Daisylyn was dissolved by the Canadian court. The full text of the court's judgment was not included.

of *res judicata*[32] between the parties, as provided in Section 48, Rule 39 of the Rules of Court.[33]

In fact, more than the principle of comity that is served by the practice of reciprocal recognition of foreign judgments between nations, the *res judicata* effect of the foreign judgments of divorce serves as the deeper basis for extending judicial recognition and for considering the alien spouse bound by its terms. This same effect, as discussed above, will not obtain for the Filipino spouse were it not for the substantive rule that the second paragraph of Article 26 of the Family Code provides.

Considerations beyond the recognition of the foreign divorce decree

As a matter of "housekeeping" concern, we note that the **Pasig City Civil Registry Office has already recorded the divorce decree on Gerbert and Daisylyn's marriage certificate based on the mere presentation of the decree.**[34] We consider the recording to be legally improper; hence, the need to draw attention of the bench and the bar to what had been done.

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[32] Literally means "a thing adjudged," *Black's Law Dictionary* (5th ed.), p. 1178; it establishes a rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits, on points and matters determined in the former. *Supra* note 28 at 462.

[33] See *Philsec Investment Corporation v. Court of Appeals*, G.R. No. 103493, June 19, 1997, 274 SCRA 102, 110, where the Court said:

While this Court has given the effect of *res judicata* to foreign judgments in several cases, it was after the parties opposed to the judgment had been given ample opportunity to repel them on grounds allowed under the law. It is not necessary for this purpose to initiate a separate action or proceeding for enforcement of the foreign judgment. What is essential is that there is opportunity to challenge the foreign judgment, in order for the court to properly determine its efficacy. This is because in this jurisdiction, with respect to actions *in personam*, as distinguished from actions *in rem*, a foreign judgment merely constitutes *prima facie* evidence of the justness of the claim of a party and, as such, is subject to proof to the contrary.

[34] On the face of the marriage certificate, the word "DIVORCED" was written in big, bold letters; *rollo*, p. 37.

Article 407 of the Civil Code states that "[a]cts, events and judicial decrees concerning the civil status of persons shall be recorded in the civil register." The law requires the entry in the civil registry of judicial decrees that produce legal consequences touching upon a person's legal capacity and status, *i.e.*, those affecting "all his personal qualities and relations, more or less permanent in nature, not ordinarily terminable at his own will, such as his being legitimate or illegitimate, or *his being married or not.*"[35]

A judgment of divorce is a judicial decree, although a foreign one, affecting a person's legal capacity and status that must be recorded. In fact, Act No. 3753 or the Law on Registry of Civil Status specifically requires the registration of divorce decrees in the civil registry:

Sec. 1. *Civil Register*. – **A civil register is established for recording the civil status of persons, in which shall be entered:**

(a) births;
(b) deaths;
(c) marriages;
(d) annulments of marriages;
(e) divorces;
(f) legitimations;
(g) adoptions;
(h) acknowledgment of natural children;
(i) naturalization; and
(j) changes of name.

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Sec. 4. *Civil Register Books.* — The local registrars shall keep and preserve in their offices the following books, in which they shall, respectively make the proper entries concerning the civil status of persons:

(1) Birth and death register;

(2) Marriage register, in which shall be entered not only the marriages solemnized but also **divorces and dissolved marriages.**

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[35] *Silverio v. Republic*, G.R. No. 174689, October 22, 2007, 537 SCRA 373, 390, citing *Beduya v. Republic*, 120 Phil. 114 (1964).

(3) Legitimation, acknowledgment, adoption, change of name and naturalization register.

But while the law requires the entry of the divorce decree in the civil registry, the law and the submission of the decree by themselves do not *ipso facto* authorize the decree's ***registration***. The law should be read in relation with the requirement of a judicial recognition of the foreign judgment before it can be given *res judicata* effect. In the context of the present case, no judicial order as yet exists recognizing the foreign divorce decree. Thus, the Pasig City Civil Registry Office acted totally out of turn and without authority of law when it annotated the Canadian divorce decree on Gerbert and Daisylyn's marriage certificate, on the strength alone of the foreign decree presented by Gerbert.

Evidently, the Pasig City Civil Registry Office was aware of the requirement of a court recognition, as it cited NSO Circular No. 4, series of 1982,[36] and Department of Justice Opinion No. 181, series of 1982[37] – both of which required a final order from a competent Philippine court *before* a foreign judgment, dissolving a marriage, can be registered in the civil registry, but it, nonetheless, allowed the registration of the decree. For being contrary to law, the registration of the foreign divorce decree without the requisite judicial recognition is patently void and cannot produce any legal effect.

Another point we wish to draw attention to is that the recognition that the RTC may extend to the Canadian divorce decree does not, by itself, authorize the ***cancellation*** of the entry in the civil registry. A petition for recognition of a foreign judgment is not the proper proceeding, contemplated under the Rules of Court, for the cancellation of entries in the civil registry.

Article 412 of the Civil Code declares that "no entry in a civil register shall be changed or corrected, without judicial order." The Rules of Court supplements Article 412 of the Civil Code by specifically providing for a special remedial

[36] *Rollo*, pp. 47-50.

[37] *Id.* at 51.

proceeding by which entries in the civil registry may be judicially cancelled or corrected. Rule 108 of the Rules of Court sets in detail the jurisdictional and procedural requirements that must be complied with before a judgment, authorizing the cancellation or correction, may be annotated in the civil registry. It also requires, among others, that the verified petition must be filed with the RTC of the province where the corresponding civil registry is located;[38] that the civil registrar and all persons who have or claim any interest must be made parties to the proceedings;[39] and that the time and place for hearing must be published in a newspaper of general circulation.[40] As these basic jurisdictional requirements have not been met in the present case, we cannot consider the petition Gerbert filed with the RTC as one filed under Rule 108 of the Rules of Court.

We hasten to point out, however, that this ruling should not be construed as requiring two separate proceedings for the registration of a foreign divorce decree in the civil registry – one for recognition of the foreign decree and another specifically for cancellation of the entry under Rule 108 of the Rules of Court. The recognition of the foreign divorce decree may be made in a Rule 108 proceeding itself, as the object of special proceedings (such as that in Rule 108 of the Rules of Court) is precisely to establish the status or right of a party or a particular fact. Moreover, Rule 108 of the Rules of Court can serve as the appropriate adversarial proceeding[41] by which the applicability of the foreign judgment can be measured and tested in terms of jurisdictional infirmities, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

WHEREFORE, we *GRANT* the petition for review on *certiorari*, and *REVERSE* the October 30, 2008 decision of

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[38] Section 1, Rule 108, Rules of Court.

[39] Section 3, Rule 108, Rules of Court.

[40] Section 4, Rule 108, Rules of Court.

[41] When the entry sought to be corrected is substantial (*i.e.*, the civil status of a person), a Rule 108 proceeding is deemed adversarial in nature. See *Co v. Civil Register of Manila*, G.R. No. 138496, February 23, 2004, 423 SCRA 420, 430.

the Regional Trial Court of Laoag City, Branch 11, as well as its February 17, 2009 order. We order the *REMAND* of the case to the trial court for further proceedings in accordance with our ruling above. Let a copy of this Decision be furnished the Civil Registrar General. No costs.

SO ORDERED.

*Carpio Morales (Chairperson), Bersamin, Abad,** and *Villarama Jr., JJ.,* concur.

SECOND DIVISION

[G.R. No. 186979. August 11, 2010]

SOCORRO LIMOS, ROSA DELOS REYES and SPOUSES ROLANDO DELOS REYES and EUGENE DELOS REYES, *petitioners, vs.* **SPOUSES FRANCISCO P. ODONES and ARWENIA R. ODONES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MODES OF DISCOVERY; ADMISSION BY ADVERSE PARTY; APPLICATION OF THE RULES ON MODE OF DISCOVERY RESTS UPON THE SOUND DISCRETION OF THE COURT; EXPLAINED. —** Pertinent to the present controversy are the rules on modes of discovery set forth in Sections 1 and 2 of Rule 26 of the Rules of Court. Under these rules, a party who fails to respond to a Request for Admission shall be deemed to have impliedly admitted all the matters contained therein. It must be emphasized, however, that the application of the rules

* 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.

on modes of discovery rests upon the sound discretion of the court. As such, it is the duty of the courts to examine thoroughly the circumstances of each case and to determine the applicability of the modes of discovery, bearing always in mind the aim to attain an expeditious administration of justice. The determination of the sanction to be imposed upon a party who fails to comply with the modes of discovery also rests on sound judicial discretion. Corollarily, this discretion carries with it the determination of whether or not to impose the sanctions attributable to such fault.

2. **ID.; ID.; ID.; ID.; REQUEST FOR ADMISSION; PURPOSE; NOT PRESENT IN CASE AT BAR. —** A request for admission is not intended to merely reproduce or reiterate the allegations of the requesting party's pleading but should set forth relevant evidentiary matters of fact described in the request, whose purpose is to establish said party's cause of action or defense. Unless it serves that purpose, it is pointless, useless, and a mere redundancy. Verily then, if the trial court finds that the matters in a Request for Admission were already admitted or denied in previous pleadings by the requested party, the latter cannot be compelled to admit or deny them anew. In turn, the requesting party cannot reasonably expect a response to the request and thereafter, assume or even demand the application of the implied admission rule in Section 2, Rule 26. In this case, the redundant and unnecessarily vexatious nature of petitioners' Request for Admission rendered it ineffectual, futile, and irrelevant so as to proscribe the operation of the implied admission rule in Section 2, Rule 26 of the Rules of Court. There being no implied admission attributable to respondents' failure to respond, the argument that a preliminary hearing is imperative loses its point. Moreover, jurisprudence has always been firm and constant in declaring that when the affirmative defense raised is failure to state a cause of action, a preliminary hearing thereon is unnecessary, erroneous, and improvident.

3. **ID.; ID.; ACTIONS; ANNULMENT OF TITLE; REQUIRED ALLEGATIONS IN THE COMPLAINT. —** In an action for annulment of title, the complaint must contain the following allegations: (1) that the contested land was privately owned by the plaintiff prior to the issuance of the assailed certificate of title to the defendant; and (2) that the defendant *perpetuated*

a fraud or committed a mistake in obtaining a document of title over the parcel of land claimed by the plaintiff.

4. **ID.; ID.; ID.; ID.; REAL PARTY-IN-INTEREST; DEFINED; APPLICATION IN CASE AT BAR. —** The real party-in-interest is the person claiming title or ownership adverse to that of the registered owner. The herein complaint alleged: (1) that respondents are the owners and occupants of a parcel of land located at Pao 1st Camiling, Tarlac, covered by OCT No. 11560 in the name of Donata Lardizabal by virtue of an Extrajudicial Succession of Estate and Sale; and (2) that petitioners fraudulently caused the cancellation of OCT No. 11560 and the issuance of new TCTs in their names by presenting a Deed of Absolute Sale with the forged signatures of Donata Lardizabal and her husband, Francisco Razalan. The absence of any transaction between petitioners and respondents over the land is of no moment, as the thrust of the controversy is the respondents' adverse claims of rightful title and ownership over the same property, which arose precisely because of the conflicting sources of their respective claims. As to the validity of the Extrajudicial Succession of Estate and Sale and the status of petitioners' predecessors-in-interest as the only heirs of Donata Lardizabal, these issues go into the merits of the parties' respective claims and defenses that can be best determined on the basis of preponderance of the evidence they will adduce in a full-blown trial. A preliminary hearing, the objective of which is for the court to determine whether or not the case should proceed to trial, will not sufficiently address such issues.

5. **ID.; ID.; ID.; DISMISSAL OF ACTION; NON-JOINDER OF INDISPENSABLE PARTIES, NOT A GROUND. —** It is settled that the non-joinder of indispensable parties is not a ground for the dismissal of an action. The remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or such times as are just. It is only when the plaintiff refuses to implead an indispensable party despite the order of the court, that the latter may dismiss the complaint.

6. **ID.; ID.; ID.; ID.; LACHES CANNOT BE RESOLVED IN A MOTION TO DISMISS. —** Equally settled is the fact that laches is evidentiary in nature and it may not be established by mere

allegations in the pleadings and can not be resolved in a motion to dismiss.

7. **ID.; SPECIAL PROCEEDINGS; SETTLEMENT OF ESTATE; DECLARATION OF HEIRSHIP CAN BE MADE ONLY IN A SPECIAL PROCEEDING AND NOT IN A CIVIL ACTION FOR ANNULMENT OF TITLE; CASE AT BAR. —** This Court held that the declaration of heirship can be made only in a special proceeding and not in a civil action. It must be noted that in *Yaptinchay* and *Enriquez*, plaintiffs' action for annulment of title was anchored on their alleged status as heirs of the original owner whereas in this case, the respondents' claim is rooted on a sale transaction. Respondents herein are enforcing their rights as buyers in good faith and for value of the subject land and not as heirs of the original owner. Unlike in *Yaptinchay* and *Enriquez*, the filiation of herein respondents to the original owner is not determinative of their right to claim title to and ownership of the property.

APPEARANCES OF COUNSEL

Ricardo C. Atienza for petitioners.
Johann Cecilio A. Ibarra and *Cheryl Angela A. Ibarra* for respondents.

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 assailing the August 14, 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 97668 and its Resolution[2] dated March 9, 2009 denying petitioners' motion for reconsideration.

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[1] *Rollo*, pp. 40-48; penned by Associate Justice Rosalina Asuncion-Vicente, with Associate Justices Remedios A. Salazar-Fernando and Ramon M. Bato, Jr., concurring.

[2] *Id.* at 50-52; penned by Associate Justice Rosalina Asuncion-Vicente and concurred in by Associate Justices Remedios Salazar-Fernando and Ramon M. Bato, Jr.

The impugned Decision affirmed the resolution dated November 16, 2006[3] and order dated January 5, 2007[4] of the trial court, which respectively denied petitioners' Motion to Set for Preliminary Hearing the Special and Affirmative Defenses[5] and motion for reconsideration.[6]

The antecedents:

On June 17, 2005, private respondents-spouses Francisco Odones and Arwenia Odones, filed a complaint for Annulment of Deed, Title and Damages against petitioners Socorro Limos, Rosa Delos Reyes and Spouses Rolando Delos Reyes and Eugene Delos Reyes, docketed as Civil Case No. 05-33 before the Regional Trial Court (RTC) of Camiling, Tarlac, Branch 68.

The complaint alleged that spouses Odones are the owners of a 940- square meter parcel of land located at Pao 1st, Camiling, Tarlac by virtue of an Extrajudicial Succession of Estate and Sale dated, January 29, 2004, executed by the surviving grandchildren and heirs of Donata Lardizabal in whom the original title to the land was registered. These heirs were Soledad Razalan Lagasca, Ceferina Razalan Cativo, Rogelio Lagasca Razalan and Dominador Razalan.

It took a while before respondents decided to register the document of conveyance; and when they did, they found out that the land's Original Certificate of Title (OCT) was cancelled on April 27, 2005 and replaced by Transfer Certificate of Title (TCT) No. 329427 in the name of herein petitioners.

Petitioners were able to secure TCT No. 329427 by virtue of a Deed of Absolute Sale allegedly executed by Donata Lardizabal and her husband Francisco Razalan on April 18, 1972.

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[3] *Id.* at 144-146.

[4] *Id.* at 158-161.

[5] *Id.* at 126-130.

[6] *Id.* at 147-157.

Petitioners then subdivided the lot among themselves and had TCT No. 329427 cancelled. In lieu thereof, three new TCTs were issued: TCT No. 392428 in the names of Socorro Limos and spouses Rolando Delos Reyes and Eugene Delos Reyes, TCT No. 392429 in the names of Spouses delos Reyes and TCT No. 392430 in the name of Rosa Delos Reyes.

Respondents sought the cancellation of these new TCTs on the ground that the signatures of Donata Lardizabal and Francisco Razalan in the 1972 Deed of Absolute Sale were forgeries, because they died on June 30, 1926 and June 5, 1971, respectively.[7]

In response, petitioners filed a Motion for Bill of Particulars[8] claiming ambiguity in respondents' claim that their vendors are the only heirs of Donata Lardizabal. Finding no merit in the motion, the trial court denied the same and ordered petitioners to file their answer to the complaint.[9]

In their answer,[10] petitioners pleaded affirmative defenses, which also constitute grounds for dismissal of the complaint. These grounds were: (1) failure to state a cause of action inasmuch as the basis of respondents' alleged title is void, since the Extrajudicial Succession of Estate and Sale was not published and it contained formal defects, the vendors are not the legal heirs of Donata Lardizabal, and respondents are not the real parties-in-interest to question the title of petitioners, because no transaction ever occurred between them; (2) non-joinder of the other heirs of Donata Lardizabal as indispensable parties; and (3) respondents' claim is barred by laches.

In their Reply, respondents denied the foregoing affirmative defenses, and insisted that the Extrajudicial Succession of Estate and Sale was valid. They maintained their standing as owners of the subject parcel of land and the nullity of the 1972 Absolute Deed of Sale, upon which respondents anchor their purported

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[7] *Id.* at 55-68.

[8] *Id.* at 69-71.

[9] *Id.* at 80.

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

title.[11] They appended the sworn statement of Amadeo Razalan declaring, among other things that:

(2) *Na hindi ko minana at ibinenta ang nasabing lupa kay Socorro Limos at Rosa delos Reyes at hindi totoo na ako lang ang tagapagmana ni Donata Lardizabal;*

x x x x x x x x x

(4) *Ang aming lola na si Donata Lardizabal ay may tatlong (3) anak na patay na sina Tomas Razalan, Clemente Razalan at Tomasa Razalan;*

(5) *Ang mga buhay na anak ni Tomas Razalan ay sina; 1. Soledad Razalan; 2. Ceferina Razalan; 3. Dominador Razalan; at 4. Amadeo Razalan. Ang mga buhay na anak ni Clemente Razalan ay sina 1. Rogelio Lagasca (isang abnormal). Ang mga buhay na anak ni Tomasa Razalan ay sina 1. Sotera Razalan at 2 pang kapatid;*

x x x x x x x x x[12]

Thereafter, petitioners served upon respondents a Request for Admission of the following matters:

1. That the husband of the deceased Donata Lardizabal is Francisco Razalan;
2. That the children of the deceased Sps. Donata Lardizabal and Francisco Razalan are Mercedes Razalan, Tomasa Razalan and Tomas Razalan;
3. That this Tomasa Razalan died on April 27, 1997, if not when? [A]nd her heirs are (a) Melecio Partido surviving husband, and her surviving children are (b) Eduardo Partido married to Elisa Filiana, (c) Enrique Razalan Partido married to Lorlita Loriana, (d) Eduardo Razalan Partido, (e) Sotera Razalan Partido married to James Dil-is and (f) Raymundo Razalan Partido married to Nemesia Aczuara, and all residents of Camiling, Tarlac.
4. That Amadeo Razalan is claiming also to be a grandchild and also claiming to be sole forced heir of Donata Lardizabal pursuant to the Succession by a Sole Heir with Sale dated January 24, 2000, executed before Atty. Rodolfo V. Robinos.

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[11] *Id.* at 118-120.

[12] *Id.* at 121-123.

5. That Amadeo Razalan is not among those who signed the Extra[j]udicial Succession of Estate and Sale dated January 29, 2004 allegedly executed in favor of the plaintiffs, Sps. Francisco/Arwenia Odones;

6. That as per Sinumpaang Salaysay of Amadeo Razalan which was submitted by the plaintiffs, the children of Tomasa Razalan are Sotera Razalan and 2 brothers/sisters. These children of Tomasa Razalan did not also sign the Extra[j]udicial Succession of Estate and Sale;

7. That there is/are no heirs of Clemente Razalan who appeared to have executed the Extra[j]udicial Succession of Estate and Sale;

8. That Soledad Razalan Lagasca, Ceferina Razalan Cativo, Rogelio Lagasca Razalan and Dominador Razalan did not file any letters (sic) of administration nor declaration of heirship before executing the alleged Extra[j]udicial Succession of Estate and Sale in favor of plaintiffs.[13]

Respondents failed to respond to the Request for Admission, prompting petitioners to file a Motion to Set for Preliminary Hearing on the Special and Affirmative Defenses,[14] arguing that respondents' failure to respond or object to the Request for Admission amounted to an implied admission pursuant to Section 2 of Rule 26 of the Rules of Court. As such, a hearing on the affirmative defenses had become imperative because petitioners were no longer required to present evidence on the admitted facts.

Respondents filed a comment on the Motion, contending that the facts sought to be admitted by petitioners were not material and relevant to the issue of the case as required by Rule 26 of the Rules of Court. Respondents emphasized that the only attendant issue was whether the 1972 Deed of Absolute Sale upon which petitioners base their TCTs is valid.[15]

In its Resolution dated November 16, 2006, the RTC denied the Motion and held that item nos. 1 to 4 in the Request for

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[13] *Id.* at 124-125.

[14] *Id.* at 126-130.

[15] *Id.* at 132-133.

Admission were earlier pleaded as affirmative defenses in petitioners' Answer, to which respondents already replied on July 17, 2006. Hence, it would be redundant for respondents to make another denial. The trial court further observed that item nos. 5, 6, and 7 in the Request for Admission were already effectively denied by the Extrajudicial Succession of Estate and Sale appended to the complaint and by the *Sinumpaang Salaysay* of Amadeo Razalan attached to respondents' Reply.[16] Petitioners moved for reconsideration[17] but the same was denied in an Order dated January 5, 2007.[18]

Petitioners elevated this incident to the CA by way of a special civil action for *certiorari*, alleging grave abuse of discretion on the part of the RTC in issuing the impugned resolution and order.

On August 14, 2008, the CA dismissed the petition ruling that the affirmative defenses raised by petitioners were not indubitable, and could be best proven in a full-blown hearing.[19]

Their motion for reconsideration[20] having been denied,[21] petitioners are now before this Court seeking a review of the CA's pronouncements.

In essence, petitioners contend that the affirmative defenses raised in their Motion are indubitable, as they were impliedly admitted by respondents when they failed to respond to the Request for Admission. As such, a preliminary hearing on the said affirmative defenses must be conducted pursuant to our ruling in *Gochan v. Gochan.*[22]

We deny the petition.

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[16] *Supra* note 3.

[17] *Id.* at 147-157.

[18] *Supra* note 4.

[19] *Supra* note 1.

[20] *Rollo*, pp. 282-297.

[21] *Supra* note 2.

[22] 423 Phil. 491, 505 (2001).

Pertinent to the present controversy are the rules on modes of discovery set forth in Sections 1 and 2 of Rule 26 of the Rules of Court, *viz*:

Section 1. *Request for admission.* – At any time after issues have been joined, a party may file and serve upon any other party a written request for the admission by the latter of the genuineness of any material and relevant document described in and exhibited with the request or of the truth of any material and relevant matter of fact set forth in the request. Copies of the documents shall be delivered with the request unless copies have already been furnished.

SEC. 2 *Implied admission.* – Each of the matters of which an admission is requested shall be deemed admitted unless, within a period designated in the request, which shall be not less than fifteen (15) days after service thereof, or within such further time as the court may allow on motion, the party to whom the request is directed files and serves upon the party requesting the admission a sworn statement either denying specifically the matters for which an admission is requested or setting forth in detail the reasons why he cannot truthfully either admit or deny those matters.

xxx x x x xxx

Under these rules, a party who fails to respond to a Request for Admission shall be deemed to have impliedly admitted all the matters contained therein. It must be emphasized, however, that the application of the rules on modes of discovery rests upon the sound discretion of the court.

As such, it is the duty of the courts to examine thoroughly the circumstances of each case and to determine the applicability of the modes of discovery, bearing always in mind the aim to attain an expeditious administration of justice.[23]

The determination of the sanction to be imposed upon a party who fails to comply with the modes of discovery also rests on sound judicial discretion.[24] Corollarily, this discretion carries

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[23] *Insular Life Assurance Co., Ltd. v. Court of Appeals*, G.R. No. 97654, November 14, 1994, 238 SCRA 88, 93.

[24] *Dela Torre v. Pepsi Cola Products Phils., Inc.*, G.R. No. 130243, October 30, 1998, 358 Phil. 849, 862 (1998).

with it the determination of whether or not to impose the sanctions attributable to such fault.

As correctly observed by the trial court, the matters set forth in petitioners' Request for Admission were the same affirmative defenses pleaded in their Answer which respondents already traversed in their Reply. The said defenses were likewise sufficiently controverted in the complaint and its annexes. In effect, petitioners sought to compel respondents to deny once again the very matters they had already denied, a redundancy, which if abetted, will serve no purpose but to delay the proceedings and thus defeat the purpose of the rule on admission as a mode of discovery which is "to expedite trial and relieve parties of the costs of proving facts which will not be disputed on trial and the truth of which can be ascertained by reasonable inquiry."[25]

A request for admission is not intended to merely reproduce or reiterate the allegations of the requesting party's pleading but should set forth relevant evidentiary matters of fact described in the request, whose purpose is to establish said party's cause of action or defense. Unless it serves that purpose, it is pointless, useless, and a mere redundancy.[26]

Verily then, if the trial court finds that the matters in a Request for Admission were already admitted or denied in previous pleadings by the requested party, the latter cannot be compelled to admit or deny them anew. In turn, the requesting party cannot reasonably expect a response to the request and thereafter, assume or even demand the application of the implied admission rule in Section 2, Rule 26.

In this case, the redundant and unnecessarily vexatious nature of petitioners' Request for Admission rendered it ineffectual, futile, and irrelevant so as to proscribe the operation of the implied admission rule in Section 2, Rule 26 of the Rules of

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[25] *Lañada v. Court of Appeals* and *Nestle Phils. v. Court of* Appeals, 426 Phil. 249, 261 (2002), citing *Concrete Aggregates Corporation v. Court of Appeals*, 334 Phil. 77 (1997).

[26] *Po v. Court of* Appeals, 247 Phil. 637, 640 (1988).

Court. There being no implied admission attributable to respondents' failure to respond, the argument that a preliminary hearing is imperative loses its point.

Moreover, jurisprudence[27] has always been firm and constant in declaring that when the affirmative defense raised is failure to state a cause of action, a preliminary hearing thereon is unnecessary, erroneous, and improvident.

In any event, a perusal of respondents' complaint shows that it was sufficiently clothed with a cause of action and they were suited to file the same.

In an action for annulment of title, the complaint must contain the following allegations: (1) that the contested land was privately owned by the plaintiff prior to the issuance of the assailed certificate of title to the defendant; and (2) that the defendant *perpetuated a fraud* or committed a mistake in obtaining a document of title over the parcel of land claimed by the plaintiff.[28]

Such action goes into the issue of ownership of the land covered by a Torrens title, hence, the relief generally prayed for by the plaintiff is to be declared as the land's true owner.[29] Thus, the real party-in-interest is the person claiming title or ownership adverse to that of the registered owner.[30]

The herein complaint alleged: (1) that respondents are the owners and occupants of a parcel of land located at Pao 1st Camiling, Tarlac, covered by OCT No. 11560 in the name of Donata Lardizabal by virtue of an Extrajudicial Succession of Estate and Sale; and (2) that petitioners fraudulently caused

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[27] *Misamis Occidental II Cooperative, Inc. v. David,* 505 Phil. 181-192 (2005), citing *The Heirs of Juliana Clavano v. Genato,* 170 Phil. 275-288 (1997).

[28] *George Katon v. Planca, et al.*, 481 Phil. 169, 184 (2004); *Heirs of Kionisala v. Heirs of Dacut*, 428 Phil. 249, 252 (2002).

[29] *Goco, et al., v. Court of Appeals, et al.,* G.R. No. 157449, April 6, 2010; *Heirs of Rolando N. Abadilla v. Galarosa*, G.R. No. 149041, July 12, 2006, 494 SCRA 675, 688.

[30] *Goco, et al., v. Court of Appeals, et al.*, *id.*

the cancellation of OCT No. 11560 and the issuance of new TCTs in their names by presenting a Deed of Absolute Sale with the forged signatures of Donata Lardizabal and her husband, Francisco Razalan.

The absence of any transaction between petitioners and respondents over the land is of no moment, as the thrust of the controversy is the respondents' adverse claims of rightful title and ownership over the same property, which arose precisely because of the conflicting sources of their respective claims.

As to the validity of the Extrajudicial Succession of Estate and Sale and the status of petitioners' predecessors-in-interest as the only heirs of Donata Lardizabal, these issues go into the merits of the parties' respective claims and defenses that can be best determined on the basis of preponderance of the evidence they will adduce in a full-blown trial. A preliminary hearing, the objective of which is for the court to determine whether or not the case should proceed to trial, will not sufficiently address such issues.

Anent the alleged non-joinder of indispensable parties, it is settled that the non-joinder of indispensable parties is not a ground for the dismissal of an action. The remedy is to implead the non-party claimed to be indispensable. Parties may be added by order of the court on motion of the party or on its own initiative at any stage of the action and/or such times as are just. It is only when the plaintiff refuses to implead an indispensable party despite the order of the court, that the latter may dismiss the complaint.[31] In this case, no such order was issued by the trial court.

Equally settled is the fact that laches is evidentiary in nature and it may not be established by mere allegations in the pleadings and can not be resolved in a motion to dismiss.[32]

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[31] *Plasabas, et al. v. Court of Appeals*, G.R. No. 166519, March 31, 2009, 582 SCRA 686, 687; *PepsiCo. Inc. v. Emerald Pizza, Inc.,* G.R. No. 153059, August 14, 2007, 530 SCRA 58, 67.

[32] *Gochan & Sons Realty Corp. v. Heirs of Raymundo Baba*, 456 Phil. 569, 571 (2003), citing *Santos v. Santos*, 418 Phil. 681, 692 (2001).

Finally, we cannot subscribe to petitioners' contention that the status of the heirs of Donata Lardizabal who sold the property to the respondents must first be established in a special proceeding. The pronouncements in *Heirs of Yaptinchay v. Hon. Del Rosario*[33] and in *Reyes v. Enriquez*[34] that the petitioners invoke do not find application in the present controversy.

In both cases, this Court held that the declaration of heirship can be made only in a special proceeding and not in a civil action. It must be noted that in *Yaptinchay* and *Enriquez*, plaintiffs' action for annulment of title was anchored on their alleged status as heirs of the original owner whereas in this case, the respondents' claim is rooted on a sale transaction. Respondents herein are enforcing their rights as buyers in good faith and for value of the subject land and not as heirs of the original owner. Unlike in *Yaptinchay* and *Enriquez*, the filiation of herein respondents to the original owner is not determinative of their right to claim title to and ownership of the property.

WHEREFORE, foregoing considered, the instant Petition is *DENIED*. The *Decision* of the Court of Appeals dated August 14, 2008 and its *Resolution* dated March 9, 2009 are hereby *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

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[33] 363 Phil. 393, 394-395 (1999).

[34] G.R. No. 162956, April 10, 2008, 551 SCRA 86.

SPECIAL THIRD DIVISION

[G.R. No. 149588. August 16, 2010]

FRANCISCO R. LLAMAS and CARMELITA C. LLAMAS, *petitioners, vs.* **THE HONORABLE COURT OF APPEALS, BRANCH 66 OF THE REGIONAL TRIAL COURT OF MAKATI CITY and THE PEOPLE OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; RULES OF COURT; WHEN APPLICATION THEREOF MAY BE SUSPENDED. —** This Court has, on occasion, suspended the application of technical rules of procedure where matters of life, liberty, honor or property, among other instances, are at stake. It has allowed some meritorious cases to proceed despite inherent procedural defects and lapses on the principle that rules of procedure are mere tools designed to facilitate the attainment of justice. The strict and rigid application of rules that tend to frustrate rather than promote substantial justice must always be avoided. It is far better and more prudent for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties.

2. **CRIMINAL LAW; REVISED PENAL CODE; SWINDLING UNDER ARTICLE 316(2) THEREOF; ELEMENTS. —** In every criminal prosecution, the State must prove beyond reasonable doubt all the elements of the crime charged and the complicity or participation of the accused. For petitioners to be convicted of the crime of swindling under Article 316 (2) of the Revised Penal Code, the prosecution had the burden to prove the confluence of the following essential elements of the crime: 1. that the thing disposed of be real property; 2. that the offender knew that the real property was encumbered, whether the encumbrance is recorded or not; 3. that there must be express representation by the offender that the real property is free from encumbrance; and 4. that the act of disposing of the real property be made to the damage of another.

3. **ID.; ID.; ID.; ID.; IF NO DAMAGE SHOULD RESULT FROM THE SALE, NO ESTAFA WOULD HAVE BEEN COMMITTED BY THE VENDOR; APPLICATION IN CASE AT BAR. —** One of the essential elements of swindling under Article 316, paragraph 2, is that the act of disposing the encumbered real property is made to the damage of another. In this case, neither the trial court nor the CA made any finding of any damage to the offended party. Nowhere in the Decision of the RTC or that of the CA is there any discussion that there was damage suffered by complainant Avila, or any finding that his rights over the property were prejudiced. On the contrary, complainant had possession and control of the land even as the cases were being heard. His possession and right to exercise dominion over the property was not disturbed. Admittedly, there was delay in the delivery of the title. This, however, was the subject of a separate case, which was eventually decided in petitioners' favor. If no damage should result from the sale, no crime of estafa would have been committed by the vendor, as the element of damage would then be lacking. The inevitable conclusion, therefore, is that petitioners should be acquitted of the crime charged.

APPEARANCES OF COUNSEL

Francisco R. Llamas for petitioners.
The Solicitor General for respondents.

R E S O L U T I O N

NACHURA, *J*.:

Before this Court is a Motion for Reconsideration filed by herein petitioner-spouses Francisco R. Llamas and Carmelita C. Llamas. On September 29, 2009, this Court promulgated a Decision[1] in the above-captioned case, denying the petition for "Annulment of Judgment and *Certiorari*, with Preliminary Injunction" filed by petitioners. Petitioners are assailing the decision of the Regional Trial Court (RTC) of Makati City convicting them of the offense "Other Forms of Swindling"

[1] *Rollo*, pp. 492-498.

punishable under Article 316, paragraph 2, of the Revised Penal Code (RPC).

Briefly, the antecedent facts are as follows:

On August 14, 1984, petitioners were charged before the Regional Trial Court (RTC) of Makati with, as aforesaid, the crime of "other forms of swindling" in the Information, docketed as Criminal Case No. 11787, which reads:

> That on or about the 20th day of November, 1978, in the Municipality of Parañaque, Metro Manila, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping and aiding one another, well knowing that their parcel of land known as Lot No. 11, Block No. 6 of the Subdivision Plan (LRC) Psd 67036, Cadastral Survey of Parañaque, LRC Record No. N-26926, Case No. 4896, situated at Barrio San Dionisio, Municipality of Parañaque, Metro Manila, was mortgaged to the Rural Bank of Imus, did then and there willfully, unlawfully and feloniously sell said property to one Conrado P. Avila, falsely representing the same to be free from all liens and encumbrances whatsoever, and said Conrado P. Avila bought the aforementioned property for the sum of ₱12,895.00 which was paid to the accused, to the damage and prejudice of said Conrado P. Avila in the aforementioned amount of ₱12,895.00.
>
> Contrary to law.

After trial on the merits, the RTC rendered its Decision on June 30, 1994, finding petitioners guilty beyond reasonable doubt of the crime charged and sentencing them to suffer the penalty of imprisonment for two months and to pay the fine of ₱18,085.00 each.

On appeal, the Court of Appeals, in its February 19, 1999 Decision in CA-G.R. No. CR No. 18270, affirmed the decision of the trial court. In its December 22, 1999 Resolution, the appellate court further denied petitioners' motion for reconsideration.

Assailing the aforesaid issuances of the appellate court, petitioners filed before this Court, on February 11, 2000, their petition for review, docketed as G.R. No. 141208. The Court, however, on March 13, 2000, denied the same for petitioners' failure to state the material

dates. Since it subsequently denied petitioners' motion for reconsideration on June 28, 2000, the judgment of conviction became final and executory.

With the consequent issuance by the trial court of the April 19, 2001 Warrant of Arrest, the police arrested, on April 27, 2001, petitioner Carmelita C. Llamas for her to serve her 2-month jail term. The police, nevertheless, failed to arrest petitioner Francisco R. Llamas because he was nowhere to be found.

On July 16, 2001, petitioner Francisco moved for the lifting or recall of the warrant of arrest, raising for the first time the issue that the trial court had no jurisdiction over the offense charged.

There being no action taken by the trial court on the said motion, petitioners instituted, on September 13, 2001, the instant proceedings for the annulment of the trial and the appellate courts' decisions.

The Court initially dismissed on technical grounds the petition in the September 24, 2001 Resolution, but reinstated the same, on motion for reconsideration, in the October 22, 2001 Resolution. [2]

In its September 29, 2009 Decision, this Court held that, following the ruling in *People v. Bitanga*,[3] the remedy of annulment of judgment cannot be availed of in criminal cases. The Court likewise rejected petitioners' contention that the trial court had no jurisdiction over the case.

Petitioners are now before this Court seeking the reversal of the September 29, 2009 Decision and, consequently, the annulment of their conviction by the trial court. In their Verified Motion for Reconsideration,[4] petitioners ask this Court to "revisit and take a second look" at the issues in the case "without being unduly hampered by any perceived technical shortfalls of a beleaguered innocent litigant." In particular, they raise the following issues:

1.WITH ALL DUE RESPECT, AND IN LIGHT OF THE CORRECT APPLICATIONS OF DOCTRINAL JURISPRUDENCE, PETITIONERS

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[2] *Id.* at 493-494.

[3] G.R. No. 159222, June 26, 2007, 525 SCRA 623.

[4] *Rollo*, pp. 504-526.

HAD PURSUED THEIR MORE THAN TWENTY FIVE (25) YEARS QUEST FOR JUSTICE AS INNOCENT MEN, AND HAD HONESTLY MAINTAINED THAT THEIR RESORT TO REVERSE, SET ASIDE AND/OR ANNUL, IS IN LINE WITH JURISPRUDENCE AND LAW, **ANY TECHNICAL SHORTFALLS [OR] DEFECTS NOTWITHSTANDING[;]**

2. WITH ALL DUE RESPECT, AGAIN IN LIGHT OF APPLICABLE JURISPRUDENCE ON THE ISSUE OF JURISDICTION, PETITIONERS ARE NOT BARRED FROM RAISING SUCH QUESTION OF JURISDICTION AT ANY TIME AND IN FACT MAINTAIN THAT RESPONDNET COURTS HAD **NO JURISDICTION** IN LAW AND ENLIGHTENING DOCTRINES TO TRY AND DECIDE THIS CASE;

3. AGAIN WITH ALL DUE RESPECT AND **UNFORTUNATELY, THE VERY JUSTIFYING MERITS OF PETITIONERS'** APPROPRIATE INSTANT REMEDY; **HAD NOT CONSEQUENTLY BEEN PASSED UPON, TO UPHOLD THE PARAMOUNT CONSTITUTIONAL CHERISED MANDATE**, "THE PRESUMPTION OF INNOCENCE MUST BE UPHELD, EXCEPT ONLY UPON ESTABLISHED AND ADMISSIBLE EVIDENCE BEYOND REASONABLE DOUBT; AND

4. PETITIONERS **VERY HUMBLY BESEECH** THIS HONORABLE COURT'S HIGHEST SENSE OF MAGNANIMITY, UNDERSTANDING, JUDICIOUS WISDOM AND COMPASSION, SO THAT JUSTICE MAY TRULY AND JUSTLY BE RENDERED IN FAVOR OF PETITIONERS AS IT MUST, GIVEN THE VERY UNIQUE AND COMPELLING JUSTIFICATIONS HEREOF[.][5]

Petitioners likewise pray for a referral of the case to the Court *En Banc* for oral argument or to be allowed to submit written supplementary pleadings for them to state the compelling reasons why their motion for reconsideration should be allowed.

In the interest of justice and for humanitarian reasons, the Court deems it necessary to re-examine this case.

Admittedly, petitioners took many procedural missteps in this case, from the time it was pending in the trial court until it reached this Court, all of which could serve as enough basis

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[5] *Id.* at 506.

to dismiss the present motion for reconsideration. However, considering petitioners' advanced age, the length of time this case has been pending, and the imminent loss of personal liberty as a result of petitioners' conviction, the Court resolves to grant *pro hac vice* the motion for reconsideration.

This Court has, on occasion, suspended the application of technical rules of procedure where matters of life, liberty, honor or property, among other instances, are at stake.[6] It has allowed some meritorious cases to proceed despite inherent procedural defects and lapses on the principle that rules of procedure are mere tools designed to facilitate the attainment of justice. The strict and rigid application of rules that tend to frustrate rather than promote substantial justice must always be avoided. It is far better and more prudent for the court to excuse a technical lapse and afford the parties a review of the case to attain the ends of justice, rather than dispose of the case on technicality and cause grave injustice to the parties.[7]

This Court notes that the case was allowed to run its course as a petition for *certiorari*, such that in its April 12, 2004 Resolution, it said "Considering the allegations, issues and arguments adduced in the petition for review on *certiorari* x x x." Likewise, in its February 10, 2003 Resolution,[8] the Court said, "It appearing that Atty. Francisco R. Llamas, in his own behalf and as counsel for petitioners, has failed to file their reply to the Solicitor General's comment on the petition for review on *certiorari* within the extended period x x x."

Thus, the Court, at the first instance, had recognized that the petition, although captioned differently, was indeed one for *certiorari*.

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[6] See *Lastimoso v. Asayo*, G.R. No. 154243, December 4, 2007, 539 SCRA 381, 385.

[7] *Tanenglian v. Lorenzo*, G.R. No. 173415, March 28, 2008, 550 SCRA 348, 368 citing *Vallejo v. Court of Appeals,* 471 Phil. 670, 684 (2004).

[8] *Rollo*, p. 189.

Since we have resolved to treat the petition as one for *certiorari*, the doctrine in *People v. Bitanga*[9] no longer finds application in this case.

Next, we proceed to resolve the substantive issues raised by petitioners.

Article 316 (2) of the Revised Penal Code states:

ART. 316. *Other forms of swindling.* – The penalty of *arresto mayor* in its minimum and medium periods and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

x x x

2. Any person who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance be not recorded;

x x x

In every criminal prosecution, the State must prove beyond reasonable doubt all the elements of the crime charged and the complicity or participation of the accused.[10]

For petitioners to be convicted of the crime of swindling under Article 316 (2) of the Revised Penal Code, the prosecution had the burden to prove the confluence of the following essential elements of the crime:

1. that the thing disposed of be real property;
2. that the offender knew that the real property was encumbered, whether the encumbrance is recorded or not;
3. that there must be express representation by the offender that the real property is free from encumbrance; and
4. that the act of disposing of the real property be made to the damage of another.[11]

One of the essential elements of swindling under Article 316, paragraph 2, is that the act of disposing the encumbered

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[9] *Supra* note 3.

[10] *People v. Limpangog*, 444 Phil. 691, 693 (2003).

[11] *Naya v. Spouses Abing*, 446 Phil. 484, 494 (2003) citing Reyes, *Revised Penal Code,* 1981 ed., Book II, p. 786.

real property is made to the damage of another. In this case, neither the trial court nor the CA made any finding of any damage to the offended party. Nowhere in the Decision of the RTC or that of the CA is there any discussion that there was damage suffered by complainant Avila, or any finding that his rights over the property were prejudiced.

On the contrary, complainant had possession and control of the land even as the cases were being heard. His possession and right to exercise dominion over the property was not disturbed. Admittedly, there was delay in the delivery of the title. This, however, was the subject of a separate case, which was eventually decided in petitioners' favor.[12]

If no damage should result from the sale, no crime of estafa would have been committed by the vendor, as the element of damage would then be lacking.[13] The inevitable conclusion, therefore, is that petitioners should be acquitted of the crime charged.

WHEREFORE, the foregoing premises considered, the Motion for Reconsideration is *GRANTED.* The assailed Decision dated September 29, 2009 is *SET ASIDE* and a new one is entered *ACQUITTING* petitioners of the crime charged on the ground of the prosecution's failure to prove their guilt beyond reasonable doubt.

SO ORDERED.

Corona C.J. (Chairperson), Brion, Peralta, and *Villarama, Jr.,*[*] *JJ.,* concur.

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[12] *Rollo*, p. 547.

[13] Reyes, *Revised Penal Code*, Book II, 1998 revised ed., p. 803 citing *People v. Mariano*, CA, 40 O.G., Supp. 4, 91.

[*] Designated member vice Associate Justice Consuelo Ynares-Santiago [ret.]

SECOND DIVISION

[G.R. No. 185122. August 16, 2010]

WENSHA SPA CENTER, INC. and/or XU ZHI JIE, *petitioners, vs.* **LORETA T. YUNG,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; REQUISITES FOR VALID TERMINATION. —** Loreta's security of tenure is guaranteed by the Constitution and the Labor Code. The 1987 Philippine Constitution provides in Section 18, Article II that the State shall protect the rights of workers and promote their welfare. Section 3, Article XIII also provides that all workers shall be entitled to security of tenure. Along that line, Article 3 of the Labor Code mandates that the State shall assure the rights of workers to security of tenure. Under the security of tenure guarantee, a worker can only be terminated from his employment for cause and after due process. For a valid termination by the employer: (1) the dismissal must be for a valid cause as provided in Article 282, or for any of the authorized causes under Articles 283 and 284 of the Labor Code; and (2) the employee must be afforded an opportunity to be heard and to defend himself. A just and valid cause for an employee's dismissal must be supported by substantial evidence, and before the employee can be dismissed, he must be given notice and an adequate opportunity to be heard. In the process, the employer bears the burden of proving that the dismissal of an employee was for a valid cause. Its failure to discharge this burden renders the dismissal unjustified and, therefore, illegal.

2. **ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE TO BE A VALID GROUND FOR DISMISSAL MUST HAVE BASIS AND MUST BE FOUNDED ON CLEARLY ESTABLISHED FACTS. —** As correctly found by the CA, the cause of Loreta's dismissal is questionable. Loss of trust and confidence to be a valid ground for dismissal must have basis and must be founded on clearly established facts. The Court finds the Labor Arbiter ruling that states, "[a]bsent any proof submitted by the

complainant, this office finds it more probable that the complainant was dismissed due to loss of trust and confidence," to be utterly erroneous as it is contrary to the applicable rules and pertinent jurisprudence. The onus of proving a valid dismissal rests on the employer, not on the employee. It is the employer who bears the burden of proving that its dismissal of the employee is for a valid or authorized cause supported by substantial evidence. To be a valid cause for termination of employment, the act or acts constituting breach of trust must have been done intentionally, knowingly, and purposely; and they must be founded on clearly established facts.

3. **ID.; ID.; ID.; THE LAW REQUIRES TWO NOTICES TO BE GIVEN TO AN EMPLOYEE PRIOR TO A VALID TERMINATION; NOT SATISFIED IN CASE AT BAR. —** The records are bereft of evidence that Loreta was duly informed of the charges against her and that she was given the opportunity to respond to those charges prior to her dismissal. If there were indeed charges against Loreta that Wensha had to investigate, then it should have informed her of those charges and required her to explain her side. Wensha should also have kept records of the investigation conducted while Loreta was on leave. The law requires that two notices be given to an employee prior to a valid termination: the first notice is to inform the employee of the charges against her with a warning that she may be terminated from her employment and giving her reasonable opportunity within which to explain her side, and the second notice is the notice to the employee that upon due consideration of all the circumstances, she is being terminated from her employment. This is a requirement of due process and clearly, Loreta did not receive any of those required notices.

4. **ID.; ID.; ID.; ILLEGAL DISMISSAL; REMEDIES AVAILABLE TO THE DISMISSED EMPLOYEE, EXPLAINED. —** Reinstatement, under the circumstances, would no longer be practical as it would not be in the interest of both parties. Under the law and jurisprudence, an illegally dismissed employee is entitled to two reliefs - backwages and reinstatement, which are separate and distinct. If reinstatement would only exacerbate the tension and further ruin the relations of the employer and the employee, or if their relationship has been unduly strained due to irreconcilable differences, particularly where the illegally dismissed employee held a managerial or key position in the

company, it would be prudent to order payment of separation pay instead of reinstatement. In the case of *Golden Ace Builders v. Talde,* We wrote: Under the doctrine of strained relations, the payment of separation pay has been considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On the one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other, the payment releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.

5. **COMMERCIAL LAW; CORPORATION CODE; CORPORATION; LIABILITY OF CORPORATE DIRECTORS AND OFFICERS FOR THE TERMINATION OF EMPLOYMENT, EXPLAINED; APPLICATION IN CASE AT BAR. —** Elementary is the rule that a corporation is invested by law with a personality separate and distinct from those of the persons composing it and from that of any other legal entity to which it may be related. "Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality." In labor cases, corporate directors and officers may be held solidarily liable with the corporation for the termination of employment only if done with malice or in bad faith. Bad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud. In the subject decision, the CA concluded that petitioner Xu and Wensha are jointly and severally liable to Loreta. We have read the decision in its entirety but simply failed to come across any finding of bad faith or malice on the part of Xu. There is, therefore, no justification for such a ruling. To sustain such a finding, there should be an evidence on record that an officer or director acted maliciously or in bad faith in terminating the services of an employee. Moreover, the finding or indication that the dismissal was effected with malice or bad faith should be stated in the decision itself.

APPEARANCES OF COUNSEL

Francisco A. Sanchez III for petitioners.
Leaño Leaño III Law Office for respondent.

D E C I S I O N

MENDOZA, *J.:*

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by an employer who was charged before the National Labor Relations Commission *(NLRC)* for dismissing an employee upon the advice of a Feng Shui master. In this action, the petitioners assail the May 28, 2008 Decision[1] and October 23, 2008 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. SP No. 98855 entitled *Loreta T. Yung v. National Labor Relations Commission, Wensha Spa Center, Inc. and/or Xu Zhi Jie*.

THE FACTS:

Wensha Spa Center, Inc. (*Wensha*) in Quezon City is in the business of sauna bath and massage services. Xu Zhi Jie a.k.a. Pobby Co *(Xu)* is its president,[3] respondent Loreta T. Yung *(Loreta)* was its administrative manager at the time of her termination from employment.

In her position paper,[4] Loreta stated that she used to be employed by Manmen Services Co., Ltd. (*Manmen*) where Xu was a client. Xu was apparently impressed by Loreta's performance. After he established Wensha, he convinced Loreta to transfer and work at Wensha. Loreta was initially reluctant to accept Xu's offer because her job at Manmen was stable

[1] *Rollo,* pp. 47-63. Penned by Associate Justice Normandie B. Pizarro with the concurrence of Associate Justice Josefina Guevara-Salonga and Associate Justice Magdangal M. de Leon.

[2] *Id.* at 64-65.

[3] *Id.* at 109, Labor Arbiter's Decision.

[4] *Id.* at 70-79.

and she had been with Manmen for seven years. But Xu was persistent and offered her a higher pay. Enticed, Loreta resigned from Manmen and transferred to Wensha. She started working on April 21, 2004 as Xu's personal assistant and interpreter at a monthly salary of ₱12,000.00.

Loreta introduced positive changes to Wensha which resulted in increased business. This pleased Xu so that on May 18, 2004, she was promoted to the position of Administrative Manager.[5]

Loreta recounted that on August 10, 2004, she was asked to leave her office because Xu and a Feng Shui master were exploring the premises. Later that day, Xu asked Loreta to go on leave with pay for one month. She did so and returned on September 10, 2004. Upon her return, Xu and his wife asked her to resign from Wensha because, according to the Feng Shui master, her aura did not match that of Xu. Loreta refused but was informed that she could no longer continue working at Wensha. That same afternoon, Loreta went to the NLRC and filed a case for illegal dismissal against Xu and Wensha.

Wensha and Xu denied illegally terminating Loreta's employment. They claimed that two months after Loreta was hired, they received various complaints against her from the employees so that on August 10, 2004, they advised her to take a leave of absence for one month while they conducted an investigation on the matter. Based on the results of the investigation, they terminated Loreta's employment on August 31, 2004 for loss of trust and confidence.[6]

The Labor Arbiter *(LA)* Francisco Robles dismissed Loreta's complaint for lack of merit. He found it more probable that Loreta was dismissed from her employment due to Wensha's loss of trust and confidence in her. The LA's decision[7] partly reads:

However, this office has found it dubious and hard to believe the contentions made by the complainant that she was dismissed

[5] *Id.* at 108.

[6] *Id.* at 81-82, respondent's Position Paper.

[7] *Id.* at 107-121.

by the respondents on the sole ground that she is a "mismatch" in respondents' business as advised by an alleged Feng Shui Master. The complainant herself alleged in her position paper that she has done several improvements in respondents' business such as uplifting the morale and efficiency of its employees and increasing respondents' clientele, and that respondent Co was very much pleased with the improvements made by the complainant that she was offered twice a promotion but she nevertheless declined. It would be against human experience and contrary to business acumen to let go of someone, who was an asset and has done so much for the company merely on the ground that she is a "mismatch" to the business. Absent any proof submitted by the complainant, this office finds it more probable that the complainant was dismissed due to loss of trust and confidence.[8]

This ruling was affirmed by the NLRC in its December 29, 2006 Resolution,[9] citing its observation that Wensha was still considering the proper action to take on the day Loreta left Wensha and filed her complaint. The NLRC added that this finding was bolstered by Wensha's September 10, 2004 letter to Loreta asking her to come back to personally clarify some matters, but she declined because she had already filed a case.

Loreta moved for a reconsideration of the NLRC's ruling but her motion was denied. Loreta then went to the CA on a petition for *certiorari*. The CA *reversed* the ruling of the NLRC on the ground that it gravely abused its discretion in appreciating the factual bases that led to Loreta's dismissal. The CA noted that there were irregularities and inconsistencies in Wensha's position. The CA stated the following:

We, thus, peruse the affidavits and documentary evidence of the Private Respondents and find the following: *First,* on the affidavits of their witnesses, it must be noted that the same were mere photocopies. It was held that [*T]he purpose of the rule in requiring the production of the best evidence is the prevention of fraud, because if a party is in possession of such evidence and withholds*

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[8] *Id.* at 117.

[9] *Id.* at 137-143. Penned by Commissioner Gregorio O. Bilog, III and concurred in by Commissioner Tito F. Genilo; Presiding Commissioner Lourdes C. Javier was on leave.

it, and seeks to substitute inferior evidence in its place, the presumption naturally arise[s] that the better evidence is withheld for fraudulent purposes which its production would expose and defeat. Moreover, the affidavits were not executed under oath. The rule is that an affiant must sign the document in the presence of and take his oath before a notary public as evidence that the affidavit was properly made. Guided by these principles, the affidavits cannot be assigned any weighty probative value and are mere scraps of paper the contents of which are hearsay. *Second*, on the sales report and order slips, which allegedly prove that Yung had been charging her food and drinks to Wensha, the said pieces of evidence do not, however, bear Yung's name thereon or even her signature. In fact, it does not state anyone's name, except that of Wensha. Hence, it would simply be capricious to pinpoint, or impute, on Yung as the author in charging such expenses to Wensha on the basis of hearsay evidence. *Third*, while the affidavit of Wensha's Operations Manager, Princess delos Reyes (delos Reyes), may have been duly executed under oath, she did not, however, specify the alleged infractions that Yung committed. If at all, delos Reyes only made general statements on the alleged complaints against Yung that were not even substantiated by any other piece of evidence. *Finally*, the daily time records (DTRs) of Yung, which supposedly prove her habitual tardiness, were mere photocopies that are not even signed by Wensha's authorized representative, thus suspect, if not violative of the best evidence rule and, therefore, incompetent evidence. x x x [Emphases appear in the original]

x x x x x x x x x.

Finally, after the Private Respondents filed their position paper, they alleged mistake on the part of their former counsel in stating that Yung was dismissed on August 31, 2004. Thus, they subsequently moved for the admission of their rejoinder. Notably, however, the said rejoinder was dated October 4, 2004, earlier than the date when their position paper was filed, which was on November 3, 2004. It is also puzzling that their position paper was dated November 25, 2004, much later than its date of filing. The irregularities are simply too glaring to be ignored. Nevertheless, the Private Respondents' admission of Yung's termination on August 31, 2004 cannot be retracted. They **cannot use the mistake of their counsel as an excuse considering that the position paper was verified by their**

Operations Manager, delos Reyes, who attested to the truth of the contents therein.[10] [Emphasis supplied]

Hence, the *fallo* of the CA decision reads:

WHEREFORE, the instant petition is GRANTED. Wensha Spa Center, Inc. and Xu Zhi Jie are ORDERED to, jointly and severally, pay Loreta T. Yung her full backwages, other privileges, and benefits, or their monetary equivalent, corresponding to the period of her dismissal from September 1, 2004 up to the finality of this decision, and damages in the amounts of fifty thousand pesos (Php50,000.00) as moral damages, twenty five thousand pesos (Php25,000.00) as exemplary damages, and twenty thousand pesos (Php20,000.00) as attorney's fees. No costs.

SO ORDERED.[11]

Wensha and Xu now assail this ruling of the CA in this petition presenting the following:

V. GROUNDS FOR THE ALLOWANCE OF THE PETITION

5.1 The following are the reasons and arguments, which are purely questions of law and some questions of facts, which justify the appeal by *certiorari* under Rule 45 of the 1997 Revised Rules of Civil Procedure, as amended, to this Honorable SUPREME COURT of the assailed Decision and Resolution, to wit:

5.1.1 The Honorable COURT OF APPEALS gravely erred in reversing that factual findings of the Honorable Labor Arbiter and the Honorable NLRC (Third Division) notwithstanding recognized and established rule in our jurisdiction that findings of facts of quasi-judicial agencies who have gained expertise on their respective subject matters are given respect and finality;

5.1.2 The Honorable COURT OF APPEALS committed grave abuse of discretion and serious errors when it ruled that findings of facts of the Honorable Labor Arbiter and the Honorable NLRC are not supported by substantial evidence despite the fact that the records clearly show that petitioner therein was not dismissed but is under

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[10] *Id.* at 54-60.

[11] *Id.* at 62.

investigation, and that she is guilty of serious infractions that warranted her termination;

5.1.3 The Honorable COURT OF APPEALS grave[ly] erred when it ordered herein petitioner to pay herein respondent her separation pay, in lieu of reinstatement, and full backwages, as well as damages and attorney's fees;

5.1.4 The Honorable COURT OF APPEALS committed grave abuse of discretion and serious errors when it held that petitioner XU ZHI JIE to be solidarily liable with WENSHA, assuming that respondent was illegally dismissed;

5.2 The same need to be corrected as they would work injustice to the herein petitioner, grave and irreparable damage will be done to him, and would pose dangerous precedent.[12]

THE COURT'S RULING:

Loreta's security of tenure is guaranteed by the Constitution and the Labor Code. The 1987 Philippine Constitution provides in Section 18, Article II that the State shall protect the rights of workers and promote their welfare. Section 3, Article XIII also provides that all workers shall be entitled to security of tenure. Along that line, Article 3 of the Labor Code mandates that the State shall assure the rights of workers to security of tenure.

Under the security of tenure guarantee, a worker can only be terminated from his employment for cause and after due process. For a valid termination by the employer: (1) the dismissal must be for a valid cause as provided in Article 282, or for any of the authorized causes under Articles 283 and 284 of the Labor Code; and (2) the employee must be afforded an opportunity to be heard and to defend himself. A just and valid cause for an employee's dismissal must be supported by substantial evidence, and before the employee can be dismissed, he must be given notice and an adequate opportunity to be heard.[13] In the process, the employer bears the burden of proving that the dismissal of an employee

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[12] *Id.* at 19-20.

[13] *Solid Development Corporation Workers Association [SDCWA-UWP] v. Solid Development Corporation*, G.R. No. 165995, August 14, 2007, 530

was for a valid cause. Its failure to discharge this burden renders the dismissal unjustified and, therefore, illegal.[14]

As a rule, the factual findings of the court below are conclusive on Us in a petition for review on *certiorari* where We review only errors of law. This case, however, is an exception because the CA's factual findings are not congruent with those of the NLRC and the LA.

According to Wensha in its position paper,[15] it dismissed Loreta on August 31, 2004 after investigating the complaints against her. Wensha asserted that her dismissal was a valid exercise of an employer's right to terminate a managerial employee for loss of trust and confidence. It claimed that she caused the resignation of an employee because of gossips initiated by her. It was the reason she was asked to take a leave of absence with pay for one month starting August 10, 2004.[16]

Wensha also alleged that Loreta was "sowing intrigues in the company" which was inimical to Wensha. She was also accused of dishonesty, serious breach of trust reposed in her, tardiness, and abuse of authority.[17]

In its Rejoinder, Wensha *changed its position* claiming that it did not terminate Loreta's employment on August 31, 2004. It even sent her a notice requesting her to report back to work. She, however, declined because she had already filed her complaint.[18]

As correctly found by the CA, the cause of Loreta's dismissal is questionable. Loss of trust and confidence to be a valid ground for dismissal must have basis and must be founded on clearly established facts.[19]

SCRA 132.

[14] *National Bookstore, Inc. v. Court of Appeals*, 428 Phil. 235 (2002).

[15] *Rollo*, p. 80.

[16] *Id.* at 81.

[17] *Id.* at 82-85.

[18] *Id.* at 90-92.

[19] *Garcia v. National Labor Relations Commission*, 351 Phil. 960 (1998).

The Court finds the LA ruling that states, "[a]bsent any proof submitted by the complainant, this office finds it more probable that the complainant was dismissed due to loss of trust and confidence,"[20] to be utterly erroneous as it is contrary to the applicable rules and pertinent jurisprudence. The onus of proving a valid dismissal rests on the employer, not on the employee.[21] It is the employer who bears the burden of proving that its dismissal of the employee is for a valid or authorized cause supported by substantial evidence. [22]

According to the NLRC, "[p]erusal of the entire records show that complainant left the respondents' premises when she was confronted with the infractions imputed against her."[23] This information was taken from the affidavit[24] of Princess Delos Reyes *(Delos Reyes)* which was dated March 21, 2005, not in Wensha's earlier position paper or pleadings submitted to the LA. The affidavits[25] of employees attached to Delos Reyes' affidavit were all dated November 19, 2004 indicating that they were not yet executed when the complaints against Loreta were supposedly being investigated in August 2004.

It is also noteworthy that Wensha's position paper related that because of the gossips perpetrated by Loreta, a certain Oliva Gonzalo *(Gonzalo)* resigned from Wensha. Because of the incident, Gonzalo, whose father was a policeman, "reportedly got angry with complainant and of the management telling her friends at respondent company that she would retaliate thus creating fear among those concerned."[26] As a result, Loreta

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[20] *Rollo,* p. 117.

[21] *Royal Crown Internationale v. National Labor Relations Commission*, G.R. No. 78085, October 16, 1989, 178 SCRA 569.

[22] *Philippine Long Distance Telephone Company, Inc. v. Tiamson*, G.R. Nos. 164684-85, November 11, 2005, 474 SCRA 761.

[23] *Rollo*, p. 141, NLRC Resolution dated December 29, 2006.

[24] *Id.* at 93-94.

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

[26] *Id.* at 81.

was advised to take a paid leave of absence for one month while Wensha conducted an investigation.

According to Loreta, however, the reason for her termination was her aura did not match that of Xu and the work environment at Wensha. Loreta narrated:

> On August 10, 2004 however, complainant was called by respondent Xu and told her to wait at the lounge area while the latter and a Feng Shui Master were doing some analysis of the office. After several hours of waiting, respondent Xu then told complainant that according to the Feng Shui master her Chinese Zodiac sign is a "mismatch" with that of the respondents; that complainant should not enter the administrative office for a month while an altar was to be placed on the left side where complainant has her table to allegedly correct the "mismatch" and that it is necessary that offerings and prayers have to be made and said for about a month to correct the alleged "jinx." Respondent Xu instructed complainant not to report to the office for a month with assurance of continued and regular salary. She was ordered not to seek employment elsewhere and was told to come back on the 10th of September 2004.[27]

Although she was a little confused, Loreta did as she was instructed and did not report for work for a month. She returned to work on September 10, 2004. This is how Loreta recounted the events of that day:

> On September 10, 2004, in the morning, complainant reported to the office of respondents. As usual, she punched-in her time card and signed in the logbook of the security guard. When she entered the administrative office, some of its employees immediately contacted respondent Xu. Respondent Xu then contacted complainant thru her mobile phone and told her to leave the administrative office immediately and instead to wait for him in the dining area.
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> xxx
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> Complainant waited for respondent Xu in the dining area. After waiting for about two (2) hours, respondent Xu was nowhere. Instead, it was Jiang Xue Qin a.k.a Annie Co, the Chinese wife of respondent Xu, who arrived and after a short conversation between them, the former frankly told complainant that she has to resign allegedly

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[27] *Id.* at 72.

she is a mismatch to respondent Xu according to the Feng Shui master and therefore she does not fit to work (sic) with the respondents. Surprised and shocked, complainant demanded of Jiang Xue Qin to issue a letter of termination if it were the reason therefor.

Instead of a termination letter issued, Jiang Xue Qin insisted for the complainant's resignation. But when complainant stood her ground, Jian Xue Qin shouted invectives at her and told to leave the office immediately.

Respondent Xu did not show up but talked to the complainant over the mobile phone and convinced her likewise to resign from the company since there is no way to retain her because her aura unbalanced the area of employment according to the Feng Shui, the Chinese spiritual art of placement. Hearing this from no lees than respondent Xu, complainant left the office and went straight to this Office and filed the present case on September 10, 2004. xxx[28]

Loreta also alleged that in the afternoon of that day, September 10, 2004, a notice was posted on the Wensha bulletin board that reads:

TO ALL EMPLOYEES OF WENSHA SPA CENTER

WE WOULD LIKE TO INFORM YOU THAT *MS. LORIE TSE YUNG*, FORMER ADMINISTRATIVE OFFICER OF WENSHA SPA CENTER *IS NO LONGER* CONNECTED TO THIS COMPANY STARTING TODAY *SEPTEMBER 10, 2004.*

ANY TRANSACTION MADE BY HER IS NO LONGER A LIABILITY OF THE COMPANY.

(SGD.) THE MANAGEMENT [Italics were in red letters.][29]

The Court finds Loreta's complaint credible. There is consistency in her pleadings and evidence. In contrast, Wensha's pleadings and evidence, taken as a whole, suffer from inconsistency. Moreover, the affidavits of the employees only pertain to petty matters that, to the Court's mind, are not sufficient to support Wensha's alleged loss of trust and confidence. To be a valid cause for termination of employment, the act or acts

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[28] *Id.* at 73.

[29] *Id.* at 73-74.

constituting breach of trust must have been done intentionally, knowingly, and purposely; and they must be founded on clearly established facts.

The CA decision is supported by evidence and logically flows from a review of the records. Loreta's narration of the events surrounding her termination from employment was simple and straightforward. Her claims are more credible than the affidavits which were clearly prepared as an afterthought.

More importantly, the records are bereft of evidence that Loreta was duly informed of the charges against her and that she was given the opportunity to respond to those charges prior to her dismissal. If there were indeed charges against Loreta that Wensha had to investigate, then it should have informed her of those charges and required her to explain her side. Wensha should also have kept records of the investigation conducted while Loreta was on leave. The law requires that two notices be given to an employee prior to a valid termination: the first notice is to inform the employee of the charges against her with a warning that she may be terminated from her employment and giving her reasonable opportunity within which to explain her side, and the second notice is the notice to the employee that upon due consideration of all the circumstances, she is being terminated from her employment.[30] This is a requirement of due process and clearly, Loreta did not receive any of those required notices.

We are in accord with the pronouncement of the CA that the reinstatement of Loreta to her former position is no longer feasible in the light of the strained relations between the parties. Reinstatement, under the circumstances, would no longer be practical as it would not be in the interest of both parties. Under the law and jurisprudence, an illegally dismissed employee is entitled to two reliefs — backwages and reinstatement, which are separate and distinct. If reinstatement would only exacerbate the tension and further ruin the relations of the employer and the employee, or if their relationship has been unduly strained

[30] Book V, Rule XXIII of the Omnibus Rules Implementing the Labor Code.

due to irreconcilable differences, particularly where the illegally dismissed employee held a managerial or key position in the company, it would be prudent to order payment of separation pay instead of reinstatement.[31] In the case of *Golden Ace Builders v. Talde,*[32] We wrote:

> Under the doctrine of strained relations, the payment of separation pay has been considered an acceptable alternative to reinstatement when the latter option is no longer desirable or viable. On the one hand, such payment liberates the employee from what could be a highly oppressive work environment. On the other, the payment releases the employer from the grossly unpalatable obligation of maintaining in its employ a worker it could no longer trust.

In the case at bench, the CA, upon its own assessment, pronounced that the relations between petitioners and the respondent have become strained because of her dismissal anchored on dubious charges. The respondent has not contested the finding. As she is not insisting on being reinstated, she should be paid separation pay equivalent to one (1) month salary for every year of service.[33] The CA, however, failed to decree such award in the dispositive portion. This should be rectified.

Nevertheless, the Court finds merit in the argument of petitioner Xu that the CA erred in ruling that he is solidarily liable with Wensha.

Elementary is the rule that a corporation is invested by law with a personality separate and distinct from those of the persons composing it and from that of any other legal entity to which it may be related. "Mere ownership by a single stockholder or by another corporation of all or nearly all of the capital stock of a corporation is not of itself sufficient ground for disregarding the separate corporate personality."[34]

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[31] *Quijano v. Mercury Drug Corporation*, 354 Phil. 112 (1998).

[32] G. R. No. 187200, May 5, 2010.

[33] *Golden Ace Builders v. Talde*, *supra* note 32.

[34] *"G" Holdings, Inc. v. National Mines and Allied Workers Union Local 103 (NAMAWU*), G.R. No. 160236, October 16, 2009, 604 SCRA 73,

In labor cases, corporate directors and officers may be held solidarily liable with the corporation for the termination of employment only if done with malice or in bad faith.[35] Bad faith does not connote bad judgment or negligence; it imports a dishonest purpose or some moral obliquity and conscious doing of wrong; it means breach of a known duty through some motive or interest or ill will; it partakes of the nature of fraud.[36]

In the subject decision, the CA concluded that petitioner Xu and Wensha are jointly and severally liable to Loreta.[37] We have read the decision in its entirety but simply failed to come across any finding of bad faith or malice on the part of Xu. There is, therefore, no justification for such a ruling. To sustain such a finding, there should be an evidence on record that an officer or director acted maliciously or in bad faith in terminating the services of an employee.[38] Moreover, the finding or indication that the dismissal was effected with malice or bad faith should be stated in the decision itself.[39]

WHEREFORE, the petition is *PARTIALLY GRANTED*. The decretal portion of the May 28, 2008 Decision of the Court of Appeals, in CA-G.R. SP No. 98855, is hereby *MODIFIED* to read as follows:

> **WHEREFORE,** the petition is GRANTED. Wensha Spa Center, Inc. is hereby ordered to pay Loreta T. Yung her full backwages, other privileges, and benefits, or their monetary equivalent, and **separation pay** reckoned from the date of her dismissal, September 1, 2004, up to the finality of this decision, plus damages in the amounts of Fifty Thousand (₱50,000.00) Pesos, as moral damages. Twenty

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114 and *Elcee Farms v. NLRC,* G.R. No. 126428, January 25, 2007, 512 SCRA 602, 616-617.

[35] *Petron Corporation v. NLRC,* G. R. No. 154532, October 27, 2006, 505 SCRA 596.

[36] *Elcee Farms v. NLRC, supra* note 34.

[37] *Rollo,* p. 62.

[38] *M+W Zander Philippines, Inc. and Rolf Wiltschek v. Trinidad Enriquez*, G.R. No. 169173, June 5, 2009, 588 SCRA 590.

[39] See *Alba v. Yupangco*, G. R. No. 188233, June 29, 2010.

Five Thousand (₱25,000.00) Pesos as exemplary damages; and Twenty Thousand (₱20,000.00) Pesos, as attorney's fees. No costs.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Abad, JJ.,* concur.

FIRST DIVISION

[G.R. No. 185848. August 16, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHAEL SEMBRANO *y* CASTRO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL SALE OF REGULATED OR PROHIBITED DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** 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 thereto. 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. Having weighed the arguments and evidence propounded by the defense and the prosecution, this Court is satisfied that the prosecution discharged its burden of establishing all the elements of illegal sale of regulated or prohibited drugs and proved appellant's guilt beyond reasonable doubt.

2. **REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; VALID WARRANTLESS ARREST; ARREST MADE DURING AN**

ENTRAPMENT OPERATION DOES NOT REQUIRE A WARRANT.— On the legality of the warrantless arrest, We reiterate that appellant was arrested during an entrapment operation where he was caught *in flagrante delicto* selling *shabu*. When an arrest is made during an entrapment operation, it is not required that a warrant be secured in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court allowing *warrantless* arrests, to wit: Section 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person: (a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense. x x x

3. ID.; ID.; SEARCH AND SEIZURE; SEARCH, INCIDENT TO A LAWFUL ARREST, NEEDED NO WARRANT TO SUSTAIN ITS VALIDITY.— A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers. If carried out with due regard for constitutional and legal safeguards, a buy-bust operation, such as the one involving appellant, deserves judicial sanction. Consequently, the warrantless arrest and warrantless search and seizure conducted on the person of appellant were allowed under the circumstances. The search, incident to his lawful arrest, needed no warrant to sustain its validity. Thus, there is no doubt that the sachets of *shabu* recovered during the legitimate buy-bust operation, are admissible and were properly admitted in evidence against him.

4. ID.; EVIDENCE; DENIAL AND FRAME-UP; BOTH SELF-SERVING AND UNCORROBORATED AND MUST FAIL IN THE LIGHT OF STRAIGHTFORWARD AND POSITIVE TESTIMONY; CASE AT BAR.— Appellant's defenses of denial and frame-up are both self-serving and uncorroborated, and must fail in light of straightforward and positive testimony of poseur-buyer identifying him as the seller of *shabu*. The twin defenses of denial and frame-up hold little weight *vis-à-vis* the strong evidence gathered by the prosecution in proving his complicity to the offenses. To recall, PO1 Manaol's testimony was corroborated on material points by PO1 Bagay, who identified appellant as the one who handed the sachet of *shabu* to PO1 Manaol after being handed two (2) One Hundred Peso bills. Contrary to the defense's claim, it is not impossible for a buy-bust operation to be conducted in broad daylight,

as in the case at bar. Frame-up, like denial, is viewed by this Court with disfavor for it can easily be concocted.

5. **ID.; ID.; PRESUMPTIONS; REGULARITY OF PERFORMANCE OF DUTIES BY POLICE OFFICERS; UPHELD IN CASE AT BAR.—** [I]n cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary. In this regard, the defense failed to show 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 in the case of appellant. Incidentally, if these were simply trumped-up charges against him, it remains a question why no administrative charges were brought against the police operatives.

6. **ID.; ID.; CREDIBILITY OF WITNESSES; ABSENT PALPABLE ERROR OR GRAVE ABUSE OF DISCRETION, TRIAL COURT'S EVALUATION THEREON WILL NOT BE DISTURBED ON APPEAL.—** [I]n weighing the testimonies of the prosecution witnesses *vis-à-vis* those of the defense, it is a well-settled 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.

7. **CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL POSSESSION OF REGULATED OR PROHIBITED DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** 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. All the aforesaid elements were established. Incident to his lawful arrest resulting from the buy-bust operation, appellant was likewise found to have in his possession 0.27 gram of methamphetamine hydrochloride, or *shabu,* the same kind of dangerous drug he was caught selling *in flagrante delicto*. There is nothing on record to show that he had legal authority to possess the same. Finally, this Court held in a

number of cases, as in *People v. Noque*, G.R. No. 175319, 15 January 2010, citing *People v. Tee*, 443 Phil. 521, 551 (2003), 'mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession – the *onus probandi* is shifted to the accused, to explain the absence of knowledge or *animus possidendi*.'

8. **ID.; ID.; ILLEGAL SALE OF DANGEROUS DRUG; PENALTY; DISCUSSED.—** [T]he sale of any dangerous drug, e.g. *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). With the effectivity, however, of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been proscribed. In this regard, the penalty applicable to Sembrano shall only be life imprisonment and fine without eligibility for parole. This Court thus sustains the penalty imposed by the RTC and later on affirmed by the Court of Appeals in Criminal Case No. **Q-04-128370.**

9. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUG; PENALTY; EXPLAINED.—** [I]llegal 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)*. The evidence adduced by the prosecution in Criminal Case No. Q-04-128371 established beyond reasonable doubt that appellant, without any legal authority, had in his possession 0.27 gram of *shabu* or less than five (5) grams of dangerous drug. Applying the Indeterminate Sentence Law, the minimum period of the imposable penalty shall not fall below the minimum period set by the law; the maximum period shall not exceed the maximum period allowed under the law. Taking the foregoing into consideration, We find that the Court of Appeals erred in imposing the penalty of Three Hundred Thousand Pesos (₱300,000.00) fine and imprisonment of six (6) years and one (1) day to eight (8) years only. Thus, the penalty of twelve (12) years and one (1) day to fourteen (14)

years and fine of Three Hundred Thousand Pesos (₱300,000.00) imposed by the RTC is proper.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PEREZ, *J.*:

Accused-appellant MICHAEL SEMBRANO *y* CASTRO (appellant) is before this Court appealing from the 18 June 2008 Decision[1] of the Court of Appeals in CA-G.R. HC No. 02762 captioned '*People of the Philippines v. Michael Sembrano y Castro*.' The Court of Appeals affirmed his conviction[2] by the Regional Trial Court of Quezon City (RTC, QC) 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]

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[1] Penned by Associate Justice Ramon R. Garcia, with the concurrence of Associate Justices Juan Q. Enriquez, Jr. and Isaias P. Dicdican; *Rollo*, pp. 2-19.

[2] Penned by Judge Severino B. De Castro, Jr., CA *rollo*, pp. 20-27.

[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

The antecedent facts

On 26 July 2004, the operatives of the Station Anti-Illegal Drugs (SAID) of the Novaliches Police Station arrested appellant in broad daylight, in the course of a buy-bust operation and after a follow-up search on him.

On 28 July 2004, the Assistant City Prosecutor of Quezon City in the National Capital Region (QC-NCR) filed two separate Informations against him for (1) illegal sale and (2) illegal possession of *shabu*, a dangerous drug. The two cases were raffled to Branch 82 of the RTC, QC and docketed as Criminal Cases Nos. Q-04-128370 and Q-04-128371, imputing the following acts against him:

Criminal Case No. Q-04-128370

That on or about the 26th day of July 2004, in Quezon City, Philippines, the said accused, not being authorized by law to sell, dispense, deliver transport or distribute any dangerous drug, did, then and there, willfully and unlawfully sell, dispense, deliver, transport, distribute or act as broker in the said transaction, zero point twelve (0.12) gram of white crystalline substance containing of *Methylamphetamine Hydrochloride*, a dangerous drug.[4]

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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.

[4] Records, p. 2.

Criminal Case No. Q-04-128371

That on or about the 26th day of July 2004, in Quezon City, Philippines, the said accused, not being authorized by law to possess any dangerous drug, did, then and there, willfully, unlawfully and knowingly have in his/her/their possession and control, zero point twenty seven (0.27) gram of white crystalline substance containing *Methylamphetamine Hydrochloride*, a dangerous drug.[5]

Sembrano was arraigned on 19 April 2005 and with the assistance of counsel, pleaded not guilty to the charges.[6] Pre-trial proceedings having been terminated, trial on the merits ensued.

During trial, the prosecution presented the testimonies of the following witnesses: (1) Police Officer 1 (PO1) Jomar Manaol; and (2) Police Officer 1 (PO1) Kingly James Bagay.

The combined testimonies of PO1 Manaol and PO1 Bagay sought to establish that at around 3:00 o'clock in the afternoon of 26 July 2004, an informant of the police arrived at the SAID of the Novaliches Police Station. The confidential informant relayed information regarding illicit drugs trade operations conducted by a certain Michael Sembrano *alias* 'Takol' in the area of Gulod in Novaliches, Quezon City.

Superintendent (Supt.) Ramon Perez, head of SAID, formed a buy-bust team composed of PO1 Jomar Manaol, SPO1 Cesar Futol, PO1 Kingly James Bagay, PO1 Neil John Dumlao, and PO1 Fernando Salonga. SPO1 Futol prepared the pre-operation report for the team. The group then proceeded to Ignacio Street corner Villareal Street in Gulod, Novaliches, Quezon City for the entrapment operation.

The group arrived at the designated area at around 3:30 o'clock in the afternoon. PO1 Manaol was designated poseur-buyer. He was handed two (2) One Hundred Peso bills which he marked with his initials 'JAM' on the lower right side thereof, right below the image of the Philippine Flag. PO1 Manaol, together with the confidential informant, then proceeded to the

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[5] Records, p. 6.

[6] Records, Vol. 1, p. 65.

target site. The other members of the team, including witness PO1 Bagay, acted as back-up and positioned themselves about twenty-five meters away from where PO1 Manaol and the confidential informant were.

They waited until appellant arrived at around 5:00 o'clock in the afternoon. Upon appellant's arrival, the confidential informant introduced PO1 Manaol to him as an interested buyer of *shabu*. PO1 Manaol handed the two marked One Hundred Peso bills to appellant, who, in turn, handed one (1) plastic sachet containing white crystalline substance to him. The transaction having been consummated, PO1 Manaol executed their pre-arranged signal and scratched his head. When the other members of the team saw PO1 Manaol execute the pre-arranged signal, they immediately proceeded to their location and arrested appellant.

PO1 Manaol recovered the suspected *shabu* subject of the sale from appellant and placed his initials JAM thereon. PO1 Bagay was also able to retrieve the buy-bust money from appellant's right hand. A follow-up frisk on appellant resulted in the confiscation of two other plastic sachets of white crystalline substance suspected to be *shabu*, from the right hand pocket of his shorts. Immediately after retrieving the evidence, PO1 Bagay marked the confiscated sachets with his initials KJB.

After his arrest, the police officers took appellant to the police station where he was turned over to the desk officer and to the on-duty investigator. PO1 Bagay, who had custody of the confiscated evidence, turned over the seized three (3) plastic sachets of white crystalline substance to the investigator. PO1 Manaol and PO1 Bagay executed a Joint Affidavit of Arrest and signed the Inventory of Seized Drugs/Item prepared by SPO1 Cesar Futol.

The confiscated items were transmitted on the same day by the investigator on-duty, through PO1 Salonga, PO1 Manaol and PO1 Bagay to the Philippine National Police (PNP) Crime Laboratory for examination.

A forensic examination of the contents of the seized sachets as conducted by Police Senior Inspector (P/S Insp.) Leonard T. Arban, Forensic Chemical Officer yielded the following results in Chemistry Report No. D-698-04:

SPECIMEN SUBMITTED:

Three (3) heat-sealed transparent plastic sachets, each containing white crystalline substance with the following markings and recorded net weights:

A (JAM - MCS) = 0.12 gram
B (KJB – MCS1) = 0.10 gram
C (KJB – MCS2) = 0.17 gram

FINDINGS:

Qualitative examination conducted on the above-stated specimens gave POSITIVE result to the tests for Methylamphetamine Hydrochloride, a dangerous drug.[7]

Expectedly, the defense had an entirely different version, with Sembrano testifying on the witness stand. He narrated that at around 1:00 o'clock in the afternoon of 26 July 2004; he was buying lumber somewhere along Quirino Highway in Novaliches, Quezon City, when a maroon Tamaraw FX stopped in front of him. The occupants thereof, PO1 Bagay and PO1 Manaol, alighted from the vehicle and arrested him. After being arrested, the police officers took him to Station 4 whereupon he was required to sign a document. Sembrano learned later on that the police officers filed a case against him for violation of Republic Act No. 9165. When asked on the witness stand if he knew the two police officers, Sembrano answered in the affirmative, having met the two since he had been their police asset since 23 April 2003. In support of his claim, Sembrano presented a copy of an Oath of Loyalty and Agent's Agreement to prove he was indeed a police asset. On cross examination, however, he testified that the police officers he mentioned were not signatories to the Oath of Loyalty and Agent's Agreement he presented in court.

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[7] Chemistry Report D-698-04, Exhibit C, Records, p. 142.

The RTC found accused-appellant guilty as charged in Criminal Cases Nos. Q-04-128370 and Q-04-128371. Weighing the body of evidence submitted by both parties, the trial court gave little credence to appellant's unsubstantiated claim that he was a police asset and ascertained that the prosecution established all the elements of illegal sale and illegal possession of a dangerous or prohibited drug.

Thus, in its Decision dated 14 February 2007, the trial court rendered judgment disposing as follows:

> WHEREFORE, premises considered, judgment is hereby rendered as follows:
>
> a) Re: Criminal Case No. Q-0-4128370, accused MICHAEL SEMBRANO is hereby found guilty beyond reasonable doubt a (sic) of a violation of Section 5, Article II of R.A. No. 9165, and accordingly, he is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT and to pay a fine in the amount of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) PESOS;
>
> b) Re: Criminal Case No. Q-04-128371, said accused is likewise found guilty beyond reasonable doubt of violation of Section 11, Article II of the same Act and, accordingly, he is hereby sentenced to suffer the indeterminate penalty of imprisonment of TWELVE (12) YEARS and one (1) DAY as MINIMUM to FOURTEEN (14) YEARS as MAXIMUM and to pay a fine in the amount of THREE HUNDRED THOUSAND (₱300,000.00) PESOS.[8]

Seeking recourse from his conviction by the trial court, the appellant elevated the case to the Court of Appeals via Notice of Appeal. Insisting on his innocence, the defense questioned the admissibility of the confiscated evidence on the ground of illegality of appellant's arrest. The defense also attacked the credibility of the prosecution witnesses, claiming their stories are unbelievable and should have led to the dismissal of the charges.

According credence to the evidence of the prosecution, the Court of Appeals promulgated its Decision on 18 June 2008,

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[8] CA *rollo*, pp. 26-27.

where the appellate court affirmed the findings and conclusions of the trial court, but reduced the penalty imposed in the illegal possession case to six (6) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum.[9]

Appellant is now appealing his conviction to this Court, as a final recourse, praying that he be absolved of the charges. Instead of filing supplemental briefs, the defense and the prosecution adopted the arguments in their respective appellate briefs submitted before the Court of Appeals.

Thus, this Court is tasked to resolve the following assignment of errors:

I. THE TRIAL COURT GRAVELY ERRED IN NOT FINDING THAT APPELLANT WAS ILLEGALLY ARRESTED AND AS SUCH, THE SACHETS OF *SHABU* ALLEGEDLY RECOVERED FROM HIM WERE INADMISSIBLE IN EVIDENCE.

II. THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE INCREDIBLE TESTIMONIES OF THE PROSECUTION WITNESSES.

III. THE TRIAL COURT GRAVELY ERRED IN FINDING APPELLANT GUILTY BEYOND REASONABLE DOUBT OF THE CRIME CHARGED.

The defense challenges the RTC and Court of Appeals rulings, anchored on its claim that the warrantless arrest against appellant was unlawful. Consequently, applying the 'fruit of the poisonous tree' doctrine, any evidence allegedly obtained during such unlawful warrantless arrest cannot be used as evidence. The

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[9] *Rollo*, p. 19, the dispositive portion of the assailed Decision reading:

WHEREFORE, premises considered, the Appeal is hereby DENIED. The Decision dated February 14, 2007 of the Regional Trial Court, Branch 82, Quezon City is AFFIRMED as to the penalty of life imprisonment for violation of Section 5, Article II of R.A. No. 9165 in Criminal Case No. Q-04-128370 while the penalty for violation of Section 11, Article II of R.A. No. 9165 in Criminal Case No. Q-04-128371 is MODIFIED in that the same is REDUCED to six (6) years and one (1) day of *prision mayor* as minimum to fourteen (14) years, eight (8) months and one (1) day of *reclusion temporal* as maximum.

defense proffers that the illegal drugs allegedly seized from appellant during the buy-bust operation should have been declared inadmissible. Alleging he is a victim of frame-up by the police officers, appellant attacks the credibility of the prosecution witnesses. In sum, appellant seeks acquittal on the ground that the prosecution failed to prove his guilt beyond reasonable doubt.

Coming from an entirely different perspective, the Office of the Solicitor General (OSG), representing the prosecution, disagrees with the aforementioned contentions from the defense side. It counters that the sachets of *shabu* were seized from appellant during a buy-bust operation. Thus, any opposition thereto with respect to its admissibility on the ground that said sachets were seized during an illegal arrest is unfounded. As for the testimonies of the prosecution witnesses, the testimony of the poseur-buyer, in particular, was corroborated by the police operatives on material points.

We find no merit in the appeal.

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 thereto.[10] 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.[11] We reiterate the meaning of the term *corpus delicti* which is the actual commission by someone of the particular crime charged.[12]

Having weighed the arguments and evidence propounded by the defense and the prosecution, this Court is satisfied that the prosecution discharged its burden of establishing all the elements of illegal sale of regulated or prohibited drugs and proved appellant's guilt beyond reasonable doubt.

The collective testimonies of the prosecution witnesses, as well as the documentary evidence offered in court, provide a

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[10] *People v. Partoza*, G.R. No. 182418, 8 May 2009, 587 SCRA 809, 816.

[11] *People v. Rivera*, G.R. No. 182347, 17 October 2008, 569 SCRA 879, 893.

[12] *People v. Taboga*, G.R. Nos. 144086-87, 426 Phil. 908, 922 (2002).

detailed picture of the sequence of events leading to the consummation of the transaction, the very moment PO1 Manaol received the drug from accused-appellant, the seller. The foregoing is the very *corpus delicti* of the offense.

Whatever doubt concerning appellant's culpability is now beyond question after he was caught in a buy-bust operation conducted by the operatives of the Novaliches Police Station in the afternoon of 26 July 2004 along Villareal Street.

Appellant was caught *in flagrante delicto* delivering 0.12 gram of methamphetamine hydrochloride or *shabu* to PO2 Manaol, the poseur-buyer, for a consideration of ₱200.00. Upon frisking after his arrest, another 0.27 gram of methamphetamine hydrochloride were recovered from him. It is clear from the evidence on record that the sachet of *shabu* sold by appellant was marked by PO2 Manaol with his initials, while the other two sachets were marked by PO1 Bagay with his initials. PO1 Bagay, who had custody of the seized evidence, brought confiscated three plastic sachets of white crystalline substance to the police station and turned over to the investigator. At the police station, an Inventory of Seized Drugs/Item was prepared by SPO1 Cesar Futol and signed by PO1 Manaol and PO1 Bagay. The investigator on duty, to whom the seized evidence were encrusted by PO1 Bagay, through PO1 Salonga, PO1 Manaol and PO1 Bagay, turned over the evidence to the PNP-Crime Laboratory for forensic examination on the same day he received the items. In a Chemistry Report released by P/S Insp. Leonard T. Arban, the white crystalline substance taken from the three sachets proved positive for *shabu*.

PO1 Manaol, the poseur-buyer, positively identified Sembrano as the person who sold and handed him the sachet containing white crystalline substance, proven to be *shabu*.[13]

On the legality of the warrantless arrest, We reiterate that appellant was arrested during an entrapment operation where he was caught *in flagrante delicto* selling *shabu*. When an arrest is made during an entrapment operation, it is not required that

[13] *Supra* note 7 at 6.

a warrant be secured in line with the provisions of Rule 113, Section 5(a) of the Revised Rules of Court allowing *warrantless* arrests, to wit:

Section 5. Arrest without warrant; when lawful. – A peace officer or a private person may, without a warrant, arrest a person:

(a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense.

x x x

A buy-bust operation is a form of entrapment which in recent years has been accepted as a valid and effective mode of apprehending drug pushers.[14] If carried out with due regard for constitutional and legal safeguards, a buy-bust operation, such as the one involving appellant, deserves judicial sanction. Consequently, the warrantless arrest and warrantless search and seizure conducted on the person of appellant were allowed under the circumstances. The search, incident to his lawful arrest, needed no warrant to sustain its validity.[15] Thus, there is no doubt that the sachets of *shabu* recovered during the legitimate buy-bust operation, are admissible and were properly admitted in evidence against him.[16]

Appellant's defenses of denial and frame-up are both self-serving and uncorroborated, and must fail in light of straightforward and positive testimony of poseur-buyer identifying him as the seller of *shabu*. The twin defenses of denial and frame-up hold little weight *vis-à-vis* the strong evidence gathered by

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[14] *People v. Cabugatan*, G.R. No. 172019, 12 February 2007, 515 SCRA 537, 552.

[15] There are eight (8) instances when a warrantless search and seizure is valid, to wit:

(1) consented searches; (2) as an incident to a lawful arrest; (3) searches of vessels and aircraft for violation of immigration, customs, and drug laws; (4) searches of moving vehicles; (5) searches of automobiles at borders or constructive borders; (6) where the prohibited articles are in "plain view;" (7) searches of buildings and premises to enforce fire, sanitary, and building regulations; and (8) "stop and frisk" operations.

[16] *People v. Agulay,* G.R. No. 181747, 26 September 2008, 566 SCRA 594.

the prosecution in proving his complicity to the offenses. To recall, PO1 Manaol's testimony was corroborated on material points by PO1 Bagay, who identified appellant as the one who handed the sachet of *shabu* to PO1 Manaol after being handed two (2) One Hundred Peso bills. Contrary to the defense's claim, it is not impossible for a buy-bust operation to be conducted in broad daylight, as in the case at bar. Frame-up, like denial, is viewed by this Court with disfavor for it can easily be concocted.[17]

Finally, in cases involving violations of Dangerous Drugs Act, credence should be given to the narration of the incident by the prosecution witnesses especially when they are police officers who are presumed to have performed their duties in a regular manner, unless there is evidence to the contrary.[18] In this regard, the defense failed to show 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 in the case of appellant. Incidentally, if these were simply trumped-up charges against him, it remains a question why no administrative charges were brought against the police operatives. Moreover, in weighing the testimonies of the prosecution witnesses *vis-à-vis* those of the defense, it is a well-settled 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.[19]

On the merits of allegations of illegal possession of *shabu*, We find, likewise, against appellant and sustain the findings of the RTC and Court of Appeals.

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;

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[17] *Chang v. People*, G.R. No. 177237, 17 October 2008, 569 SCRA 711, 733.

[18] *People v. Lamado,* G.R. No. 185278, 13 March 2009, 581 SCRA 544, 552.

[19] *People v. Remerata*, G.R. No. 147230, 449 Phil. 813, 822 (2003).

and (3) the accused freely and consciously possessed the drug.[20] All the aforesaid elements were established. Incident to his lawful arrest resulting from the buy-bust operation, appellant was likewise found to have in his possession 0.27 gram of methamphetamine hydrochloride, or *shabu,* the same kind of dangerous drug he was caught selling *in flagrante delicto*. There is nothing on record to show that he had legal authority to possess the same. Finally, this Court held in a number of cases, as in *People v. Noque*, G.R. No. 175319, 15 January 2010, citing *People v. Tee*, 443 Phil. 521, 551 (2003), 'mere possession of a regulated drug *per se* constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused absent a satisfactory explanation of such possession – the *onus probandi* is shifted to the accused, to explain the absence of knowledge or *animus possidendi*.'

We now determine the imposable penalties.

The sale of *shabu* is punishable under Section 5, Article II of Republic Act No. 9165, *viz*.:

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

Under the provisions of said law, the sale of any dangerous drug, *e.g. 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

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[20] *People v. Lagman*, G.R. No. 168695, 8 December 2005, 573 SCRA 224, 232-233.

Ten Million Pesos (₱10,000,000.00).[21] With the effectivity, however, of Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines," the imposition of the supreme penalty of death has been proscribed. In this regard, the penalty applicable to Sembrano shall only be life imprisonment and fine without eligibility for parole. This Court thus sustains the penalty imposed by the RTC and later on affirmed by the Court of Appeals in Criminal Case No. **Q-04-128370.**

On the other hand, illegal possession of dangerous drugs is penalized under Section 11, Article II of Republic Act No. 9165, to wit:

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.

The foregoing provision specifically states that 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*

[21] *People v. Serrano,* G.R. No. 179038, 6 May 2010.

Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00).[22] The evidence adduced by the prosecution in Criminal Case No. Q-04-128371 established beyond reasonable doubt that appellant, without any legal authority, had in his possession 0.27 gram of *shabu* or less than five (5) grams of dangerous drug.

Applying the Indeterminate Sentence Law, the minimum period of the imposable penalty shall not fall below the minimum period set by the law; the maximum period shall not exceed the maximum period allowed under the law. Taking the foregoing into consideration, We find that the Court of Appeals erred in imposing the penalty of Three Hundred Thousand Pesos (₱300,000.00) fine and imprisonment of six (6) years and one (1) day to eight (8) years only. Thus, the penalty of twelve (12) years and one (1) day to fourteen (14) years and fine of Three Hundred Thousand Pesos (₱300,000.00) imposed by the RTC is proper.

WHEREFORE, in view of all the foregoing, the 18 June 2008 Decision of the Court of Appeals in CA-G.R. HC No. 02762, finding appellant *MICHAEL SEMBRANO y CASTRO* guilty beyond reasonable doubt of the crimes of illegal sale and illegal possession of dangerous drugs is *AFFIRMED* with *MODIFICATIONS*. As modified, appellant is sentenced to suffer the indeterminate penalty of imprisonment ranging from twelve (12) years and one (1) day, as minimum, to fourteen (14) years, as maximum, and to pay a fine of Three Hundred Thousand Pesos (₱300,000.00) in Criminal Case No. Q-04-128371, for illegal possession of dangerous drugs under Section 11, of Republic Act No. 9165. The penalties imposed in Criminal Case No. *Q-04-128370*, for illegal sale of dangerous drugs under Section 15, of Republic Act No. 9165, is sustained.

SO ORDERED.

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

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[22] *People v. Darisan and Gauang,* G.R. No. 176151, 30 January 2009, 577 SCRA 486, 492.

FIRST DIVISION

[G.R. No. 188271. August 16, 2010]

JESUS E. DYCOCO, JR., *petitioner, vs.* **EQUITABLE PCI BANK (NOW BANCO DE ORO), RENE BUENAVENTURA and SILES SAMALEA,** *respondents.*

SYLLABUS

1. **MERCANTILE LAW; BANKING; BANK PERSONNEL; BURDENED WITH A HIGH LEVEL OF RESPONSIBILITY IN THE CUSTODY AND MANAGEMENT OF FUNDS; IN CASE AT BAR, PETITIONER FAILED TO DISCHARGE THIS BURDEN.—** As the banking industry is impressed with public interest, all bank personnel are burdened with a high level of responsibility insofar as care and diligence in the custody and management of funds are concerned. Petitioner miserably failed to discharge this burden. Petitioner violated his duties and responsibilities as PBM when he signed and approved the subject transactions without the necessary signatures of the concerned clients. As PBM, it was his obligation to ensure "that all documentary requirements (were) complied with by clients being handled and that the bank's interest (was) at all times protected." It was incumbent on him to enforce "strict compliance with bank policies and internal control procedures while maintaining the highest level of service quality."

2. **ID.; ID.; ID.; GROSS NEGLIGENCE; REPEATED FAILURE TO OBSERVE BASIC PROCEDURE, A CASE OF.—** Gross negligence connotes "want of care in the performance of one's duties." Petitioner's failure to observe basic procedure constituted gross negligence. His repeated failure to carefully observe his duties as PBM clearly showed utter want of care.

3. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF CONFIDENCE; DISMISSAL FROM EMPLOYMENT, JUSTIFIED.—** After committing gross negligence, petitioner surprisingly still expects respondent

bank to retain him. Nothing can compel an employer to continue availing of the services of an employee guilty of acts inimical to its interests as this is a ground for loss of confidence. Petitioner's breach of respondent bank's policies intended to safeguard the bank and its clients' funds was clearly inimical to the interests of his employer. Loss of confidence and dismissal from employment were therefore justified. Loss of confidence applies to situations where the employee is routinely charged with the care and custody of employer's money or property. "If the employees are cashiers, *managers*, supervisors, salesmen or other personnel occupying positions of responsibility, the employer's loss of trust and confidence in said employees may justify termination of their employment."

APPEARANCES OF COUNSEL

Aquende Ralla & Associates Law Offices for petitioner.
Joel T. Cloma for respondents.

R E S O L U T I O N

CORONA, *C.J.*:

Petitioner Jesus E. Dycoco, Jr. seeks reconsideration of the August 26, 2009 resolution denying his petition[1] wherein he assailed the February 16, 2009 decision and May 12, 2009 resolution of the Court of Appeals (CA) in CA-G.R. SP No. 105126.

The CA affirmed the decision and resolution of the National Labor Relations Commission (NLRC) in *Jesus Dycoco, Jr. v. Equitable PCI Bank / Rene Buenaventura, et al.,* docketed as LAC No. 01-000390-08. The NLRC, on the other hand, reversed and set aside the July 24, 2007 decision of the labor arbiter of the Regional Arbitration Branch No. V, Legazpi City, in RAB-V Case No. 09-00407-06 which held that petitioner was illegally dismissed by respondents Equitable PCI Bank (now Banco de Oro), Rene Buenaventura and Siles Samalea.

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

In reversing the labor arbiter, the NLRC ruled that petitioner's dismissal was for just cause. He was guilty of serious misconduct, willful disobedience and gross negligence for not performing his duty to complete the documentary requirements in the opening of accounts pursuant to the bank's internal procedures. This directly resulted in the unauthorized abstraction of bank funds.

The pertinent facts are as follows.

In February 1997, petitioner was hired by respondent bank as Assistant Manager and/or OIC Branch Head of its Legazpi City Branch, Region V (Legazpi branch). In 2000, petitioner became Branch Head and in September 2003, respondent bank underwent an internal reorganization. Pursuant thereto, petitioner became the Personal Banking Manager (PBM) of the Legazpi branch.

In June 2005, several clients of the Legazpi branch filed complaints for alleged unauthorized abstractions of various trust funds, treasury placements and deposits. Respondent bank promptly commenced an investigation. Consequently, "show cause" letters were issued to the officers of the Legazpi branch, including Branch Center Head Glena Orogo, former Service Officer respondent Siles Samalea, Service Officer Irene Tabuzo, Operations Officers Imelda Espiritu and Maria Fe Gianan, Investment Clerk Carlo Quirong and the petitioner as the PBM.

The November 14, 2005 "show cause" letter[2] addressed to petitioner stated the results of the investigation, as follows:

> A. On the Abstraction of Trust Placement of Client, Ma. Carolina V. Villegas
>
> > a. On 01.30.04, when you approved the opening of PLI account for ₱7.5M of Ms. Villegas:
> >
> > > i. You did not require Ms. Villegas to accomplish/ submit the account opening requirements such as Revocable Trust Agreement, Investment Guidelines and Trust Compensation Agreement.

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[2] *Rollo*, p. 365.

ii. You did not require Ms. Villegas to sign on the LOI-Contribution for ₱7.5M (as initial contribution) to acknowledge the validity and correctness of contribution made, despite your notation "signature to follow" on the cited LOI.

b. You did not enroll in your Sales Portal the PLI account of Ms. Ma. Carolina V. Villegas opened with an initial placement of ₱7.5M on 01.30.04 upon your approval.

c. You did not secure the required account opening documents (*i.e.* Revocable Trust Agreements, Investment Guidelines, Trust Compensation Agreement) on the PLI account opened on 01.30.04 by Ms. Villegas, despite e-mail follow ups by Ms. Ma. Nelisa M. Trajano/AO–Personal Trust and Agencies Division on 5.13.04 and 02.23.05.

d. Based on statements of branch personnel, you prevented the BCH and her branch personnel from going to the residence of Carlo B. Quirong to make inquiry/ investigation about the Villegas case.

B. On the Abstraction of Trust Placement of Clients, Fr. Roberto Crisol or Benita Crisol (PLI No. 117-78825-2)

a. On 10.29.03, you did not require Fr. Roberto Crisol or Benita Crisol to sign on the LOI-Contribution for ₱285K to acknowledge the validity and correctness of contribution made, despite your notation "signature to follow" on the cited LOI.

C. On the Abstraction of Trust Placement of Clients, Fr. Roberto Crisol or Anna Lea Borromeo (PLI No. 117-78828-7)

a. On 10.29.06, you did not require Fr. Roberto Crisol or Anna Lea Borromeo to sign on the LOI-Contribution for ₱235K to acknowledge the validity and correctness of contribution made, despite your notation "signature to follow" on the cited LOI.

D. On the Abstraction of Trust Placement of Clients, Fr. Roberto Crisol or Ma. Celio Sabareza (PLI No. 117-78829-5)

a. On 7.31.03, you co-approved the payment of spurious withdrawal for ₱100K from the PLI account of Fr. Roberto Crisol or Maria Celio Sabareza:

i. Despite the signatures of Fr. Roberto Crisol on the LOI-Withdrawal for ₱100K were forged.

ii. Although you did not verify the signatures of Fr. Roberto Crisol on the spurious LOI-Withdrawal for ₱100K against the specimen signatures on file. Instead, you allowed Carlo B. Quirong do the signature verification.

iii. Without requiring the PLI processor (Ailene C. Perfecto) to prepare Manager's Check under the name of Fr. Roberto Crisol or Ma. Celio Sabareza (Trustor/client) or credit memo (CM) for client's account as mode of payment of said PLI withdrawal as required by policy. Instead, you approved the validation of cited withdrawal as "miscellaneous payout."

iv. Allowing Carlo B. Quirong/CSA to pay via "miscellaneous payout" the LOI-Withdrawal for ₱100K instead of the teller.

E. You did not enroll in your Sales Portal the five PLI accounts of Fr. Roberto Crisol, *et al*. outstanding with the branch as of 01.31.04.

F. On the Abstraction of Trust Placements of Sps. Cesario Israel/Josephine Bandong

a. You did not immediately notify or report the fraudulent act of Carlo B. Quirong, Sales Assistant to his superior officer, BCH upon your knowledge of the incident on 06.15.05. The BCH could have immediately placed under preventive suspension Carlo B. Quirong effective 06.15.05, thereby preventing the complaint of Mayor Dick Galicia, client on the alleged withdrawal for ₱810K by Carlo B. Quirong on 06.16.05.

b. You did not report the Cesario Israel/Josephine Bandong (Abstraction of CTF placement for ₱2,371,620.43 on 12.09.03 by Carlo Quirong) incident

> to Internal Audit Division (IAD) within two working days from the date of your knowledge of the incident on 06.15.05.
>
> xxx
>
> As a result, the fraudulent withdrawal was not detected/ prevented exposing the Bank to financial loss of P100K.

In August 2006, respondent bank issued a second "show cause" letter[3] to petitioner charging him with involvement in alleged dollar-trading activities. Petitioner was preventively suspended from September 20, 2006 to October 20, 2006.

On September 22, 2006, while petitioner was under preventive suspension, he filed a complaint in the NLRC Regional Arbitration Branch No. V alleging constructive dismissal and illegal suspension, and demanding reinstatement/separation pay and payment of incentives, 13th month pay, bonuses, moral and exemplary damages and attorney's fees.

However, on October 10, 2006, respondent bank rendered a decision[4] with respect to the first "show cause" letter finding petitioner guilty of violating Articles IV (F) (Class C) (1), IV (D) (Class D) (1) and IV (E) (Class C) (13) of the bank's Code of Conduct, and Article 282 (b) of the Labor Code. The penalty of dismissal was imposed on him. Petitioner was, however, exonerated from the charge of dollar-trading as specified in the second "show cause" letter.

On July 24, 2007, the labor arbiter held that petitioner was illegally dismissed. He ordered respondent bank to pay separation pay, backwages, incentives, bonuses, 13th month pay and attorney's fees in the total amount of ₱1,147,216.00.[5]

On appeal, the NLRC reversed the labor arbiter's decision. The CA subsequently affirmed the NLRC.

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[3] *Rollo*, p. 392.

[4] *Rollo*, p. 414.

[5] Equivalent to 10% of the total award as computed above.

Petitioner insists that he was illegally dismissed. We already rejected his position but petitioner seeks reconsideration.

The motion for reconsideration is denied.

Jurisprudence[6] has repeatedly outlined how diligence in the banking industry should be observed:

> By its very nature, the business of the petitioner bank is so impressed with public trust; banks are mandated to exercise a higher degree of diligence in the handling of its affairs than that expected of an ordinary business enterprise. Banks handle transactions involving millions of pesos and properties worth considerable sums of money. The banking business will thrive only as long as it maintains the trust and confidence of its customers/clients. Indeed, by the very nature of their work, the degree of responsibility, care and trustworthiness expected of officials and employees of the bank is far greater than those of ordinary officers and employees in the other business firms. Hence, no effort must be spared by banks and their officers and employees to ensure and preserve the trust and confidence of the general public and its customers/clients as well as the integrity of its records and the safety and well-being of its customers/clients while in its premises.

As the banking industry is impressed with public interest, all bank personnel are burdened with a high level of responsibility insofar as care and diligence in the custody and management of funds are concerned. Petitioner miserably failed to discharge this burden.

Petitioner violated his duties and responsibilities as PBM when he signed and approved the subject transactions without the necessary signatures of the concerned clients. As PBM, it was his obligation to ensure "that all documentary requirements (were) complied with by clients being handled and that the bank's interest (was) at all times protected." It was incumbent on him to enforce "strict compliance with bank policies and

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[6] *United Coconut Planters Bank v. Basco,* G.R. No. 142668 (2004). Citing *Lim Sio Bio v. Court of Appeals*, 221 SCRA 307 (1993) and *Philippine Commercial and International Bank v. Court of Appeals,* 350 SCRA 446 (2001).

internal control procedures while maintaining the highest level of service quality."[7]

It is significant that petitioner did not even deny that it was he who signed, approved and facilitated the subject transactions relating to the various abstractions committed by a bank employee. It was an implied admission that he was the one who opened the door for the commission of the unlawful abstractions by failing to ensure that all requirements for the opening of accounts were complied with. This constituted gross negligence.

As a PBM, petitioner should have exercised much care in performing his functions. Petitioner's failure on three separate occasions to require clients to sign the requisite documents (a vital and standard procedure in all banking transactions) was a clear manifestation of serial negligence. Because of this gross negligence, Carlo Quirong, respondent bank's Customer Sales Assistant, was able to filch millions of pesos from respondent bank by manipulating clients' accounts.

Petitioner's assertion that neither Quirong nor any of the bank operations personnel was under his supervision and that the day-to-day operations of his branch were the responsibility of the Banking Center Head does not exonerate him from liability. He was duty-bound to make certain that such documentary requirements were complied with in accordance with respondent bank's rules.

Gross negligence connotes "want of care in the performance of one's duties."[8] Petitioner's failure to observe basic procedure constituted gross negligence. His repeated failure to carefully observe his duties as PBM clearly showed utter want of care.

After committing gross negligence, petitioner surprisingly still expects respondent bank to retain him. Nothing can compel an employer to continue availing of the services of an employee guilty of acts inimical to its interests as this is a ground for loss

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[7] *Rollo,* p. 74.

[8] *JGB and Associates, Inc. v. National Labor Relations Commission*, 254 SCRA 457 (1996).

of confidence.[9] Petitioner's breach of respondent bank's policies intended to safeguard the bank and its clients' funds was clearly inimical to the interests of his employer. Loss of confidence and dismissal from employment were therefore justified.

Loss of confidence applies to situations where the employee is routinely charged with the care and custody of employer's money or property.[10] "If the employees are cashiers, *managers*, supervisors, salesmen or other personnel occupying positions of responsibility, the employer's loss of trust and confidence in said employees may justify termination of their employment."[11]

The CA was thus correct in upholding the dismissal of petitioner.

WHEREFORE, the motion for reconsideration is *DENIED with FINALITY.*

Costs against petitioner.

No further pleadings or motions shall be entertained. Let entry of judgment be made in due course.

SO ORDERED.

Velasco, Jr., Leonardo-de Castro, del Castillo, and *Perez, JJ.,* concur.

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[9] *EEI v. National Labor Relations Commission*, 133 SCRA 752.

[10] Azucena, Jr. C.A. *Everybody's Labor Code*, 2007 Ed., p. 330.

[11] Azucena, Jr. C.A. *Everybody's Labor Code*, 2007 Ed., p. 331 (Emphasis supplied).

SECOND DIVISION

[G.R. No. 190065. August 16, 2010]

DERMALINE, INC., *petitioner, vs.* **MYRA PHARMACEUTICALS, INC.,** *respondent.*

SYLLABUS

1. **MERCANTILE LAW; INTELLECTUAL PROPERTY; TRADEMARK; DEFINED.—** A trademark is any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by others. Inarguably, it is an intellectual property deserving protection by law. In trademark controversies, each case must be scrutinized according to its peculiar circumstances, such that jurisprudential precedents should only be made to apply if they are specifically in point.

2. **ID.; ID.; REPUBLIC ACT NO. 8293 (INTELLECTUAL PROPERTY CODE); LAW ON TRADEMARKS; EXCLUSIVE RIGHT OF REGISTERED TRADEMARK OWNER TO PREVENT THIRD PARTIES FROM USING A TRADEMARK, OR SIMILAR SIGNS OR CONTAINERS FOR GOODS OR SERVICES, WITHOUT ITS CONSENT, IDENTICAL OR SIMILAR TO ITS REGISTERED TRADEMARK, WHERE SUCH USE WOULD RESULT IN A LIKELIHOOD OF CONFUSION.—** As Myra correctly posits, as a registered trademark owner, it has the right under Section 147 of R.A. No. 8293 to prevent third parties from using a trademark, or similar signs or containers for goods or services, without its consent, identical or similar to its registered trademark, where such use would result in a likelihood of confusion.

3. **ID.; ID.; ID.; ID.; ID.; TWO TESTS IN DETERMINING LIKELIHOOD OF CONFUSION; ELUCIDATED.—** In determining likelihood of confusion, case law has developed two (2) tests, the Dominancy Test and the Holistic or Totality Test. The Dominancy Test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion or deception. It is applied when the trademark sought

to be registered contains the main, essential and dominant features of the earlier registered trademark, and confusion or deception is likely to result. Duplication or imitation is not even required; neither is it necessary that the label of the applied mark for registration should suggest an effort to imitate. The important issue is whether the use of the marks involved would likely cause confusion or mistake in the mind of or deceive the ordinary purchaser, or one who is accustomed to buy, and therefore to some extent familiar with, the goods in question. Given greater consideration are the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets, and market segments. The test of dominancy is now explicitly incorporated into law in Section 155.1 of R.A. No. 8293 which provides— 155.1. Use in commerce any reproduction, counterfeit, copy, or **colorable imitation** of a registered mark or the same container or a **dominant feature** thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; On the other hand, the Holistic Test entails a consideration of the entirety of the marks as applied to the products, including labels and packaging, in determining confusing similarity. The scrutinizing eye of the observer must focus not only on the predominant words but also on the other features appearing in both labels so that a conclusion may be drawn as to whether one is confusingly similar to the other.

4. ID.; ID.; ID.; ID.; ID.; TWO TYPES OF CONFUSION; CASE AT BAR.— Relative to the question on confusion of marks and trade names, jurisprudence has noted two (2) types of confusion, *viz*: (1) confusion of goods (product confusion), where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (2) confusion of business (source or origin confusion), where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product, and the public would then be deceived either into that belief or into the belief that there is

some connection between the two parties, though inexistent. In rejecting the application of Dermaline for the registration of its mark "DERMALINE DERMALINE, INC.," the IPO applied the Dominancy Test. It declared that both confusion of goods and service and confusion of business or of origin were apparent in both trademarks. It also noted that, per Bureau Decision No. 2007-179 dated December 4, 2007, it already sustained the opposition of Myra involving the trademark "DERMALINE" of Dermaline under Classification 5. The IPO also upheld Myra's right under Section 138 of R.A. No. 8293, which provides that a certification of registration of a mark is *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods and those that are related thereto specified in the certificate. We agree with the findings of the IPO. As correctly applied by the IPO in this case, while there are no set rules that can be deduced as what constitutes a dominant feature with respect to trademarks applied for registration; usually, what are taken into account are signs, color, design, peculiar shape or name, or some special, easily remembered earmarks of the brand that readily attracts and catches the attention of the ordinary consumer.

5. ID.; ID.; ID.; ID.; PROTECTION TO WHICH A REGISTERED TRADEMARK OWNER IS ENTITLED EXTENDS TO PROTECTION IN PRODUCT AND MARKET AREAS THAT ARE THE NORMAL POTENTIAL EXPANSION OF HIS BUSINESS; CASE AT BAR.— Indeed, the registered trademark owner may use its mark on the same or similar products, in different segments of the market, and at different price levels depending on variations of the products for specific segments of the market. The Court is cognizant that the registered trademark owner enjoys protection in product and market areas that are the *normal potential expansion of his business*. Thus, we have held – Modern law recognizes that the protection to which the owner of a trademark is entitled is not limited to guarding his goods or business from *actual* market competition with identical or similar products of the parties, but extends to all cases in which the use by a junior appropriator of a trade-mark or trade-name is **likely to lead to a confusion of source, as where prospective purchasers would be misled into thinking that the complaining party has extended his**

business into the field (see 148 ALR 56 et seq; 53 Am Jur. 576) or is in *any* way connected with the activities of the infringer; **or when it forestalls the normal potential expansion of his business** (v. 148 ALR 77, 84; 52 Am. Jur. 576, 577). Thus, the public may mistakenly think that Dermaline is connected to or associated with Myra, such that, considering the current proliferation of health and beauty products in the market, the purchasers would likely be misled that Myra has already expanded its business through Dermaline from merely carrying pharmaceutical topical applications for the skin to health and beauty services.

6. **REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF THE INTELLECTUAL PROPERTY OFFICE DESERVE RESPECT FROM THE SUPREME COURT.—** Besides, the issue on protection of intellectual property, such as trademarks, is factual in nature. The findings of the IPO, upheld on appeal by the same office, and further sustained by the CA, bear great weight and deserves respect from this Court.

APPEARANCES OF COUNSEL

Garay Cruz & Associates for petitioner.
Ochave and Escalona for respondent.

D E C I S I O N

NACHURA, *J*.:

This is a petition for review on *certiorari*[1] seeking to reverse and set aside the Decision dated August 7, 2009[2] and the Resolution dated October 28, 2009[3] of the Court of Appeals (CA) in CA-G.R. SP No. 108627.

The antecedent facts and proceedings—

[1] *Rollo*, pp. 3-18.

[2] Penned by Associate Justice Martin S. Villarama, Jr. (now a member of this Court), with Associate Justices Vicente S.E. Veloso and Normandie B. Pizarro, concurring; *id.* at 19-32.

[3] *Id.* at 32.

On October 21, 2006, petitioner Dermaline, Inc. (Dermaline) filed before the Intellectual Property Office (IPO) an application for registration of the trademark "DERMALINE DERMALINE, INC." (Application No. 4-2006011536). The application was published for Opposition in the IPO E-Gazette on March 9, 2007.

On May 8, 2007, respondent Myra Pharmaceuticals, Inc. (Myra) filed a Verified Opposition[4] alleging that the trademark sought to be registered by Dermaline so resembles its trademark "DERMALIN" and will likely cause confusion, mistake and deception to the purchasing public. Myra said that the registration of Dermaline's trademark will violate Section 123[5] of Republic Act (R.A.) No. 8293 (Intellectual Property Code of the Philippines). It further alleged that Dermaline's use and registration of its applied trademark will diminish the distinctiveness and dilute the goodwill of Myra's "DERMALIN," registered with the IPO way back July 8, 1986, renewed for ten (10) years on July 8, 2006. Myra has been extensively using "DERMALIN" commercially since October 31, 1977, and said mark is still valid and subsisting.

Myra claimed that, despite Dermaline's attempt to differentiate its applied mark, the dominant feature is the term "DERMALINE," which is practically identical with its own "DERMALIN," more particularly that the first eight (8) letters of the marks are identical, and that notwithstanding the additional letter "E" by Dermaline,

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[4] *Id.* at 78-86.

[5] SEC. 123. *Registrability.* – 123.1. A mark cannot be registered if it:

x x x

(d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

(i) The same goods or services, or

(ii) Closely related goods or services, or

(iii) If it nearly resembles such a mark as to be likely to deceive or cause confusion;

x x x (Emphasis supplied.)

the pronunciation for both marks are identical. Further, both marks have three (3) syllables each, with each syllable identical in sound and appearance, even if the last syllable of "DERMALINE" consisted of four (4) letters while "DERMALIN" consisted only of three (3).

Myra also pointed out that Dermaline applied for the same mark "DERMALINE" on June 3, 2003 and was already refused registration by the IPO. By filing this new application for registration, Dermaline appears to have engaged in a fishing expedition for the approval of its mark. Myra argued that its intellectual property right over its trademark is protected under Section 147[6] of R.A. No. 8293.

Myra asserted that the mark "DERMALINE DERMALINE, INC." is aurally similar to its own mark such that the registration and use of Dermaline's applied mark will enable it to obtain benefit from Myra's reputation, goodwill and advertising and will lead the public into believing that Dermaline is, in any way, connected to Myra. Myra added that even if the subject application was under Classification 44[7] for various skin

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[6] SEC. 147. *Rights Conferred.* — 147.1. The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

147.2. The exclusive right of the owner of a well-known mark defined in Subsection 123.1(e) which is registered in the Philippines, shall extend to goods and services which are not similar to those in respect of which the mark is registered: *Provided*, That use of that mark in relation to those goods or services would indicate a connection between those goods or services and the owner of the registered mark: *Provided further*, That the interests of the owner of the registered mark are likely to be damaged by such use.

[7] "FACIAL, BACK CLEANING, ACNE TREATMENT AND CONTROL SKIN PEELING (FACE BODY, ARMPIT, ARMS AND LEGS), SLIMMING, HAIR GROWER TREATMENT, SKIN BLEACHING (FACE, BODY, ARMPIT, BODY & LEGS), DERMALIFT (FACE LIFTING, BODY TONING, EYEBAG REMOVAL), EXCESSIVE SWEATING, BODY ODOR TREATMENT AND CONTROL, OPEN PORES TREATMENT, STRETCH MARK TREATMENT, BODY MASSAGE, EYELASH PERMING, TATTOO

treatments, it could still be connected to the "DERMALIN" mark under Classification 5[8] for pharmaceutical products, since ultimately these goods are very closely related.

In its Verified Answer,[9] Dermaline countered that a simple comparison of the trademark "DERMALINE DERMALINE, INC." *vis-à-vis* Myra's "DERMALIN" trademark would show that they have entirely different features and distinctive presentation, thus it cannot result in confusion, mistake or deception on the part of the purchasing public. Dermaline contended that, in determining if the subject trademarks are confusingly similar, a comparison of the words is not the only determinant, but their entirety must be considered in relation to the goods to which they are attached, including the other features appearing in both labels. It claimed that there were glaring and striking dissimilarities between the two trademarks, such that its trademark "DERMALINE DERMALINE, INC." speaks for itself (*Res ipsa loquitur*). Dermaline further argued that there could not be any relation between its trademark for health and beauty services from Myra's trademark classified under medicinal goods against skin disorders.

The parties failed to settle amicably. Consequently, the preliminary conference was terminated and they were directed to file their respective position papers.[10]

(EYEBROW, UPPER AND LOWER LID, LIP), WOMEN'S HAIRCUT, MEN'S HAIRCUT, KID'S HAIRCUT, BLOW-DRY SETTING, UP-STYLE (LADIES), PERMING, TINT (TOUCH UP), HIGHLIGHTS (CAP), HIGHLIGHTS (FOIL), CELLOPHANE, HAIR COLOR, HAIR RELAXING, HAIR TREATMENT/SPA, HOT OIL, FULL MAKE-UP, EYE MAKE-UP, FOOT SPA WITH PEDICURE, FOOT SCRUB, MANICURE, EYEBROW THREADING, UPPER LIP THREADING, FULL BODY MASSAGE, HALF BODY MASSAGE, SAUNA."

[8] "TOPICAL ANTIBACTERIAL, ANTIFUNGAL, ANTISCABIES PREPARATIONS FOR THE TREATMENT OF SKIN DISORDERS."

[9] *Rollo*, pp. 87-93.

[10] Position Paper (For the Opposer), *rollo*, pp. 94-106; Position Paper for Dermaline, pp. 107-119.

On April 10, 2008, the IPO-Bureau of Legal Affairs rendered Decision No. 2008-70[11] sustaining Myra's opposition pursuant to Section 123.1(d) of R.A. No. 8293. It disposed—

WHEREFORE, the Verified Opposition is, as it is, hereby SUSTAINED. Consequently, Application Serial No. 4-2006-011536 for the mark 'DERMALINE, DERMALINE, INC. Stylized Wordmark' for Dermaline, Inc. under class 44 covering the aforementioned goods filed on 21 October 2006, is as it is hereby, REJECTED.

Let the file wrapper of 'DERMALINE, DERMALINE, INC. Stylized Wordmark' subject matter of this case be forwarded to the Bureau of Trademarks (BOT) for appropriate action in accordance with this Decision.

SO ORDERED.[12]

Aggrieved, Dermaline filed a motion for reconsideration, but it was denied under Resolution No. 2009-12(D)[13] dated January 16, 2009.

Expectedly, Dermaline appealed to the Office of the Director General of the IPO. However, in an Order[14] dated April 17, 2009, the appeal was dismissed for being filed out of time.

Undaunted, Dermaline appealed to the CA, but it affirmed and upheld the Order dated April 17, 2009 and the rejection of Dermaline's application for registration of trademark. The CA likewise denied Dermaline's motion for reconsideration; hence, this petition raising the issue of whether the CA erred in upholding the IPO's rejection of Dermaline's application for registration of trademark.

The petition is without merit.

A trademark is any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and

[11] *Id.* at 37-50.

[12] *Id.* at 26.

[13] *Id.* at 52-53.

[14] *Id.* at 34-35.

distinguish them from those manufactured, sold, or dealt by others.[15] Inarguably, it is an intellectual property deserving protection by law. In trademark controversies, each case must be scrutinized according to its peculiar circumstances, such that jurisprudential precedents should only be made to apply if they are specifically in point.[16]

As Myra correctly posits, as a registered trademark owner, it has the right under Section 147 of R.A. No. 8293 to prevent third parties from using a trademark, or similar signs or containers for goods or services, without its consent, identical or similar to its registered trademark, where such use would result in a likelihood of confusion.

In determining likelihood of confusion, case law has developed two (2) tests, the Dominancy Test and the Holistic or Totality Test.

The Dominancy Test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion or deception.[17] It is applied when the trademark sought to be registered contains the main, essential and dominant features of the earlier registered trademark, and confusion or deception is likely to result. Duplication or imitation is not even required; neither is it necessary that the label of the applied mark for registration should suggest an effort to imitate. The important issue is whether the use of the marks involved would likely cause confusion or mistake in the mind of or deceive the ordinary purchaser, or one who is accustomed to buy, and therefore to some extent familiar with, the goods in question.[18] Given greater

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[15] *Prosource International, Inc. v. Horphag Research Management SA,* G.R. No. 180073, November 25, 2009, 605 SCRA 523, 528; *McDonald's Corporation v. MacJoy Fastfood Corporation,* G.R. No. 166115, February 2, 2007, 514 SCRA 95, 107.

[16] *Philip Morris, Inc. v. Fortune Tobacco Corporation*, G.R. No. 158589, June 27, 2006, 493 SCRA 333, 356.

[17] *Amigo Manufacturing, Inc. v. Cluett Peabody Co., Inc.*, 406 Phil. 905, 918 (2001).

[18] *Philip Morris, Inc. v. Fortune Tobacco Corporation*, *supra* at 359, citing *Dy Buncio v. Tan Tiao Bok*, 42 Phil. 190, 196-197 (1921).

consideration are the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets, and market segments.[19] The test of dominancy is now explicitly incorporated into law in Section 155.1 of R.A. No. 8293 which provides—

> 155.1. Use in commerce any reproduction, counterfeit, copy, or **colorable imitation** of a registered mark or the same container or a **dominant feature** thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; (*emphasis supplied*)

On the other hand, the Holistic Test entails a consideration of the entirety of the marks as applied to the products, including labels and packaging, in determining confusing similarity. The scrutinizing eye of the observer must focus not only on the predominant words but also on the other features appearing in both labels so that a conclusion may be drawn as to whether one is confusingly similar to the other.[20]

Relative to the question on confusion of marks and trade names, jurisprudence has noted two (2) types of confusion, *viz*: (1) confusion of goods (product confusion), where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (2) confusion of business (source or origin confusion), where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product, and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent.[21]

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[19] *McDonald's Corporation v. L.C. Big Mak Burger, Inc.,* 480 Phil. 402, 434 (2004).

[20] *Mighty Corporation v. E. & J. Gallo Winery,* 478 Phil. 615, 659 (2004).

[21] *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, *supra* at

In rejecting the application of Dermaline for the registration of its mark "DERMALINE DERMALINE, INC.," the IPO applied the Dominancy Test. It declared that both confusion of goods and service and confusion of business or of origin were apparent in both trademarks. It also noted that, per Bureau Decision No. 2007-179 dated December 4, 2007, it already sustained the opposition of Myra involving the trademark "DERMALINE" of Dermaline under Classification 5. The IPO also upheld Myra's right under Section 138 of R.A. No. 8293, which provides that a certification of registration of a mark is *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods and those that are related thereto specified in the certificate.

We agree with the findings of the IPO. As correctly applied by the IPO in this case, while there are no set rules that can be deduced as what constitutes a dominant feature with respect to trademarks applied for registration; usually, what are taken into account are signs, color, design, peculiar shape or name, or some special, easily remembered earmarks of the brand that readily attracts and catches the attention of the ordinary consumer.[22]

Dermaline's insistence that its applied trademark "DERMALINE DERMALINE, INC." had differences "too striking to be mistaken" from Myra's "DERMALIN" cannot, therefore, be sustained. While it is true that the two marks are presented differently – Dermaline's mark is written with the first "DERMALINE" in script going diagonally upwards from left to right, with an upper case "D" followed by the rest of the letters in lower case, and the portion "DERMALINE, INC." is written in upper case letters, below and smaller than the long-hand portion; while Myra's mark "DERMALIN" is written in an upright font, with a capital "D" and followed by lower case letters – the likelihood of confusion is still apparent. This is

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428, citing *Sterling Products International, Incorporated v. Farbenfabriken Bayer Aktiengesellschaft, et al.,* 137 Phil. 838, 852 (1969).

[22] *Rollo*, p. 47.

because they are almost spelled in the same way, except for Dermaline's mark which ends with the letter "E," and they are pronounced practically in the same manner in three (3) syllables, with the ending letter "E" in Dermaline's mark pronounced silently. Thus, when an ordinary purchaser, for example, hears an advertisement of Dermaline's applied trademark over the radio, chances are he will associate it with Myra's registered mark.

Further, Dermaline's stance that its product belongs to a separate and different classification from Myra's products with the registered trademark does not eradicate the possibility of mistake on the part of the purchasing public to associate the former with the latter, especially considering that both classifications pertain to treatments for the skin.

Indeed, the registered trademark owner may use its mark on the same or similar products, in different segments of the market, and at different price levels depending on variations of the products for specific segments of the market. The Court is cognizant that the registered trademark owner enjoys protection in product and market areas that are the *normal potential expansion of his business*. Thus, we have held –

> Modern law recognizes that the protection to which the owner of a trademark is entitled is not limited to guarding his goods or business from *actual* market competition with identical or similar products of the parties, but extends to all cases in which the use by a junior appropriator of a trade-mark or trade-name is **likely to lead to a confusion of source, as where prospective purchasers would be misled into thinking that the complaining party has extended his business into the field** (see 148 ALR 56 et seq; 53 Am Jur. 576) or is in *any* way connected with the activities of the infringer; **or when it forestalls the normal potential expansion of his business** (v. 148 ALR 77, 84; 52 Am. Jur. 576, 577).[23] (Emphasis supplied)

Thus, the public may mistakenly think that Dermaline is connected to or associated with Myra, such that, considering

[23] *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, *supra* at 432, citing *Sta. Ana v. Maliwat, et al.*, 133 Phil. 1006, 1013 (1968).

the current proliferation of health and beauty products in the market, the purchasers would likely be misled that Myra has already expanded its business through Dermaline from merely carrying pharmaceutical topical applications for the skin to health and beauty services.

Verily, when one applies for the registration of a trademark or label which is almost the same or that very closely resembles one already used and registered by another, the application should be rejected and dismissed outright, even without any opposition on the part of the owner and user of a previously registered label or trademark. This is intended not only to avoid confusion on the part of the public, but also to protect an already used and registered trademark and an established goodwill.[24]

Besides, the issue on protection of intellectual property, such as trademarks, is factual in nature. The findings of the IPO, upheld on appeal by the same office, and further sustained by the CA, bear great weight and deserves respect from this Court. Moreover, the decision of the IPO had already attained finality when Dermaline failed to timely file its appeal with the IPO Office of the Director General.

WHEREFORE, the petition is *DENIED.* The Decision dated August 7, 2009 and the Resolution dated October 28, 2009 of the Court of Appeals in CA-G.R. SP No. 108627 are *AFFIRMED.* Costs against petitioner.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

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[24] *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, *supra* at 406, citing *Faberge Incorporated v. Intermediate Appellate Court*, G.R. No. 71189, November 4, 1992, 215 SCRA 316, 320 and *Chuanchow Soy & Canning Co. v. Dir. of Patents and Villapania*, 108 Phil. 833, 836.

SECOND DIVISION

[G.R. No. 190216. August 16, 2010]

ARNOLD F. ANIB, *petitioner, vs.* **COCA-COLA BOTTLERS PHILS., INC. and/or RHOGIE FELICIANO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; CERTIFICATION AGAINST FORUM SHOPPING; RULE THEREON, NOT VIOLATED IN CASE AT BAR.—** Indeed, under Section 5, Rule 7 of the Revised Rules of Court, a plaintiff or principal party to a complaint or other initiatory pleading is obliged to inform the court of the filing of the same or similar action within five days from such filing. Failure to do so makes the action susceptible to dismissal. In *Rudecon Management Corp. v. Singson*, the Court clarified that the "same or similar action or claim" refers to a case wherein the parties, causes of action, issues and reliefs prayed for, are identical to those in the first case. Obviously then, petitioner did not violate this rule when he failed to inform the Court that a petition for *certiorari* filed by respondent was pending before the CA as such petition does not involve similar causes of action, issues and reliefs prayed for.

2. **ID.; ID.; RULES OF PROCEDURE; APPLICATION THEREOF MAY BE RELAXED TO SERVE THE DEMANDS OF SUBSTANTIAL JUSTICE, PARTICULARLY IN LABOR CASES.—** It is well-settled that the application of technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases. Labor cases must be decided according to justice and equity and the substantial merits of the controversy. Procedural niceties should be avoided in labor cases in which the provisions of the Rules of Court are applied only in suppletory manner. Indeed, rules of procedure may be relaxed to relieve a part of an injustice not commensurate with the degree of non-compliance with the process required.

APPEARANCES OF COUNSEL

Legal Advocates for Workers Interest for petitioner.
Cortina and Buted Law Offices for respondents.

R E S O L U T I O N

NACHURA, *J.*:

For resolution is the petition for review on *certiorari* filed by petitioner, Arnold F. Anib, assailing the Court of Appeals (CA) Resolution[1] dated March 18, 2009 and Minute Resolution dated April 29, 2009.

On March 3, 1993, petitioner was employed as helper by respondent, Coca-Cola Bottlers Philippines, Inc. Later on, he was assigned to supervise respondent's mini warehouse in Ayala St., Makati City.

On March 20, 2005, a national inventory of the contents of the warehouse was conducted, and the result tallied with the number reflected in the Daily Stock Situation Report (DSSR) that was prepared by petitioner.

On April 23, 2005, the warehouse was padlocked by its owner due to respondent's failure to pay rentals. The DSSR for that day reflected that there were 1,455 cases left in the warehouse. On May 17, 2010, the warehouse was reopened, as respondent was able to settle its obligations with the owner. A spot count was conducted by petitioner, together with Rollie Latosa (Logistics Coordinator), a representative from the third party logistics service provider (referred to as the 3PL), and the assigned salesman. They discovered that there was a shortage in the stocks with a value equivalent of ₱361,061.00.

On May 24, 2005, petitioner was notified in writing of the shortage and was required to explain why he should not be found guilty of violating the Code of Disciplinary Rules and

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[1] Penned by Associate Justice Andres B. Reyes, Jr., with Associate Justices Jose C. Reyes, Jr. and Normandie B. Pizarro, concurring; *rollo*, pp. 53-54.

Regulations. Petitioner asked for time to explain the shortage as his wife was sick at that time.

Meantime, the stocks at the warehouse were re-inventoried. This time, the re-inventory revealed a shortage of 1,412 cases amounting to ₱404,807.00.

On June 3, 2005, respondents sent petitioner a Notice of Investigation and Grounding, advising him that an investigation will be conducted. A hearing was conducted on June 27, 2005, during which petitioner claimed that he did not know how the shortage came about and that he simply adopted the beginning inventory and the delivery of the 3PL. He said he was not certain if the stocks mentioned in the April 23, 2005 DSSR actually entered the warehouse.

Respondent conducted further investigation and discovered other irregularities allegedly committed by petitioner. Respondent claimed that stocks were withdrawn from the warehouse and delivered to other outlets during the time that the warehouse was supposedly padlocked. Petitioner purportedly issued a receipt for an amount less than what was actually paid by the outlet, and he applied the overpayment to his other shortages. For these violations, petitioner was again made to explain. He then admitted the discrepancy in the receipt and requested that the shortage be deducted from his salary.

On December 28, 2005, petitioner received a Notice of Termination. He then filed a complaint for illegal dismissal against respondent.

On March 31, 2008, the Labor Arbiter rendered a decision sustaining petitioner's dismissal, thus:

> WHEREFORE, judgment is hereby made finding the complainant to have been validly dismissed from employment but, as discussed above, ordering the respondent company to pay him a separation pay computed at a half month's pay for every year of service.
>
> Other claims are DISMISSED for lack of merit.
>
> SO ORDERED.[2]

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[2] *Id.* at 42.

Petitioner then elevated the case to the National Labor Relations Commission (NLRC).

On September 22, 2008, the NLRC reversed the Labor Arbiter's Decision, finding that there was no basis for petitioner's dismissal. The NLRC said that the alleged discrepancy in the stocks can be settled by reconciling the account and by investigating all the persons involved, not only petitioner. It opined that the investigation was conducted not for the purpose of ferreting out the truth but to pin down petitioner and find justification for his termination. The dispositive portion of the NLRC decision reads:

> WHEREFORE, the foregoing premises considered, the instant appeal is hereby GRANTED. The Decision appealed from is REVERSED and SET ASIDE, and a new one is issued declaring COCA-COLA BOTTLERS PHILIPPINES, INC. guilty of illegal dismissal.
>
> Respondent-appellee is ordered to pay Arnold Anib the following:
>
> 1. full backwages computed from the time he was dismissed up to finality of this resolution;
> 2. separation pay in lieu of reinstatement; and
> 3. attorney's fees equivalent to 10% of the award.
>
> The complaint for damages and other monetary claims are DISMISSED for lack of merit.
>
> SO ORDERED.[3]

Both parties filed their respective motions for reconsideration, which were denied for lack of merit in the NLRC Resolution dated February 9, 2009.[4]

Petitioner filed a petition for *certiorari* with the CA. In a Resolution dated March 18, 2009, the CA denied outright the petition for failure to comply with Section 1 of Rule 65, Rules of Civil Procedure, as only a photocopy of the September 22, 2008 NLRC Resolution was submitted.[5] The CA further noted that —

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[3] *Id.* at 50.

[4] *Id.* at 57.

[5] *Id.* at 53.

1. the present petition was filed by herein petitioner without paying the required docketing and other legal fees;

2. a reading of the records of the present petition, however, discloses that petitioner herein submitted documents to the effect that he is an indigent;

3. surprisingly, the present petition is silent as to any plea of the petitioner to litigate the same as pauper; and

4. whether to allow herein petitioner or not to litigate the present petition as pauper, the same is left to the discretion of this Court upon compliance of the required documents supporting it.[6]

Thereafter, petitioner submitted his Compliance to the CA, where he alleged that the NLRC Decision attached to his petition was "certified photocopy" by Angelito V. Vives, NLRC Board Secretary IV, 3rd Division, on February 4, 2009. In support of his plea to litigate as an indigent, he attached to the Compliance the following documents: (1) Petitioner's Affidavit attesting that he is unemployed, that his family does not earn a gross income exceeding an amount double the monthly minimum wage of an employee, and that his family does not own real property with a fair market value exceeding ₱300,000.00; (2) Supplemental Affidavit; (3) Joint Affidavit of petitioner's neighbors; (4) Certification of Indigency of the Municipal Social Welfare & Development Office; and (5) Certification of the Municipal Assessor that petitioner does not own any real property.

In a Minute Resolution dated April 29, 2009, the CA merely noted the Compliance on the ground that the petition had already been dismissed per Resolution dated March 18, 2009.[7] Hence, petitioner filed this petition for review ascribing the following errors to the CA: (1) denying a pauper litigant free access to the courts, and (2) ruling based on pure technicality and not correcting the error of the NLRC in awarding separation pay instead of ordering reinstatement.

In its Comment to the Petition, respondent averred that petitioner violated the rule against forum shopping when he

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[6] *Id.* at 54

[7] *Id.* at 58.

failed to inform the Court that another case – a petition for review filed by respondent, assailing the same NLRC Decision – was pending before the CA (docketed as CA–G.R. SP No. 108476). Respondent therefore prays that the petition be dismissed on the ground of forum-shopping.

The petition is partly meritorious.

Indeed, under Section 5, Rule 7 of the Revised Rules of Court, a plaintiff or principal party to a complaint or other initiatory pleading is obliged to inform the court of the filing of the same or similar action within five days from such filing. Failure to do so makes the action susceptible to dismissal. In *Rudecon Management Corp. v. Singson*,[8] the Court clarified that the "same or similar action or claim" refers to a case wherein the parties, causes of action, issues and reliefs prayed for, are identical to those in the first case. Obviously then, petitioner did not violate this rule when he failed to inform the Court that a petition for *certiorari* filed by respondent was pending before the CA as such petition does not involve similar causes of action, issues and reliefs prayed for.

The CA should not have dismissed the petition for *certiorari* upon a mere technicality, that is, failure to attach a certified true copy of the assailed NLRC Decision. Incidentally, petitioner insisted in his Compliance that the copy of the assailed NLRC decision attached to the Petition was certified by a duly authorized officer of the NLRC.

Such mere technicality should not be allowed to impede petitioner's call for a just review of the decision in the illegal dismissal case, ordering the payment of separation pay in lieu of reinstatement.

It is well-settled that the application of technical rules of procedure may be relaxed to serve the demands of substantial justice, particularly in labor cases. Labor cases must be decided according to justice and equity and the substantial merits of the controversy.[9] Procedural niceties should be avoided in

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[8] 494 Phil. 581, 601 (2005).

[9] *Garcia v. PAL, Inc.,* 498 Phil. 808, 809 (2005).

labor cases in which the provisions of the Rules of Court are applied only in suppletory manner. Indeed, rules of procedure may be relaxed to relieve a part of an injustice not commensurate with the degree of non-compliance with the process required.[10]

We therefore remand the case to the CA for further proceeding. However, it behooves the CA to resolve, initially, the issue of whether to allow petitioner to litigate the case as an indigent, taking into consideration the supporting documents that petitioner attached to his Compliance.

WHEREFORE, the petition is *PARTLY GRANTED*. The CA Resolution dated March 18, 2009 and Minute Resolution dated April 29, 2009 are *SET ASIDE*. The case is *REMANDED* to the Court of Appeals for further proceeding.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

EN BANC

[G.R. No. 172604. August 17, 2010]
(Formerly G.R. Nos. 155345-47)

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **VENANCIO ROXAS *y* ARGUELLES,** *appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT.— Time and again, we have ruled that the findings of

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[10] *Id.* at 822.

the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. The trial court is in a better position to decide the question of credibility, having seen and heard the witnesses themselves and observed their behavior and manner of testifying. We have painstakingly examined the records of the case, particularly the testimonies for the prosecution and the defense. However, after much examination, we find no persuasive much less compelling reason to depart from the findings of the trial court.

2. **CRIMINAL LAW; FRUSTRATED MURDER, COMMITTED; QUALIFIED BY TREACHERY AND EVIDENT PREMEDITATION.—** The evidence likewise reveal, undoubtedly, the commission of frustrated murder as qualified by the circumstances of treachery and evident premeditation. The medical findings show that had it not been due to the timely and proper medical attention given to the victim, the gunshot wound sustained by the victim would have been fatal. Treachery exists when an offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself, arising from the defense which the offended party might make. As narrated by Agnes, she could not have been aware that she would be attacked by appellant. In the darkness of the night while she just finished relieving herself and still trying to get up, she was shot by appellant in the head with a gun. There was no opportunity for her to defend herself, since appellant, suddenly and without provocation, shot her as she was about to get up. The essence of treachery is the unexpected and sudden attack on the victim which renders the latter unable and unprepared to defend himself by reason of the suddenness and severity of the attack. This criterion applies whether the attack is frontal or from behind. Moreover, the requisites of evident premeditation was likewise duly established in this case, to wit: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination; and (c) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of

his act. The prosecution's evidence particularly the testimony of Agnes demonstrated that Gungon and Roxas had indeed planned to kill her from the time they took the car.

3. ID.; ANTI-CARNAPPING LAW (R.A. 6539); ELEMENTS OF CARNAPPING, PROVEN.— [W]e agree that Roxas is also guilty of violation of the Anti-Carnapping Law. R.A. 6539 x x x. More specifically, the elements of the crime are as follows: 1. That there is an actual taking of the vehicle; 2. That the offender intends to gain from the taking of the vehicle; 3. That the vehicle belongs to a person other than the offender himself; 4. That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things. A careful examination of the evidence presented would show that *all* the elements of carnapping were proven in this case. It cannot be denied that the 1993 Nissan Sentra with plate number TKR-837 was unlawfully taken from Agnes without her consent and by means of force or intimidation, considering that he and his co-accused alternately poked a gun at Agnes. After shooting her, appellant also flee with the subject vehicle which shows his intent to gain. Agnes also positively identified appellant and Gungon as the ones who took the subject vehicle from her.

4. ID.; THEFT; IN THE ABSENCE OF EVIDENCE THAT THE TAKING WAS EMPLOYED WITH THE USE OF FORCE, VIOLENCE, OR INTIMIDATION, ACCUSED CAN ONLY BE HELD GUILTY OF THEFT.— [W]e likewise agree that Roxas is only guilty of theft and not robbery as initially charged. From the records, it appears that the jewelries and cash were taken from Agnes without the attendance of violence or intimidation upon her person. Agnes herself testified that when she regained consciousness, she already found her necklace, pair of earrings, watch and cash, to be missing. While it was proven beyond reasonable doubt that appellant took Agnes' personal things, there was no evidence, however, that the taking was employed with the use of force, violence and intimidation.

5. ID.; COMPLEX CRIME; KIDNAPPING AND SERIOUS ILLEGAL DETENTION WITH FRUSTRATED MURDER; PENALTY.— The crime of kidnapping and serious illegal detention has been correctly complexed by the RTC with frustrated murder. A complex crime is committed when a single act constitutes two or more, grave or less grave, felonies, or when an offense

is a necessary means for committing the other. In a complex crime, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. Since the kidnapping and serious illegal detention is the more serious crime, the proper penalty under Article 267 of the Revised Penal Code, as amended by R.A. 7659, should be applied in its maximum period; thus, the penalty should be death. However, in the light of R.A. 9346, or the *Anti-Death Penalty Law,* which prohibits the imposition of the death penalty, the imposition of the penalty of *reclusion perpetua* instead of death is, thus, proper and ineligible for parole.

6. ID.; ID.; ID.; CIVIL LIABILITIES.— Appellant is, likewise, ordered to pay Agnes Guirindola ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

APPEARANCES OF COUNSEL

The Solicitor General for appellee.
Mauricio Law Office for appellant.

D E C I S I O N

PERALTA, *J.*:

On appeal by way of automatic review is the Decision[1] dated January 13, 2006 of the Court of Appeals in CA-G.R. CR-H.C. No. 00666, affirming the Judgment[2] of the Regional Trial Court (RTC) convicting appellant Venancio Roxas *y* Arguelles (appellant) for the crimes of Kidnapping and Serious Illegal Detention with Frustrated Murder, Violation of Republic Act (R.A.) 6539, or the *Anti-Carnapping Act of 1972*, and Theft. The Informations alleged –

In Criminal Case No. Q-94-54285 for Kidnapping and Serious Illegal Detention with Frustrated Murder –

That on or about January 12, 1994 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named

[1] *Rollo*, pp. 3-44.

[2] CA *rollo*, pp. 63-90.

accused, conspiring together, confederating and mutually helping one another, did then and there by means of force, violence against and intimidation of person and at gunpoint, willfully, unlawfully, and feloniously kidnap, carry away and detain AGNES GUIRINDOLA, a female, thereby depriving her of her liberty, and thereafter bring her to an uninhabited place in Barangay Bagong Pook, San Jose, Batangas and then and there, with intent to kill and with treachery, evident premeditation, and abuse of superior strength, willfully, unlawfully and feloniously shoot her in the face with a hand gun, thus performing all the acts of execution which would produce the crime of MURDER as consequence, but which, nevertheless, do not produce it by reason of causes independent of the will of the accused, that is, the able and timely medical assistance given to said Agnes Guirindola which prevented her death, resulting to her utmost grief, sorrow, sufferings and sleepless night, compensable in actual, moral and exemplary damages in such amounts as may be awarded to them under the provisions of the Civil Code of the Philippines.

CONTRARY TO LAW.[3]

In Criminal Case No. Q-94-54286 for Carnapping –

That on or about January 12, 1994, in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring together, confederating and mutually helping one another, with intent to gain and by means of force, violence against and intimidation of person and at gunpoint, did then and there, willfully, unlawfully and feloniously, take and carry away one Nissan Sentra Model 1993 with Plate No. TKR-837, then driven by Agnes Guirindola but owned by her mother Elvira G. Guirindola, to the damage and prejudice of said Agnes Guirindola and Elvira G. Guirindola in such amount as may be awarded to them under the Civil Code of the Philippines.

CONTRARY TO LAW.[4]

and -

In Criminal Case No. 94-54287 (amended) for Robbery –

That on or about January 12, 1994 in Quezon City, Philippines, and within the jurisdiction of this Honorable Court, the above-named

[3] *Id.* at 12-14.

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

accused, conspiring together, confederating and mutually helping one another, with intent to gain and by means of force, violence against and intimidation of person and at gunpoint, did then and there, willfully, unlawfully and feloniously, while on board the motor vehicle of AGNES GUIRINDOLA, a 1993 Nissan Sentra with Plate No. TKR-837, and in the course of its trip, divested and robbed said Agnes Guirindola of the following cash, check and personal belongings, to wit:

Cash	₱ 1,000.00
Check	3,000.00
Pieces of jewelry valued at	34,000.00

and in the course of execution thereof, shoot and fatally wounded Agnes Guirindola with a handgun, which is clearly unnecessary in the commission of the crime, to the damage and prejudice of said Agnes Guirindola, in such amount as may be awarded to her under the provisions of the Civil Code of the Philippines.

CONTRARY TO LAW.[5]

The antecedent facts as culled from the records are as follows:

On January 12, 1994, around 3:00 p.m., Agnes Guirindola (Agnes), while cruising along Panay Avenue, Quezon City, on board a red 1993 model Nissan Sentra sedan with plate number TKR-837, was suddenly flagged down by a man wearing a PNP reflectorized vest. The man signaled her to make a U-turn. Agnes complied and made the U-turn. The man walked in front of her car and proceeded to the right side of the car.[6] Agnes, later on, identified the man in open court as appellant, Venancio Roxas (Roxas).

Agnes opened the right front window of the car and asked Roxas, who had positioned himself at the front passenger side, "*Ano ang problema*?" Roxas replied, "*Miss, one way street po ito*." Agnes explained to the man that she usually passed by the same street and it was only that day that she had been

[5] *Id* at 21-23.

[6] TSN, April 17, 1996, pp. 21-23. (Direct examination of Agnes Guirindola)

caught. Roxas told her that the street had been made a one-way street because a girl figured in an accident in the same street two days ago.[7]

Roxas then asked for Agnes' driver's license. After taking the driver's license, Roxas handed her a piece of paper which she was asked to sign. Agnes noticed that it was not the usual traffic citation ticket but, nevertheless, she pretended to sign the same by making a check thereon.[8]

When Agnes handed back the paper to Roxas, the latter asked her to open the door of the car so that he could show her the one-way sign and the other traffic aide at the corner of the street. Agnes let Roxas enter the car. Roxas then instructed Agnes to drive to the corner of the street, and upon reaching the corner, Roxas pointed to her the one-way sign and looked for the traffic aide he had told Agnes about. The traffic aide was not there. Agnes asked Roxas where she could drop him. Roxas told Agnes to make a left turn from the corner of the street and that he will alight somewhere in Mother Ignacia. Agnes obliged and made a left turn and stopped the car. Thinking that Roxas was waiting for a bribe, Agnes took out her wallet, pulled a ₱50.00 bill and gave it to Roxas. After receiving the money, Roxas returned to Agnes her driver's license.[9]

Upon returning the driver's license to Agnes, Roxas immediately switched off the engine of the car and poked a gun at her saying "*Miss, kailangan ko ang kotse mo.*" Agnes, terrified and shocked by Roxas' actions, cried and pleaded with him to let her go and just take the car. Roxas continued to poke a gun at her, unmindful of what Agnes was telling him.[10]

After a while, Agnes heard a knock from outside the car. Roxas opened the rear door and then someone boarded the

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[7] *Id.* at 24-25.

[8] *Id.* at 26.

[9] *Id.* at 26-28.

[10] *Id.* at 28-30.

car, occupying the back seat. The second passenger immediately reclined the driver's seat and pulled Agnes towards the back seat. Agnes identified this man as Roberto Gungon (Gungon). Subsequently, Roxas took the driver's seat and drove the car while Gungon held Agnes on the shoulder with one hand, and her leg with the other.[11]

Agnes then heard Gungon say: "*Boss, dalhin natin sya sa Philcoa*." After crossing Mother Ignacia Street, Gungon got his beeper and told Roxas: "*Boss, dalhin na natin siya sa dati, doon na natin siya i-s*." Agnes became more frightened as she understood "s" to mean "salvage," a lingo for summary execution.[12]

Along the way, Roxas stopped the car and went to a sari-sari store. Gungon was left behind, holding Agnes, and would tighten his grip every time she made a slight move and sometimes would poke a gun at her. Upon returning to the car, Roxas offered Agnes a bottle of soft drink and Skyflakes biscuit. Agnes refused so Roxas handed the softdrink to Gungon and told him: "*Mamaya painom mo sa kanya at pakainin mo siya.*" Gungon took the bottle of softdrink and tried to force Agnes to drink the contents thereof. Agnes refused because she saw tablets floating inside the bottle. Roxas resumed driving, while Gungon held Agnes.[13]

Agnes testified that she planned to escape, but could not make a single move because every time she made a slight move, Gungon would poke the gun at her. The windows of the car were tinted and remained closed.[14]

Around 5:00 p.m., Agnes noticed that they were already at the South Superhighway.[15]

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[11] *Id.* at 30-31.

[12] TSN, May 27, 1996, pp. 14, 17-18. (Cross-examination of Agnes Guirindola.)

[13] TSN, April 17, 1996, pp. 32-33. (Direct examination of Agnes Guirindola.)

[14] *Id.* at 33-35.

[15] *Id.* at 35, 40-44.

Along the superhighway, Roxas stopped the car in order to urinate. Gungon guarded Agnes by holding her. When Roxas returned, Gungon alighted to relieve himself too. While Gungon was out of the car, Roxas sat at the driver's seat facing Agnes and poked his gun at her. Shortly thereafter, Gungon came back to the car and Roxas resumed driving. When Agnes took the prayer leaflet from her wallet, Gungon looked at her wallet and saw the picture of her sister. When asked if she was the one in the picture, Agnes told Gungon that it was her sister. Out of the blue, Gungon also took his wallet and showed Agnes three (3) pictures which, according to him, were the pictures of his niece, his girlfriend and that of Roxas and a lady with a little child. After showing the same to Agnes, Gungon returned the said pictures to his wallet.[16] Agnes planned to escape at that time but the car was running at a speed of 80 to 100 kilometers per hour. Agnes just continued to pray.[17]

At this point, Gungon again offered the softdrink to Agnes. When she refused, Gungon became mad and tightened his hold on Agnes, forcing her to drink it. Sensing that Gungon was already furious, Agnes took the softdrink. After Agnes drank it, Roxas told Gungon, "*Ipainom mo pa itong dalawang tablets dahil malaki sya, mahina iyong dalawa para sa kanya*." Gungon took the tablets from Roxas and forced Agnes to swallow the same. Out of fear, Agnes took the tablets, but did not swallow them. She placed the tablets under her tongue. When Roxas and Gungon were not looking, she took her handkerchief and spat out the tablets into the handkerchief.[18]

Afterwards, Agnes told Roxas and Gungon that she was hungry and wanted to eat a McDonald's sandwich. Gungon replied that they were in the province and that there was no

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[16] The pictures [Exhibits "F" and "F-1"], together with the rosary of Agnes and the key to the Nissan Sentra car, were later on recovered from the possession of Gungon when he was arrested and detained at the NBI in Manila.

[17] TSN, April 17, 1996, pp. 45-51, 58. (Direct examination of Agnes Guirindola.)

[18] *Id.* at 58-63.

McDonald's there. Roxas told Agnes that they will just drop by a restaurant to buy something to eat. Roxas then stopped by a bakery and alighted from the car, while Gungon held Agnes. It was at this point that Agnes noticed the signboard of the bakery which read something like Sto. Tomas or San Jose, Batangas. After a while, Roxas came back with a "*taisan*" cake and offered it to Agnes which she refused. At that instance, Agnes felt dizzy and fell asleep.[19]

When Agnes woke up, she found herself lying at the back seat with her legs on the lap of Gungon. The car was at a standstill. She noticed from the car's clock on the dashboard that it was about 9:30 or 10:00 p.m. She also found out that her jewelries consisting of bracelets, pair of earrings, necklace and a watch worth around ₱30,000.00 to ₱40,000.00, as well as her pair of shoes, were already gone. When she asked Gungon about them, the latter told her that they were just keeping the same for her. Agnes also lost her wallet containing a check in the amount of ₱3,000.00 and cash in the amount of ₱1,000.00.[20]

Agnes also noticed that there was already a third man sitting in front of the car beside Roxas who was still driving. She then asked them if she could relieve herself. Gungon asked Roxas if Agnes would be allowed to relieve herself to which Roxas answered in the affirmative. Agnes fixed her hair and then asked Gungon for her shoes. Gungon put the shoes on her feet. Roxas alighted from the car and opened the rear door. Gungon alighted first from the car followed by Agnes. Gungon then led Agnes to a nearby grassy area and told her, "*O, dyan ka na lang umihi.*" After Agnes relieved herself, and as she was about to get up and return to the car, she saw white sparks at her right side and then she fell down. When she opened her eyes, she saw Roxas walking back towards the car with a gun in his hand. She did not see Gungon at that particular time. Then she lost consciousness.[21]

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[19] *Id.* at 64-67.

[20] *Id.* at 68-70.

[21] TSN, April 25, 1996, pp. 12-18. (Direct examination of Agnes Guirindola.)

When Agnes regained consciousness, she was all alone. Roxas, Gungon and the third man, as well as the car, were no longer there. It was very dark. She followed a "sparkling light" that led her to a small house. Upon reaching the house, she opened the door and saw two (2) children and a teenager singing. She asked for their help but upon seeing her, they ran away. She then saw a lady standing at the stairs of the house carrying a baby. Agnes asked for her help but the lady went upstairs and locked herself inside the room. Agnes followed her and knocked at the door of the room asking for help, but still the lady did not come out of the room. She then went downstairs and lied down on the sofa. Only then did she notice that blood was profusely oozing from her face and there were "holes" in the left side of her neck and her right cheek.[22]

After a while, Agnes heard a vehicle arrive and also heard voices saying: "*May taong duguan sa loob ng bahay, tulungan natin siya*!" Agnes was then carried to a Fiera motor vehicle and brought to the Batangas Regional Hospital, where she was treated for her wounds and given first aid.[23] Agnes sustained the following injuries:

Gunshot wound, POE, Zygomatic area (R), POX Sudmandibular area (L); Fx, zygomatic arch & condylar area, (R) Sec to GSW; Submandibular Gland involvement with sinus tract. (Exhibit "A", Medical Certificate dated February 1, 1994 signed by attending physician Dr. Lauro R. San Jose, Captain MC, Neurosurgery 4-A, p. 177, Volume III, Record)

The following day, about 3:00 a.m. of January 13, 1994, the parents of Agnes and the rest of the family arrived at the hospital. Her parents immediately arranged for her transfer to the V. Luna General Hospital (now AFP Medical Center) in Quezon City, where she was treated further, operated on and confined for forty-three (43) days.[24] Agnes incurred actual damages amounting to ₱36,161.83 for her hospitalization, surgical operation

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[22] *Id.* at 18-21.

[23] *Id.* at 21-23.

[24] *Id.* at 24-25.

and medical treatment, and suffered moral damages the amount of which she cannot readily quantify, as a result of the ordeal she underwent on that fateful day of January 12, 1994.[25]

Upon transfer of Agnes to the V. Luna General Hospital, her parents immediately reported the incident to the National Bureau of Investigation (NBI) in Manila, which promptly conducted an investigation. On January 17, 1994, some NBI agents visited her for the taking of the cartographic sketches of Roxas and Gungon. On January 19, 1994, another group of NBI agents went to the hospital and showed her 3 to 4 pictures of Gungon who was subsequently arrested in Davao City. On February 1, 1994, Agnes positively identified Gungon at the NBI in a police lineup consisting of 5 to 6 men. Likewise, Agnes was able to identify certain personal effects recovered from Gungon such as her rosary beads,[26] jewelry purse,[27] key chain with a key to the lock of her Nissan Sentra car,[28] and the check taken from her, which were all presented in evidence in the trial of Gungon as well as in the trial of the instant case against Roxas.[29]

In the meantime, the NBI conducted a manhunt for Roxas. On September 11, 1995, Roxas was arrested by elements of the NBI inside the municipal hall of Taysan, Batangas, where he was working under the Office of the Mayor using the *aliases* "Joe Villamor" and "Marianito Villamor."

Agnes further testified that the name of appellant Venancio Roxas was supplied by the NBI, but she was very sure that he was the person who fatally shot her. She positively identified Roxas on January 12, 1994 during a police line-up at the NBI as the perpetrator other than Gungon, of the crimes charged.

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[25] *Id.* at 40-42.

[26] Exhibit "E".

[27] Exhibit "E-1".

[28] Exhibit "D".

[29] TSN, April 25, 1996, pp. 26-31. (Direct examination of Agnes Guirindola.)

She told the NBI agents that the person in the picture was the one who had flagged her down and shot her on January 12, 1994.

For the defense, appellant denied committing the crimes charged against him. He claimed that it was impossible for him to be at the place of incident on January 12, 1994. He narrated that on that same day, at around 6:00 to 7:00 p.m., he and a certain Tranquilino Mangiliman and two others were installing an antenna on the roof of his house. He added that he never left his house that evening. Both Mangiliman and his wife, Hermogena Roxas, testified that on January 12, 1994, Roxas was in his house at Feria Compound, Commonwealth Town Homes, Quezon City.

Subsequently, in a Decision[30] dated September 5, 2002, the court *a quo*, found Roxas guilty of Kidnapping and Serious Illegal Detention with frustrated murder, carnapping and theft, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in these cases finding accused Venancio Roxas *y* Arguelles guilty beyond reasonable doubt:

In Criminal Case No. Q-94-54285 for Kidnapping and serious illegal detention with frustrated murder, and sentences him to suffer the maximum penalty of DEATH.

In Criminal Case No. Q-94-54286, for Carnapping, and sentences him to suffer the indeterminate penalty of imprisonment from 18 years, as minimum, to 25 years, as maximum;

In Criminal Case No. Q-94-54287, for the crime of Theft, and sentences him to suffer the indeterminate penalty of imprisonment from 2 years, 4 months and 1 day of *prision correccional,* as minimum, to 8 years, 8 months and 1 day of *prision mayor,* as maximum, plus 1 year for the additional ₱10,000.00 in excess of ₱20,000.00 value of the property taken or a total of 9 years, 8 months and 1 day, as maximum.

The accused shall be credited in full of his preventive imprisonment.

Accused Roxas is also liable to pay the offended party Agnes Guirindola, moral and exemplary damages in the amount of

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[30] CA *rollo,* pp. 63-90.

₱1,000,000.00 and ₱500,000.00, respectively, actual damages in the amount of ₱36,161.83, representing her hospitalization and related expenses, and ₱38,000.00 representing the value of the articles taken from her. Accused Roxas is likewise ordered to pay Mrs. Elvira Guirindola the amount of ₱250,257.90.00, representing the cost of repair of the subject vehicle.

SO ORDERED.

August 29, 2002, Quezon City.[31]

Roxas moved for a reconsideration of the September 5, 2002 decision of the court *a quo*. Likewise, noting the well-attended promulgation of the court *a quo*'s decision, Roxas also moved for the inhibition of the Honorable Judge Demetrio Macapagal, Sr. He argued that the presence of then Justice Secretary Hernando Perez showed the court's predisposition to convict him of the offenses charged. Roxas contended that he was robbed of his right to due process because the Judge Demetrio Macapagal, Sr. had lost the cold neutrality of an impartial judge required of him in trying and resolving cases.

In an Order[32] dated October 8, 2002, the RTC denied appellant's motions for inhibition and reconsideration.

Meanwhile, appellant's co-accused Roberto Gungon *y* Santiago was found guilty of the same charges in a Decision[33] dated March 19, 1998. Roxas was at-large during the trial and was arrested only after the RTC rendered the judgment of conviction against Gungon. Thus, the cases, as far as they concerned Roxas, was archived until he was eventually arrested on September 11, 1995.

The records of this case were originally elevated to this Court for automatic review. Conformably with our ruling in *People v. Mateo*,[34] however, the case was referred to the Court of Appeals for intermediate review.

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[31] *Id.* at 89.

[32] *Id.* at 93.

[33] *People v. Gungon*, G.R. No. 119574, March 19, 1998, 257 SCRA 618.

[34] G.R. Nos. 147678-87, July 4, 2004, 433 SCRA 640.

In its Decision[35] dated January 13, 2006, the appellate court affirmed *in toto* the decision of the court *a quo*.

Thus, this appeal, raising the following arguments:

I

WHETHER OR NOT THE COURT *A QUO* ERRED IN RENDERING IN THE ABOVE-TITLED CASE DESPITE THE FACT THAT THE PRESIDING JUDGE OF THE COURT *A QUO* HAS LOST THE COLD NEUTRALITY OF AN IMPARTIAL JUDGE, THEREBY VIOLATING THE RIGHT OF THE ACCUSED-APPELLANT TO DUE PROCESS.

II

WHETHER OR NOT THE COURT *A QUO* ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY OF THE OFFENSES OF (1) KIDNAPPING AND SERIOUS ILLEGAL DETENTION WITH FRUSTRATED MURDER, (2) CARNAPPING, AND (3) THEFT.

Roxas challenged the RTC judge's neutrality as he invoked that he was deprived of his right to due process because of the "unexplained presence" of the former Secretary of the Department of Justice, Hernando Perez, in court. He contended that the RTC was already predisposed to convict him even before trial.

We are unconvinced.

The Court finds no basis for appellant's allegation that he was deprived of due process of law and that the trial conducted was far from impartial and fair. The imputation of bias and partiality is not supported by the record. The fact that the trial judge opted to believe the prosecution's evidence rather than that of the defense is not a sign of bias.[36]

Even if the RTC had allowed the presence of then Secretary Hernando Perez and the media, there is no sufficient basis to show that their presence or pervasive publicity unduly influenced the court's judgment. Before we could conclude that appellant was prejudiced by the presence of the media and Secretary Perez, he must first show substantial proof, not merely cast

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[35] CA *rollo,* pp. 268-310.

[36] *People v. Tabarno*, 312 Phil. 542, 548 (1995).

suspicions. There must be a showing that adverse publicity indeed influenced the court's decision.[37] We found none, in this case.

Appellant further argued that the RTC erred in finding him guilty of the crimes charged against him.

Time and again, we have ruled that the findings of the trial court on the credibility of witnesses and their testimonies are entitled to the highest respect and will not be disturbed on appeal in the absence of any clear showing that the trial court overlooked, misunderstood or misapplied some facts or circumstances of weight and substance which would have affected the result of the case. The trial court is in a better position to decide the question of credibility, having seen and heard the witnesses themselves and observed their behavior and manner of testifying.[38]

We have painstakingly examined the records of the case, particularly the testimonies for the prosecution and the defense. However, after much examination, we find no persuasive much less compelling reason to depart from the findings of the trial court.

Agnes not only positively identified her abductors, she also graphically narrated what happened on January 12, 1994. Actual restraint of the victim's liberty was evident in the instant case from the moment Agnes was taken from Panay Avenue to a remote place in Batangas. Agnes testified, thus:

Q – After Roberto Gungon pulled you towards the back seat, what happened?
A – Venancio Roxas took the driver seat and started the car, sir. I mean, he took the driver seat and started the car.

Q – What was Roberto Gungon doing after Venancio Roxas started the car?
A – He was holding me sir.

Q – How was he holding you?

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[37] *People v. Sesbreño*, 372 Phil. 762, 780 (1999).

[38] *People v. Andres,* G.R. No. 122735, September 25, 1998, 296 SCRA 318, 331-332.

A – One hand on my shoulder and the other one is (sic) on my leg, sir.

x x x x x x x x x

Q – What did Gungon do with the bottle?
A – He still forced me but when I refused he just placed it down in the car, sir.

Q – After that what happened?
A – Roxas still drove and Gungon was still holding me, then after that we went to this gasoline station to gas up, sir.

x x x x x x x x x

Q – Why were you not able to escape while you were seated and crying?
A – Because Gungon was holding me and everytime I just made a slight move, he poked the gun at me, sir.[39]

x x x x x x x x x

Q – While you were praying, do you know what Gungon and Roxas were doing at that time?

x x x x x x x x x

A – Yes, Roxas was driving and Gungon was still holding me and he asked Roxas if he could relieve himself, sir.

x x x x x x x x x

Q – After your car stopped, what happened?

A – He told Gungon that he'll take a leak (sic) first before Gungon so Roxas alighted from the car and took a leak (sic), sir.

Q – How about Gungon, where was he?

A – He was seated beside me, he was still holding me, sir.

Q – After Roxas finished leaking (sic), do you know what did he do (sic), if any?

A – Yes, he went back to the car, he sat at the driver's seat, he faced in front of me (sic), took the gun and poked it at me and then Gungon alighted from the car and he was the next one who took a leak (sic), sir.

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[39] TSN, April 17, 1996, pp. 31-35.

x x x x x x x x x

Q - After Roxas alighted from the car, where were you at that time?
A - I was still sitting at the car, with Gungon, sir.

Q- What was Gungon doing at that time?
A- Yes, we were waiting for Roxas and he was holding my leg, sir.[40]

x x x x x x x x x

Q – Previously, you testified that Gungon was holding you and everytime you made a slight movement he would grips (sic) you firmly and poke a gun at you. My question is – for how long had Gungon been doing this?
A – Ever since he pulled me from the driver seat to the back seat up to the time when we were cruising along South Superhighway, sir.

Q – Up to that while you were driving?
A – Yes, sir.

Q – When you reached Batangas, in the bakery, what was Gungon's (sic) doing to you, if any?

A- He kept on holding me although from time to time and only when I made a slight move, sir.[41]

Thus, based on the foregoing testimony of Agnes, the trial court did not err in convicting appellant of the crime of kidnapping and serious illegal detention. Article 267 of the Revised Penal Code defines the crime, thus:

Art. 267. *Kidnapping and serious illegal detention*. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death;

1. If the kidnapping or detention shall have lasted more than three days.

2. ***If it shall have been committed simulating public authority*;**

[40] *Id.* at 45-66.

[41] TSN, April 25, 1996, p. 11.

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made;

4. *If the person kidnapped or detained shall be a* minor, except when the accused is any of the parents, *female* or a public officer.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed. (As amended by Sec. 8, Republic Act No. 7659).[42]

The evidence likewise reveal, undoubtedly, the commission of frustrated murder as qualified by the circumstances of treachery and evident premeditation. The medical findings show that had it not been due to the timely and proper medical attention given to the victim, the gunshot wound sustained by the victim would have been fatal.

Treachery exists when an offender commits any of the crimes against persons, employing means, methods or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself, arising from the defense which the offended party might make. As narrated by Agnes, she could not have been aware that she would be attacked by appellant. In the darkness of the night while she just finished relieving herself and still trying to get up, she was shot by appellant in the head with a gun. There was no opportunity for her to defend herself, since appellant, suddenly and without provocation, shot her as she was about to get up. The essence of treachery is the unexpected and sudden attack on the victim which renders the latter unable and unprepared to defend himself by reason of the suddenness and severity of the attack. This criterion applies whether the attack is frontal or from behind.[43]

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[42] Emphasis supplied.

[43] *People of the Philippines v. Ryan Lalongisip y Delos Angeles*, G.R. No. 188331, June 16, 2010.

Moreover, the requisites of evident premeditation was likewise duly established in this case, to wit: (a) the time when the accused determined to commit the crime; (b) an act manifestly indicating that the accused has clung to his determination; and (c) a sufficient lapse of time between such determination and execution to allow him to reflect upon the consequences of his act.[44]

The prosecution's evidence particularly the testimony of Agnes demonstrated that Gungon and Roxas had indeed planned to kill her from the time they took the car. As testified to by Agnes:

Q – You said that Roxas returned with a biscuit and a bottle of softdrink, what was done with the biscuit and bottle of softdrink, if you know?

A – I refused to accept it, he insisted but still I refused so he just handed it to Gungon. He just told Gungon "*mamaya painom mo sa kanya at pakainin mo siya,*" sir.

Q – Why did you refuse the softdrink?

A – Simply because when he handed it to me I saw tablets floating inside the bottle, sir.[45]

x x x x x x x x x

Q – At about 5:00 and 6:00 in the evening of January 12, 1994 where were you at that time?

x x x x x x x x x

A – Actually we were not really there, its (sic) we were headed towards South Superhighway. I mean I don't know the exact place but I am familiar that we were heading towards South super highway, sir.

x x x x x x x x x

Q – When you reached the South Superhighway at that time what happened?

A – While we were in the car Gungon got his beeper and then he told Roxas "Boss, negative Philcoa," sir.

x x x x x x x x x

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[44] *People v. Juan*, 324 Phil. 770, 783 (1996).

[45] TSN, April 17, 1996, p. 32.

Q – While you were driving along South super highway at that time, do you know what happened inside the car between the three of you?
A – Yes, sir. That time Gungon was still holding me and then he told Roxas "*boss, dalhin na natin siya sa dati, doon na natin siya i*-s."

Q – After you heard that remark of Gungon, what did you do?
A – Well, of course I was shocked and I asked them if they were going to rape me or kill me or just leave me somewhere, I do not know, sir.

Q – After you uttered those words, do you know if Gungon answered?
A – Yes, sir, he told me that don't give us ideas (sic).[46]

x x x x x x x x x

Q – What did you do when the bottle of softdrink was being offered to you?
A – I refused to get it, sir.

Q – When you refused to drink it, do you know what did Gungon do?
A – Yes, he got mad and furious, he held me so tight and forced me to drink it, sir.

Q – Now, because he was furious and he was angry at you, what did you do?
A – I took the softdrink, sir.

Q – After you drank that softdrink, what happened?

x x x x x x x x x

A – Yes, sir, after drinking it Roxas offered two (2) more tablets to Gungon, he told to Gungon "*ipainom mo pa sa kanya itong dalawang tabletas dahil malaki siya, mahina iyong dalawa para sa kanya*".[47]

x x x x x x x x x

Q – Do you know what time was it when you woke up?
A – I guess it was about 9:30 or 10:00 in the evening, sir.

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[46] *Id.* at 41-44.

[47] *Id.* at 61-63.

Q – How were you able to place the time?
A – There is a watch on the dashboard of the car, sir.[48]

Thus, from the foregoing, it is evident that the commission of the killing, *albeit* frustrated, was formed from the moment the accused took the victim in Quezon City until she was ultimately "executed" in Batangas. The lapse of more than eight hours, that is, approximately from 1:00 p.m. to 10:00 p.m., satisfies the last requisite for the appreciation of evident premeditation as there was sufficient time for meditation and reflection before the commission of the crime yet appellant proceeded with the same.

Likewise, we agree that Roxas is also guilty of violation of the Anti-Carnapping Law. R.A. 6539, otherwise known as *An Act Preventing and Penalizing Carnapping*, defines *carnapping* as *the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things*." More specifically, the elements of the crime are as follows:

1. That there is an actual taking of the vehicle;

2. That the offender intends to gain from the taking of the vehicle;

3. That the vehicle belongs to a person other than the offender himself;

4. That the taking is without the consent of the owner thereof; or that the taking was committed by means of violence against or intimidation of persons, or by using force upon things.

A careful examination of the evidence presented would show that *all* the elements of carnapping were proven in this case. It cannot be denied that the 1993 Nissan Sentra with plate number TKR-837 was unlawfully taken from Agnes without her consent and by means of force or intimidation, considering that he and his co-accused alternately poked a gun at Agnes. After shooting her, appellant also flee with the subject vehicle which shows his intent to gain. Agnes also positively identified appellant and Gungon as the ones who took the subject vehicle from her.

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

Finally, we likewise agree that Roxas is only guilty of theft and not robbery as initially charged.

From the records, it appears that the jewelries and cash were taken from Agnes without the attendance of violence or intimidation upon her person. Agnes herself testified that when she regained consciousness, she already found her necklace, pair of earrings, watch and cash, to be missing.[49] While it was proven beyond reasonable doubt that appellant took Agnes' personal things, there was no evidence, however, that the taking was employed with the use of force, violence and intimidation.

PENALTIES

As to the imposable penalty, we sustain the findings of the RTC, as affirmed by the appellate court, with modification as to the penalty for the crime of kidnapping and serious illegal detention with frustrated murder and the awarding of damages.

The crime of kidnapping and serious illegal detention has been correctly complexed by the RTC with frustrated murder. A complex crime is committed when a single act constitutes two or more, grave or less grave, felonies, or when an offense is a necessary means for committing the other.

In a complex crime, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period. Since the kidnapping and serious illegal detention is the more serious crime, the proper penalty under Article 267[50] of the Revised Penal Code, as amended by R.A. 7659, should be

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[49] *Id.* at 68-69.

[50] Art. 267 *Kidnapping and serious illegal detention*. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death.

1. If the kidnapping or detention shall have lasted more than three days;

2. If it shall have been committed simulating public authority;

3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained, or if threats to kill him shall have been made;

4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

applied in its maximum period; thus, the penalty should be death. However, in light of R.A. 9346, or the *Anti-Death Penalty Law*, which prohibits the imposition of the death penalty, the imposition of the penalty of *reclusion perpetua* instead of death is, thus, proper and ineligible for parole.

Likewise, in accordance with current jurisprudence, we modify the award of damages, and apply *People of the Philippines v. Richard O. Sarcia*[51] where we said:

> The principal consideration for the award of damages, under the ruling in *People v. Salome* and *People v. Quiachon* is the **penalty provided by law or imposable for the offense because of its heineousness, not** the public penalty **actually** imposed on the offender.
>
> x x x x x x x x x
>
> It should be noted that while the new law prohibits the *imposition* of the death penalty, **the penalty provided for by law for a heinous offense is still death and the offense is still heinous.** Consequently, the civil indemnity for the victim is still **Php75,000.00.**
>
> *People v. Quiachon* also rationcinates as follows:
>
> With respect to the award of damages, the appellate court, following prevailing jurisprudence, correctly awarded the following amounts: ₱75,000.00 as civil indemnity **which is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty**; ₱75,000.00 as moral damages because the victim is assumed to have suffered moral injuries, hence, entitling her to an award of moral damages even without proof thereof, x x x.
>
> **Even if** the penalty of death is not to be imposed on the appellant because of the prohibition in R.A. No. 9346, **the civil indemnity**

The penalty shall be death penalty where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

[51] G.R. No. 169641, September 10, 2009, 599 SCRA 20.

of ₱75,000.00 is still proper because, following the rationcination in *People v. Victor*, **the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.** The Court declared that the award of ₱75,000.00 shows "**not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time but also the expression of the displeasure of the court of the incidence of heinous crimes against chastity.**"

The litmus test therefore, in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually imposed is reduced to *reclusion perpetua.*[52]

WHEREFORE, the instant appeal is *DENIED.* The Decision of the Court of Appeals, dated January 13, 2006, in CA-G.R. CR-H.C. No. 00666, is *AFFIRMED* with *MODIFICATION*, insofar as to sentence appellant Venancio Roxas *y* Arguelles to suffer the penalty of *reclusion perpetua* for the crime of Kidnapping and Serious Illegal Detention with Frustrated Murder, and to declare him ineligible for parole. Appellant is, likewise, ordered to pay Agnes Guirindola ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages. Costs against the appellant.

SO ORDERED.

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

Bersamin, J., no part.

Brion and *Sereno, JJ.,* on leave.

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[52] *Id.* at 44-45.

SECOND DIVISION

[G.R. No. 171982. August 18, 2010]

DEVELOPMENT BANK OF THE PHILIPPINES, *petitioner, vs.* **TRADERS ROYAL BANK and PRIVATIZATION AND MANAGEMENT OFFICE (vice ASSET PRIVATIZATION TRUST),** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; ISSUES; QUESTIONS OF FACT ARE NOT REVIEWABLE IN A RULE 45 PETITION; QUESTION OF FACT AND QUESTION OF LAW, DISTINGUISHED. —** The issues presented in this case involve questions of fact which are not reviewable in a petition for review under Rule 45. The Court is not a trier of facts. Section 1 of Rule 45 provides that "[t]he petition shall raise only questions of law which must be distinctly set forth." A question of fact exists when the doubt centers on the truth or falsity of the alleged facts while a question of law exists if the doubt centers on what the law is on a certain set of facts. There is a question of fact if the issue requires a review of the evidence presented or requires the re-evaluation of the credibility of witnesses. However, if the issue raised is capable of being resolved without need of reviewing the probative value of the evidence, the question is one of law.

2. **ID.; ID.; ID.; ID.; ISSUES POINTED REQUIRE REVIEW OF FACTUAL FINDINGS IN CASE AT BAR. —** All the issues raised by petitioner require a review of the factual findings of the Court of Appeals and the evidence presented. On the first issue, both the trial court and the appellate court found that DBP was duly informed by TRB of the change of supplier from Archer Daniels Midland Corporation to Emi Disc Corporation. DBP did not object to the change of supplier and even paid TRB's letters of credit covering the importation from Emi Disc Corporation. We agree with the conclusion of the Court of Appeals that such acts of DBP clearly indicate its acquiescence or approval of the amendment on the letters of credit as regards the change of supplier. Thus, the importation from Emi Disc

Corporation is still covered by the DBP guaranty. The resolution of the second issue of whether the letters of credit have already been fully paid likewise requires evaluation of the evidence and review of the factual findings of the appelate court. In this case, the Court of Appeals concurred with the findings of the trial court that based on the evidence presented, the total amount availed of by Phil-Asia with respect to the letters of credit has not yet been paid in full. x x x Similarly, the third issue involves a question of fact. The determination of whether the PMO should be liable requires the examination of evidence, particularly the deed of transfer which allegedly shows that APT assumed the liability of DBP and Phil-Asia under the letters of credit. The trial court ruled that there was no sufficient evidence to hold that APT (now PMO) assumed the liability of DBP and Phil-Asia relative to the letters of credit.

3. **ID.; ID.; ID.; ID.; ID.; FINALITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT ESPECIALLY WHEN AFFIRMED BY THE COURT OF APPEALS; EXCEPTIONS THERETO, NOTAPPLICABLE.** — In this case, the Court of Appeals concurred with the factual findings of the trial court. Factual findings of the trial court which are adopted and confirmed by the Court of Appeals are final and conclusive on the Court unless the findings are not supported by the evidence on record. We find no justifiable reason to deviate from the findings and ruling of the Court of Appeals. The jurisdiction of the Court in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are conclusive upon the Court since it is not the Court's function to analyze and weigh the evidence all over again. Nevertheless, in several cases, the Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they

are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. However, petitioner failed to show that this case falls under any of the exceptions.

APPEARANCES OF COUNSEL

Office of the Legal Counsel (DBP) for petitioner.
*Gonzalez Sinense Jimenez & Associate*s for Traders Royal Bank.
The Solicitor General for Privatization and Management Office.

R E S O L U T I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 19 December 2003 Decision[2] and the 16 March 2006 Resolution[3] of the Court of Appeals in CA-G.R. CV No. 42965.

The Facts

In 1980, Phil-Asia Food Industries Corporation (Phil-Asia) obtained a loan accommodation from Traders Royal Bank (TRB) in the form of four letters of credit with a total amount of ₱92,290,845.58. The loan was used for the importation of machineries and equipment for the establishment of a soya

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

[2] *Rollo*, pp. 9-17. Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Ruben T. Reyes and Noel G. Tijam, concurring.

[3] *Id.* at 19-20.

beans processing plant. In a letter dated 30 April 1980, Development Bank of the Philippines (DBP) issued a guaranty in favor of TRB to answer for the cost of the importation covered by the letters of credit to the extent of $8,015,447.13.

Phil-Asia and DBP made partial payments on the loan covered by the letters of credit, leaving a balance of ₱8,432,381.78. When Phil-Asia and DBP failed to pay the balance despite demands, TRB filed with the trial court a complaint to collect the unpaid balance of the letters of credit against Phil-Asia and DBP. The Asset Privatization Trust (APT),[4] now the Privatization and Management Office (PMO),[5] was later impleaded as defendant because it allegedly acquired the distressed accounts of DBP, which includes that of Phil-Asia.

DBP claimed that it was not liable for the importation from the supplier Emi Disc Corporation since its guaranty covers only importation from Archer Daniels Midland Corporation. DBP alleged that the change in supplier was without its consent and thus, not covered by its guaranty. DBP also alleged that there was overpayment of the loan covered by the letters of credit.

For its part, Phil-Asia likewise alleged that there was in fact overpayment since the total amount of the letters of credit was only₱92,290,845.58, whereas the payments of Phil-Asia and DBP totaled ₱100,395,434.10, resulting in an overpayment of ₱8,104,588.52. Furthermore, Phil-Asia averred that its obligation had been extinguished by novation.

TRB denied that there was overpayment. TRB explained that the amount applied to the principal credited to Phil-Asia

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[4] The APT was created under Proclamation No. 50 ("Proclaiming and Launching a Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or the Assets thereof, and Creating the Committee on Privatization and the Asset Privatization Trust"), issued by then President Corazon C. Aquino on 8 December 1986.

[5] The APT has been replaced by the Privatization Management Office (PMO), created under Executive Order No. 323 on 6 December 2000 by then President Joseph E. Estrada.

was reduced or adjusted because some payments made by DBP were erroneously credited to Phil-Asia. Besides, as stated in the adjusted Statement of Account, there were some payments which were erroneously reflected as principal payments which should have been applied to outstanding and unpaid interests.

On the other hand, APT maintained that it did not assume the obligations incurred or might have been incurred by DBP with Phil-Asia's creditors.

On 13 May 1993, the trial court rendered a decision, the dispositive portion of which reads:

> WHEREFORE, defendant Phil-Asia Food Industries Corporation and Development Bank of the Philippines are ordered to pay, jointly and severally, to plaintiff Traders Royal Bank the sum of ₱8,432,381.78, together with interest thereon at six percent (6%) per annum from September 19, 1986, until the amount is fully paid, plus attorney's fees equivalent to ten percent (10%) of the said unpaid balance. The said defendants are also required to pay the costs of the suit.
>
> The complaint is dismissed with respect to defendant Asset Privatization Trust.
>
> The counterclaims and cross-claims of defendants Phil-Asia Food Industries Corporation, Development Bank of the Philippines and Asset Privatization Trust, for lack of merit, are also dismissed.
>
> SO ORDERED.[6]

Both TRB and DBP appealed the trial court's decision. The Court of Appeals affirmed the trial court's decision with modification. The dispositive portion of the 19 December 2003 Decision of the Court of Appeals reads:

> WHEREFORE, the appealed decision is AFFIRMED with the MODIFICATIONS (i) that the amount [of] ₱8,432,381.78 awarded in favor of plaintiff shall bear interest at the rate of 12% per annum from the filing of the complaint until fully paid and (ii) that cross-defendant Phil-Asia Food Industries Corporation is ordered to indemnify cross-claimant Development Bank of the Philippines for whatever amount the latter may be compelled to pay plaintiff under

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[6] *Rollo*, pp. 70-71.

this decision plus interest thereon at the rate of 12% per annum from the date of such payment until full indemnification.[7]

Both DBP and TRB moved for reconsideration, which the Court of Appeals denied in its Resolution dated 16 March 2006.

<u>The Ruling of the Court of Appeals</u>

The Court of Appeals held that DBP's act of paying TRB's letters of credit covering the importation from Emi Disc Corporation constituted implied approval and ratification of the change of supplier from Archer Daniels Midland Corporation to Emi Disc Corporation. Thus, DBP is still liable under its guaranty. Citing Articles 2066 and 2067 of the Civil Code,[8] the Court of Appeals ruled that as guarantor of Phil-Asia's obligations to TRB under the letters of credit, DBP is entitled to indemnity from Phil-Asia.

Contrary to the claims of DBP and Phil-Asia that there was overpayment, the Court of Appeals found that out of Phil-Asia's ₱92,290,845.58 loan accommodation from TRB, the payments of DBP and Phil-Asia only totaled ₱83,858,463.80, thus, leaving a balance of ₱8,432,381.78. Furthermore, the Court of Appeals ruled that since there was no evidence of any stipulation on the rate of interest, a 12% interest rate per annum should apply from the filing of the complaint until full payment of the obligation.

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

[8] Articles 2066 and 2067 of the Civil Code read:

Art. 2066. The guarantor who pays for a debtor must be indemnified by the latter.

The indemnity comprises:

(1) The total amount of the debt;

(2) The legal interests thereon from the time the payment was made known to the debtor, even though it did not earn interest for the creditor;

(3) The expenses incurred by the guarantor after having notified the debtor that payment had been demanded of him;

(4) Damages, if they are due.

Art. 2067. The guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor.

If the guarantor has compromised with the creditor, he cannot demand of the debtor more than what he has really paid.

As regards APT, the Court of Appeals held that no evidence was presented to show that the obligations of DBP and Phil-Asia under the letters of credit were transferred to or assumed by APT.

The Issues

Petitioner submits the following issues:

1. WHETHER THE IMPORTATION OF MACHINERIES COVERED BY THE SUBJECT LETTERS OF CREDIT ARE COVERED BY THE DBP GUARANTEE.
2. WHETHER THE LETTERS OF CREDIT SUBJECT TO RESPONDENT TRADERS ROYAL BANK'S CLAIM HAVE BEEN PAID.
3. ASSUMING THAT DBP CAN BE HELD LIABLE FOR RESPONDENT TRADERS ROYAL BANK'S CLAIM, WHETHER THE PRIVATIZATION AND MANAGEMENT OFFICE SHOULD BE MADE TO PAY FOR THE SAME.[9]

The Ruling of the Court

The petition has no merit.

The issues presented in this case involve questions of fact which are not reviewable in a petition for review under Rule 45. The Court is not a trier of facts. Section 1 of Rule 45 provides that "[t]he petition shall raise only questions of law which must be distinctly set forth."

A question of fact exists when the doubt centers on the truth or falsity of the alleged facts while a question of law exists if the doubt centers on what the law is on a certain set of facts.[10] There is a question of fact if the issue requires a review of the evidence presented or requires the re-evaluation of the credibility of witnesses.[11] However, if the issue raised

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[9] *Rollo*, p. 123.

[10] *Yokohama Tire Philippines, Inc. v. Yokohama Employees Union*, G.R. No. 163532, 12 March 2010.

[11] *Microsoft Corp. v. Maxicorp, Inc.*, 481 Phil. 550 (2004).

is capable of being resolved without need of reviewing the probative value of the evidence, the question is one of law.[12]

All the issues raised by petitioner require a review of the factual findings of the Court of Appeals and the evidence presented.

On the first issue, both the trial court and the appellate court found that DBP was duly informed by TRB of the change of supplier from Archer Daniels Midland Corporation to Emi Disc Corporation. DBP did not object to the change of supplier and even paid TRB's letters of credit covering the importation from Emi Disc Corporation. We agree with the conclusion of the Court of Appeals that such acts of DBP clearly indicate its acquiescence or approval of the amendment on the letters of credit as regards the change of supplier. Thus, the importation from EMI Disc Corporation is still covered by the DBP guaranty.

The resolution of the second issue of whether the letters of credit have already been fully paid likewise requires evaluation of the evidence and review of the factual findings of the appellate court. In this case, the Court of Appeals concurred with the findings of the trial court that based on the evidence presented, the total amount availed of by Phil-Asia with respect to the letters of credit has not yet been paid in full. The Court of Appeals stated:

> In its letter dated October 13, 1983, DBP questioned TRB's statement of account as of September 5, 1983 concerning the alleged reduction of Phil-Asia's total payment from ₱55,799,351.81 to ₱40,880,523.81. The "discrepancy," however, had been adequately explained in TRB's adjusted statement x x x
>
> It does not appear that DBP had made further complaint despite receipt of TRB's letter dated October 20, 1983 and adjusted statement.
>
> As a rule, he who pleads payment has the burden of proving it. Even where the plaintiff must allege non-payment, the general rule is that the burden rests on the defendant to prove payment, rather than on the plaintiff to prove non-payment (*Audion Electric Co., Inc. vs. NLRC*, 308 SCRA 430). Appellant has failed its burden.

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[12] *Pagsibigan v. People*, G.R. No. 163868, 4 June 2009, 588 SCRA 249.

The application of payments (Exh. 13-A [DBP]) exposes the fallacy of DBP's claim that it had fully paid—and even overpaid—TRB. It clearly shows that the payments of DBP and Phil-Asia totaled ₱83,858,463.80. Deducting said amount from Phil-Asia's availment on the LCs in the sum of ₱92,290,845.58, there remains a balance of ₱8,432,381.78, which represents its outstanding obligation.[13]

Similarly, the third issue involves a question of fact. The determination of whether the PMO should be liable requires the examination of evidence, particularly the deed of transfer which allegedly shows that APT assumed the liability of DBP and Phil-Asia under the letters of credit. The trial court ruled that there was no sufficient evidence to hold that APT (now PMO) assumed the liability of DBP and Phil-Asia relative to the letters of credit. In the same manner, the Court of Appeals found that:

DBP likewise contends that APT should have been held liable for the obligations of DBP and Phil-Asia to TRB under the LCs because APT assumed the same pursuant to Proclamation No. 50 and [the] deed of transfer executed between DBP and the national government. However, no evidence was presented to substantiate DBPs allegation. Neither the deed of transfer nor Annex B thereof shows that the obligations of DBP and Phil-Asia under the LCs were transferred to, and assumed by, APT.[14]

Indeed, the party who alleges an affirmative defense,[15] or claims that there is subrogation, has the burden of proof to establish the same.[16] DBP failed to prove its claim that APT should be held liable.[17]

In this case, the Court of Appeals concurred with the factual findings of the trial court. Factual findings of the trial court

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[13] *Rollo*, pp. 13-15.

[14] *Id.* at 15.

[15] *U-Bix Corporation v. Bandiola*, G.R. No. 157168, 26 June 2007, 525 SCRA 566.

[16] *Ledonio v. Capitol Development Corporation*, G.R. No. 149040, 4 July 2007, 526 SCRA 379.

[17] Section 1, Rule 131 of the Rules of Court provides that "[b]urden of proof is the duty of a party to present evidence on the facts in issue

which are adopted and confirmed by the Court of Appeals are final and conclusive on the Court unless the findings are not supported by the evidence on record.[18] We find no justifiable reason to deviate from the findings and ruling of the Court of Appeals.

The jurisdiction of the Court in cases brought before it from the appellate court is limited to reviewing errors of law, and findings of fact of the Court of Appeals are conclusive upon the Court since it is not the Court's function to analyze and weigh the evidence all over again.[19] Nevertheless, in several cases,[20] the Court enumerated the exceptions to the rule that factual findings of the Court of Appeals are binding on the Court: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed

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necessary to establish his claim or defense by the amount of evidence required by law."

[18] *People v. Fabian*, G.R. No. 181040, 15 March 2010; *People v. Lopez*, G.R. No. 181441, 14 November 2008, 571 SCRA 252; *Materrco, Inc. v. First Landlink Asia Development Corporation*, G.R. No. 175687, 28 November 2007, 539 SCRA 226.

[19] *Republic v. Regional Trial Court*, *Br. 18, Roxas City, Capiz*, G.R. No. 172931, 18 June 2009, 589 SCRA 552.

[20] *Teofisto Oño v. Vicente N. Lim*, G.R. No. 154270, 9 March 2010; *Heirs of Jose Lim v. Juliet Villa Lim*, G.R. No. 172690, 3 March 2010; *Narvaez v. Narciso*, G.R. No. 165907, 27 July 2009, 594 SCRA 60; *Triumph International (Phils.), Inc. v. Apostol*, G.R. No. 164423, 16 June 2009, 589 SCRA 185, citing *Almendrala v. Ngo,* G.R. No. 142408, 30 September 2005, 471 SCRA 311.

by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.

However, petitioner failed to show that this case falls under any of the exceptions.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the 19 December 2003 Decision and the 16 March 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 42965.

SO ORDERED.

Peralta, del Castillo,[*] *Abad,* and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 175116. August 18, 2010]

JERRY ONG, *petitioner, vs.* **PHILIPPINE DEPOSIT INSURANCE CORP.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; RULE 45 PETITION, PROPER REMEDY.—** We first resolve the issue raised by respondent anent the mode of appeal availed of by petitioner. Petitioner filed a petition for review on *certiorari* assailing the Decision and Resolution of the CA which were final dispositions of the case on the merits, thus, a petition under Rule 45 of the Rules of Court is proper. Rule 45 provides that an appeal by *certiorari* from the judgments or final orders or resolutions of the appellate court is by a verified petition for review on *certiorari*. Contrary

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[*] Designated additional member per Raffle dated 16 August 2010.

to respondent's claim that petitioner in this petition merely alleges that the CA abused its discretion in dismissing his appeal, we find that petitioner also imputes grave error committed by the CA in rendering its assailed decision finding that the appeal was not perfected.

2. **ID.; ID.; RTC'S DISMISSAL OF AN APPEAL FOR FAILURE TO FILE A RECORD ON APPEAL DOES NOT CONSTITUTE GRAVE ABUSE OF DISCRETION.—** In this case, petitioner filed his Notice of Appeal on June 17, 2003, and the RTC gave due course to the appeal after it found that the notice of appeal was filed within the reglementary period. However, upon respondent's motion for reconsideration, where it argued that petitioner failed to file a record on appeal, considering that the decision was rendered in a petition for liquidation of RBO which was a special proceeding, the RTC reversed itself as no record on appeal was filed, and dismissed petitioner's appeal for having been taken out of time. The RTC did not commit a grave abuse of discretion in dismissing petitioner's appeal, since it is clearly stated under the Rules that filing of the notice of appeal must be accompanied by a record on appeal to perfect one's appeal in a special proceeding. In fact, the RTC's dismissal of petitioner's appeal was expressly allowed under Section 13 of Rule 41 of the Rules of Court. x x x Thus, we find no error committed by the CA when it sustained the RTC's dismissal of petitioner's appeal for failure to comply with the Rules.

3. **ID.; ID.; FILING OF RECORD ON APPEAL IS MANDATORY; COUNSEL'S MISTAKE OR LACK OF KNOWLEDGE OF THE EXISTING RULES DOES NOT WARRANT RELAXATION OF THE RULE.—** Petitioner's argument that his counsel's honest belief that their claim against the RBO assets and the civil case filed by RBO against petitioner for the annulment of mortgage were ordinary civil actions and a mere notice of appeal would be sufficient to perfect his appeal is not a satisfactory reason to warrant a relaxation of the mandatory rule on the filing of a record on appeal. x x x Thus, the erroneous assumption of petitioner's counsel could not excuse her from complying with the Rules. If we are to accept such reason and grant petitioner's petition would be putting a premium on his counsel's ignorance or lack of knowledge of existing Rules. An erroneous application of the law or rules is not excusable error. Petitioner is bound by the mistake of his counsel.

4. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; ISSUES ON THE**

ADMISSIBILITY OF THE TESTIMONIES OF WITNESSES ARE QUESTIONS OF FACTS THAT ARE BEYOND THE AMBIT OF SPECIAL CIVIL ACTION OF *CERTIORARI*.— Petitioner's claim that the issue on the admissibility of testimonies of respondent's witnesses does not call for an evaluation of evidence but a question of law as it calls for the application of the law on hearsay evidence; thus, within the remedy of a petition for *certiorari* is not meritorious. We find no error committed by the CA when it held that such issue was beyond the jurisdictional parameter of a special civil action of *certiorari* as such issue dwelt into questions of facts and evaluation of evidence. The sole office of a writ of *certiorari* is the correction of errors of jurisdiction and does not include a review of public respondent's evaluation of the evidence and factual findings. In a special civil action for *certiorari* under Rule 65 of the Rules of Court, questions of fact are generally not permitted, the inquiry being limited to whether the public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion.

APPEARANCES OF COUNSEL

The Law Firm of Cruz Cruz and Navarro III for petitioner.
Office of the General Counsel (PDIC) for respondent.

D E C I S I O N

PERALTA, *J*.:

Before us is a petition for review on *certiorari* filed by petitioner Jerry Ong seeking to annul and set aside the Decision[1] dated July 31, 2006 and the Resolution[2] dated October 5, 2006 issued by the Court of Appeals (CA) in CA-G.R. SP No. 93441.

Sometime in 1982 and 1983, petitioner Jerry Ong made some money market placements with Omnibus Finance Inc. (OFI),

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[1] Penned by Associate Justice Conrado M. Vasquez, Jr., with Associate Justices Amelita G. Tolentino and Vicente S.E. Veloso, concurring; *rollo*, pp. 73-83.

[2] *Id.* at 71.

which later on suffered serious financial difficulties. As petitioner's money market placements matured, he demanded from OFI the return of the same. However, OFI's checks issued thereby were dishonored by the drawee bank. It was alleged that OFI sought the assistance of its sister companies which included the Rural Bank of Olongapo (RBO). On December 29, 1983, Jose Ma. Carballo, OFI President, and Cynthia Gonzales, Chairperson of the Board of Directors of RBO, executed in favor of petitioner a Deed of Real Estate Mortgage[3] over two parcels of land located in Tagaytay City covered by Transfer Certificates of Title Nos. T-13769 and T-13770, which are both registered in RBO's name, as collateral to guarantee the payment of OFI's money market obligations to petitioner in the amount of ₱863,517.02. The mortgage was executed by Gonzales by virtue of a Secretary's Certificate[4] issued by Atty. Efren L. Legaspi, RBO's alleged Assistant Corporate Secretary, showing that Gonzales was authorized by the RBO Board to execute such mortgage. The deed of mortgage was annotated on TCT Nos. T-13769 and T-13770 of the Register of Deeds of Tagaytay City on January 13, 1984.

As OFI failed to pay petitioner the obligation secured by the real estate mortgage, petitioner foreclosed the mortgage on March 18, 1984. A Certificate of Sale was correspondingly issued which was registered with the Register of Deeds of Tagaytay City on July 16, 1985. Petitioner alleged that representatives of the Central Bank of the Philippines (Central Bank) had approached him and borrowed TCT Nos. T-13769 and T-13770 for the on- going audit and inventory of the assets of the RBO; however, these titles were not returned despite petitioner's demand. Petitioner filed with the RTC of Tagaytay City, Branch 18, a case for the surrender of said titles, docketed as TC-803. The case was subsequently dismissed for being premature as the one year redemption period had not yet expired.

On May 22, 1984, RBO's Corporate Secretary and Acting Manager, Atty. Rodolfo C. Soriano, filed with the RTC of

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[3] *Id.* at 151-155.

[4] *Id.* at 98.

Tagaytay City, an action for the annulment of real estate mortgage, extrajudicial foreclosure of mortgage proceedings, sheriff's certificate of sale with damages against petitioner, OFI, Cynthia Gonzales, the Sheriff and the Register of Deeds of Tagaytay City, raffled off to Branch 18, and was docketed as Civil Case No. TG-805. However, the case was later suspended due to OFI's pending application for rehabilitation with the Securities and Exchange Commission.

On May 9, 1985, the Central Bank, as petitioner, which was later substituted by respondent Philippine Deposit Insurance Corporation[5] (PDIC) filed with the RTC of Olongapo City a petition for assistance in the liquidation of RBO, docketed as Sp. Proc. No. 170-0-85 and was raffled off to Branch 73. Later, upon respondent's motion, Civil Case No. TG-805, *i.e.*, for annulment of mortgage, was consolidated with RBO's liquidation proceedings.

On February 5, 1991, petitioner filed with Branch 79 of the RTC of Quezon City[6] a petition for the surrender of the titles of the Tagaytay properties against RBO, which petition was eventually ordered dismissed by the CA after finding that the RTC lacked jurisdiction to try the case, but without prejudice to petitioner's right to file his claim in RBO's liquidation proceedings pending before Branch 73 of the RTC of Olongapo City.

Consequently, on February 16, 1996, petitioner filed in Sp. Proc. No. 170-0-85 a Motion to Admit Claim against RBO's assets as a secured creditor and the winning bidder and/or purchaser of the Tagaytay properties in the foreclosure sale. Respondent filed its Comment/Opposition to the motion. Trial, thereafter, ensued on petitioner's claim.

On June 25, 2001, Acting Presiding Judge Philbert I. Iturralde issued an Order[7] declaring petitioner's claim against RBO

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[5] Pursuant to Monetary Board Resolution No. 261 dated September 15, 1993, PDIC was designated as the Liquidator of the Rural Bank of Olongapo vice the Central Bank of the Philippines.

[6] Docketed as Civil Case No. 91-8019.

[7] *Rollo*, pp. 180-183.

valid and legitimate, the dispositive portion of which reads:

WHEREFORE, under the foregoing circumstance, the claim of Jerry Ong is hereby declared valid and legitimate and therefore GRANTED. As prayed for, the two (2) parcels of land covered under TCT Nos. 13769 and 13770, with all its improvements be awarded to Claimant Jerry Ong. The titles subject matter of this claim allegedly in possession of the Central Bank or its appointed liquidator, or any person presently in possession of said Transfer Certificate of Title is directed and ordered to immediately surrender the same to the Claimant. Should the same be lost and/or upon proof of its loss the Register of Deeds is ordered to issue in the claimant's name new titles pursuant to the consolidation of property earlier made by the claimant over the property.

SO ORDERED.[8]

Respondent filed its motion for reconsideration. In a Resolution[9] dated June 27, 2002, Judge Renato J. Dilag reversed the June 25, 2001 Decision. The decretal portion of the Resolution reads:

WHEREFORE, foregoing considered, the Order of this Court dated June 25, 2001 is hereby reconsidered and set aside. The real estate mortgage executed on December 29, 1983 by and between Cynthia Gonzales representing RBO and Jose Ma. Carballo, representing OFI is hereby declared null and void. The Extrajudicial Proceedings conducted in March 1984 and the Sheriff's Certificate of Sale dated March 23, 1984 issued in the name of Jerry Ong are, likewise, declared null and void. And, for failure to substantiate his claim against RBO, Jerry Ong's claim is hereby denied.

SO ORDERED.[10]

Petitioner's motion for reconsideration was denied in an Order[11] dated May 26, 2003, a copy of which was received by petitioner on June 16, 2003.

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[8] *Id.* at 182-183.

[9] *Id.* at 184-188.

[10] *Id.* at 188.

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

On June 17, 2003, petitioner, thru counsel, filed a Notice of Appeal[12] which the RTC gave due course in an Order[13] dated July 14, 2004, after finding that the appeal had been filed within the reglementary period. The RTC also ordered the elevation of the entire records to the CA for further proceedings.

Respondent sought reconsideration of the Order giving due course to petitioner's appeal as the latter failed to file a record on appeal within the reglementary period; thus, the appeal was not perfected. Petitioner filed his Comment/Opposition to such motion and at the same time attaching the Record on Appeal dated August 25, 2004.

On May 31, 2005, the RTC issued an Order, [14] the dispositive portion of which reads:

> FOREGOING CONSIDERED, the Order of this Court dated July 14, 2004 is hereby reconsidered and set aside. Consequently, as provided under Rule 41, Sec. 13 of the Revised Rules of Court, the appeal is hereby dismissed for having been taken out of time.
>
> SO ORDERED.

Petitioner's motion for reconsideration was denied in an Order dated December 7, 2005.[15]

Petitioner then filed with the CA a petition for *certiorari* with prayer for the issuance of a writ of preliminary injunction assailing the RTC Orders dated May 31, 2005 and December 7, 2005 for having been issued with grave abuse of discretion.

After the parties submitted their respective pleadings, the CA issued its assailed Decision on July 31, 2006, dismissing the petition.

In so ruling, the CA found that since Sp. Proc. No. 170-0-85 was for the liquidation of RBO, it was a special proceeding and not an ordinary action; that liquidation proceedings are

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

[13] *Id.* at 204.

[14] *Id.* at 255-257.

[15] *Id.* at 258.

considered special proceedings as held in *Pacific Banking Corporation Employees Organization v. Court of Appeals*;[16] that since multiple appeals are allowed in proceedings for liquidation of an insolvent corporation, a record on appeal was necessary in petitioner's case for the perfection of his appeal.

The CA found unpersuasive petitioner's plea to consider his failure to submit a record on appeal on time as excusable neglect saying that petitioner was fully aware that Sp. Proc. No. 170-0-85 was a petition for liquidation, because he filed his claim as a preferred creditor of RBO, he participated in the trial thereof and filed the notice of appeal under the title of the said liquidation case; that petitioner's feigned ignorance and miscalculation cannot justify an exception to the strict rule on perfection of appeal within the reglementary period; that petitioner filed the record on appeal 426 days after the lapse of the reglementary period, and *certiorari* cannot be a substitute for a lost remedy of appeal. The CA ruled that petitioner's failure to perfect his appeal within the prescribed period rendered the RTC decision final and executory which deprived the appellate court of jurisdiction to alter the final judgment, much less entertain the appeal.

On petitioner's claim that there was a grave abuse of discretion committed by the RTC in giving credence to the testimonies of respondent's witnesses, the CA ruled that such matter was beyond the jurisdictional parameter of a special civil action of *certiorari* as such issue dwelt into questions of facts and evaluation of evidence.

Petitioner's motion for reconsideration was denied in a Resolution dated October 5, 2006.

Hence, the present petition on the following grounds:

THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISMISSED THE PETITION FOR *CERTIORARI* BASED SOLELY ON TECHNICAL RULES OF PROCEDURE.

THE COURT OF APPEALS GRAVELY ERRED AND ABUSED ITS DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION

[16] 312 Phil. 578, 593 (1995).

WHEN IT DISMISSED THE PETITION FOR *CERTIORARI* WITHOUT PASSING UPON THE MERIT OF PETITIONER'S APPEAL.[17]

Petitioner reiterates his argument raised before the CA that his counsel's failure to submit a record on appeal on time is an excusable neglect as the failure was due to the serious complications surrounding the case that led her to commit an error of judgment; that petitioner's counsel honestly believed that their claim filed against RBO in the special proceedings and the civil case filed by RBO against petitioner for the annulment of mortgage under Civil Case No. TG-805, which was eventually consolidated with the special proceedings, were ordinary civil actions since they sought the enforcement or protection of a right or prevention or redress of a wrong; thus, a mere notice of appeal would be sufficient to perfect petitioner's appeal. Petitioner argues that we have liberalized in some instances the rule on perfection of appeals and cites *Gregorio v. CA*[18] and *Gonzales-Orense v. Court of Appeals*,[19] thus, he asks for the same leniency in the interest of substantial justice so as to give him the chance to ventilate his appeal on the merit.

Petitioner claims that the issue on the admissibility of the testimonies of respondent's witnesses is a question of law as its resolution calls for the application of the law on hearsay evidence and not the evaluation of evidence; that respondent's witnesses came only upon RBO's liquidation process and were not even connected with RBO at the time of the execution of the real estate mortgage among RBO, OFI and petitioner; thus, their testimonies are inadmissible for being hearsay evidence, and a special civil action of *certiorari* is the proper remedy to assail the admission of the same; that it would serve the ends of justice if the CA had taken a second look on the facts and evidence of the case to determine the merit of petitioner's appeal.

In its Comment, respondent avers that while the petition was denominated as a petition for review under Rule 45, the same

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[17] *Id.* at 38.

[18] G.R. No. L-43511, July 28, 1976, 72 SCRA 120.

[19] G.R. No. 80526, July 18, 1988, 163, SCRA 477.

imputes lack or excess of jurisdiction on the part of the CA in issuing its assailed decision; thus, petitioner availed of the wrong remedy. Petitioner filed his Reply thereto.

We first resolve the issue raised by respondent anent the mode of appeal availed of by petitioner. Petitioner filed a petition for review on *certiorari* assailing the Decision and Resolution of the CA which were final dispositions of the case on the merits, thus, a petition under Rule 45 of the Rules of Court is proper. Rule 45 provides that an appeal by *certiorari* from the judgments or final orders or resolutions of the appellate court is by a verified petition for review on *certiorari*. Contrary to respondent's claim that petitioner in this petition merely alleges that the CA abused its discretion in dismissing his appeal, we find that petitioner also imputes grave error committed by the CA in rendering its assailed decision finding that the appeal was not perfected.

As to the main issues raised by petitioner, we find the same unmeritorious.

Sections 2 (a) and 3 of Rule 41 of the Rules of Court provide:

SEC. 2. *Modes of Appeal* – x x x

(a) *Ordinary appeal*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

x x x x x x x x x

SEC. 3. *Period of ordinary appeal.* — The appeal shall be taken within fifteen (15) days from the notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from the notice of judgment or final order.

The period to appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file a motion for new trial or reconsideration shall be allowed.

It has been held that a petition for liquidation of an insolvent corporation is classified as a special proceeding.[20] The RTC decision, which petitioner sought to appeal from, was rendered in the special proceeding for the liquidation of RBO's assets; thus, applying the above-quoted provisions, an appeal in a special proceeding requires both the filing of a notice of appeal and the record on appeal within thirty days from receipt of the notice of judgment or final order.

In this case, petitioner filed his Notice of Appeal on June 17, 2003, and the RTC gave due course to the appeal after it found that the notice of appeal was filed within the reglementary period. However, upon respondent's motion for reconsideration, where it argued that petitioner failed to file a record on appeal, considering that the decision was rendered in a petition for liquidation of RBO which was a special proceeding, the RTC reversed itself as no record on appeal was filed, and dismissed petitioner's appeal for having been taken out of time. The RTC did not commit a grave abuse of discretion in dismissing petitioner's appeal, since it is clearly stated under the Rules that filing of the notice of appeal must be accompanied by a record on appeal to perfect one's appeal in a special proceeding. In fact, the RTC's dismissal of petitioner's appeal was expressly allowed under Section 13 of Rule 41 of the Rules of Court which states:

SECTION 13. *Dismissal of appeal*. – Prior to the transmittal of the original record or the record on appeal to the appellate court, the trial court may *motu proprio* or on motion to dismiss the appeal for having been taken out of time.

Thus, we find no error committed by the CA when it sustained the RTC's dismissal of petitioner's appeal for failure to comply with the Rules.

In *In the Matter of the Heirship (Intestate Estates) of the Late Hermogenes Rodriguez, et al. v. Jaime M. Robles*,[21] we nullified the CA decision for lack of jurisdiction in taking

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[20] *Pacific Banking Corporation Employees Organization v. Court of Appeals*, *supra* note 16.

[21] G.R No. 182645, December 4, 2009.

cognizance of an appeal from the RTC decision which had already lapsed into finality for failure of the party to file a record on appeal within the reglementary period, and said:

> This Court has invariably ruled that perfection of an appeal in the manner and within the period laid down by law is not only mandatory but also jurisdictional. The failure to perfect an appeal as required by the rules has the effect of defeating the right to appeal of a party and precluding the appellate court from acquiring jurisdiction over the case. The right to appeal is not a natural right nor a part of due process; it is merely a statutory privilege, and may be exercised only in the manner and in accordance with the provisions of the law. The party who seeks to avail of the same must comply with the requirement of the rules. Failing to do so, the right to appeal is lost. The reason for rules of this nature is because the dispatch of business by courts would be impossible, and intolerable delays would result, without rules governing practice. Public policy and sound practice demand that judgments of courts should become final and irrevocable at some definite date fixed by law. Such rules are a necessary incident to the proper, efficient and orderly discharge of judicial functions. Thus, we have held that the failure to perfect an appeal within the prescribed reglementary period is not a mere technicality, but jurisdictional. Just as a losing party has the privilege to file an appeal within the prescribed period, so does the winner also have the correlative right to enjoy the finality of the decision. Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal. There are exceptions to this rule, unfortunately respondents did not present any circumstances that would justify the relaxation of said rule.

The rules of procedure must be faithfully followed, except only when, for persuasive reasons, they may be relaxed to relieve a litigant of an injustice commensurate with his failure to comply within the prescribed procedure. [22] Concomitant to a liberal interpretation of the rules of procedure should be an effort on the part of the party invoking liberality to adequately explain his failure to abide by the rules.[23]

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[22] *Duremdes v. Duremdes*, 461 Phil. 388, 400 (2003).

[23] *Id.*

Petitioner's argument that his counsel's honest belief that their claim against the RBO assets and the civil case filed by RBO against petitioner for the annulment of mortgage were ordinary civil actions and a mere notice of appeal would be sufficient to perfect his appeal is not a satisfactory reason to warrant a relaxation of the mandatory rule on the filing of a record on appeal. We find *apropros* the CA's disposition on the matter in this wise:

> Withal, petitioner's ratiocinations that he failed to submit a Record on Appeal on time could be taken as excusable neglect due to serious complications surrounding the case leading him to an error of judgment where "an ordinary human being, courts, not excepted, is susceptible to commit, is highly unsustainable. Petitioner counsel's honest belief that the claim of petitioner Ong and the civil case for annulment of mortgage under TG-085 were ordinary actions and, as such, mere filing of a notice of appeal would be sufficient, is far from being persuasive. This is not the excusable neglect as envisioned by the rules in order to sidestep on the strict compliance with the rules on appeal. Petitioner was fully aware that Sp. Proc. No. 170-0-85 is a petition for liquidation because they filed their claim in the case claiming to be a preferred creditor, participated in the trial thereof in every step of the way, and filed the disputed Notice of Appeal under the title of the said case. We cannot find any reason to accept petitioner's feigned ignorance that the case they were appealing is a liquidation petition. In fine, such miscalculation of the petitioner cannot justify an exception to the rules, and to apply the liberal construction rule.[24]

Thus, the erroneous assumption of petitioner's counsel could not excuse her from complying with the Rules. If we are to accept such reason and grant petitioner's petition would be putting a premium on his counsel's ignorance or lack of knowledge of existing Rules.[25] An erroneous application of the law or rules is not excusable error.[26] Petitioner is bound by the mistake of his counsel.

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[24] *Rollo*, pp. 81-82.

[25] See *Enriquez v. Enriquez*, G.R. No. 139305, August 25, 2005, 468 SCRA 77, 86.

[26] See *Ditching v. Court of Appeals*, 331 Phil. 665, 678 (1996), citing *Jocson v. Baguio*, 179 SCRA 550 (1989).

The cases of *Gregorio v. CA* and *Gonzales-Orense v. Court of Appeals*, cited by petitioner to support his plea for the relaxation of the rules on the application of the reglementary periods of appeal, find no application in his case.

Gregorio v. CA involved the failure of therein petitioner to file appellant's brief within the extended period on the basis of which the CA dismissed the appeal. We reinstated the appeal saying that the CA may allow the extension of time to file brief as long as good and sufficient cause was shown and the motion was filed before the expiration of the time sought to be extended; that expiration of time to file brief, unlike lateness in filing the notice of appeal, appeal bond or record on appeal was not a jurisdictional matter and may be waived by the parties. The case before us deals with the matter of the non-filing of the record on appeal within the reglementary period prescribed by law which is not only mandatory but jurisdictional.

Gonzales Orense v. CA though involving the issue of the non-filing of a record on appeal, the factual mileu of that case was different. In that case, petitioner filed his notice of appeal from the order of the probate court awarding the amount of ₱20,000.00 for his services in the probate of the will of the husband of his client. The probate court transmitted the records to the CA, and later petitioner submitted his appellants' brief and respondent her appellee's brief. However, the CA dismissed the appeal as petitioner failed to submit a record on appeal. In a petition filed with us, we reinstated the appeal since we found that the question presented to us, *i.e.*, whether or not a record on appeal was necessary when an award of attorney's fees by the probate court was elevated to the CA, was one of first impression; that petitioner acted in honest, if mistaken interpretation of the applicable law; that the probate itself believed that the record on appeal was unnecessary and respondent herself apparently thought so too for she did not move to dismiss the appeal and instead impliedly recognized its validity by filing the appellee's brief. In the present case, petitioner filed in Sp. Proc. No. 170-0-85 his claim against the assets of RBO as a secured creditor by virtue of the real estate mortgage; that a petition for liquidation is in the nature of a special proceeding

was already settled in *Pacific Banking Corporation Employees Organization v. Court of Appeals*,[27] decided in 1995, thus, no longer a novel issue when petitioner's appeal was filed in 2003. Moreover, unlike in *Gonzales-Orense*, where therein respondent did not move for the dismissal of the appeal and even filed her appellee's brief, herein respondent had moved in the RTC for the dismissal of the appeal for failure of petitioner to file the record on appeal.

Petitioner's claim that the issue on the admissibility of testimonies of respondent's witnesses does not call for an evaluation of evidence but a question of law as it calls for the application of the law on hearsay evidence; thus, within the remedy of a petition for *certiorari* is not meritorious. We find no error committed by the CA when it held that such issue was beyond the jurisdictional parameter of a special civil action of *certiorari* as such issue dwelt into questions of facts and evaluation of evidence. The sole office of a writ of *certiorari* is the correction of errors of jurisdiction and does not include a review of public respondent's evaluation of the evidence and factual findings.[28] In a special civil action for *certiorari* under Rule 65 of the Rules of Court, questions of fact are generally not permitted, the inquiry being limited to whether the public respondent acted without or in excess of its jurisdiction or with grave abuse of discretion.[29]

WHEREFORE, the petition is hereby *DENIED*. The Decision dated July 31, 2006 and the Resolution dated October 5, 2006 of the Court of Appeals in CA-G.R. SP. No. 93441 are *AFFIRMED*.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

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[27] *Supra* note 16.

[28] *Oro v. Diaz,* 413 Phil. 416, 427 (2001), citing *Building Care Corporation v. National Labor Relations Commission,* 268 SCRA 666 (1997).

[29] *Id.* at 428, citing *Buñag v. Court of Appeals*, 303 SCRA 591 (1999).

FIRST DIVISION

[G.R. No. 182094. August 18, 2010]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EFREN ALFONSO,** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; RAPE BY SEXUAL ASSAULT; HOW COMMITTED; CASE AT BAR.—** Under Article 266-A(2) of the RPC, rape by sexual assault is committed "[b]y any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person." In the present case, there is no doubt that appellant inserted his finger into the genital of "AAA." The claim of the appellant that disease or scratching caused the reddening of "AAA's" genital lacks factual basis. In fact, appellant did not mention this before the court below to bolster his defense of denial albeit Dr. Quilon's mentioning that the reddening of "AAA's" genital could have also been caused by scratching or disease. Likewise, the defense never presented any proof that "AAA" was suffering from a disease at the time. Neither did the defense elicit any admission from "AAA" that she scratched her genital thus causing the reddening. On the contrary, records show that "AAA" was forthright in her testimony that her father inserted his finger into her vagina. Moreover, appellant's admission that he touches "AAA's" vagina each time he gives her a bath strengthens our belief that he is capable of committing sexual abuse to his own daughter. Also, such admission does not negate the possibility of committing rape by sexual assault on "AAA" on April 7, 2002.

2. **ID.; STATUTORY RAPE; HOW COMMITTED.—** Under Art. 266-A(1)(d) of the RPC, statutory rape is committed "[b]y a man who shall have carnal knowledge of a woman" who is "under twelve (12) years of age." In the instant case, the prosecution proved beyond reasonable doubt that appellant had carnal knowledge of "BBB" who was only 5 years of age at the time.

3. REMEDIAL LAW; EVIDENCE; THE FLIGHT OF AN ACCUSED IS AN INDICATION OF HIS GUILT OR OF A GUILTY MIND; CASE AT BAR.— [T]he courts below correctly disposed of appellant's contention that "EEE" was the real culprit. Both "AAA" and "BBB" were consistent in pointing out that it was appellant who committed the sexual acts against them. Despite the suggestion from appellant's counsel, both remained steadfast that their father was the one who raped them. Lending credence to the fact that appellant was indeed guilty of the crimes attributed against him were his own actuations at the time material to this case. By appellant's own admission, he did nothing upon learning that his own daughters "AAA" and "BBB" were sexually molested allegedly by "EEE." Instead, he just went to sleep upon learning of the abuses committed against his own daughters. When his wife, "CCC," insisted on bringing "AAA" and "BBB" to the hospital to undergo medical examination, appellant got angry. He sold their personal effects and even destroyed their house. He also made himself scarce. Even after hearing over the radio that he was the one accused of raping his two daughters, he did not come forward to clear his name. Instead, he went on hiding until his capture two years later. "[T]he flight of an accused is an indication of his guilt or of a guilty mind."

4. CRIMINAL LAW; RAPE BY SEXUAL ASSAULT; PENALTY.— Under Article 266-B of the RPC, the penalty for rape by sexual assault is *reclusion temporal* "if the rape is committed by any of the 10 aggravating/qualifying circumstances mentioned in this article." In Criminal Case No. RTC-'02-735, the rape was committed by a parent against his then 3-year old child. *Reclusion temporal* ranges from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* which ranges from six (6) years and one (1) day to twelve (12) years. Thus, the trial court, as affirmed by the CA, correctly imposed upon appellant the penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal,* as maximum.

5. ID.; STATUTORY RAPE; PENALTY.— In Criminal Case No. RTC-'02-736, appellant had carnal knowledge of his daughter, "BBB," who was only 5 years old. Hence, the crime committed was statutory rape, the penalty for which is death. However, with the passage of Republic Act No. 9346 prohibiting the imposition

of the death penalty, the CA correctly modified the penalty to *reclusion perpetua* without eligibility for parole.

6. CIVIL LAW; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES; AWARDED IN CASE AT BAR.— In Criminal Case No. RTC-'02-735, the awards of ₱30,000.00 as civil indemnity and another ₱30,000.00 as moral damages are proper. However, the award of exemplary damages in the amount of ₱25,000.00 must be increased to ₱30,000.00 in line with prevailing jurisprudence. In Criminal Case No. RTC-'02-736, we find that both the trial court and the CA correctly awarded the amounts of ₱75,000.00 as civil indemnity and another ₱75,000.00 as moral damages. However, the award of exemplary damages in the amount of ₱25,000.00 must be increased to ₱30,000.00 in line with prevailing jurisprudence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

DEL CASTILLO, *J.*:

A father, accused of raping his two minor daughters, is before us praying for his acquittal.

On appeal is the July 31, 2007 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02312 which affirmed with modifications the Joint Decision[2] of the Regional Trial Court (RTC) of Calabanga, Camarines Sur, Branch 63, finding appellant Efren Alfonso guilty of Rape by Sexual Assault under Article 266-A(2) of the Revised Penal Code (RPC) in Criminal Case No. RTC-'02-735 and Statutory Rape under Article 266-A(1)(d) in Criminal Case No. RTC-'02-736.

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[1] *Rollo,* pp. 2-24; penned by Associate Justice Martin S. Villarama, Jr. (now a Member of this Court) and concurred in by Associate Justices Noel G. Tijam and Sesinando E. Villon.

[2] Records, Vol. 1, pp. 65-90; penned by Judge Freddie D. Balonzo.

Factual Antecedents

On October 1, 2002, two Informations were filed charging appellant with violations of Article 266-A(2) and 266-A(1)(d) of the RPC. The Informations read:

Crim. Case No. RTC'02-735

The undersigned Assistant Provincial Prosecutor x x x accuses EFREN ALFONSO [of] the crime of RAPE defined and penalized under Art. 266-A, (2) of the Revised Penal Code as amended by Republic Act 8353 and committed as follows:

That on or about the 7th day of April 2002, in x x x Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, willfully, unlawfully and feloniously committed an act of sexual assault upon his three (3)[-]year old daughter, "AAA"[3] by inserting his finger into the vagina of the said victim to her damage and prejudice.

The crime is committed with the following attendant aggravating/ qualifying circumstances: The victim is a child below seven years old and the offender is the father of the victim.

ACTS CONTRARY TO LAW.[4]

Crim. Case No. RTC'02-736

The undersigned Assistant Provincial Prosecutor x x x accuses EFREN ALFONSO [of] the crime of RAPE, defined and penalized under Art. 266-A, (1)(d) of the Revised Penal Code as amended by Republic Act 8353 and committed as follows:

That on or about the 7th day of April 2002, in x x x Philippines, and within the jurisdiction of this Honorable Court, the above-named

[3] The identity of the victim or any information which could 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; and 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.

[4] Records, Vol. 2, p. 1.

accused, willfully, unlawfully and feloniously succeed[ed] in having carnal knowledge [of] "BBB," his [Five (5)-year] old daughter to her damage and prejudice.

The crime is committed with the following attendant aggravating/ qualifying circumstances: The victim is a child below seven years old and the offender is the father of the victim.

ACTS CONTRARY TO LAW.[5]

On arraignment, appellant pleaded not guilty to both charges.[6] During pre-trial, appellant admitted that "AAA" and "BBB" are his legitimate children and who were then only 3 and 5 years old, respectively, on April 7, 2002.[7]

Thereafter, the cases were jointly tried.[8]

Version of the Prosecution

The prosecution's first witness was "CCC," the mother of "AAA" and "BBB." "CCC" testified that on April 6, 2002, she and her sons "DDD" and "EEE" went to Magarao, Camarines Sur, to have "DDD" treated by a quack doctor. They left "AAA" and "BBB" at their residence in the care of herein appellant. When "CCC" returned home on April 8, 2002, she found "AAA" and "BBB" crying and in a state of shock. She initially brought her daughters to the quack doctor but was prevailed upon to bring them to a hospital for medical examination. Upon her prodding, "AAA" and "BBB" informed her that they were sexually abused by their father, herein appellant.[9]

The prosecution next presented Dr. Augusto M. Quilon, Jr. (Dr. Quilon), a resident physician at the Bicol Medical Center who testified on the results of the medical examinations conducted on "AAA" and "BBB." Dr. Quilon explained that "AAA's" hymen was intact but her labia majora bore reddish

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[5] Records, Vol. 1, p. 1.

[6] *Id.* at 33; Records, Vol. 2, p. 55.

[7] Records, Vol. 1, pp. 35-36.

[8] *Id.*

[9] TSN, November 23, 2004, pp. 1-11.

marks which could possibly be caused by the insertion of a finger. "BBB," on the other hand, had superficial lacerations in her hymen which could possibly be caused by sexual contact or insertion of a foreign object.[10]

The prosecution next presented "BBB" as its witness. "BBB" was only 7 years old when she testified in court, thus:

x x x x x x x x x

PROS. OLIVEROS:

Q Do you know what x x x your father has done to you?

A Yes, Sir.

Q Can you tell us what your father has done to you?

A He had [sexual] intercourse with me.

Q When you said you were molested by your father, what happened to your vagina?

A It was painful.

Q Do you know also [where] the penis of your father x x x [was] situated?

INTERPRETER:

A And the witness pointed to her vagina.

PROS. OLIVEROS:

Q Did x x x your father x x x [insert his penis into] your vagina?

A Yes, Sir.

x x x x x x x x x

Q You said a while ago that you felt pain, aside from that, what did you [observe] in your vagina?

A It was painful.

Q Was there blood that oozed [from] your vagina?

A Yes, Sir.

Q Do you have clothes x x x when this incident happened?

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[10] TSN, December 15, 2004, pp. 1-12.

A Yes, Sir.

Q [Were] your clothes x x x removed?

A Yes, Sir.

Q Who removed [your clothes]?

A My father.

Q Kindly tell us again what is the name of your father who removed your apparel?

A Efren.

Q If your father Efren is in court, [can you] pinpoint him to us?

INTERPRETER:

A And the witness pointed to a man, [who] when asked what is his name, answered Efren Alfonso.

PROS. OLIVEROS:

Q Can you tell us, ["BBB"], after you were sexually abused by your father, do you still remember what happened to your sister ["AAA"]?

A Yes, Sir.

Q Tell us what did your father do to your sister ["AAA"]?

A He used his hand.

Q What did your father do [with] his hand?

A He used his hand.

Q Where did your father [use his hand]?

A On the vagina.

INTERPRETER:

And the witness pointed to her vagina.

PROS. OLIVEROS:

Q Vagina of your sister ["AAA"]?

A Yes, Sir.

x x x x x x x x x

Q By the way, ["BBB"], when [did] this incident [happen] x x x was [it] [nighttime] or x x x [daytime]?

A It was x x x [nighttime].

x x x x x x x x x[11]

After "BBB," the prosecution presented "AAA" who was only 5 years old when she testified, thus:

x x x x x x x x x

PROS. OLIVEROS:

Q Do you know also the name of your father?

A Yes, Sir.

Q Kindly tell us[.]

A Efren.

PROS. OLIVEROS:

Q If your father[,] Efren[,] is in court, please look around and pinpoint him to us[.]

INTERPRETER:

The witness has pointed to a man [who] when asked what is his name, answered Efren Alfonso.

PROS. OLIVEROS:

Q A while ago you pinpointed to your father[,] Efren Alfonso[.] Do you know what [your father did to you?]

A Yes, Sir.

Q What did your father do to you?

A He removed his clothes and he removed also my clothes and he had sexual intercourse with me.

Q What did your father use in sexually abusing you?

A His forefinger.

INTERPRETER:

As demonstrated by the witness.

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[11] TSN, January 12, 2005, pp. 6-8.

PROS. OLIVEROS:

Q When you were sexually abused by your father by using his finger, who was your companion then?

A Owen and x x x my sister.

Q You said that you were sexually molested by your father by using his finger[. Did] x x x your father [insert his finger into] your vagina?

A Yes, Sir.

Q What did you feel when your father inserted his finger into your vagina?

A It was painful.

Q A while ago you said you have a companion, a sister of yours, if that sister is in court can you pinpoint her to us?

INTERPRETER:

The witness x x x pointed to a girl and when asked what is her name, [she] answered ["BBB"].

PROS. OLIVEROS:

x x x x x x x x x

Q You pinpointed your older sister ["BBB"], do you know what x x x your father also [did] to your sister ["BBB"]?

A Yes, Sir.

Q Kindly tell us what x x x your father [did] to your older sister ["BBB"].

A My sister removed her clothes and my father also removed his clothes.

Q After removing those clothes, what did your father do?

A He had sexual intercourse with ["BBB"].[12]

In order to assess whether "AAA" understood what she was testifying on, the trial judge likewise propounded questions to her. Thus:

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[12] TSN, January 19, 2005, pp. 5-7.

COURT:

Few questions from the court.

Q You x x x mentioned ["AAA"] that your father had inserted his finger [into] your vagina, was it done [at nighttime?]

A Yes, Your Honor.

Q And your mother was not around?

A Yes, Your Honor.

Q And it was only the following day that your mother arrived?

A Yes, Sir.

Q And that was also the time that you have informed your mother of what happened?

A Yes, Your Honor.

Q And x x x who were with you on that night?

A Erwin and Ate.

Q What about your father?

A He was with us that night.

Q And it was you, your father, your sister[,] and [a] certain Erwin, who slept together on that night?

A Yes, Sir.

Q You also x x x mentioned that whenever you take a bath your father [would insert] his finger [into] your vagina, is that correct?

A Yes, Sir.

Q What did you feel?

A Painful.

Q And you did not inform your mother [that] whenever your father bathed you, [he would insert] his finger [into] your vagina?

A No, Your Honor.

Q So it was only the following day after your father had inserted his finger [into] your vagina that you x x x told your mother about it?

A Yes, Your Honor.[13]

Finally, the prosecution presented the Local Civil Registrar who testified on the Certificates of Live Birth of "AAA" and "BBB." It was established that "AAA" was born on January 18, 1999 and was only 3 years old when the incident happened. As regards "BBB," she was born on September 25, 1996 and was only 5 years old when the incident occurred.

Version of the Defense

The defense presented appellant as its lone witness. He claimed that on April 7, 2002, he was working at the sugarcane plantation located about two kilometers away from their house[14] but he took his lunch at their house.[15] Contrary to the testimony of "CCC," appellant claimed that his wife did not leave their house on April 7, 2002.[16]

According to appellant, it was already nighttime when he went home on April 7, 2002.[17] Upon arrival, he noticed that "AAA" was already asleep but "BBB" was still awake. He was informed by his wife that "BBB" was sick.[18] Appellant further testified, thus:

Q What did you do after you learned that "BBB" was not feeling well?

A I told my wife to ask "BBB" what she feels.

Q Did your wife ask "BBB"?

A Yes, sir.

Q Did you hear ["BBB's" answer] to the query asked by your wife?

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

[14] TSN, April 13, 2005, p. 4.

[15] *Id.* at 5.

[16] *Id.* at 2.

[17] *Id.* at 6.

[18] *Id.* at 7.

A Yes, sir, headache.

Q What happened next after you heard "BBB" complaining about her head?

A Then my wife asked "BBB" again what else is she feeling[.]

Q Did "BBB" answer back?

A Yes, sir.

Q What did you hear?

A She was also complaining about her knees.

Q x x x [W]hat happened next, if any?

A My wife asked her again.

Q What was the question?

A What else was wrong with her.

Q What did "BBB" answer when she was asked again.

A Her vagina is also painful.

Q So, what happened next after "BBB" told your wife that her vagina was painful?

A "BBB" told us that she was sexually abused by her Manoy, by her elder brother.

Q What did you do after "BBB" told you that she was sexually abused by her Manoy?

A Nothing, sir.

Q How about your wife, what did she do?

A None also, sir.

Q So, what happened to "BBB" after she told you that she was abused by her Manoy, after telling that what did she do?

A Nothing, sir.

Q You said that you [did] nothing together with your wife including "BBB." What [happened] after you heard "BBB" [tell] you x x x that she was sexually abused by her Manoy?

A I asked my wife if she will file a case in court but she did not respond.

Q So, what did you do after that?

A When I asked my wife if she will file a case in court, my wife did not reply.

Q That's why after that what happened next?

A No more, sir.

Q So, what did you do?

A Then we went to sleep.[19]

x x x x x x x x x

Q Who is this ["EEE"] you referred to?

A When I married my wife, she already [has] a son.

Q ["EEE"] is your step-son, is that correct?

A Yes, sir.

Q How were you able to say that it was ["EEE"] who sexually abused your two daughters?

A It was my wife who asked our daughters and they told my wife that it was ["EEE"] who abused them.

x x x x x x x x x

Q Were there other persons aside from ["EEE"] whom they called Manoy?

A None, sir.[20]

x x x x x x x x x

COURT:

Only one question from the court.

Q What is the age of ["EEE" in] April, 2002?

A [In] April 2002, he was already in Grade III.

Q His age may be 10 or 11 years old?

A Yes, your Honor.[21]

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[19] *Id.* at 8-10.

[20] *Id.* at 10-11.

[21] *Id.* at 14.

Ruling of the Regional Trial Court

On May 25, 2006, the RTC rendered its Joint Decision,[22] the dispositive portion of which reads:

PREMISES CONSIDERED, the prosecution having proven the guilt of the accused beyond reasonable doubt in both Criminal Case No. RTC'02-735 and Criminal Case No. RTC'02-736, judgment is hereby rendered as follows:

1. In **Criminal Case No. RTC'02-735**, this Court finds the accused, EFREN ALFONSO, guilty beyond reasonable doubt of the offense of Rape by Sexual Assault as defined and penalized under paragraph 2 of Article 266-A of Republic Act 8353 with the qualifying circumstances under number 1 of Article 266-B of Republic Act 8353 that the victim is under 18 years of age and the offender is a parent and under number 5 thereof that the victim is a child below seven years old as charged in the Information and hereby sentences him to suffer the indeterminate penalty of SIX (6) years and ONE (1) day of *PRISION MAYOR*, as minimum, to SEVENTEEN (17) years, FOUR (4) months and ONE (1) day of *RECLUSION TEMPORAL*, as maximum; and to indemnify the offended party, "AAA," civil indemnity of ₱30,000.00, moral damages of ₱30,000.00 and exemplary damages of ₱15,000.00. The accused being a detention prisoner is entitled to be credited with 4/5 of his preventive imprisonment in the service of his sentence in accordance with Article 29 of the Revised Penal Code.

2. In **Criminal Case No. RTC'02-736**, this Court finds the accused, EFREN ALFONSO, guilty beyond reasonable doubt of the offense of Statutory Rape by having carnal knowledge of his daughter who is below 12 years of age as defined and penalized under letter (d) paragraph 1 of Article 266-A of R.A. 8353 with the qualifying circumstance under number 1 of Art. 266-B of Republic Act 8353 that the victim is under 18 years of age and the offender is a parent and under number 5 thereof that the victim is a child below seven years old as charged in the Information and hereby sentences him to suffer the extreme penalty of DEATH; and to indemnify the victim, "BBB," the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.[23]

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[22] Records, Vol. 1, pp. 65-90.

[23] *Id.* at 89.

The trial court lent credence to the testimony of "CCC" that she was in Magarao on April 6, 2002 and that when she went home on April 8, 2002, she learned that her daughters "AAA" and "BBB" had been sexually molested by the appellant.[24] Lending credibility to "CCC's" testimony were the results of the physical examination conducted on her daughters which indicated that "AAA" had "hyperemic *labia majora*" while "BBB" had "superficial lacerations in her hymen."[25]

The court *a quo* found it unusual that the appellant did nothing at all upon learning of the sexual molestations suffered by his daughters which were allegedly committed by "EEE."[26] Worse, after learning over the radio that he was accused of raping his daughters, he did not come forward; instead, he made himself scarce until his apprehension two years later.[27]

On the other hand, the trial court found "AAA" and "BBB" competent witnesses despite their young age. Carefully observing their manner of testifying, the court below was satisfied that they can "perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court."[28]

The trial court disregarded the insinuation by the appellant that it was "EEE" who sexually abused "AAA" and "BBB." It noted that despite rigid cross-examination, "AAA" and "BBB" stuck to their testimonies that it was appellant who committed the molestations.[29] It also found it highly improbable for "CCC" to coach "AAA" and "BBB" to testify falsely against their father, or for "CCC" to allow "AAA" and "BBB" "to go through the rigors of a public trial"[30] just to have her husband convicted

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[24] *Id.* at 77.

[25] *Id.* at 77-82.

[26] *Id.* at 77.

[27] *Id.*

[28] *Id.* at 78.

[29] *Id.* at 81-82, 85.

[30] *Id.* at 84.

for a crime which he did not commit.[31] Since the complaints were filed on April 19, 2002 or barely 12 days after the commission of the crimes, the RTC opined that it was inconceivable for "CCC" "to have decided to fabricate a rape charge against the [appellant] much less convince or coach her children to testify falsely against their father."[32] Besides, the trial court noted that appellant did not offer any explanation as to why he sold their personal effects and destroyed their house when his wife decided to bring "AAA" and "BBB" to the hospital for medical examination.[33]

Ruling of the Court of Appeals

On appeal, appellant argued that the trial court erred in giving credence to the testimonies of "AAA" and "BBB." He claimed that their testimonies were all lies and fabrications as coached to them by "CCC."[34] He also alleged that the trial court erred in appreciating the qualifying circumstance of relationship as it was not proven that appellant is the father of "BBB."[35]

In its assailed July 31, 2007 Decision,[36] the CA found "no reason to reverse the findings of the trial court"[37] and thus upheld appellant's conviction on both charges. The dispositive portion of the CA Decision reads:

> WHEREFORE, premises considered, the present appeal is hereby DISMISSED for lack of merit. The appealed Joint Decision dated May 25, 2006 of the Regional Trial Court of Calabanga, Camarines Sur, Branch 63 is hereby AFFIRMED with MODIFICATIONS in that accused-appellant is sentenced to *reclusion perpetua* with no possibility of parole and reduction of exemplary damages from

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[31] *Id.*

[32] *Id.* at 85.

[33] *Id.* at 84.

[34] CA *rollo*, p. 75.

[35] *Id.* at 76.

[36] *Rollo,* pp. 2-24.

[37] *Id.* at 17.

₱30,000.00 to ₱25,000.00 in Criminal Case No. RTC'02-736 and in Criminal Case No. RTC'02-735, the increase from ₱15,000.00 to ₱25,000.00 in exemplary damages.

In all other respects, the decision under review STANDS.

With costs against the accused-appellant.

SO ORDERED.[38]

Our Ruling

On July 25, 2008, appellee filed a Manifestation[39] stating that it would no longer file a Supplemental Brief having already extensively discussed the issues in its brief filed before the CA.

Appellant filed his Supplemental Brief[40] on August 8, 2008. He insists that the CA overlooked the fact that the reddening of "AAA's" sexual organ might have been caused by a disease or by the scratching done by "AAA" herself. He claims that he could not be held liable for rape by sexual assault considering that the act imputed against him is nothing different from the accidental or casual touching of "AAA's" vagina which he does every time he gives "AAA" a bath.[41] As regards "BBB's" testimony, appellant argues that the same deserves scant consideration because "BBB" was coached by her mother, "CCC." Thus, the possibility that some other person committed the rape is present.[42] In particular, he points to "EEE" as the culprit.[43]

The appeal is bereft of merit.

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[38] *Id.* at 23.

[39] *Id.* at 36-37.

[40] *Id.* at 39-43.

[41] *Id.* at 39.

[42] *Id.* at 39-40.

[43] *Id.* at 40.

Both the trial court and the CA correctly found appellant guilty of rape by sexual assault.

Under Article 266-A(2) of the RPC, rape by sexual assault is committed "[b]y any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person."

In the present case, there is no doubt that appellant inserted his finger into the genital of "AAA." The claim of the appellant that disease or scratching caused the reddening of "AAA's" genital lacks factual basis. In fact, appellant did not mention this before the court below to bolster his defense of denial albeit Dr. Quilon's mentioning that the reddening of "AAA's" genital could have also been caused by scratching or disease. Likewise, the defense never presented any proof that "AAA" was suffering from a disease at the time. Neither did the defense elicit any admission from "AAA" that she scratched her genital thus causing the reddening. On the contrary, records show that "AAA" was forthright in her testimony that her father inserted his finger into her vagina.

Moreover, appellant's admission that he touches "AAA's" vagina each time he gives her a bath strengthens our belief that he is capable of committing sexual abuse to his own daughter. Also, such admission does not negate the possibility of committing rape by sexual assault on "AAA" on April 7, 2002.

We reviewed succintly the testimony of "AAA" and we find the same credible and straightforward. At the time of the incident, "AAA" was only 3 years old. She was 5 years old when she testified before the court. However, despite her age she consistently and without hesitation pointed to her father as the person who inserted his finger into her vagina on April 7, 2002.

Her tender age notwithstanding the trial court ably found "AAA" competent to testify on her harrowing experience. As aptly observed by the trial court:

Certain nagging questions need to be answered such as for instance did the children fully understand the meaning of what they were telling the court? Were they able to distinguish truth from falsehood? Were they able to appreciate the duty to tell the truth in court?

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The competence of "BBB" to testify as to the fact of her having been sexually abused was amply demonstrated before this Court. Both "BBB" and "AAA" were asked questions by the prosecution and defense in order to probe their competency to testify in terms of their ability to perceive, remember, communicate and distinguish truth from falsehood. After observing the manner of testifying and hearing the answers of the child witnesses, this court was satisfied that no substantial doubt existed regarding the ability of the children to perceive, remember, communicate, distinguish truth from falsehood, or appreciate the duty to tell the truth in court.[44]

Both the trial court and the CA correctly found appellant guilty of statutory rape.

Under Art. 266-A(1)(d) of the RPC, statutory rape is committed "[b]y a man who shall have carnal knowledge of a woman" who is "under twelve (12) years of age." In the instant case, the prosecution proved beyond reasonable doubt that appellant had carnal knowledge of "BBB" who was only 5 years of age at the time.

Both the trial court and the appellate court correctly disregarded appellant's contention that "BBB's" testimony was rehearsed. The records clearly show that "BBB" testified in a straightforward and credible manner despite the rigid cross-examination by the appellant's counsel. She remained steadfast throughout her narration that it was appellant who sexually abused her. This prompted the trial court to state thus:

It is unthinkable that a child of tender years placed under rigid cross-examination would not loosen up or break down and reveal the details of such a traumatic experience including pinpointing the actual perpetrator of the crime. It is believed that such traumatic

[44] Records, Vol. 1, pp. 77-78.

experiences are deeply engraved in the memory of the victim and will certainly come to the surface once the victim is confronted and cross-examined especially when the victim is an innocent and naïve child. Their natural innocence and naivete will prevent them from sustaining a lie.[45]

There is likewise no basis to appellant's claim that "CCC" coached "BBB" to testify falsely against him. We agree with the trial court's observation that:

To say that "CCC" deliberately concocted the rape charge against accused who was her husband and that she taught her children, who were only 5 and 7 years of age, to falsely testify against their very own father would attribute such a high degree of malevolence if not sophistication to said witness. This court finds it highly improbable. To go out of her way to file a complaint and go through the rigors of a public trial for the purpose of having her husband convicted for an offense he did not commit is to this court something the witness does not appear capable of. Moreover, wanting to spare a son from being prosecuted and punished is not a sufficient motivation for a wife and mother to want to have her husband put in prison or punished with the supreme penalty of death. The ordinary functioning of the human mind and human emotion does not seem to work that way. It could probably happen in moments of desperation as when there is no other way to save her son. The sequence of events as shown by the evidence does not bear this out. x x x

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The record likewise shows that the complaint was filed on April 19, 2002 or only 9 days after the children were examined and were found to have signs of having been sexually abused. During this span of time, it is inconceivable for "CCC" to have decided to fabricate a rape charge against the accused much less convince or coach her children to testify falsely against their father. Moreover, all these could have been uncovered during cross examination. As it is, despite the rigid cross examination by counsel for the accused, "BBB" and "AAA" did not falter in pointing to their father as the one who did something wrong to their vaginas.[46]

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[45] *Id.* at 81.

[46] *Id.* at 84-85.

Finally, the courts below correctly disposed of appellant's contention that "EEE" was the real culprit. Both "AAA" and "BBB" were consistent in pointing out that it was appellant who committed the sexual acts against them. Despite the suggestion from appellant's counsel, both remained steadfast that their father was the one who raped them. Lending credence to the fact that appellant was indeed guilty of the crimes attributed against him were his own actuations at the time material to this case. By appellant's own admission, he did nothing upon learning that his own daughters "AAA" and "BBB" were sexually molested allegedly by "EEE." Instead, he just went to sleep upon learning of the abuses committed against his own daughters. When his wife, "CCC," insisted on bringing "AAA" and "BBB" to the hospital to undergo medical examination, appellant got angry. He sold their personal effects and even destroyed their house. He also made himself scarce. Even after hearing over the radio that he was the one accused of raping his two daughters, he did not come forward to clear his name. Instead, he went on hiding until his capture two years later. "[T]he flight of an accused is an indication of his guilt or of a guilty mind."[47]

We thus agree with the observation of the court *a quo* that:

The facts as testified to by the accused on the other hand do not seem to jibe with the normal habits of man. For instance, according to the accused, despite having heard that his child "BBB" was sexually abused by his stepson, he did nothing about it. It does not take much education to feel the protective instincts of a father whose child has been violated. He did not confront his stepson nor did he report the matter to the *barangay*. Not even when he learned over the radio that he was being accused of raping his own daughters did he come forward with what he believed was the truth. Instead, the accused made himself scarce until he was finally apprehended in the year 2004. Such actuations do not appear consistent with the actuations of an innocent man.[48]

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It might have been a bit more believable if say the accused reported the matter to the *barangay* captain or warned ["CCC"] that he would

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[47] *People v. Vallador*, 327 Phil. 303, 315 (1996).

[48] Records, Vol. I, p. 77.

report the matter to the authorities. He did neither. In fact, he did nothing. There is nothing to corroborate his claim that "BBB" told her mother that she was sexually abused by her Manoy.[49]

All told, we entertain no doubt that appellant committed the imputed acts upon his daughters "AAA" and "BBB" on April 7, 2002.

The Penalty

Under Article 266-B of the RPC, the penalty for rape by sexual assault is *reclusion temporal* "if the rape is committed by any of the 10 aggravating/ qualifying circumstances mentioned in this article." In Criminal Case No. RTC-'02-735, the rape was committed by a parent against his then 3-year old child. *Reclusion temporal* ranges from twelve (12) years and one (1) day to twenty (20) years. Applying the Indeterminate Sentence Law, the penalty next lower in degree is *prision mayor* which ranges from six (6) years and one (1) day to twelve (12) years. Thus, the trial court, as affirmed by the CA, correctly imposed upon appellant the penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal,* as maximum.

In Criminal Case No. RTC-'02-736, appellant had carnal knowledge of his daughter, "BBB," who was only 5 years old. Hence, the crime committed was statutory rape, the penalty for which is death.[50] However, with the passage of Republic Act No. 9346[51] prohibiting the imposition of the death penalty,

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[49] *Id.* at 84.

[50] Revised Penal Code, Art. 266-B provides in part:

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The death penalty shall also be imposed if the crime of rape is committed with any of the following aggravating/qualifying circumstances:

1. When the victim is under eighteen (18) years of age and the offender is a parent x x x of the victim.

x x x x x x x x x

5. When the victim is a child below seven (7) years old.

[51] AN ACT PROHIBITING THE IMPOSITION OF THE DEATH PENALTY IN THE PHILIPPINES [2006].

the CA correctly modified the penalty to *reclusion perpetua* without eligibility for parole.

Damages

In Criminal Case No. RTC-'02-735, the awards of ₱30,000.00 as civil indemnity and another ₱30,000.00 as moral damages are proper. However, the award of exemplary damages in the amount of ₱25,000.00 must be increased to ₱30,000.00 in line with prevailing jurisprudence.[52]

In Criminal Case No. RTC-'02-736, we find that both the trial court and the CA correctly awarded the amounts of ₱75,000.00 as civil indemnity and another ₱75,000.00 as moral damages. However, the award of exemplary damages in the amount of ₱25,000.00 must be increased to ₱30,000.00 in line with prevailing jurisprudence.[53]

WHEREFORE, we *AFFIRM* with *MODIFICATIONS* the July 31, 2007 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 02312. Appellant Efren Alfonso is found guilty of Rape by Sexual Assault in Criminal Case No. RTC-'02-735 and is sentenced to suffer the penalty of six (6) years and one (1) day of *prision mayor*, as minimum, to seventeen (17) years, four (4) months and one (1) day of *reclusion temporal*, as maximum. He is also ordered to pay "AAA" the amounts of ₱30,000.00 as civil indemnity, ₱30,000.00 as moral damages, and ₱30,000.00 as exemplary damages. Appellant is also found guilty of Statutory Rape in Criminal Case No. RTC-'02-736 and is hereby sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole. He is also ordered to pay "BBB" the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages.

SO ORDERED.

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

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[52] See *People v. Lindo,* G.R. No. 189818, August 9, 2010.

[53] See *People v. Garbida*, G.R. No. 188569, July 13, 2010.

SECOND DIVISION

[G.R. No. 183688. August 18, 2010]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **RIZALINA GUSTILO BARRIDO and HEIRS OF ROMEO BARRIDO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; INHERENT POWERS OF THE STATE; EXPROPRIATION; JUST COMPENSATION; IF JUST COMPENSATION IS NOT SETTLED PRIOR TO THE PASSAGE OF R.A. NO. 6657, IT SHOULD BE COMPUTED IN ACCORDANCE WITH SAID LAW EVEN IF THE PROPERTY WAS ACQUIRED UNDER P.D. 27.—** We have ruled in a number of cases that if just compensation is not settled prior to the passage of Republic Act (R.A.) No. 6657, it should be computed in accordance with said law even if the property was acquired under P.D. No. 27. The fixing of just compensation should, therefore, be based on the parameters prescribed in R.A. No. 6657, with P.D. No. 27 and E.O. No. 228 having only suppletory effect. Specifically, Section 17 of R.A. 6657 is the principal basis of the computation for just compensation. The factors set forth in this section have been translated into a basic formula outlined in DAR Administrative Order No. 5, series of 1998, thus: "A. There shall be one basic formula for the valuation of lands covered by VOS or CA: LV = (CNI x 0.6) + (CS x 0.3) + (MV x 0.1) Where: LV = Land Value CNI = Capitalized Net Income CS = Comparable Sales MV= Market Value per Tax Declaration The above formula shall be used if all three factors are present, relevant and applicable. A1. When the CS factor is not present and CNI and MV are applicable, the formula shall be: LV = (CNI x 0.9) + (MV x 0.1) A2. When the CNI factor is not present, and CS and MV are applicable, the formula shall be: LV = (CS x 0.9) + (MV x 0.1) A3. When both the CS and CNI are not present and only MV is applicable, the formula shall be: LV = MV x 2 In no case shall the value of the land using the formula MV x 2 exceed the lowest value of land within the same estate under consideration or within the same *barangay* or municipality (in that order) approved by LBP within one (1) year from receipt of claimfolder."

2. ID.; ID.; ID.; ID.; WHILE THE DETERMINATION THEREOF IS ESSENTIALLY A JUDICIAL FUNCTION, THE JUDGE CANNOT ABUSE HIS DISCRETION BY NOT TAKING INTO FULL CONSIDERATION THE FACTORS SPECIFICALLY IDENTIFIED BY LAW.— While the determination of just compensation is essentially a judicial function vested in the RTC acting as a Special Agrarian Court, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules. Special Agrarian Courts are not at liberty to disregard the formula laid down in DAR A.O. No. 5, series of 1998, because unless an administrative order is declared invalid, courts have no option but to apply it. The courts cannot ignore, without violating the agrarian law, the formula provided by the DAR for the determination of just compensation.

APPEARANCES OF COUNSEL

CARP Legal Services Department (LBP) for petitioner.
Tomas R. Leonidas for respondents.

R E S O L U T I O N

NACHURA, *J.*:

For review is the Court of Appeals (CA) Decision[1] dated February 20, 2008 and its Resolution[2] dated July 8, 2008 in CA-G.R. CEB-SP No. 01641. The assailed decision affirmed the Decision[3] of the Regional Trial Court (RTC), Branch 34, Iloilo City in Civil Case No. 04-28093; while the assailed resolution denied petitioner Land Bank of the Philippines' motion for reconsideration.

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[1] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Pampio A. Abarintos and Francisco P. Acosta, concurring; *rollo*, pp. 65-75.

[2] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Priscilla Baltazar-Padilla and Francisco P. Acosta, concurring; *id.* at 78-79.

[3] Penned by Presiding Judge Ma. Yolanda M. Panaguiton-Gaviño; *id.* at 120-133.

The undisputed facts are as follows:

Respondents Rizalina Gustilo Barrido and the Heirs of Romeo Barrido are the registered owners of a parcel of land with an area of 89,204 square meters covered by Original Certificate of Title No. 0-6318, situated in Barangay Apologista, Sara, Iloilo. On April 30, 2003, the government expropriated a portion of the property consisting of 43,461[4] sq m for distribution to the farmer-beneficiaries under the Land Reform Program. Petitioner offered respondents a total amount of ₱60,385.49 as just compensation, but respondents rejected the offer. Respondents instituted an original action before the RTC for the judicial determination of just compensation. The case was docketed as Civil Case No. 04-28093.[5]

In their separate Answers, petitioner and the Department of Agrarian Reform (DAR) insisted that the valuation made is correct, it being based on the formula laid down in Presidential Decree (P.D.) No. 27 as supplemented by Executive Order (E.O.) No. 228.[6] Under these issuances, the prescribed formula is as follows:

Land Value = Average Gross Production (AGP) x 2.5 x
Government Support Price (GSP)

On December 8, 2005, the RTC rendered a Decision[7] fixing the just compensation at ₱94, 797.09 per hectare, the dispositive portion of which reads:

> WHEREFORE, based on the foregoing premises, judgment is hereby rendered fixing the just compensation of land at ₱94,797.09 per hectare and ordering the LBP to pay plaintiffs Rizalina Gustilo Barrido and Heirs of Romeo Barrido the total sum of ₱411,997.63 as just compensation for the 4.3461 hectares taken by the government pursuant to P.D. No. 27 and E.O. No. 228 plus 12% interest per annum from March 21, 2003 until full payment.

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[4] Initially claimed as 45,461 sq m.

[5] *Rollo*, p. 65.

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

[7] *Supra* note 3.

SO ORDERED.[8]

The RTC arrived at the valuation by taking the average between the amount found by the DAR using the formula prescribed by E.O. No. 228 and the market value of the property which is ₱175,700.00 per hectare. In addition, the court also awarded 12% interest in the form of damages in view of the delay in the payment of just compensation.[9] Petitioner's motion for reconsideration was denied on March 1, 2006.[10]

On appeal, the CA affirmed the RTC decision in its entirety. Hence, the instant petition for review which assigns the following errors:

I.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW WHEN IT AFFIRMED THE DECISION DATED DECEMBER 8, 2005 AND ORDER DATED MARCH 1, 2006 OF THE REGIONAL TRIAL COURT OF ILOILO CITY, BRANCH 34 IN CIVIL CASE NO. 04-28093, FINDING THAT THE APPLICABLE LAW IN THE INSTANT CASE IS R.A. NO. 6657 AND NOT P.D. NO. 27 AND E.O. NO. 228.

II.

ASSUMING *ARGUENDO* THAT R.A. NO. 6657 IS THE APPLICABLE LAW, STILL THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW WHEN IT AFFIRMED THE SAID DECISION AND ORDER OF THE TRIAL COURT THAT FIXED THE JUST COMPENSATION WHICH IS NOT IN ACCORDANCE WITH THE PROVISIONS OF R.A. NO. 6657 AS TRANSLATED INTO A BASIC FORMULA UNDER DAR ADMINISTRATIVE ORDER NO. 5, SERIES OF 1998.

III.

THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW WHEN IT AFFIRMED THE SUBJECT DECISION AND ORDER OF THE TRIAL COURT THAT AWARDED IN FAVOR

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[8] *Rollo*, p. 131.

[9] *Id.* at 130-131.

[10] *Id.* at 132-133.

OF THE RESPONDENT TWELVE PERCENT (12%) INTEREST PER ANNUM FOR ALLEGED DELAY IN PAYMENT.[11]

The issues raised in the instant case are not novel. We have ruled in a number of cases that if just compensation is not settled prior to the passage of Republic Act (R.A.) No. 6657, it should be computed in accordance with said law even if the property was acquired under P.D. No. 27.[12] The fixing of just compensation should, therefore, be based on the parameters prescribed in R.A. No. 6657, with P.D. No. 27 and E.O. No. 228 having only suppletory effect.[13] Specifically, Section 17[14] of R.A. 6657 is the principal basis of the computation for just compensation.[15] The factors set forth in this section have been translated into a basic formula outlined in DAR Administrative Order No. 5, series of 1998,[16] thus: [17]

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

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[11] *Id.* at 22-23.

[12] *Land Bank of the Philippines v. Domingo and Mamerto Soriano*, G.R. Nos. 180772 and 180776, May 6, 2010; *Land Bank of the Philippines v. Dumlao*, G.R. No. 167809, November 27, 2008, 572 SCRA 108.

[13] *Land Bank of the Philippines v. Domingo and Mamerto Soriano*, *supra*.

[14] Section 17 of R.A. 6657 states:

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

[15] *Land Bank of the Philippines v. Domingo and Mamerto Soriano, supra*.

[16] Revised Rules and Regulations Governing the Valuation of Lands Voluntarily Offered or Compulsorily Acquired Pursuant to Republic Act No. 6657.

[17] *Heirs of Lorenzo and Carmen Vidad and Agvid Construction Co., Inc. v. Land Bank of the Philippines*, G.R. No. 166461, April 30, 2010.

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

Where: LV = Land Value
CNI = Capitalized Net Income
CS = Comparable Sales
MV= Market Value per Tax Declaration

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

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

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

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

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

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

LV = MV x 2

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

While the determination of just compensation is essentially a judicial function vested in the RTC acting as a Special Agrarian Court, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law and implementing rules.[18] Special Agrarian Courts are not at liberty to disregard the formula laid down in DAR A.O. No. 5, series of 1998, because unless an administrative order is declared invalid, courts have no option but to apply it.[19] The courts cannot ignore, without violating the agrarian law, the formula provided by the DAR for the determination of just compensation.[20]

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[18] *Land Bank of the Philippines v. Kumassie Plantation Company, Incorporated*, G.R. No. 177404, June 25, 2009, 591 SCRA 1.

[19] *Land Bank of the Philippines v. Dumlao*, *supra* at 132-133.

[20] *Allied Bank Corporation v. Land Bank of the Philippines*, G.R. No. 175422, March 13, 2009, 581 SCRA 301, 313 citing *Land Bank of the*

In this case, the RTC adopted a different formula in determining land valuation by considering the average between the findings of the DAR using the formula laid down in E.O. 228 and the market value of the property as stated in the tax declaration. This is obviously a departure from the mandate of the law and the DAR administrative order.

As the RTC based its valuation on a different formula and without taking into consideration the factors set forth in Section 17 of R.A. 6657, we are constrained to remand the case to the RTC for the determination of just compensation in accordance with this formula and applicable DAR regulations.

WHEREFORE, the February 20, 2008 Decision and July 8, 2008 Resolution of the Court of Appeals in CA-G.R. CEB-SP No. 01641 are *REVERSED* and *SET ASIDE.*

Civil Case No. 04-28093 is *REMANDED* to the court of origin, Branch 34 of the Regional Trial Court of Iloilo City, which is directed to determine with dispatch the just compensation due respondents Rizalina Gustilo Barrido and the Heirs of Romeo Barrido strictly in accordance with the formula laid down in DAR Administrative Order No. 5, series of 1998.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

Philippines v. Celada, G.R. No. 164876, January 23, 2006, 479 SCRA 495.

SECOND DIVISION

[G.R. No. 185286. August 18, 2010]

MA. SOCORRO CAMACHO-REYES, *petitioner, vs.* **RAMON REYES-REYES,** *respondent.*

SYLLABUS

1. **CIVIL LAW; FAMILY CODE; VOID MARRIAGES; DECLARATION OF NULLITY OF MARRIAGE BASED ON PSYCHOLOGICAL INCAPACITY; PSYCHOLOGICAL INCAPACITY; CHARACTERISTICS.—** *Santos v. Court of Appeals* solidified the jurisprudential foundation of the principle that the factors characterizing psychological incapacity to perform the essential marital obligations are: (1) gravity, (2) juridical antecedence, and (3) incurability. We explained: "The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved."

2. **ID.; ID.; ID.; ID.; ID.; THE LACK OF PERSONAL EXAMINATION AND INTERVIEW OF A PERSON DIAGNOSED WITH PERSONALITY DISORDER, DOES NOT *PER SE*, INVALIDATE THE TESTIMONIES OF THE DOCTORS.—** The lack of personal examination and interview of the respondent, or any other person diagnosed with personality disorder, does not *per se* invalidate the testimonies of the doctors. Neither do their findings automatically constitute hearsay that would result in their exclusion as evidence. For one, marriage, by its very definition, necessarily involves only two persons. The totality of the behavior of one spouse during the cohabitation and marriage is generally and genuinely witnessed mainly by the other. In this case, the experts testified on their individual assessment of the present state of the parties' marriage from the perception of one of the parties, herein petitioner. Certainly, petitioner, during their marriage, had occasion to interact with, and experience, respondent's pattern of behavior which she

could then validly relay to the clinical psychologists and the psychiatrist. For another, the clinical psychologists' and psychiatrist's assessment were not based solely on the narration or personal interview of the petitioner. Other informants such as respondent's own son, siblings and in-laws, and sister-in-law (sister of petitioner), testified on their own observations of respondent's behavior and interactions with them, spanning the period of time they knew him. These were also used as the basis of the doctors' assessments.

3. **ID.; ID.; ID.; ID.; ID.; DOCTORS CAN DIAGNOSE THE PSYCHOLOGICAL MAKE UP OF A PERSON BASED ON A NUMBER OF FACTORS CULLED FROM VARIOUS SOURCES.—** Within their acknowledged field of expertise, doctors can diagnose the psychological make up of a person based on a number of factors culled from various sources. A person afflicted with a personality disorder will not necessarily have personal knowledge thereof. In this case, considering that a personality disorder is manifested in a pattern of behavior, self-diagnosis by the respondent consisting only in his bare denial of the doctors' separate diagnoses, does not necessarily evoke credence and cannot trump the clinical findings of experts.

4. **ID.; ID.; ID.; ID.; ID.; A RECOMMENDATION FOR THERAPY DOES NOT AUTOMATICALLY IMPLY CURABILITY.—** A recommendation for therapy does not automatically imply *curability*. In general, recommendations for therapy are given by clinical psychologists, or even psychiatrists, to manage behavior. In Kaplan and Saddock's textbook entitled Synopsis of Psychiatry, treatment, ranging from psychotherapy to pharmacotherapy, for all the listed kinds of personality disorders are recommended. In short, Dr. Dayan's recommendation that respondent should undergo therapy does not necessarily negate the finding that respondent's psychological incapacity is incurable.

5. **ID.; ID.; ID; ID.; ID.; A CLINICAL PSYCHOLOGIST'S OR PSYCHIATRIST'S DIAGNOSES THAT A PERSON HAS PERSONALITY DISORDER IS NOT AUTOMATICALLY BELIEVED BY THE COURTS.—** It is true that a clinical psychologist's or psychiatrist's diagnoses that a person has personality disorder is not automatically believed by the courts in cases of declaration of nullity of marriages. Indeed, a clinical

psychologist's or psychiatrist's finding of a personality disorder does not exclude a finding that a marriage is valid and subsisting, and not beset by one of the parties' or both parties' psychological incapacity. On more than one occasion, we have rejected an expert's opinion concerning the supposed psychological incapacity of a party. In *Lim v. Sta. Cruz-Lim*, we ruled that, even without delving into the non-exclusive list found in *Republic v. Court of Appeals & Molina*, the stringent requisites provided in *Santos v. Court of Appeals* must be independently met by the party alleging the nullity of the marriage grounded on Article 36 of the Family Code. x x x In the case at bar, however, even without the experts' conclusions, the factual antecedents (narrative of events) alleged in the petition and established during trial, all point to the inevitable conclusion that respondent is psychologically incapacitated to perform the essential marital obligations.

6. ID.; ID.; ID.; ID.; ID.; ANTISOCIAL PERSONALITY DISORDER; CLINICAL FEATURES.— [I]t is well to note that persons with antisocial personality disorder exhibit the following clinical features: "Patients with antisocial personality disorder can often seem to be normal and even charming and ingratiating. Their histories, however, reveal many areas of disordered life functioning. Lying, truancy, running away from home, thefts, fights, substance abuse, and illegal activities are typical experiences that patients report as beginning in childhood. x x x Their own explanations of their antisocial behavior make it seem mindless, but their mental content reveals the complete absence of delusions and other signs of irrational thinking. In fact, they frequently have a heightened sense of reality testing and often impress observers as having good verbal intelligence. x x x Those with this disorder do not tell the truth and cannot be trusted to carry out any task or adhere to any conventional standard of morality. x x x A notable finding is a lack of remorse for these actions; that is, they appear to lack a conscience." In the instant case, respondent's pattern of behavior manifests an inability, nay, a psychological incapacity to perform the essential marital obligations as shown by his: (1) sporadic financial support; (2) extra-marital affairs; (3) substance abuse; (4) failed business attempts; (5) unpaid money obligations; (6) inability to keep a job that is not connected with the family businesses; and (7) criminal charges of *estafa*.

7. **ID.; ID.; ID.; ID.; ID.; EACH CASE MUST BE JUDGED ACCORDING TO ITS OWN CASE.—** [I]t is wise to be reminded of the *caveat* articulated by Justice Teodoro R. Padilla in his separate statement in *Republic v. Court of Appeals and Molina*: "x x x Each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts. In the field of psychological incapacity as a ground for annulment of marriage, it is trite to say that no case is on 'all fours' with another case. The trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court."

APPEARANCES OF COUNSEL

Tan Acut Lopez & Pison for petitioner.
Reyes Cabrera Rojas & Associates for respondent.

D E C I S I O N

NACHURA, *J.*:

This case is, again, an instance of the all-too-familiar tale of a marriage in disarray.

In this regard, we air the caveat that courts should be extra careful before making a finding of psychological incapacity or vicariously diagnosing personality disorders in spouses where there are none. On the other hand, blind adherence by the courts to the exhortation in the Constitution[1] and in our statutes that marriage is an inviolable social institution, and validating a marriage that is null and void despite convincing proof of psychological incapacity, trenches on the very reason why a marriage that is doomed from its inception should not be forcibly inflicted upon its hapless partners for life.

At bar is a petition for review on *certiorari* assailing the decision of the Court of Appeals in CA -G.R. CV No.

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[1] Article XV, Section 2 of the Constitution.

89761[2] which reversed the decision of the Regional Trial Court, Branch 89, Quezon City in Civil Case No. Q-01-44854.[3]

First, we unfurl the facts.

Petitioner Maria Socorro Camacho-Reyes met respondent Ramon Reyes at the University of the Philippines (UP), Diliman, in 1972 when they were both nineteen (19) years old. They were simply classmates then in one university subject when respondent cross-enrolled from the UP Los Baños campus. The casual acquaintanceship quickly developed into a boyfriend-girlfriend relationship. Petitioner was initially attracted to respondent who she thought was free spirited and bright, although he did not follow conventions and traditions.[4] Since both resided in Mandaluyong City, they saw each other every day and drove home together from the university.

Easily impressed, petitioner enjoyed respondent's style of courtship which included dining out, unlike other couples their age who were restricted by a university student's budget. At that time, respondent held a job in the family business, the Aristocrat Restaurant. Petitioner's good impression of the respondent was not diminished by the latter's habit of cutting classes, not even by her discovery that respondent was taking marijuana.

Not surprisingly, only petitioner finished university studies, obtaining a degree in AB Sociology from the UP. By 1974, respondent had dropped out of school on his third year, and just continued to work for the Aristocrat Restaurant.

On December 5, 1976, the year following petitioner's graduation and her father's death, petitioner and respondent got married. At that time, petitioner was already five (5) months pregnant and employed at the Population Center Foundation.

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[2] Penned by Associate Justice Celia C. Librea-Leagogo, with Associate Justices Mario L. Guarina III and Pampio A. Abarintos concurring, and Associate Justices Vicente Q. Roxas and Teresita Dy-Liacco Flores dissenting, *rollo*, pp. 9-45.

[3] Penned by Judge Elsa I. De Guzman, *id.* at 237-261.

[4] Psychiatric Report of Dr. Cecilia C. Villegas, *id.* at 404.

Thereafter, the newlyweds lived with the respondent's family in Mandaluyong City. All living expenses were shouldered by respondent's parents, and the couple's respective salaries were spent solely for their personal needs. Initially, respondent gave petitioner a monthly allowance of ₱1,500.00 from his salary.

When their first child was born on March 22, 1977, financial difficulties started. Rearing a child entailed expenses. A year into their marriage, the monthly allowance of ₱1,500.00 from respondent stopped. Further, respondent no longer handed his salary to petitioner. When petitioner mustered enough courage to ask the respondent about this, the latter told her that he had resigned due to slow advancement within the family business. Respondent's game plan was to venture into trading seafood in the province, supplying hotels and restaurants, including the Aristocrat Restaurant. However, this new business took respondent away from his young family for days on end without any communication. Petitioner simply endured the set up, hoping that the situation will change.

To prod respondent into assuming more responsibility, petitioner suggested that they live separately from her in-laws. However, the new living arrangement engendered further financial difficulty. While petitioner struggled to make ends meet as the single-income earner of the household, respondent's business floundered. Thereafter, another attempt at business, a fishpond in Mindoro, was similarly unsuccessful. Respondent gave money to petitioner sporadically. Compounding the family's financial woes and further straining the parties' relationship was the indifferent attitude of respondent towards his family. That his business took him away from his family did not seem to bother respondent; he did not exert any effort to remain in touch with them while he was away in Mindoro.

After two (2) years of struggling, the spouses transferred residence and, this time, moved in with petitioner's mother. But the new set up did not end their marital difficulties. In fact, the parties became more estranged. Petitioner continued to carry the burden of supporting a family not just financially, but in most aspects as well.

In 1985, petitioner, who had previously suffered a miscarriage, gave birth to their third son. At that time, respondent was in Mindoro and he did not even inquire on the health of either the petitioner or the newborn. A week later, respondent arrived in Manila, acting nonchalantly while playing with the baby, with nary an attempt to find out how the hospital bills were settled.

In 1989, due to financial reverses, respondent's fishpond business stopped operations. Although without any means to support his family, respondent refused to go back to work for the family business. Respondent came up with another business venture, engaging in scrap paper and carton trading. As with all of respondent's business ventures, this did not succeed and added to the trail of debt which now hounded not only respondent, but petitioner as well. Not surprisingly, the relationship of the parties deteriorated.

Sometime in 1996, petitioner confirmed that respondent was having an extra-marital affair. She overheard respondent talking to his girlfriend, a former secretary, over the phone inquiring if the latter liked respondent's gift to her. Petitioner soon realized that respondent was not only unable to provide financially for their family, but he was, more importantly, remiss in his obligation to remain faithful to her and their family.

One of the last episodes that sealed the fate of the parties' marriage was a surgical operation on petitioner for the removal of a cyst. Although his wife was about to be operated on, respondent remained unconcerned and unattentive; and simply read the newspaper, and played dumb when petitioner requested that he accompany her as she was wheeled into the operating room. After the operation, petitioner felt that she had had enough of respondent's lack of concern, and asked her mother to order respondent to leave the recovery room.

Still, petitioner made a string of "final" attempts to salvage what was left of their marriage. Petitioner approached respondent's siblings and asked them to intervene, confessing that she was near the end of her rope. Yet, even respondent's siblings waved the white flag on respondent.

Adolfo Reyes, respondent's elder brother, and his spouse, Peregrina, members of a marriage encounter group, invited and sponsored the parties to join the group. The elder couple scheduled counseling sessions with petitioner and respondent, but these did not improve the parties' relationship as respondent remained uncooperative.

In 1997, Adolfo brought respondent to Dr. Natividad A. Dayan for a psychological assessment to "determine benchmarks of current psychological functioning." As with all other attempts to help him, respondent resisted and did not continue with the clinical psychologist's recommendation to undergo psychotherapy.

At about this time, petitioner, with the knowledge of respondent's siblings, told respondent to move out of their house. Respondent acquiesced to give space to petitioner.

With the *de facto* separation, the relationship still did not improve. Neither did respondent's relationship with his children.

Finally, in 2001,[5] petitioner filed (before the RTC) a petition for the declaration of nullity of her marriage with the respondent, alleging the latter's psychological incapacity to fulfill the essential marital obligations under Article 36 of the Family Code.

Traversing the petition, respondent denied petitioner's allegations that he was psychologically incapacitated. Respondent maintained that he was not remiss in performing his obligations to his family—both as a spouse to petitioner and father to their children.

After trial (where the testimonies of two clinical psychologists, Dr. Dayan and Dr. Estrella Magno, and a psychiatrist, Dr. Cecilia Villegas, were presented in evidence), the RTC granted the petition and declared the marriage between the parties null and void on the ground of their psychological incapacity. The trial court ruled, thus:

Wherefore, on the ground of psychological incapacity of both parties, the petition is GRANTED. Accordingly, the marriage between

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[5] The original petition was filed in July of 2001; RTC records, pp. 1-18; the amended petition, in December of the same year, *id.* at 87-88.

petitioner MA. SOCORRO PERPETUA CAMACHO and respondent RAMON REYES contracted on December 4, 1976 at the Archbishop's Chapel Villa San Miguel Mandaluyong, Rizal, is declared null and void under Art. 36 of the Family Code, as amended. Henceforth, their property relation is dissolved.

Parties are restored to their single or unmarried status.

Their children JESUS TEODORO CAMACHO REYES and JOSEPH MICHAEL CAMACHO REYES, who are already of age and have the full civil capacity and legal rights to decide for themselves having finished their studies, are free to decide for themselves.

The Decision becomes final upon the expiration of fifteen (15) days from notice to the parties. Entry of Judgment shall be made if no Motion for Reconsideration or New Trial or Appeal is filed by any of the parties, the Public Prosecutor or the Solicitor General.

Upon finality of this Decision, the Court shall forthwith issue the corresponding Decree if the parties have no properties[.] [O]therwise, the Court shall observe the procedure prescribed in Section 21 of AM 02-11-10 SC.

The Decree of Nullity quoting the dispositive portion of the Decision (Sec. 22 AM 02-11-10 SC) shall be issued by the Court only after compliance with Articles 50 & 51 of the Family Code as implemented under the Rules on Liquidation, Partition and Distribution of Property (Sections 19 & 21, AM 02-11-10 SC) in a situation where the parties have properties.

The Entry of Judgment of this Decision shall be registered in the Local Civil Registry of Mandaluyong and Quezon City.

Let [a] copy of this Decision be furnished the parties, their counsel, the Office of the Solicitor General, the Public Prosecutor, the Office of the Local Civil Registrar, Mandaluyong City, the Office of the Local Civil Registrar, Quezon City and the Civil Registrar General at their respective office addresses.

SO ORDERED.[6]

Finding no cogent reason to reverse its prior ruling, the trial court, on motion for reconsideration of the respondent, affirmed the declaration of nullity of the parties' marriage.

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[6] *Rollo*, pp. 260-261.

Taking exception to the trial court's rulings, respondent appealed to the Court of Appeals, adamant on the validity of his marriage to petitioner. The appellate court, agreeing with the respondent, reversed the RTC and declared the parties' marriage as valid and subsisting. Significantly, a special division of five (two members dissenting from the majority decision and voting to affirm the decision of the RTC) ruled, thus:

> *WHEREFORE,* premises considered, the appeal is **GRANTED**. The Decision dated May 23, 2007 and Order dated July 13, 2007 of the Regional Trial Court of Quezon City, Branch 89 in *Civil Case No. Q-01-44854* are **REVERSED** and **SET ASIDE**. The Amended Petition for Declaration of Nullity of Marriage is hereby **DISMISSED**. No pronouncement as to costs.[7]

Undaunted by the setback, petitioner now appeals to this Court positing the following issues:

I

THE COURT OF APPEALS ERRED IN NOT RULING THAT RESPONDENT IS PSYCHOLOGICALLY INCAPACITATED TO COMPLY WITH THE ESSENTIAL OBLIGATIONS OF MARRIAGE.

II

THE COURT OF APPEALS ERRED IN NOT RULING THAT PETITIONER IS LIKEWISE PSYCHOLOGICALLY INCAPACITATED TO COMPLY WITH THE ESSENTIAL OBLIGATIONS OF MARRIAGE.

III

THE COURT OF APPEALS ERRED WHEN IT DISREGARDED THE TESTIMONIES OF THE EXPERT WITNESSES PRESENTED BY PETITIONER.

IV

THE COURT OF APPEALS ERRED IN NOT RULING THAT THE FINDINGS OF THE TRIAL COURT ARE BINDING ON IT.

V

THE COURT OF APPEALS ERRED IN NOT RULING THAT THE TOTALITY OF THE EVIDENCE PRESENTED DULY ESTABLISHED

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[7] *Id.* at 231.

THE PSYCHOLOGICAL INCAPACITIES OF THE PARTIES TO COMPLY WITH THE ESSENTIAL OBLIGATIONS OF MARRIAGE.

VI

THE COURT OF APPEALS ERRED IN NOT RULING THAT THE PSYCHOLOGICAL INCAPACITIES OF THE PARTIES TO COMPLY WITH THE ESSENTIAL OBLIGATIONS OF MARRIAGE WERE ESTABLISHED, NOT MERELY BY A TOTALITY, BUT BY A PREPONDERANCE OF EVIDENCE.

VII

THE COURT OF APPEALS ERRED IN NOT RULING THAT THE PARTIES' MARRIAGE, WHICH IS UNDOUBTEDLY VOID *AB INITIO* UNDER ARTICLE 36 OF THE FAMILY CODE, DOES NOT FURTHER THE INITIATIVES OF THE STATE CONCERNING MARRIAGE AND FAMILY AND THEREFORE, NOT COVERED BY THE MANTLE OF THE CONSTITUTION ON THE PROTECTION OF MARRIAGE.

VIII

THE COURT OF APPEALS ERRED IN NOT RULING THAT THE *AMENDED PETITION* WAS VALIDLY AMENDED TO CONFORM TO EVIDENCE.[8]

Essentially, petitioner raises the singular issue of whether the marriage between the parties is void *ab initio* on the ground of both parties' psychological incapacity, as provided in Article 36 of the Family Code.

In declaring the marriage null and void, the RTC relied heavily on the oral and documentary evidence obtained from the three (3) experts *i.e.*, Doctors Magno, Dayan and Villegas. The RTC ratiocinated, thus:

> After a careful evaluation of the entire evidence presented, the Court finds merit in the petition.
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> Article 36 of the Family Code reads:
>
>> "A marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply

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[8] *Id.* at 102-103.

with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after solemnization."

and Art. 68 of the same Code provides:

"The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support."

Similarly, Articles 69-71 further define the mutual obligations of a marital partner towards each other and Articles 220, 225 and 271 of the Family Code express the duties of parents toward their children.

Article 36 does not define what psychological incapacity means. It left the determination of the same solely to the Court on a case to case basis.

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Taking into consideration the explicit guidelines in the determination of psychological incapacity in conjunction to the totality of the evidence presented, with emphasis on the pervasive pattern of behaviors of the respondent and outcome of the assessment/ diagnos[is] of expert witnesses, Dra. Dayan, Dra. Mango and Dra. Villegas on the psychological condition of the respondent, the Court finds that the marriage between the parties from its inception has a congenital infirmity termed "psychological incapacity" which pertains to the inability of the parties to effectively function emotionally, intellectually and socially towards each other in relation to their essential duties to mutually observe love, fidelity and respect as well as to mutually render help and support, (Art. 68 Family Code). In short, there was already a fixed niche in the psychological constellation of respondent which created the death of his marriage. There is no reason to entertain any slightest doubt on the truthfulness of the personality disorder of the respondent.

The three expert witnesses have spoken. They were unanimous in their findings that respondent is suffering from personality disorder which psychologically incapacitated him to fulfill his basic duties to the marriage. Being professionals and hav[ing] solemn duties to their profession, the Court considered their assessment/diagnos[is] as credible or a product of an honest evaluation on the psychological status of the respondent. This psychological incapacity of the respondent, in the uniform words of said three (3) expert witnesses, is serious, incurable and exists before his marriage and renders him

a helpless victim of his structural constellation. It is beyond the respondent's impulse control. In short, he is weaponless or powerless to restrain himself from his consistent behaviors simply because he did not consider the same as wrongful. This is clearly manifested from his assertion that nothing was wrong in his marriage with the petitioner and considered their relationship as a normal one. In fact, with this belief, he lent deaf ears to counseling and efforts extended to them by his original family members to save his marriage. In short, he was blind and too insensitive to the reality of his marital atmosphere. He totally disregarded the feelings of petitioner who appeared to have been saturated already that she finally revealed her misfortunes to her sister-in-law and willingly submitted to counseling to save their marriage. However, the hard position of the respondent finally constrained her to ask respondent to leave the conjugal dwelling. Even the siblings of the respondent were unanimous that separation is the remedy to the seriously ailing marriage of the parties. Respondent confirmed this stand of his siblings.

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The process of an ideal atmosphere demands a give and take relationship and not a one sided one. It also requires surrender to the fulfillment of the essential duties to the marriage which must naturally be observed by the parties as a consequence of their marriage. Unfortunately, the more than 21 years of marriage between the parties did not create a monument of marital integrity, simply because the personality disorder of the respondent which renders him psychologically incapacitated to fulfill his basic duties to his marriage, is deeply entombed in his structural system and cure is not possible due to his belief that there is nothing wrong with them.

The checkered life of the parties is not solely attributable to the respondent. Petitioner, too, is to be blamed. Dra. Villegas was firm that she, too, is afflicted with psychological incapacity as her personality cannot be harmonized with the personality of the respondent. They are poles apart. Petitioner is a well-organized person or a perfectionist while respondent is a free spirited or carefree person. Thus, the weakness of the respondent cannot be catered by the petitioner and vice-versa.

Resultantly, the psychological incapacities of both parties constitute the thunder bolt or principal culprit on their inability to nurture and reward their marital life with meaning and significance.

So much so that it is a pity that though their marriage is intact for 21 years, still it is an empty kingdom due to their psychological incapacity which is grave, incurable and has origin from unhealthy event in their growing years.

Both parties to the marriage are protected by the law. As human beings, they are entitled to live in a peaceful and orderly environment conducive to a healthy life. In fact, Article 72 of the Family Code provides remedy to any party aggrieved by their marital reality. The case of the parties is already a settled matter due to their psychological incapacity. In the words of Dra. Magno, their marriage, at the very inception, was already at the funeral parlor. Stated differently, there was no life at all in their marriage for it never existed at all. The Court finds that with this reality, both parties suffer in agony by continuously sustaining a marriage that exists in paper only. Hence, it could no longer chain or jail the parties whose marriage remains in its crib with its boots and diaper due to factors beyond the physical, emotional, intellectual and social ability of the parties to sustain.[9]

In a complete turnaround, albeit disposing of the case through a divided decision, the appellate court diverged from the findings of the RTC in this wise:

On the basis of the guidelines [in *Republic v. Court of Appeals and Molina*] *vis-à-vis* the totality of evidence presented by herein [petitioner], we find that the latter failed to sufficiently establish the alleged psychological incapacity of her husband, as well as of herself. There is thus no basis for declaring the nullity of their marriage under Article 36 of the Family Code.

[Petitioner] presented several expert witnesses to show that [respondent] is psychologically incapacitated. Clinical psychologist Dayan diagnosed [respondent] as purportedly suffering from Mixed Personality Disorder (Schizoid Narcissistic and Anti-Social Personality Disorder). Further, clinical psychologist Magno found [respondent] to be suffering from an Antisocial Personality Disorder with narcissistic and dependent features, while Dr. Villegas diagnosed [respondent] to be suffering from Personality Disorder of the anti-social type, associated with strong sense of Inadequacy especially along masculine strivings and narcissistic features.

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[9] *Id.* at 257-260.

Generally, expert opinions are regarded, not as conclusive, but as purely advisory in character. A court may place whatever weight it chooses upon such testimonies. It may even reject them, if it finds that they are inconsistent with the facts of the case or are otherwise unreasonable. In the instant case, neither clinical psychologist Magno nor psychiatrist Dr. Villegas conducted a psychological examination on the [respondent].

Undoubtedly, the assessment and conclusion made by Magno and Dr. Villegas are hearsay. They are "unscientific and unreliable" as they have no personal knowledge of the psychological condition of the [respondent] as they never personally examined the [respondent] himself.

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[I]t can be gleaned from the recommendation of Dayan that the purported psychological incapacity of [respondent] is not incurable as the [petitioner] would like this Court to think. It bears stressing that [respondent] was referred to Dayan for "psychological evaluation to determine benchmarks of current psychological functioning." The undeniable fact is that based on Dayan's personal examination of the [respondent], the assessment procedures used, behavioral observations made, background information gathered and interpretation of psychological data, the conclusion arrived at is that there is a way to help the [respondent] through individual therapy and counseling sessions.

Even granting *arguendo* that the charges cast by the [petitioner] on [respondent], such as his failure to give regular support, substance abuse, infidelity and "come and go" attitude are true, the totality of the evidence presented still falls short of establishing that [respondent] is psychologically incapacitated to comply with the essential marital obligations within the contemplation of Article 36 of the Family Code.

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In the case at bar, we hold that the court *a quo's* findings regarding the [respondent's] alleged mixed personality disorder, his "come and go" attitude, failed business ventures, inadequate/delayed financial support to his family, sexual infidelity, insensitivity to [petitioner's] feelings, irresponsibility, failure to consult [petitioner] on his business pursuits, unfulfilled promises, failure to pay debts in connection with his failed business activities, taking of drugs, *etc.* are not rooted on

some debilitating psychological condition but on serious marital difficulties/differences and mere refusal or unwillingness to assume the essential obligations of marriage. [Respondent's] "defects" were not present at the inception of marriage. They were even able to live in harmony in the first few years of their marriage, which bore them two children xxx. In fact, [petitioner] admitted in her Amended Petition that initially they lived comfortably and [respondent] would give his salary in keeping with the tradition in most Filipino households, but the situation changed when [respondent] resigned from the family-owned Aristocrat Restaurant and thereafter, [respondent] failed in his business ventures. It appears, however, that [respondent] has been gainfully employed with Marigold Corporation, Inc. since 1998, which fact was stipulated upon by the [petitioner].

xxx x x x xxx

As regards the purported psychological incapacity of [petitioner], Dr. Villegas' Psychiatric Report states that [petitioner] "manifested inadequacies along her affective sphere, that made her less responsive to the emotional needs of her husband, who needed a great amount of it, rendering her relatively psychologically incapacitated to perform the duties and responsibilities of marriage.

However, a perusal of the Amended Petition shows that it failed to specifically allege the complete facts showing that petitioner was psychologically incapacitated from complying with the essential marital obligations of marriage at the time of celebration [thereof] even if such incapacity became manifest only after its celebration xxx. In fact, what was merely prayed for in the said Amended Petition is that judgment be rendered "declaring the marriage between the petitioner and the respondent solemnized on 04 December 1976 to be void *ab initio* on the ground of psychological incapacity on the part of the respondent at the time of the celebration of marriage x x x.

xxx x x x xxx

What is evident is that [petitioner] really encountered a lot of difficulties in their marriage. However, it is jurisprudentially settled that psychological incapacity must be more than just a "difficulty," a "refusal" or a "neglect" in the performance of some marital obligations, it is essential that they must be shown to be <u>incapable</u> of doing so, due to some psychological illness existing at the time of the celebration of the marriage.

While [petitioner's] marriage with [respondent] failed and appears to be without hope of reconciliation, the remedy, however, is not always to have it declared void *ab initio* on the ground of psychological incapacity. An unsatisfactory marriage, however, is not a null and void marriage. No less than the Constitution recognizes the sanctity of marriage and the unity of the family; it decrees marriage as legally "*inviolable*" and protects it from dissolution at the whim of the parties. Both the family and marriage are to be "*protected*" by the State.

Thus, in determining the import of "psychological incapacity" under Article 36, it must be read in conjunction with, although to be taken as distinct from Articles 35, 37, 38 and 41 that would likewise, but for different reasons, render the marriage void *ab initio*, or Article 45 that would make the marriage merely voidable, or Article 55 that could justify a petition for legal separation. Care must be observed so that these various circumstances are not applied so indiscriminately as if the law were indifferent on the matter. Article 36 should not be confused with a divorce law that cuts the marital bond at the time the causes therefor manifest themselves. x x x

It remains settled that the State has a high stake in the preservation of marriage rooted in its recognition of the sanctity of married life and its mission to protect and strengthen the family as a basic autonomous social institution. Hence, any doubt should be resolved in favor of the existence and continuation of the marriage and against its dissolution and nullity.[10]

After a thorough review of the records of the case, we cannot subscribe to the appellate court's ruling that the psychological incapacity of respondent was not sufficiently established. We disagree with its decision declaring the marriage between the parties as valid and subsisting. Accordingly, we grant the petition.

Santos v. Court of Appeals[11] solidified the jurisprudential foundation of the principle that the factors characterizing psychological incapacity to perform the essential marital obligations are: (1) gravity, (2) juridical antecedence, and (3) incurability. We explained:

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[10] *Id.* at 38-44.

[11] G.R. No. 112019, January 4, 1995, 240 SCRA 20.

The incapacity must be grave or serious such that the party would be incapable of carrying out the ordinary duties required in marriage; it must be rooted in the history of the party antedating the marriage, although the overt manifestations may emerge only after the marriage; and it must be incurable or, even if it were otherwise, the cure would be beyond the means of the party involved.[12]

As previously adverted to, the three experts were one in diagnosing respondent with a personality disorder, to wit:

1. Dra. Cecilia C. Villegas

PSYCHODYNAMICS OF THE CASE

[Petitioner] is the second among 6 siblings of educated parents. Belonging to an average social status, intellectual achievement is quite important to the family values (*sic*). All children were equipped with high intellectual potentials (*sic*) which made their parents proud of them. Father was disabled, but despite his handicap, he was able to assume his financial and emotional responsibilities to his family and to a limited extent, his social functions (*sic*). Despite this, he has been described as the unseen strength in the family.

Mother [of petitioner] was [actively involved] in activities outside the home. Doing volunteer and community services, she was not the demonstrative, affectionate and the emotional mother (*sic*). Her love and concern came in the form of positive attitudes, advices (*sic*) and encouragements (*sic*), but not the caressing, sensitive and soothing touches of an emotional reaction (*sic*). Psychological home environment did not permit one to nurture a hurt feeling or depression, but one has to stand up and to help himself (*sic*). This trained her to subjugate (*sic*) emotions to reasons.

Because of her high intellectual endowment, she has easy facilities for any undertakings (*sic*). She is organized, planned (*sic*), reliable, dependable, systematic, prudent, loyal, competent and has a strong sense of duty (*sic*). But emotionally, she is not as sensitive. Her analytical resources and strong sense of objectivity predisposed her to a superficial adjustments (*sic*). She acts on the dictates of her mind and reason, and less of how she feels (*sic*). The above qualities are perfect for a leader, but less effective in a heterosexual relationship, especially to her husband, who has deep seated sense of inadequacy,

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[12] *Rollo*, pp. 33-34.

insecurity, low self esteem and self-worth despite his intellectual assets (*sic*). Despite this, [petitioner] remained in her marriage for more than 20 years, trying to reach out and lending a hand for better understanding and relationship (*sic*). She was hoping for the time when others, like her husband would make decision for her (*sic*), instead of being depended upon. But the more [petitioner] tried to compensate for [respondent's] shortcomings, the bigger was the discrepancy in their coping mechanisms (*sic*). At the end, [petitioner] felt unloved, unappreciated, uncared for and she characterized their marriage as very much lacking in relationship (*sic*).

On the other hand, [respondent] is the 9th of 11 siblings and belonged to the second set of brood (*sic*), where there were less bounds (*sic*) and limitations during his growing up stage. Additionally, he was acknowledged as the favorite of his mother, and was described to have a close relationship with her. At an early age, he manifested clinical behavior of conduct disorder and was on marijuana regularly. Despite his apparent high intellectual potentials (*sic*), he felt that he needed a "push" to keep him going. His being a "free spirit," attracted [petitioner], who adored him for being able to do what he wanted, without being bothered by untraditional, unacceptable norms and differing ideas from other people. He presented no guilt feelings, no remorse, no anxiety for whatever wrongdoings he has committed. His studies proved too much of a pressure for him, and quit at the middle of his course, despite his apparent high intellectual resources (*sic*).

His marriage to [petitioner] became a bigger pressure. Trying to prove his worth, he quit work from his family employment and ventured on his own. With no much planning and project study, his businesses failed. This became the sources (*sic*) of their marital conflicts, the lack of relationships (*sic*) and consultations (*sic*) with each other, his negativistic attitudes (*sic*) and sarcasm, stubbornness and insults, his spitting at her face which impliedly meant "you are nothing as compared to me" were in reality, his defenses for a strong sense of inadequacy (*sic*).

As described by [petitioner], he is intelligent and has bright ides. However, this seemed not coupled with emotional attributes such as perseverance, patience, maturity, direction, focus, adequacy, stability and confidence to make it work. He complained that he did not feel the support of his wife regarding his decision to go into his own business. But when he failed, the more he became negativistic and closed to suggestions especially from [petitioner]. He was too

careful not to let go or make known his strong sense of inadequacy, ambivalence, doubts, lack of drive and motivation or even feelings of inferiority, for fear of rejection or loss of pride. When things did not work out according to his plans, he suppressed his hostilities in negative ways, such as stubbornness, sarcasm or drug intake.

His decision making is characterized by poor impulse control, lack of insight and primitive drives. He seemed to feel more comfortable in being untraditional and different from others. Preoccupation is centered on himself, (*sic*) an unconscious wish for the continuance of the gratification of his dependency needs, (*sic*) in his mother-son relationship. From this stems his difficulties in heterosexual relationship with his wife, as pressures, stresses, (*sic*) demands and expectations filled up in *(sic)* up in their marital relationship. Strong masculine strivings is projected.

For an intelligent person like [respondent], he may sincerely want to be able to assume his duties and responsibilities as a husband and father, but because of a severe psychological deficit, he was unable to do so.

Based on the clinical data presented, it is the opinion of the examiner, that [petitioner] manifested inadequacies along her affective sphere, that made her less responsive to the emotional needs of her husband, who needed a great amount of it, rendering her relatively psychologically incapacitated to perform the duties and responsibilities of marriage. **[Respondent], on the other hand, has manifested strong clinical evidences (*sic*), that he is suffering from a Personality Disorder, of the antisocial type, associated with strong sense of Inadequacy along masculine strivings and narcissistic features that renders him psychologically incapacitated to perform the duties and responsibilities of marriage. This is characterized by his inability to conform to the social norms that ordinarily govern many aspects of adolescent and adult behavior. His being a "free spirit" associated with no remorse, no guilt feelings and no anxiety, is distinctive of this clinical condition. His prolonged drug intake [marijuana] and maybe stronger drugs lately, are external factors to boost his ego.**

The root cause of the above clinical conditions is due to his underlying defense mechanisms, or the unconscious mental processes, that the ego uses to resolve conflicts. His prolonged and closed attachments to his mother encouraged cross identification and developed a severe sense of inadequacy specifically along

masculine strivings. He therefore has to camouflage his weakness, in terms of authority, assertiveness, unilateral and forceful decision making, aloofness and indifference, even if it resulted to antisocial acts. His narcissistic supplies rendered by his mother was not resolved (*sic*).

It existed before marriage, but became manifest only after the celebration, due to marital demands and stresses. It is considered as permanent in nature because it started early in his psychological development, and therefore became so engrained into his personality structures (sic). It is considered as severe in degree, because it hampered, interrupted and interfered with his normal functioning related to heterosexual adjustments. (emphasis supplied)[13]

2. Dr. Natividad A. Dayan

Adolfo and Mandy[, respondent]'s brothers, referred [respondent] to the clinic. According to them, respondent has not really taken care of his wife and children. He does not seem to have any direction in life. He seems to be full of bright ideas and good at starting things but he never gets to accomplish anything. His brothers are suspecting (*sic*) that until now [respondent] is still taking drugs. There are times when they see that [respondent] is not himself. He likes to bum around and just spends the day at home doing nothing. They wish that he'd be more responsible and try to give priority to his family. [Petitioner,] his wife[,] is the breadwinner of the family because she has a stable job. [Respondent]'s brothers learned from friends that [petitioner] is really disappointed with him. She has discussed things with him but he always refused to listen. She does not know what to do with him anymore. She has grown tired of him.

When [respondent] was asked about his drug problem, he mentioned that he stopped taking it in 1993. His brothers think that he is not telling the truth. It is so hard for [respondent] to stop taking drugs when he had been hooked to it for the past 22 years. When [respondent] was also asked what his problems are at the moment, he mentioned that he feels lonely and distressed. He does not have anyone to talk to. He feels that he and his wife [have] drifted apart. He wants to be close to somebody and discuss things with this person but he is not given the chance. He also mentioned that one of his weak points is that he is very tolerant of people[,] that is why he is taken advantage of most of the time. He wants to avoid conflict

[13] *Id.* at 413-416.

so he'd rather be submissive and compliant. He does not want to hurt anyone [or] to cause anymore pain. He wants to make other people happy.

x x x x x x x x x

Interpretation of Psychological Data

A. Intellectual / Cognitive Functioning

x x x x x x x x x

B. Vocational Preference

x x x x x x x x x

C. Socio Emotional Functioning

x x x x x x x x x

In his relationships with people, [respondent] is apt to project a reserved, aloof and detached attitude. [Respondent] exhibits withdrawal patterns. He has deep feelings of inadequacy. Due to a low self-esteem, he tends to feel inferior and to exclude himself from association with others. He feels that he is "different" and as a result is prone to anticipate rejections. Because of the discomfort produced by these feelings, he is apt to avoid personal and social involvement, which increases his preoccupation with himself and accentuates his tendency to withdraw from interpersonal contact. [Respondent] is also apt to be the less dominant partner. He feels better when he has to follow than when he has to take the lead. A self-contained person[,] he does not really need to interact with others in order to enjoy life and to be able to move on. He has a small need of companionship and is most comfortable alone. He, too[,] feels uncomfortable in expressing his more tender feelings for fear of being hurt. Likewise, he maybe very angry within but he may choose to repress this feeling. [Respondent's] strong need for social approval, which could have stemmed from some deep seated insecurities makes him submissive and over [compliant]. He tends to make extra effort to please people. Although at times[, he] already feels victimized and taken advantage of, he still tolerates abusive behavior for fear of interpersonal conflicts. Despite his [dis]illusion with people, he seeks to minimize dangers of indifference and disapproval [of] others. Resentments are suppressed. This is likely to result in anger and frustrations which is likewise apt to be repressed.

There are indications that [respondent] is[,] at the moment[,] experiencing considerable tension and anxiety. He is prone to fits of apprehension and nervousness. Likewise, he is also entertaining feelings of hopelessness and is preoccupied with negative thought. He feels that he is up in the air but with no sound foundation. He is striving [for] goals which he knows he will never be able to attain. Feeling discouraged and distressed, he has difficulty concentrating and focusing on things which he needs to prioritize. He has many plans but he can't accomplish anything because he is unable to see which path to take. This feeling of hopelessness is further aggravated by the lack of support from significant others.

Diagnostic Impression

Axis	I	:	Drug Dependence
AxisII		:	**Mixed Personality Disorder [Schizoid, Narcissistic and Antisocial Personality Disorder]**
Axis	III	:	None
AxisIV		:	Psychosocial and Environmental Problems: Severe He seems to be very good at planning and starting things but isunable to accomplish anything; unable to give priority to the needs of his family; in social relationships.
Axis	V	:	Global Assessment of Functioning – Fair (Emphasis supplied)[14]

3. Dr. Estrella T. Tiongson-Magno

Summary and Conclusion

From the evidence available from [petitioner's] case history and from her psychological assessment, and despite the non-cooperation of the respondent, it is possible to infer with certainty the nullity of this marriage. Based on the information available about the respondent, he suffers from [an] antisocial personality disorder with narcissistic and dependent features that renders him too immature and irresponsible to assume the normal obligations of a marriage. As for the petitioner, she is a good, sincere, and conscientious person

[14] *Id.* at 390-397.

and she has tried her best to provide for the needs of her children. Her achievements in this regard are praiseworthy. But she is emotionally immature and her comprehension of human situations is very shallow for a woman of her academic and professional competence. And this explains why she married RRR even when she knew he was a pothead, then despite the abuse, took so long to do something about her situation.

Diagnosis for [petitioner]:

Axis	I	Partner Relational Problem
Axis Style	II	Obsessive Compulsive Personality with Self-Defeating features
Axis	III	No diagnosis
Axis	IV	Psychosocial Stressors-Pervasive Family Discord (spouse's immaturity, drug abuse, and infidelity) Severity: 4-severe

Diagnosis for [respondent]

Axis	I	Partner Relational Problem
Axis	II	**Antisocial Personality Disorder with marked narcissistic, aggressive sadistic and dependent features**
Axis	III	No diagnosis
Axis	IV	Psychosocial Stressors-Pervasive Family Discord (successful wife) Severity: 4 (severe)

x x x x x x x x x

One has to go back to [respondent's] early childhood in order to understand the **root cause** of his antisocial personality disorder. [Respondent] grew up the ninth child in a brood of 11. His elder siblings were taken cared of by his grandmother. [Respondent's] father was kind, quiet and blind and [respondent] was [reared] by his mother. Unfortunately, [respondent's] mother grew up believing that she was not her mother's favorite child, so she felt "*api*, treated like poor relations." [Respondent's] mother's reaction to her perceived rejection was to act out—with poor impulse control and poor mood

regulation (spent money like water, had terrible temper tantrums, *etc*.). Unwittingly, his mother became [respondent's] role model.

However, because [respondent] had to get on with the business of living, he learned to use his good looks and his charms, and learned to size up the weaknesses of others, to lie convincingly and to say what people wanted to hear (esp. his deprived mother who liked admiration and attention, his siblings from whom he borrowed money, *etc.*). In the process, his ability to love and to empathize with others was impaired so that he cannot sustain a relationship with one person for a long time, which is devastating in a marriage.

[Respondent's] **narcissistic personality features** were manifested by his self-centeredness (*e.g.* moved to Mindoro and lived there for 10 years, leaving his family in Manila); his grandiose sense of self-importance (*e.g.* he would just "come and go," without telling his wife his whereabouts, *etc.*); his sense of entitlement (*e.g.* felt entitled to a mistress because [petitioner] deprived him of his marital rights, *etc.*); interpersonally exploitative (*e.g.* let his wife spend for all the maintenance needs of the family, *etc.*); and lack of empathy (*e.g.* when asked to choose between his mistress and his wife, he said he would think about it, *etc.*) The **aggressive sadistic personality features** were manifested whom he has physically, emotionally and verbally abusive [of] his wife when high on drugs; and his dependent personality features were manifested by his need for others to assume responsibility for most major areas of his life, and in his difficulty in doing things on his own.

[Respondent], diagnosed with an antisocial personality disorder with marked narcissistic features and aggressive sadistic and dependent features, is psychologically incapacitated to fulfill the essential obligations of marriage: to love, respect and render support for his spouse and children. A personality disorder is not curable as it is permanent and stable over time.

From a psychological viewpoint, therefore, there is evidence that the marriage of [petitioner] and [respondent is] null and void from the very beginning. (emphasis supplied)[15]

Notwithstanding these telling assessments, the CA rejected, wholesale, the testimonies of Doctors Magno and Villegas for

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[15] *Id.* at 372-375.

being hearsay since they never personally examined and interviewed the respondent.

We do not agree with the CA.

The lack of personal examination and interview of the respondent, or any other person diagnosed with personality disorder, does not *per se* invalidate the testimonies of the doctors. Neither do their findings automatically constitute hearsay that would result in their exclusion as evidence.

For one, marriage, by its very definition,[16] necessarily involves only two persons. The totality of the behavior of one spouse during the cohabitation and marriage is generally and genuinely witnessed mainly by the other. In this case, the experts testified on their individual assessment of the present state of the parties' marriage from the perception of one of the parties, herein petitioner. Certainly, petitioner, during their marriage, had occasion to interact with, and experience, respondent's pattern of behavior which she could then validly relay to the clinical psychologists and the psychiatrist.

For another, the clinical psychologists' and psychiatrist's assessment were not based solely on the narration or personal interview of the petitioner. Other informants such as respondent's own son, siblings and in-laws, and sister-in-law (sister of petitioner), testified on their own observations of respondent's behavior and interactions with them, spanning the period of time they knew him.[17] These were also used as the basis of the doctors' assessments.

The recent case of *Lim v. Sta. Cruz-Lim*,[18] citing The Diagnostic and Statistical Manual of Mental Disorders, Fourth

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[16] Article 1 of the Family Code.

Art. 1. Marriage is a special contract of permanent union between a man and a woman entered into in accordance with law for the establishment of conjugal and family life. x x x

[17] *Rollo*, pp. 243, 248-249.

[18] G.R. No. 176464, February 4, 2010.

Edition (DSM IV),[19] instructs us on the general diagnostic criteria for personality disorders:

A. An enduring pattern of inner experience and behavior that deviates markedly from the expectations of the individual's culture. This pattern is manifested in two (2) or more of the following areas:

(1) cognition (*i.e.*, ways of perceiving and interpreting self, other people, and events)

(2) affectivity (*i.e.*, the range, intensity, liability, and appropriateness of emotional response)

(3) interpersonal functioning

(4) impulse control

B. The enduring pattern is inflexible and pervasive across a broad range of personal and social situations.

C. The enduring pattern leads to clinically significant distress or impairment in social, occupational or other important areas of functioning.

D. The pattern is stable and of long duration, and its onset can be traced back at least to adolescence or early adulthood.

E. The enduring pattern is not better accounted for as a manifestation or a consequence of another mental disorder.

F. The enduring pattern is not due to the direct physiological effects of a substance (*i.e.*, a drug of abuse, a medication) or a general medical condition (*e.g.*, head trauma).

Specifically, the DSM IV outlines the diagnostic criteria for Antisocial Personality Disorder:

A. There is a pervasive pattern of disregard for and violation of the rights of others occurring since age 15 years, as indicated by three (or more) of the following:

(1) failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly performing acts that are grounds for arrest

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[19] Quick Reference to the Diagnostic Criteria from DSM IV-TR, American Psychiatric Association, 2000.

(2) deceitfulness, as indicated by repeated lying, use of aliases, or conning others for personal profit or pleasure

(3) impulsivity or failure to plan ahead

(4) irritability and aggressiveness, as indicated by repeated physical fights or assaults

(5) reckless disregard for safety of self or others

(6) consistent irresponsibility, as indicated by repeated failure to sustain consistent work behavior or honor financial obligations

(7) lack of remorse as indicated by being indifferent to or rationalizing having hurt, mistreated, or stolen from another

B. The individual is at least 18 years.

C. There is evidence of conduct disorder with onset before age 15 years.

D. The occurrence of antisocial behavior is not exclusively during the course of schizophrenia or a manic episode.[20]

Within their acknowledged field of expertise, doctors can diagnose the psychological make up of a person based on a number of factors culled from various sources. A person afflicted with a personality disorder will not necessarily have personal knowledge thereof. In this case, considering that a personality disorder is manifested in a pattern of behavior, self-diagnosis by the respondent consisting only in his bare denial of the doctors' separate diagnoses, does not necessarily evoke credence and cannot trump the clinical findings of experts.

The CA declared that, based on Dr. Dayan's findings and recommendation, the psychological incapacity of respondent is not incurable.

The appellate court is mistaken.

A recommendation for therapy does not automatically imply *curability*. In general, recommendations for therapy are given

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[20] See Kaplan and Saddock's *Synopsis of Psychiatry and Psychology Behavioral Sciences/Clinical Psychiatry* (8th ed.), p. 785.

by clinical psychologists, or even psychiatrists, to manage behavior. In Kaplan and Saddock's textbook entitled Synopsis of Psychiatry,[21] treatment, ranging from psychotherapy to pharmacotherapy, for all the listed kinds of personality disorders are recommended. In short, Dr. Dayan's recommendation that respondent should undergo therapy does not necessarily negate the finding that respondent's psychological incapacity is incurable.

Moreover, Dr. Dayan, during her testimony, categorically declared that respondent is psychologically incapacitated to perform the essential marital obligations.[22] As aptly stated by Justice Romero in her separate opinion in the ubiquitously cited case of *Republic v. Court of Appeals & Molina*:[23]

> *[T]he professional opinion of a psychological expert became increasingly important in such cases. Data about the person's entire life, both before and after the ceremony, were presented to these experts and they were asked to give professional opinions about a party's mental capacity at the time of the wedding.* These opinions were rarely challenged and tended to be accepted as decisive evidence of lack of valid consent.
>
> … [Because] of *advances made in psychology during the past decades. There was now the expertise to provide the all-important connecting link between a marriage breakdown and premarital causes.*

In sum, we find *points of convergence* & consistency in all three reports and the respective testimonies of Doctors Magno, Dayan and Villegas, *i.e.*: (1) respondent does have problems; and (2) these problems include chronic irresponsibility; inability to recognize and work towards providing the needs of his family; several failed business attempts; substance abuse; and a trail of unpaid money obligations.

It is true that a clinical psychologist's or psychiatrist's diagnoses that a person has personality disorder is not automatically believed

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[21] See Kaplan and Saddock's Synopsis of Psychiatry and Psychology Behavioral Sciences/Clinical Psychiatry (8th ed.), 1998.

[22] *Rollo,* pp. 243-247.

[23] G.R. No. 108763, February 13, 1997, 268 SCRA 198, 219.

by the courts in cases of declaration of nullity of marriages. Indeed, a clinical psychologist's or psychiatrist's finding of a personality disorder does not exclude a finding that a marriage is valid and subsisting, and not beset by one of the parties' or both parties' psychological incapacity.

On more than one occasion, we have rejected an expert's opinion concerning the supposed psychological incapacity of a party.[24] In *Lim v. Sta. Cruz-Lim*,[25] we ruled that, even without delving into the non-exclusive list found in *Republic v. Court of Appeals & Molina*,[26] the stringent requisites provided in *Santos v. Court of Appeals*[27] must be independently met by the party alleging the nullity of the marriage grounded on Article 36 of the Family Code. We declared, thus:

It was folly for the trial court to accept the findings and conclusions of Dr. Villegas with nary a link drawn between the "psychodynamics of the case" and the factors characterizing the psychological incapacity. Dr. Villegas' sparse testimony does not lead to the inevitable conclusion that the parties were psychologically incapacitated to comply with the essential marital obligations. Even on questioning from the trial court, Dr. Villegas' testimony did not illuminate on the parties' alleged personality disorders and their incapacitating effect on their marriage x x x.

Curiously, Dr. Villegas' global conclusion of both parties' personality disorders was not supported by psychological tests properly administered by clinical psychologists specifically trained in the tests' use and interpretation. The supposed personality disorders of the parties, considering that such diagnoses were made, could have been fully established by psychometric and neurological tests which are designed to measure specific aspects of people's intelligence, thinking, or personality.

x x x x x x x x x

[24] *Padilla-Rumbaua v. Rumbaua*, G.R. No. 166738, August 14, 2009, 596 SCRA 157; *Paz v. Paz*, G.R. No. 166579, February 18, 2010.

[25] *Supra* note 18.

[26] *Supra*.

[27] *Supra* note 11.

The expert opinion of a psychiatrist arrived at after a maximum of seven (7) hours of interview, and unsupported by separate psychological tests, cannot tie the hands of the trial court and prevent it from making its own factual finding on what happened in this case. The probative force of the testimony of an expert does not lie in a mere statement of his theory or opinion, but rather in the assistance that he can render to the courts in showing the facts that serve as a basis for his criterion and the reasons upon which the logic of his conclusion is founded.

In the case at bar, however, even without the experts' conclusions, the factual antecedents (narrative of events) alleged in the petition and established during trial, all point to the inevitable conclusion that respondent is psychologically incapacitated to perform the essential marital obligations.

Article 68 of the Family Code provides:

Art. 68. The husband and wife are obliged to live together, observe mutual love, respect and fidelity, and render mutual help and support.

In this connection, it is well to note that persons with antisocial personality disorder exhibit the following clinical features:

Patients with antisocial personality disorder can often seem to be normal and even charming and ingratiating. Their histories, however, reveal many areas of disordered life functioning. Lying, truancy, running away from home, thefts, fights, substance abuse, and illegal activities are typical experiences that patients report as beginning in childhood. x x x Their own explanations of their antisocial behavior make it seem mindless, but their mental content reveals the complete absence of delusions and other signs of irrational thinking. In fact, they frequently have a heightened sense of reality testing and often impress observers as having good verbal intelligence.

x x x Those with this disorder do not tell the truth and cannot be trusted to carry out any task or adhere to any conventional standard of morality. x x x A notable finding is a lack of remorse for these actions; that is, they appear to lack a conscience.[28]

In the instant case, respondent's pattern of behavior manifests an inability, nay, a psychological incapacity to perform the

[28] *Supra* note 20.

essential marital obligations as shown by his: (1) sporadic financial support; (2) extra-marital affairs; (3) substance abuse; (4) failed business attempts; (5) unpaid money obligations; (6) inability to keep a job that is not connected with the family businesses; and (7) criminal charges of *estafa*.

On the issue of the petitioner's purported psychological incapacity, we agree with the CA's ruling thereon:

> A perusal of the Amended Petition shows that it failed to specifically allege the complete facts showing that petitioner was psychologically incapacitated from complying with the essential marital obligations of marriage at the time of the celebration of marriage even if such incapacity became manifest only after its celebration x x x. In fact, what was merely prayed for in the said Amended Petition is that judgment be rendered "declaring the marriage between the petitioner and the respondent solemnized on 04 December 1976 to be void *ab initio* on the ground of psychological incapacity on the part of the respondent at the time of the celebration of the marriage x x x
>
> At any rate, even assuming *arguendo* that [petitioner's] Amended Petition was indeed amended to conform to the evidence, as provided under Section 5, Rule 10 of the Rules of Court, Dr. Villegas' finding that [petitioner] is supposedly suffering from an Inadequate Personality [Disorder] along the affectional area does not amount to psychological incapacity under Article 36 of the Family Code. Such alleged condition of [petitioner] is not a debilitating psychological condition that incapacitates her from complying with the essential marital obligations of marriage. In fact, in the Psychological Evaluation Report of clinical psychologist Magno, [petitioner] was given a glowing evaluation as she was found to be a "good, sincere, and conscientious person and she has tried her best to provide for the needs of her children. Her achievements in this regard are praiseworthy." Even in Dr. Villegas' psychiatric report, it was stated that [petitioner] was able to remain in their marriage for more than 20 years "trying to reach out and lending a hand for better understanding and relationship." With the foregoing evaluation made by no less than [petitioner's] own expert witnesses, we find it hard to believe that she is psychologically incapacitated within the contemplation of Article 36 of the Family Code.[29]

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[29] *Rollo*, p. 43.

All told, it is wise to be reminded of the *caveat* articulated by Justice Teodoro R. Padilla in his separate statement in *Republic v. Court of Appeals and Molina*:[30]

> x x x Each case must be judged, not on the basis of *a priori* assumptions, predilections or generalizations but according to its own facts. In the field of psychological incapacity as a ground for annulment of marriage, it is trite to say that no case is on "all fours" with another case. The trial judge must take pains in examining the factual milieu and the appellate court must, as much as possible, avoid substituting its own judgment for that of the trial court.

In fine, given the factual milieu of the present case and in light of the foregoing disquisition, we find ample basis to conclude that respondent was psychologically incapacitated to perform the essential marital obligations at the time of his marriage to the petitioner.

WHEREFORE, the petition is *GRANTED.* The decision of the Court of Appeals in CA -G.R. CV No. 89761 is *REVERSED.* The decision of the Regional Trial Court, Branch 89, Quezon City in Civil Case No. Q-01-44854 declaring the marriage between petitioner and respondent *NULL* and *VOID* under Article 36 of the Family Code is *REINSTATED.* No costs.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

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[30] *Supra* note 23, at 214.

THIRD DIVISION

[A.M. No. 07-1-05-RTC. August 23, 2010]

RE: REQUEST OF JUDGE SALVADOR M. IBARRETA, JR., REGIONAL TRIAL COURT, BRANCH 8, DAVAO CITY, FOR EXTENSION OF TIME TO DECIDE CIVIL CASE NOS. 30,410-04, 30,998-05, 7286-03 AND 8278-5.

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; JUDGES; DUTY TO RESOLVE CASES WITHIN THE REGLEMENTARY PERIOD. —** To ensure the strict observance of the constitutional mandate for all lower courts to decide or resolve cases or matters within the reglementary period, the Court issued Administrative Circular No. 13-87 which reads: x x x 3. Judges shall observe scrupulously the periods prescribed by Article VIII, Section 15 of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so. x x x And the *New Code of Judicial Conduct for the Philippine Judiciary* which took effect on June 1, 2004 expressly requires judges to perform all judicial duties, "including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness." Rule 3.05 of the Code of Judicial Conduct also echoes the mandate to decide or resolve cases or matters within the reglementary period by requiring judges to dispose of the court's business promptly and decide or resolve cases or matters within the required periods.

2. **ID.; ID.; ID.; UNDUE DELAY IN RESOLVING CASES, ABHORRED; PENALTY. —** Heavy workload per se is not an excuse in not observing the reglementary period of deciding cases. An appointment to the Judiciary is an honor burdened with a heavy responsibility. When respondent accepted the appointment, he also accepted the heavy workload that comes with it. x x x Under Sections 9 and 11 (B) of the Rule 140 of the Rules of Court, as amended, undue delay in rendering decision is classified as a

less serious charge penalized by (1) suspension from office without salary and other benefits for not less than one month nor more than three months; or (2) a fine of more than ₱10,000 but not exceeding ₱20,000.

R E S O L U T I O N

CARPIO MORALES, *J.*:

For failure to render decision in at least three cases within the reglementary period, as extended, the Office of the Court Administrator (OCA) recommends that Judge Salvador M. Ibarreta, Jr. (respondent), Presiding Judge of Branch 8 of the Davao City Regional Trial Court, be fined in the amount of ₱15,000.

By letter-request of October 26, 2006,[1] respondent requested for a 90-day extension of time to resolve four cases — **Civil Case No. 30, 410-04** which was due on November 2, 2006; **Civil Case No. 30,998-05** which was due on November 5, 2006; **Civil Case No. 7286-03** which was due on November 8, 2006; and **Civil Case No. 8278-05** which was due on November 8, 2006. The ground given in his request was "heavy caseload."

Pending resolution of his October 26, 2006 letter-request, respondent, by another letter-request of December 22, 2006,[2] requested a 90-day extension, due to "heavy case load," to resolve the therein listed 24 cases which included Civil Case Nos. 30,998-05 and 30,410-04, the first two of the four cases subject of his October 26, 2006 letter-request.

By another letter-request of January 2, 2007,[3] respondent sought another extension of 90 days within which to decide Civil Case Nos. 7286-03 and 8278-05, the last two of four cases subject of his October 26, 2006 letter-request.

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[1] *Rollo*, p. 3.

[2] *Id.* at 20-21.

[3] *Id.* at 22.

By Resolution of February 12, 2007,[4] the Court granted respondent's October 26, 2006 letter-request.

By letter-request of April 23, 2007,[5] respondent requested an extension of 90 days within which to decide 13 cases including Civil Case Nos. 30,410-04, 7286-03, and 8278-05, the first, third and fourth of the four cases subject of his October 26, 2006 letter-request.

On May 2, 2007, the OCA received a copy of respondent's decision in Civil Case No. 30, 998-05, the second of the four cases subject of his October 26, 2006 letter-request, which was promulgated on January 2, 2007.

Again, by letter-request of June 8, 2007, respondent requested, due to "heavy case load" and "considering further that [respondent was] on sick leave since January 15, 2007 up to the present," another 90-day extension to decide 16 cases including Civil Case No. 30,410-4, the first of the four cases subject of his October 26, 2006 letter-request.

Before the Court could act on respondent's June 8, 2007 letter-request, respondent, by another letter-request of July 4, 2007,[6] requested for another extension of 90 days within which to decide 11 cases including Civil Case No. 7286-03, the third of the four cases subject of his October 26, 2006 letter-request (fourth extension) and Civil Case No. 8278-05, the fourth of the four cases subject of his October 26, 2006 letter-request (fourth extension).

By Resolution of July 11, 2007,[7] the Court noted respondent's submission of a copy of his decision in Civil Case No. 30, 998-2005 (the second of the four cases subject of his October 26, 2006 letter-request) which, as earlier stated, was received by the OCA on May 2, 2007, as "partial compliance." By the same Resolution, the Court granted respondent's request for

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[4] *Id.* at 5.

[5] *Id.* at 35.

[6] *Id.* at 33.

[7] *Id.* at 26-27.

extension of 90 days within which to decide Civil Cases Nos. 30,410-04, 7286-03 and 8278-05, the first, third and fourth cases subject of his October 26, 2006 letter-request, reckoned from their respective due dates, per respondent's letter-requests of December 22, 2006 and January 2, 2007. Respondent was, however, reminded to indicate in his "future requests . . . the number of times such requests have been made."

By Resolution of September 26, 2007,[8] the Court noted and granted respondent's letter-requests dated April 23, 2007, June 8, 2007 and July 4, 2007, again with a reminder to indicate "in his future request … the number of times such request has been made." Respondent was further directed to furnish the Court, through the OCA, a copy of each of his decisions in Civil Case Nos. 30,410-04, 7286-03, and 8278-05, the first, third and fourth of the four cases subject of his letter-request of October 26, 2006, within ten days from rendition of the decision.

By MEMORANDUM of January 27, 2010,[9] the OCA informed the Court that despite the lapse of more than two years, respondent had not yet furnished the Court copies of his decisions in the three cases subject of his October 26, 2006 letter-request.[10] The OCA thus recommended that respondent be fined in the amount of ₱15,000 for failure to decide these three cases, and that he be directed to decide them within 15 days from notice, *cum* warning that a repetition of the same or similar act shall be dealt with more severely.

By failing to submit a copy of each of the decisions on the three cases which respondent was expected to decide within the period, as extended, the presumption is that he failed to decide them. In any event, he failed to heed this Court's Resolutions bearing on them.

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[8] *Id.* at 36-37.

[9] *Id.* at 39-40.

[10] In the said Memorandum, the OCA stated that respondent had until October 28, 2007 within which to decide Civil Case No. 30,410-04, and until November 3, 2007, within which to decide Civil Cases Nos. 7286-03 and 8278-05.

To ensure the strict observance of the constitutional mandate for all lower courts to decide or resolve cases or matters within the reglementary period, the Court issued Administrative Circular No. 13-87 which reads:

> x x x x x x x x x
>
> 3. Judges shall observe scrupulously the periods prescribed by Article VIII, Section 15 of the Constitution for the adjudication and resolution of all cases or matters submitted in their courts. Thus, all cases or matters must be decided or resolved within twelve months from date of submission by all lower collegiate courts while all other lower courts are given a period of three months to do so. x x x (underscoring supplied)

And the *New Code of Judicial Conduct for the Philippine Judiciary* which took effect on June 1, 2004 expressly requires judges to perform all judicial duties, "including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness."[11]

Rule 3.05 of the Code of Judicial Conduct[12] also echoes the mandate to decide or resolve cases or matters within the reglementary period by requiring judges to dispose of the court's business promptly and decide or resolve cases or matters within the required periods.

Heavy workload per se is not an excuse in not observing the reglementary period of deciding cases. An appointment to the Judiciary is an honor burdened with a heavy responsibility. When respondent accepted the appointment, he also accepted the heavy workload that comes with it.

In *Buenaflor v. Judge Ibaretta, Jr.*,[13] the Court found respondent liable for inefficiency and failure to decide the therein

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[11] Sec. 5, Canon 6.

[12] The *New Code of Judicial Conduct for the Philippine Judiciary* superseded the *Canons of Judicial Ethics* and the *Code of Judicial Conduct*. However, there is a provision in the New Code that in cases of deficiency or specific provisions in the New Code, the Canons of Judicial Ethics and the Code of Judicial Conduct shall be applicable in a suppletory character.

[13] 431 Phil. 249 (2002).

complainant's case on time and imposed on him a fine of ₱3,000, the same having occurred before the amendment of Rule 140 of the Rules of Court by A.M. No. 01-8-10-SC which took effect on October 1, 2001.

Under Sections 9 and 11 (B) of the Rule 140 of the Rules of Court, as amended, undue delay in rendering decision is classified as a less serious charge penalized by (1) suspension from office without salary and other benefits for not less than one month nor more than three months; or (2) a fine of more than ₱10,000 but not exceeding ₱20,000.

Under the facts of the case, the recommended penalty should be increased to ₱20,000.

WHEREFORE, Judge Salvador M. Ibarreta, Jr. is, for undue delay in rendering decisions, *FINED* in the amount of Twenty Thousand (₱20,000) Pesos. He is directed to decide Civil Cases Nos. 30,410-04; 7286-03 and 8278-05 within fifteen days from notice, and to immediately furnish the Court, through the Office of the Court Administrator, a copy of each of the decisions therein.

He is further *WARNED* that a repetition of the same or similar act shall be dealt with more severely.

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

FIRST DIVISION

[G.R. Nos. 153952-71. August 23, 2010]

PEOPLE OF THE PHILIPPINES, *plaintiff, vs.* **THE HON. SANDIGANBAYAN (4TH Div.) and HENRY BARRERA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUIRES PRIOR FILING OF MOTION FOR RECONSIDERATION. —** At the outset, we note that this Petition for *Certiorari* under Rule 65 of the Rules of Court was filed without a Motion for Reconsideration of the Decision dated May 6, 2002 having been filed before the Sandiganbayan. This fact alone would have warranted the dismissal of the instant Petition given the general rule that a motion for reconsideration is a condition *sine qua non* before the filing of a petition for *certiorari*.

2. **POLITICAL LAW; CONSTITUTIONAL LAW; JUDICIAL DEPARTMENT; THAT NO DECISION SHALL BE RENDERED WITHOUT EXPRESSING CLEARLY AND DISTINCTLY THE FACTS AND LAW ON WHICH IT IS BASED; PURPOSE. —** Article VIII, Section 14 of the 1987 Constitution mandates that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." The purpose of Article VIII, Section 14 of the Constitution is to inform the person reading the decision, and especially the parties, of how it was reached by the court after consideration of the pertinent facts and examination of the applicable laws. The losing party is entitled to know why he lost, so he may appeal to a higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. Thus, a decision is adequate if a party desiring to appeal therefrom can assign errors against it.

3. **CRIMINAL LAW; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); SEC. 3 ON CORRUPT PRACTICES OF PUBLIC OFFICERS, PAR. E; REQUISITES. —** In order to be held guilty of violating Section 3(e) of Republic Act No. 3019, the provision itself explicitly requires that the accused caused *undue injury* for having acted **with manifest partiality, evident bad faith, or with gross inexcusable negligence**, in the discharge of his official administrative or judicial function.

x x x [I]n *Pecho v. Sandiganbayan*, we explained that the undue injury caused to any party, including the government, under Section 3(e) of Republic Act No. 3019, could only mean **actual injury or damage** which must be established by evidence.

4. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; ELUCIDATED. — In *People v. Sandiganbayan*, we defined grave abuse of discretion as follows: Grave abuse of discretion is the capricious and whimsical exercise of judgment as equivalent to lack of jurisdiction or where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act in contemplation of law. x x x. The sole office of an extraordinary writ of *certiorari* is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. For as long as the court acted within its jurisdiction, an error of judgment that it may commit in the exercise thereof is not correctible through the special civil action of *certiorari*.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff.

Angara Abello Concepcion Regala and Cruz for private respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This Petition for *Certiorari* under Rule 65 of the Rules of Court assails the Decision[1] dated May 6, 2002 of the Sandiganbayan granting the Demurrer to Evidence of Mayor Henry E. Barrera (Mayor Barrera) and dismissing Criminal Case Nos. 25035-25037, 25039-25041, 25043, 25045-25047, 25049-25050, and 25053-25054, on the ground that the elements of

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[1] Penned by Associate Justice Nicodemo T. Ferrer with Associate Justices Narciso S. Nario and Raoul V. Victorino, concurring; *rollo*, pp. 31-42.

the offense under Section 3(e) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, as amended, were not established beyond reasonable doubt.

Mayor Barrera, together with Rufina Escala (Escala) and Santos Edquiban (Edquiban), were charged with 14 counts of violation of Sections 3(e) and 9 of Republic Act No. 3019 in separate Informations, which alleged essentially similar set of facts, save for the names of the complainants, to wit:

> That on or about 30 June 1998, or sometime prior or subsequent thereto, in Candelaria, province of Zambales, Philippines, and within the jurisdiction of this Honorable Court, accused Henry E. Barrera, Santos Edquiban and Rufina E. Escala, all public officers, then being the Municipal Mayor, Market Collector, and District Supervisor, respectively, all of Candelaria, Province of Zambales, committing the penal offense herein charged against them while in the performance of, in relation to, and taking advantage of their official functions and duties as such, thru manifest partiality and/or evident bad faith, did then and there, willfully, unlawfully, and criminally, in conspiracy with one another, prevent [Ermelinda Abella (Criminal Case No. 25035), Lourdes Jaquias (C.C. No. 25036), John Espinosa (C.C. No. 25037), Jean Basa (C.C. No. 25038), Lerma Espinosa (C.C. No. 25039), Eduardo Sison (C.C No. 25040), Lina Hebron (C. C. No. 25041), Nora Elamparo (C.C. No. 25042), Luz Aspiras (C.C . No. 25043), Oscar Lopez (C.C. No. 25044), Corazon Cansas (C.C. No. 25045), Michelle Palma (C.C. No. 25046), Mila Saberon (C.C. No.25047), Merlina Miraflor (C.C. No. 25048), Edna Bagasina (C.C. No. 25049), Jocelyn Educalane (C.C. No. 25050), Alvin Gatdula (C.C. No. 25051), Helen Egenias (C.C. No. 25052), Luz Eclarino (C.C. No. 25053) and Josephine Elamparo (C.C. No. 25054)], a legitimate lessee-stallholder from exercising his/her contractual and/or proprietary rights to transfer to, occupy and/or operate his/her assigned stall at the public market of Candelaria, Province of Zambales, under the subsisting lease contract dated 25 June 1998, without any valid or justifiable reason whatsoever, by means of the issuance and implementation of the patently unlawful Memorandum No. 1 dated 30 June 1998, thereby causing undue injury to (private complainants).[2]

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[2] *Id.* at 32.

During the Pre-Trial Conference on February 22, 2000, the People and Mayor Barrera marked their respective documentary exhibits and entered into the following stipulation of facts:

1. That at the time material to this case as alleged in all of the Informations, accused Henry E. Barrera was a public officer being then the municipal mayor of Candelaria, Zambales;

2. That private complainants were awarded individual contract of lease for a market stall in the new Candelaria Public Market by the former Mayor Fidel Elamparo before the oath taking of the accused on June 30, 1998;

3. That the awardees are the following:

1. Ermelina Abella	11. Corazon Cansas
2. Lourdes Jaquias	12. Michelle Palma
3. John Espinosa	13. Mila Saberon
4. Jean Basa	14. Merlinda Miraflor
5. Lerma Espinosa	15. Edna Bagasina
6. Eduardo Sison	16. Jocelyn Educalane
7. Lina Hebron	17. Alvin Gatdula
8. Nora Elamparo	18. Helen Egenias
9. Luz Aspiras	19. Luz Eclarino
10. Oscar Lopez	20. Josephine Elamparo

4. That on June 30, 1998 accused Henry E. Barrera after taking his oath as the new Mayor of Candelaria, Zambales went to the public market and pleaded with the complainants herein not to occupy the new market stalls;

5. That there was a public hearing conducted on the issue of the public market on July 8, 1998 by the Sangguniang Bayan with the new elected mayor as presiding officer;

6. That accused Henry E. Barrera was the Vice-Mayor of Candelaria, Zambales from 1986 to 1992;

7. That the accused was a stall holder or lessee of one of the stalls at the Candelaria Public Market;

8. That on March 11, 1995 during the time of Mayor Fidel Elamparo, the public market of Candelaria, Zambales was razed to the ground;

9. That the incident displaced about 60 market vendors;

10.That Ex-Mayor Elamparo assured the market vendors who were displaced together with Congressman Antonio Diaz that they will enjoy priority/preference over the new stalls once the public market is re-built; and

11.That the displaced market vendors were temporarily sheltered along Perla St. and Ruby St., adjacent to the burned public market.

The parties agreed, that the only issue to be resolved is: whether or not accused Henry E. Barrera is liable for violation of Section 3(e) and 9 of Republic Act No. 3019.[3]

While the Pre-Trial Order, reflecting the foregoing stipulation of facts, was not signed by the members of the Fourth Division of the Sandiganbayan, the issuance, authenticity, and contents thereof were never disputed nor put in issue by any of the parties.

When arraigned, accused Mayor Barrera, Escala, and Edquiban separately pleaded not guilty.

On August 2, 2000, Escala and Edquiban filed an Omnibus Motion: 1) For the Issuance of an Order Dropping Dr. Rufina Escala and Mr. Santos Edquiban from the Information; 2) To Withdraw Bond; and 3) To Lift Hold Departure Orders on the ground that the Ombudsman approved the recommendation of the Special Prosecutor to drop said two accused from the Informations.

In an Order dated August 8, 2000, the Sandiganbayan granted the Omnibus Motion and accordingly ordered Escala and Edquiban dropped from the Informations.

Complainants Abella, Jaquias, John Espinosa, Lerma Espinosa, Sison, Hebron, Cansas, Palma, Saberon, Bagasina, Educalane, Eclarino, and Josephine Elamparo testified for the People. Upon motion of the People, the Sandiganbayan issued an Order dated August 14, 2001, dismissing the complaints of Basa, Norma Elamparo, Lopez, Miraflor, Gatdula, and Egenias, on the ground that said charges cannot be prosecuted successfully without the testimony of these six complainants. The People, however,

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[3] *Id.* at 62-63.

proceeded with the prosecution of the complaints of Abella and the 13 other complainants (Abella, *et al.*). Subsequently, the People formally offered its documentary exhibits, which were admitted in evidence.

Mayor Barrera filed a Motion for Leave to File Demurrer to Evidence on October 23, 2001, which the Sandiganbayan granted in an Order dated October 29, 2001.

Mayor Barrera filed his Demurrer to Evidence on November 8, 2001, avowing that there was no bad faith in his issuance of Memorandum No. 1, which prevented Abella, *et al.*, from occupying the new stalls at the Candelaria Public Market. He explained that he needed to issue Memorandum No. 1 since the previous Municipal Mayor, Fidel Elamparo, awarded the Lease Contracts over the new public market stalls less than a week before the end of the latter's term and without regard to the requirement of pertinent laws. Mayor Barrera also claimed that he did not act with manifest partiality in issuing Memorandum No. 1 considering that said issuance applies not only to Abella, *et al.*, but also to all awardees of the questionable Lease Contracts. Mayor Barrera further pointed out that Abella, *et al.*, did not suffer any undue injury even when they were unable to occupy the new public market stalls as they were able to continue working and earning as market vendors at the temporary public market site. Hence, Mayor Barrera argued that any purported damage sustained by Abella, *et al.*, by reason of the issuance and implementation of Memorandum No. 1 should be solely borne by them, being *damnum absque injuria*.

In its Comment/Opposition to Mayor Barrera's Demurrer to Evidence, the People asserted that the pieces of evidence it adduced and presented were more than sufficient to sustain the accused Mayor's conviction. The People maintained that it would be in Mayor Barrera's best interest to explain during trial why on June 30, 1998, said Mayor, assisted by the police, forcibly evicted Abella, *et al.*, from the new public market and padlocked the market stalls without the benefit of any court order. According to the People, Mayor Barrera's actuations displayed a wanton disregard of the constitutional rights to life

and property, as well as to due process of law, which resulted to business losses on the part of Abella, *et al.*, from the time their market stalls were closed.

On May 6, 2002, the Sandiganbayan rendered its Decision granting Mayor Barrera's Demurrer to Evidence and dismissing the criminal cases against said Mayor. The dispositive portion of the Decision reads:

> WHEREFORE, the Demurrer to Evidence filed by accused HENRY E. BARRERA, through counsel, is hereby GRANTED and Criminal Cases Nos. 25035-37; 25039-41; 25043; 25045-47; 25049-50 and 25053-54 are hereby DISMISSED on the ground that the elements of the offense under Sec. 3(e) of R.A. No. 3019, as amended, were not established beyond reasonable doubt.[4]

Without filing a Motion for Reconsideration of the Sandiganbayan judgment, the People filed the present Petition, faulting the graft court for the following:

I

THE RESPONDENT COURT ACTED WITH GRAVE ABUSE OF DISCRETION IN PROMULGATING THE ASSAILED DECISION AS IT NEVER EXPRESSED CLEARLY AND DISTINCTLY THE FACTS AND THE EVIDENCE ON WHICH IT IS BASED, IN VIOLATION OF THE PROVISIONS OF SEC. 14, ARTICLE VIII OF THE CONSTITUTION.

II

THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT THE PROSECUTION FAILED TO PROVE AND QUANTIFY ACTUAL INJURY AND DAMAGE SUFFERED BY THE PRIVATE COMPLAINANTS.

III

THE RESPONDENT COURT COMMITTED GRAVE ABUSE OF DISCRETION IN RULING THAT THE PROSECUTION FAILED TO PROVE EVIDENT BAD FAITH ON THE PART OF THE PRIVATE RESPONDENT.

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[4] *Id.* at 42.

The Petition has no merit.

At the outset, we note that this Petition for *Certiorari* under Rule 65 of the Rules of Court was filed without a Motion for Reconsideration of the Decision dated May 6, 2002 having been filed before the Sandiganbayan. This fact alone would have warranted the dismissal of the instant Petition given the general rule that a motion for reconsideration is a condition *sine qua non* before the filing of a petition for *certiorari*. In *Republic v. Sandiganbayan*,[5] we held:

> As a rule, the special civil action of *certiorari* under Rule 65 of the 1997 Rules of Civil Procedure, as amended, lies only when the lower court has been given the opportunity to correct the error imputed to it through a motion for reconsideration of the assailed order or resolution. The rationale of the rule rests upon the presumption that the court or administrative body which issued the assailed order or resolution may amend the same, if given the chance to correct its mistake or error. The motion for reconsideration, therefore, is a condition ***sine qua non*** before filing a petition for *certiorari*.
>
> Here, petitioners filed the instant petitions for *certiorari* without interposing a motion for reconsideration of the assailed Resolution of the Sandiganbayan. Section 1 of the same Rule 65 requires that petitioners must not only show that the trial court, in issuing the questioned Resolution, "acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction," but that "there is no appeal, nor any plain, speedy, and adequate remedy in the ordinary course of law." We have held that the "plain," "speedy," and "adequate remedy" referred to in Section 1 of Rule 65 is a *motion for reconsideration* of the questioned Order or Resolution. It bears stressing that the strict application of this rule will also prevent unnecessary and premature resort to appellate proceedings. We thus cannot countenance petitioners' disregard of this procedural norm and frustrate its purpose of attaining speedy, inexpensive, and orderly judicial proceedings.

In justifying their failure to file the required motion for reconsideration, petitioners vehemently assert that they were "deprived of due process and there is extreme urgency for relief,

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[5] 499 Phil. 138, 150-152 (2005).

and that under the circumstances, a motion for reconsideration would be useless."

We are not persuaded.

Petitioners may not arrogate to themselves the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioners must show concrete, compelling, and valid reason for doing so. They must demonstrate that the Sandiganbayan, in issuing the assailed Resolution, acted capriciously, whimsically and arbitrarily by reason of passion and personal hostility. Such capricious, whimsical and arbitrary acts must be apparent on the face of the assailed Resolution. These, they failed to do.

The People in the instant case absolutely failed to provide any explanation as to why it did not first move for reconsideration of the challenged Sandiganbayan judgment before seeking a writ of *certiorari* from this Court. We therefore cannot find any "concrete, compelling, and valid reason" to except the People from the aforementioned general rule of procedure.

The Petition at bar must also be dismissed on substantive grounds.

Article VIII, Section 14 of the 1987 Constitution mandates that "[n]o decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based." The purpose of Article VIII, Section 14 of the Constitution is to inform the person reading the decision, and especially the parties, of how it was reached by the court after consideration of the pertinent facts and examination of the applicable laws. The losing party is entitled to know why he lost, so he may appeal to a higher court, if permitted, should he believe that the decision should be reversed. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. Thus, a decision is adequate if a party desiring to appeal therefrom can assign errors against it.[6]

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[6] *People v. Orbita*, 433 Phil. 761, 771-772 (2002).

Our review of the Sandiganbayan Decision dated May 6, 2006 reveals that said judgment actually contained a summary of the antecedent facts and proceedings; as well as a discussion on the relevant statutory provisions, the elements of the offense charged, and the testimonial and documentary evidence presented by the People. The factual and legal bases of the assailed Sandiganbayan Decision, granting Mayor Barrera's Demurrer to Evidence, are readily evident in the following excerpts therefrom:

> The instant "Demurrer to Evidence" is impressed with merit.
>
> Section 3, paragraph (e) of R.A. 3019, provides that:
>
> > Section 3. *Corrupt Practices of Public Officers*. – In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful;
> >
> > x x x x x x x x x
> >
> > e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefit, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. x x x
>
> To be liable for violation of Section 3(e) of Republic Act No. 3019, four essential elements (as stated in the Information filed in the present cases) must be present:
>
> > 1) That the accused is a public officer or a private person charged in conspiracy with the public officers;
> >
> > 2) That said public officer commits the prohibited acts during the performance of his official duties or in relation to his public position;
> >
> > 3) That he causes undue injury to any party, whether government or private individuals; and
> >
> > 4) That the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence.

The first two above-stated elements are clearly present in the instance cases. However, the third and fourth elements appear to be absent, or at best remain doubtful.

The *undue injury* mentioned as the third essential element in the commission of the crime requires proof of actual injury and damage. Clarifying, the Supreme Court, in *Llorente v. Sandiganbayan*, stated:

> "x x x Unlike in actions for torts, *undue injury* in Sec. 3(e) cannot be presumed even after a wrong or a violation of a right has been established. Its existence must be proven as one of the elements of a crime. In fact, the causing of undue injury or the giving of any unwarranted advantage or preference through manifest partiality, evident bad faith or gross inexcusable negligence constitutes the very act punished under this section. Thus, it is required that the undue injury be specified, quantified and proven to the point of moral certainty."

In the instant cases, the evidence presented by the prosecution failed to prove actual injury and damage suffered by the private complainants, as one of the elements of the crime herein charged, in that it failed to specify, quantify and prove to the point of moral certainty the purported "*undue injury.*" The complainants in their testimonies, admitted that they have been working and earning, either as market vendors or in pursuit of their profession from the time of the closure of their respective market stalls up to now. Also, their claims of business losses, at the time material to the cases at bar, leave much to be desired *vis-à-vis* the moral certitude exacted by law to prove the alleged undue injury. Pathetically, said evidence, are either contradictory or incredible.

Likewise, the prosecution's evidence failed to prove *manifest partiality* and/or *evident bad faith* on the part of the accused, as the fourth of the above-stated requisites for the commission of the crime herein charged.

For an act to be considered as exhibiting "*manifest partiality*," there must be a showing of a clear, notorious or plain inclination or predilection to favor one side rather than the other. "Partiality" is synonymous with "bias" which "excites a disposition to see and report matters as they are wished for rather than as they are." "*Evident bad faith*," on the other hand, is something which does not simply connote bad judgment or negligence; it imputes a dishonest purpose

or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; It partakes of the nature of fraud. It contemplates a state of mind affirmatively operating with furtive design, or some motive of self-interest or ill will for ulterior purpose. *Evident bad faith* connotes a manifest and deliberate intent on the part of the accused to do wrong or cause damage.

The evidence presented by the prosecution falls short of that quantum of proof necessary to establish the fact that the accused acted with manifest partiality or with evident bad faith. On the contrary, what is clear from the evidence adduced, was that herein accused simply exercised his legitimate powers under the Local Government Code of 1991 (LGC) which provides that a municipal mayor has the power to "*enforce all laws and ordinances relative to the governance of the municipality and the exercise of its corporate powers*" and, for this purpose, he shall have the power to "*issue such executive order as are necessary for the proper enforcement and execution of the laws and ordinances*." Ex-Mayor Elamparo's acts of entering into lease contracts, when his term was about to expire and herein accused-movant's term was about to commence, being the mayor-elect, was not only in violation of the Local Government Code provision that "*no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the sangguniang concerned*," but also of the other requirements of law such as, a verified application from the complainants, payment of application fees, drawing of lots and the opening of bids, since not all the displaced vendors can be accommodated in the thirty-two stalls in the new public market. The intent of such a maneuvering was obviously to tie the hands of the incoming administration.

The undue haste of awarding stalls in the new public market by Ex-Mayor Elamparo was flagrant, because from 26 June to 30 June, 1998, former stall holders of the old market that burned down, held a rally to denounce the allegedly unfair awarding of contracts of lease over the new stalls, complaints ranging from awards to new comers, to instances of two stalls, being awarded to one lessee.

It was precisely in this state of affair that prompted herein accused-movant Barrera to cause the issuance of Memorandum No. 1, Series of 1998, after he had taken his oath as mayor of Candelaria, Zambales, to wit:

> "You are hereby advised that effective 1:00 PM, June 30, 1998, the transferring to and occupancy of stalls inside the Public Market shall be temporarily suspended.
>
> For your strict implementation and compliance."

Lastly, of significance is the fact that Memorandum No. 1 applied to all stallholders at the new public market, be they supporters or not of Mayor Barrera during the 1998 mayoralty elections just past. These admissions of the complaining witnesses in open court, thus, refute their allegations in their affidavits that the purpose of the memorandum was to award the new stalls to Mayor Barrera's supporters.

In the light of all the foregoing, We find that herein accused-movant Henry E. Barrera cannot in fairness be held liable under the indictment. In this connection, it has been held that the prosecution must rely on the strength of its own evidence and not on the weakness of the defense; the burden of proof is never on the accused to disprove the facts necessary to establish the crime charged. "It is safely entrenched in our jurisprudence" says the Supreme Court, "that unless the prosecution discharges its burden to prove the guilt of an accused beyond reasonable doubt, the latter need not even offer evidence in his behalf.[7]

In fact, based on the foregoing, the People was able to identify and discuss with particularity in its present Petition the grave abuse of discretion allegedly committed by the graft court in granting Mayor Barrera's Demurrer to Evidence. Thus, contrary to the People's contention, the aforequoted Sandiganbayan judgment did not violate the mandate of Article VIII, Section 14 of the 1987 Constitution.

We further disagree with the People's assertion of grave abuse of discretion on the part of Sandiganbayan in ruling that several elements for the violation of Section 3(e) of Republic Act No. 3019[8] are lacking, or at best, doubtful, in this case.

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[7] *Rollo*, pp. 36-42.

[8] Section 9 of Republic Act No. 3019 referred to in the Complaints and the Pre-Trial Order merely provides for the penalties for violations of said statute. It provides:

In order to be held guilty of violating Section 3(e) of Republic Act No. 3019, the provision itself explicitly requires that the accused caused **undue injury** for having acted **with manifest partiality, evident bad faith, or with gross inexcusable negligence**, in the discharge of his official administrative or judicial function. The People's evidence failed to support the existence of these two elements.

The issuance by Mayor Barrera of Memorandum No. 1 is rooted in Section 444, in relation to Section 22, of Republic Act No. 7160, otherwise known as the Local Government Code of 1991, which provide:

Section 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* **–** (a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

x x x x x x x x x

(2) Enforce all laws and ordinances relative to the governance of the municipality and the exercise of its corporate powers provided for under Section 22 of this Code, implement all approved policies, programs, projects, services and activities of the municipality and, in addition to the foregoing, shall:

x x x x x x x x x

Sec. 9. *Penalties for violations*. – (a) Any public officer or private person committing any of the unlawful acts or omission enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than six years and one month nor more than fifteen years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party at whose complaint, the criminal prosecution was initiated shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the fair value of such thing.

(iii) Issue such executive orders as are necessary for the proper enforcement and execution of laws and ordinances.

Section 22. *Corporate Powers.* – x x x

x x x x x x x x x

(c) Unless otherwise provided in this Code, no contract may be entered into by the local chief executive in behalf of the local government unit without prior authorization by the *sanggunian* concerned. A legible copy of such contract shall be posted at a conspicuous place in the provincial capitol or the city, municipality or *barangay* hall.

The award of Lease Contracts over the new public market stalls were marred by several irregularities, among which, was it being made by the former Mayor with only one week before the expiration of his term and the lack of prior authorization by the *sanggunian* as required by Section 22(c) of Republic Act No. 7160. Also, there were 60 market vendors displaced by the fire at the old public market, but only 32 stalls were available for occupancy at the new public market. A rally was held by the stall holders displaced by the fire from the old public market to denounce the allegedly unfair awarding of the Lease Contracts over the new public market stalls to new comers, and even in some instances, the awarding of two stalls to only one lessee. These circumstances prompted Mayor Barrera, the newly elected Municipal Mayor, to issue Memorandum No. 1 pursuant to his duty of enforcing and implementing laws and ordinances for the general welfare of the municipality and its inhabitants. It bears to stress that Memorandum No. 1 applies equitably to all awardees of the Lease Contracts over the new public market stalls, not just Abella, *et al*., and did not give any unwarranted benefit, advantage, or preference to any particular private party. Consequently, we find that the Sandiganbayan did not commit grave abuse of discretion when it declared that Mayor Barrera did not issue Memorandum No. 1 with manifest partiality, evident bad faith, or with gross inexcusable negligence.

Moreover, in *Pecho v. Sandiganbayan*,[9] we explained that the undue injury caused to any party, including the government,

[9] G.R. No. 111399, November 14, 1994, 238 SCRA 116, 133.

under Section 3(e) of Republic Act No. 3019, could only mean **actual injury or damage** which must be established by evidence. Abella, *et al.*, alleged undue damage/injury by reason of Memorandum No. 1 because they had been unable to occupy the new public market stalls and were thus deprived of their daily income of varying amounts. However, Abella, *et al*., in their own testimonies,[10] admitted that that they have continued working and earning – either as market vendors at the temporary public market site, or in pursuit of their profession – from the time their market stalls were closed until present time. Hence, there was no sufficient evidence to establish actual injury or damage suffered by Abella, *et al*., by reason of Memorandum No. 1.

In *People v. Sandiganbayan*,[11] we defined grave abuse of discretion as follows:

Grave abuse of discretion is the capricious and whimsical exercise of judgment as equivalent to lack of jurisdiction or where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility, and it must be so patent and gross as to amount to an evasion of positive duty or a virtual refusal to perform the duty enjoined or to act in contemplation of law. x x x.

x x x x x x x x x

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

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[10] TSN, May 22, 2000, p. 25 (Abella).

TSN, August 21, 2000, pp. 21-22, 27 (Sison).

TSN, September 18, 2000, p. 14 (Jaquias).

TSN, November 6, 2000, pp. 28-29 (Espinosa).

TSN, November 9, 2000, pp. 12-13 (Educalane).

TSN, January 17, 2001, p. 32 (Hebron).

TSN, March 6, 2001, p. 18 (Palma).

TSN, June 27, 2001, p. 17 (Saberon).

[11] *People v. Sandiganbayan*, G.R. Nos. 137707-11, December 17, 2004, 447 SCRA 291, 306-308.

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.

The sole office of an extraordinary writ of *certiorari* is the correction of errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. For as long as the court acted within its jurisdiction, an error of judgment that it may commit in the exercise thereof is not correctible through the special civil action of *certiorari*. To reiterate, the Sandiganbayan, in rendering the challenged Decision, acted with jurisdiction and did not gravely abuse its discretion.

There being no grave abuse of discretion on the part of the Sandiganbayan in granting Mayor Barrera's Demurrer to Evidence as to deprive the graft court of jurisdiction, the issuance of a writ of *certiorari* is not warranted in the present case.

WHEREFORE, the Petition is hereby *DISMISSED.*

SO ORDERED.

Corona, C.J. (Chairperson), Velasco, Jr., del Castillo, and *Perez, JJ.,* concur.

SECOND DIVISION

[G.R. No. 165339. August 23, 2010]

EQUITABLE PCI BANK, *petitioner, vs.* **ARCELITO B. TAN,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; RA 8246 RE COURT OF APPEALS (CA) DIVISIONS; CASES ALREADY SUBMITTED FOR DECISION AS OF ITS EFFECTIVITY WERE NO LONGER INCLUDED FOR RE-RAFFLE TO THE NEWLY CREATED CA DIVISIONS IN VISAYAS AND MINDANAO; CASE AT BAR. —** Under Section 3 of R.A. 8246, it is provided that: Section 3. Section 10 of Batas Pambansa Blg. 129, as amended, is hereby further amended to read as follows: Sec. 10. *Place of Holding Sessions.* — The Court of Appeals shall have its permanent stations as follows: The first seventeen (17) divisions shall be stationed in the City of Manila for cases coming from the First to the Fifth Judicial Regions; the Eighteenth, Nineteenth, and Twentieth Divisions shall be in Cebu City for cases coming from the Sixth, Seventh and Eighth Judicial Regions; the Twenty-first, Twenty-second and Twenty-third Divisions shall be in Cagayan de Oro City for cases coming from the Ninth, Tenth, Eleventh, and Twelfth Judicial Regions. Whenever demanded by public interest, or whenever justified by an increase in case load, the Supreme Court, upon its own initiative or upon recommendation of the Presiding Justice of the Court of Appeals, may authorize any division of the Court to hold sessions periodically, or for such periods and at such places as the Supreme Court may determine, for the purpose of hearing and deciding cases. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months unless extended by the Chief Justice of the Supreme Court. Further, Section 5 of the same Act provides: Upon the effectivity of this Act, all pending cases, ***except those which have been submitted for resolution***, shall be referred to the proper division of the Court of Appeals. Although CA-G.R. CV No. 41928 originated from Cebu City and is thus referable to the CA's Divisions in Cebu City, the said case was already submitted for decision as of July 25, 1994. Hence, CA-G.R. CV No. 41928, which was already submitted for decision as of the effectivity of R.A. 8246, *i.e.*, February 1, 1997, can no longer be referred to the CA's Division in Cebu City. Thus, the CA's Former Fourth Division correctly ruled that CA-G.R. CV No. 41928 pending in its division was not among those cases that had to be re-raffled to the newly-created CA Divisions in the Visayas Region.

2. **ID.; ID.; ID.; ID.; LAW CANNOT BE SUPPLANTED BY ADMINISTRATIVE ISSUANCES. —** Administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Thus, Office Order No. 82-04-CG cannot defeat the provisions of R.A. 8246.

3. **ID.; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED. —** The principle is well established that this Court is not a trier of facts. Therefore, in an appeal by *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. The resolution of factual issues is the function of the lower courts whose findings on these matters are received with respect and are, as a rule, binding on this Court. However, this rule is subject to certain exceptions. One of these is when the findings of the appellate court are contrary to those of the trial court.

4. **COMMERCIAL LAW; GENERAL BANKING LAW OF 2000 (RA 8791); DECLARATION OF POLICY; HIGH STANDARD OF DILIGENCE REQUIRED OF BANKS. —** The law imposes on banks high standards in view of the fiduciary nature of banking. Section 2 of R.A. 8791 decrees: *Declaration of Policy.* – The State recognizes the vital role of banks in providing an environment conducive to the sustained development of the national economy and the fiduciary nature of banking that requires high standards of integrity and performance. In furtherance thereof, the State shall promote and maintain a stable and efficient banking and financial system that is globally competitive, dynamic and responsive to the demands of a developing economy. Although R.A. 8791 took effect only in the year 2000, the Court had already imposed on banks the same high standard of diligence required under R.A. 8791 at the time of the untimely debiting of respondent's account by petitioner in May 1992. In *Simex International (Manila), Inc. v. Court of Appeals*, which was decided in 1990, the Court held that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship. The diligence required of banks, therefore, is more than that of a good father of a family. In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions.

The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs.

5. **ID.; ID.; ID.; ID.; DRAWEE BANK UNDER STRICT LIABILITY TO PAY TO THE ORDER OF THE PAYEE IN ACCORDANCE WITH THE DRAWER'S INSTRUCTIONS AS REFLECTED ON THE FACE AND BY THE TERMS OF THE CHECK; VIOLATED IN CASE AT BAR. —** Proximate cause is that cause which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred. The proximate cause of the loss is not respondent's manner of writing the date of the check, as it was very clear that he intended Check No. 275100 to be dated May 30, 1992 and not May 3, 1992. The proximate cause is petitioner's own negligence in debiting the account of the respondent prior to the date as appearing in the check, which resulted in the subsequent dishonor of several checks issued by the respondent and the disconnection by ASELCO and ANECO of his electric supply. The bank on which the check is drawn, known as the drawee bank, is under strict liability to pay to the order of the payee in accordance with the drawer's instructions as reflected on the face and by the terms of the check. Thus, payment made before the date specified by the drawer is clearly against the drawee bank's duty to its client. x x x Evidently, the bank's negligence was the result of lack of due care required of its managers and employees in handling the accounts of its clients. Petitioner was negligent in the selection and supervision of its employees. In *Citibank, N.A. v. Cabamongan,* the Court ruled: x x x Banks handle daily transactions involving millions of pesos. By the very nature of their works, the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. Banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees.

6. **CIVIL LAW; DAMAGES; ACTUAL DAMAGES; MUST BE SUFFICIENTLY ESTABLISHED. —** Actual or compensatory damages are those awarded in order to compensate a party for an injury or loss he suffered. They arise out of a sense of

natural justice and are aimed at repairing the wrong done. Except as provided by law or by stipulation, a party is entitled to an adequate compensation only for such pecuniary loss as he has duly proven. To recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable. x x x The Court cannot simply rely on speculation, conjecture or guesswork in determining the amount of damages.

7. **ID.; ID.; TEMPERATE DAMAGES; MAY BE AWARDED IN LIEU OF ACTUAL DAMAGES. —** In the absence of competent proof on the actual damages suffered, respondent is entitled to temperate damages. Under Article 2224 of the Civil Code of the Philippines, 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 proved with certainty. The allowance of temperate damages when actual damages were not adequately proven is ultimately a rule drawn from equity, the principle affording relief to those definitely injured who are unable to prove how definite the injury. x x x Article 2216 of the Civil Code instructs that assessment of damages is left to the discretion of the court according to the circumstances of each case.

8. **ID.; ID.; MORAL DAMAGES; PROPER FOR INJURIES UNJUSTLY CAUSED DUE TO BANK'S NEGLIGENCE IN THE PERFORMANCE OF ITS OBLIGATIONS. —** Anent the award of moral damages, it is settled that moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused. In *Philippine National Bank v. Court of Appeals*, the Court held that a bank is under obligation to treat the accounts of its depositors with meticulous care whether such account consists only of a few hundred pesos or of millions of pesos. Responsibility arising from negligence in the performance of every kind of obligation is demandable. While petitioner's negligence in that case may not have been attended with malice and bad faith, the banks' negligence caused respondent to suffer mental anguish, serious anxiety, embarrassment and humiliation. In said case, We ruled that

respondent therein was entitled to recover reasonable moral damages.

9. **ID.; ID.; EXEMPLARY DAMAGES; PROPER AGAINST BANK WHO FAILED TO EXERCISE THE HIGHEST DEGREE OF DILIGENCE AND HIGH STANDARDS OF INTEGRITY AND PERFORMANCE REQUIRED OF IT. —** On the award of exemplary damages, Article 2229 of the Civil Code states: Art. 2229. 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. The law allows the grant of exemplary damages to set an example for the public good. The banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have attained an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence. For this reason, banks should guard against injury attributable to negligence or bad faith on its part. Without a doubt, it has been repeatedly emphasized that since the banking business is impressed with public interest, of paramount importance thereto is the trust and confidence of the public in general. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required of it. Petitioner, having failed in this respect, the award of exemplary damages in the amount of ₱50,000.00 is in order.

10. **ID.; ID.; ATTORNEY'S FEES; MAY BE RECOVERED WHEN PARTY COMPELLED TO LITIGATE TO PROTECT HIS INTEREST. —** As to the award of attorney's fees, Article 2208 of the Civil Code provides, among others, that attorney's fees may be recovered when exemplary damages are awarded or when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest. Respondent has been forced to undergo unnecessary trouble and expense to protect his interest. The Court affirms the appellate court's award of attorney's fees in the amount of ₱30,000.00.

APPEARANCES OF COUNSEL

Zosa & Quijano Law Offices for petitioner.

Zafra Zafra Zafra and Associates and *Austreverto A. Navales* for respondent.

D E C I S I O N

PERALTA, *J*.:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to set aside the Decision[1] and the Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 41928.

The antecedents are as follows:

Respondent Arcelito B.Tan maintained a current and savings account with Philippine Commercial International Bank (PCIB), now petitioner Equitable PCI Bank.[3] On May 13, 1992, respondent issued PCIB Check No. 275100 postdated May 30, 1992[4] in the amount of ₱34,588.72 in favor of Sulpicio Lines, Inc. As of May 14, 1992, respondent's balance with petitioner was ₱35,147.59. On May 14, 1992, Sulpicio Lines, Inc. deposited the aforesaid check to its account with Solid Bank, Carbon Branch, Cebu City. After clearing, the amount of the check was immediately debited by petitioner from respondent's account thereby leaving him with a balance of only ₱558.87.

Meanwhile, respondent issued three checks from May 9 to May 16, 1992, specifically, PCIB Check No. 275080 dated May 9, 1992, payable to Agusan del Sur Electric Cooperative Inc. (ASELCO) for the amount of ₱6,427.68; PCIB Check No. 275097 dated May 10, 1992 payable to Agusan del Norte Electric Cooperative Inc., (ANECO) for the amount of ₱6,472.01;

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[1] Penned by Associate Justice Godardo A. Jacinto, with Associate Justices Jose L. Sabio Jr. and Noel G. Tijam, concurring; *rollo,* pp. 30-39.

[2] *Id.* at 52.

[3] Pursuant to a merger between Equitable Bank and PCI Bank, *rollo*, p. 5.

[4] Petitioner alleged that the check was dated May 3, 1992.

and PCIB Check No. 314104 dated May 16, 1992 payable in cash for the amount of ₱10,000.00. When presented for payment, PCIB Check Nos. 275080, 275097 and 314014 were dishonored for being drawn against insufficient funds.

As a result of the dishonor of Check Nos. 275080 and 275097 which were payable to ASELCO and ANECO, respectively, the electric power supply for the two mini-sawmills owned and operated by respondent, located in Talacogon, Agusan del Sur; and in Golden Ribbon, Butuan City, was cut off on June 1, 1992 and May 28, 1992, respectively, and it was restored only on July 20 and August 24, 1992, respectively.

Due to the foregoing, respondent filed with the Regional Trial Court (RTC) of Cebu City a complaint against petitioner, praying for payment of losses consisting of unrealized income in the amount of ₱1,864,500.00. He also prayed for payment of moral damages, exemplary damages, attorney's fees and litigation expenses.

Respondent claimed that Check No. 275100 was a postdated check in payment of Bills of Lading Nos. 15, 16 and 17, and that his account with petitioner would have had sufficient funds to cover payment of the three other checks were it not for the negligence of petitioner in immediately debiting from his account Check No. 275100, in the amount of ₱34,588.72, even as the said check was postdated to May 30, 1992. As a consequence of petitioner's error, which brought about the dishonor of the two checks paid to ASELCO and ANECO, the electric supply to his two mini-sawmills was cut off, the business operations thereof were stopped, and purchase orders were not duly served causing tremendous losses to him.

In its defense, petitioner denied that the questioned check was postdated May 30, 1992 and claimed that it was a current check dated May 3, 1992. It alleged further that the disconnection of the electric supply to respondent's sawmills was not due to the dishonor of the checks, but for other reasons not attributable to the bank.

After trial, the RTC, in its Decision[5] dated June 21, 1993, ruled in favor of petitioner and dismissed the complaint.

Aggrieved by the Decision, respondent filed a Notice of Appeal.[6] In its Decision dated May 31, 2004, the Court of Appeals reversed the decision of the trial court and directed petitioner to pay respondent the sum of ₱1,864,500.00 as actual damages, ₱50,000.00 by way of moral damages, ₱50,000.00 as exemplary damages and attorney's fees in the amount of ₱30,000.00. Petitioner filed a motion for reconsideration, which the CA denied in a Resolution dated August 24, 2004.

Hence, the instant petition assigning the following errors:

I

THE FOURTH DIVISION OF THE COURT OF APPEALS DEFIED OFFICE ORDER NO. 82-04-CG BY HOLDING ON TO THIS CASE AND DECIDING IT INSTEAD OF UNLOADING IT AND HAVING IT RE-RAFFLED AMONG THE DIVISIONS IN CEBU CITY.

II

THE COURT OF APPEALS ERRED IN REVERSING THE FINDING OF THE REGIONAL TRIAL COURT THAT CHECK NO. 275100 WAS DATED MAY 3, 1992.

III

THE COURT OF APPEALS ERRED IN NOT HOLDING THAT RESPONDENT'S WAY OF WRITING THE DATE ON CHECK NO. 275100 WAS THE PROXIMATE CAUSE OF THE DISHONOR OF HIS THREE OTHER CHECKS.

IV

THE COURT OF APPEALS ERRED IN AWARDING ACTUAL DAMAGES, MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.

Anent the first issue, petitioner submits that the CA defied Office Order No. 82-04-CG dated April 5, 2004 issued by then CA Presiding Justice Cancio C. Garcia when it failed to unload

[5] *Rollo*, pp. 25-28.

[6] Records, p. 212.

CA-G.R. CV No. 41928 so that it may be re-raffled among the Divisions in Cebu City.

Office Order No. 82-04-CG[7] provides:

x x x x x x x x x

In view of the reorganization of the different Divisions due to the appointment of eighteen (18) new Justices to the additional divisions in the cities of Cebu and Cagayan de Oro, the raffle of civil, criminal and special cases submitted for decision and falling within the jurisdiction of the additional divisions shall commence on April 6, 2004.

The raffle of newly-filed cases and those for completion likewise falling within the jurisdiction of the additional divisions, shall start on April 12, 2004.

x x x x x x x x x

Petitioner alleged that since the aforementioned Office Order directed the raffle of civil, criminal and special cases submitted for decision and falling within the jurisdiction of the additional divisions on April 6, 2004, CA-G.R. CV No. 41928 should have been unloaded by the CA's Fourth Division and re-raffled to the CA's Division in Cebu City instead of deciding the case on May 31, 2004.

Respondent argued that the CA's Fourth Division correctly acted in taking cognizance of the case. The CA defended its jurisdiction by ruling that cases already submitted for decision as of the effectivity of Republic Act (R.A.) 8246[8] on February 1, 1997 were no longer included for re-raffle to the newly-created Visayas and Mindanao Divisions of the CA, conformable to Section 5 of the said statute.

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[7] *Rollo*, p. 54.

[8] An Act Creating Additional Divisions in the Court of Appeals, Increasing the Number of Court of Appeals Justices from Fifty-One (51) to Sixty-Nine (69), Amending for the Purpose Batas Pambansa Bilang 129, As Amended otherwise Known as the Judiciary Reorganization Act of 1980, Appropriating Funds Therefor, and for other purposes.

Petitioner's argument is misplaced. Under Section 3 of R.A. 8246, it is provided that:

Section 3. Section 10 of Batas Pambansa Blg. 129, as amended, is hereby further amended to read as follows:

Sec. 10. *Place of Holding Sessions*. — The Court of Appeals shall have its permanent stations as follows: The first seventeen (17) divisions shall be stationed in the City of Manila for cases coming from the First to the Fifth Judicial Regions; the Eighteenth, Nineteenth, and Twentieth Divisions shall be in Cebu City for cases coming from the Sixth, Seventh and Eighth Judicial Regions; the Twenty-first, Twenty-second and Twenty-third Divisions shall be in Cagayan de Oro City for cases coming from the Ninth, Tenth, Eleventh, and Twelfth Judicial Regions. Whenever demanded by public interest, or whenever justified by an increase in case load, the Supreme Court, upon its own initiative or upon recommendation of the Presiding Justice of the Court of Appeals, may authorize any division of the Court to hold sessions periodically, or for such periods and at such places as the Supreme Court may determine, for the purpose of hearing and deciding cases. Trials or hearings in the Court of Appeals must be continuous and must be completed within three (3) months unless extended by the Chief Justice of the Supreme Court.

Further, Section 5 of the same Act provides:

Upon the effectivity of this Act, all pending cases, ***except those which have been submitted for resolution***, shall be referred to the proper division of the Court of Appeals.[9]

Although CA-G.R. CV No. 41928 originated from Cebu City and is thus referable to the CA's Divisions in Cebu City, the said case was already submitted for decision as of July 25, 1994.[10] Hence, CA-G.R. CV No. 41928, which was already submitted for decision as of the effectivity of R.A. 8246, *i.e.*, February 1, 1997, can no longer be referred to the CA's Division in Cebu City. Thus, the CA's Former Fourth Division correctly ruled that CA-G.R. CV No. 41928 pending in its division was

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[9] Emphasis supplied.

[10] CA's resolution dated July 25, 1994; CA *rollo*, p. 326.

not among those cases that had to be re-raffled to the newly-created CA Divisions in the Visayas Region.

Further, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out.[11] Thus, Office Order No. 82-04-CG cannot defeat the provisions of R.A. 8246.

As to the second issue, petitioner maintains that the CA erred in reversing the finding of the RTC that Check No. 275100 was dated May 3, 1992. Petitioner argued that in arriving at the conclusion that Check No. 275100 was postdated May 30, 1992, the CA just made a visual examination of the check, unlike the RTC which verified the truth of respondent's testimony relative to the issuance of Check No. 275100. Respondent argued that the check was carefully examined by the CA which correctly found that Check No. 275100 was postdated to May 30, 1992 and not May 3, 1992.

The principle is well established that this Court is not a trier of facts. Therefore, in an appeal by *certiorari* under Rule 45 of the Rules of Court, only questions of law may be raised. The resolution of factual issues is the function of the lower courts whose findings on these matters are received with respect and are, as a rule, binding on this Court. However, this rule is subject to certain exceptions. One of these is when the findings of the appellate court are contrary to those of the trial court.[12] Due to the divergence of the findings of the CA and the RTC, We shall re-examine the facts and evidence presented before the lower courts.

The RTC ruled that:

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The issue to be resolved in this case is whether or not the date of PCIB Check No. 275100 is May 3, 1992 as contended by the defendant,

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[11] *Commissioner of Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.,* G.R. No. 150947, 453 Phil. 1043, 1052 (2003), citing *Commissioner of Internal Revenue v. CA,* 310 Phil. 392 (1995).

[12] *Guillang v. Bedania,* G.R. No. 162987, May 21, 2009, 588 SCRA 73, 84.

or May 30, 1992 as claimed by the plaintiff. The date of the check is written as follows – 5/3/0/92. From the manner by which the date of the check is written, the Court cannot really make a pronouncement as to whether the true date of the check is May 3 or May 30, 1992, without inquiring into the background facts leading to the issuance of said check.

According to the plaintiff, the check was issued to Sulpicio Lines in payment of bill of lading nos. 15, 16 and 17. An examination of bill of lading no. 15, however, shows that the same was issued, not in favor of plaintiff but in favor of Coca Cola Bottlers Philippines, Inc. Bill of Lading No. 16 is issued in favor of Suson Lumber and not to plaintiff. Likewise, Bill of Lading No. 17 shows that it was issued to Jazz Cola and not to plaintiff. Furthermore, the receipt for the payment of the freight for the shipments reflected in these three bills of lading shows that the freight was paid by Coca Cola Bottlers Philippines, Inc. and not by plaintiff.

Moreover, the said receipt shows that it was paid in cash and not by check. From the foregoing, the evidence on record does not support the claim of the plaintiff that Check No. 275100 was issued in payment of bills of lading nos. 15, 16 and 17.

Hence, the conclusion of the Court is that the date of the check was May 3, 1992 and not May 30, 1992.[13]

x x x x x x x x x

In fine, the RTC concluded that the check was dated May 3, 1992 and not May 30, 1992, because the same check was not issued to pay for Bills of Lading Nos. 15, 16 and 17, as respondent claims. The trial court's conclusion is preposterous and illogical. The purpose for the issuance of the check has no logical connection with the date of the check. Besides, the trial court need not look into the purpose for which the check was issued. A reading of Check No. 275100[14] would readily show that it was dated May 30, 1992. As correctly observed by the CA:

On the first issue, we agree with appellant that appellee Bank apparently erred in misappreciating the date of Check No. 275100.

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[13] Decision dated June 21, 1993, *rollo*, p. 27.

[14] Exhibit DDDD, CA *rollo*, p. 253.

We have carefully examined the check in question (Exh. DDDD) and we are convinced that it was indeed postdated to May 30, 1992 and not May 3, 1992 as urged by appellee. The date written on the check clearly appears as "5/30/1992" (Exh. DDDD-4). The first bar (/) which separates the numbers "5" and "30" and the second bar (/) which further separates the number "30" from the year 1992 appear to have been done in heavy, well-defined and bold strokes, clearly indicating the date of the check as "5/30/1992" which obviously means May 30, 1992. On the other hand, the alleged bar (/) which appellee points out as allegedly separating the numbers "3" and "0," thereby leading it to read the date as May 3, 1992, is not actually a bar or a slant but appears to be more of an unintentional marking or line done with a very light stroke. The presence of the figure "0" after the number "3" is quite significant. In fact, a close examination thereof would unerringly show that the said number zero or "0" is connected to the preceeding number "3." In other words, the drawer of the check wrote the figures "30" in one continuous stroke, thereby contradicting appellee's theory that the number "3" is separated from the figure "0" by a bar. Besides, appellee's theory that the date of the check is May 3, 1992 is clearly untenable considering the presence of the figure "0" after "3" and another bar before the year 1992. And if we were to accept appellee's theory that what we find to be an unintentional mark or line between the figures "3" and "0" is a bar separating the two numbers, the date of the check would then appear as "5/3/0/1992, which is simply absurd. Hence, we cannot go along with appellee's theory which will lead us to an absurd result. It is therefore our conclusion that the check was postdated to May 30, 1992 and appellee Bank or its personnel erred in debiting the amount of the check from appellant's account even before the check's due date. Undoubtedly, had not appellee bank prematurely debited the amount of the check from appellant's account before its due date, the two other checks (Exhs. LLLL and GGGG) successively dated May 9, 1992 and May 16, 1992 which were paid by appellant to ASELCO and ANECO, respectively, would not have been dishonored and the said payees would not have disconnected their supply of electric power to appellant's sawmills, and the latter would not have suffered losses.

The law imposes on banks high standards in view of the fiduciary nature of banking. Section 2 of R.A. 8791[15] decrees:

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[15] The General Banking Law of 2000.

Declaration of Policy. – The State recognizes the vital role of banks in providing an environment conducive to the sustained development of the national economy and the fiduciary nature of banking that requires high standards of integrity and performance. In furtherance thereof, the State shall promote and maintain a stable and efficient banking and financial system that is globally competitive, dynamic and responsive to the demands of a developing economy.

Although R.A. 8791 took effect only in the year 2000, the Court had already imposed on banks the same high standard of diligence required under R.A. 8791 at the time of the untimely debiting of respondent's account by petitioner in May 1992. In *Simex International (Manila), Inc. v. Court of Appeals*,[16] which was decided in 1990, the Court held that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.

The diligence required of banks, therefore, is more than that of a good father of a family.[17] In every case, the depositor expects the bank to treat his account with the utmost fidelity, whether such account consists only of a few hundred pesos or of millions. The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs.[18] From the foregoing, it is clear that petitioner bank did not exercise the degree of diligence that it ought to have exercised in dealing with its client.

With respect to the third issue, petitioner submits that respondent's way of writing the date on Check No. 275100

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[16] G.R. No. 88013, March 19, 1990, 183 SCRA 360, 367.

[17] *Samsung Construction Company Philippines, Inc. v. Far East Bank and Trust Company,* G.R. No. 129015, August 13, 2004, 436 SCRA 402, 421.

[18] *Metropolitan Bank and Trust Company v. Cabilzo,* G.R. No. 154469, December 6, 2006, 510 SCRA 259, 270.

was the proximate cause of the dishonor of his three other checks. Contrary to petitioner's view, the Court finds that its negligence is the proximate cause of respondent's loss.

Proximate cause is that cause which, in a natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury, and without which the result would not have occurred.[19] The proximate cause of the loss is not respondent's manner of writing the date of the check, as it was very clear that he intended Check No. 275100 to be dated May 30, 1992 and not May 3, 1992. The proximate cause is petitioner's own negligence in debiting the account of the respondent prior to the date as appearing in the check, which resulted in the subsequent dishonor of several checks issued by the respondent and the disconnection by ASELCO and ANECO of his electric supply.

The bank on which the check is drawn, known as the drawee bank, is under strict liability to pay to the order of the payee in accordance with the drawer's instructions as reflected on the face and by the terms of the check.[20] Thus, payment made before the date specified by the drawer is clearly against the drawee bank's duty to its client.

In its memorandum[21] filed before the RTC, petitioner submits that respondent caused confusion on the true date of the check by writing the date of the check as 5/3/0/92. If, indeed, petitioner was confused on whether the check was dated May 3 or May 30 because of the "/" which allegedly separated the number "3" from the "0," petitioner should have required respondent drawer to countersign the said "/" in order to ascertain the true intent of the drawer before honoring the check. As a matter of practice, bank tellers would not receive nor honor such checks which they believe to be unclear, without the counter-signature of its drawer. Petitioner should have exercised the highest

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[19] *Bank of the Philippine Islands v. Lifetime Marketing Corporation,* G.R. No. 176434, June 25, 2008, 555 SCRA 373, 381-382.

[20] *Metropolitan Bank and Trust Company v. Cabilzo, supra* note 18, at 272.

[21] Records, p. 187.

degree of diligence required of it by ascertaining from the respondent the accuracy of the entries therein, in order to settle the confusion, instead of proceeding to honor and receive the check.

Further, petitioner's branch manager, Pedro D. Tradio, in a letter[22] addressed to ANECO, explained the circumstances surrounding the dishonor of PCIB Check No. 275097. Thus:

June 11, 1992

ANECO
Agusan del Norte

Gentlemen:

This refer (sic) to PCIB Check No. 275097 dated May 16, 1992 in the amount of ₱6,472.01 payable to your goodselves issued by Mr. Arcelito B. Tan (MANWOOD Industries) which was returned by PCIB Mandaue Branch for insufficiency of funds.

Please be advised that the return of the aforesaid check was a result of an earlier negotiation to PCIB-Mandaue Branch through a deposit made on May 14, 1992 with SOLIDBANK Carbon Branch, or through Central Bank clearing via Philippine Clearing House Corporation facilities, of a postdated check which ironically and without bad faith passed undetected through several eyes from the payee of the check down to the depository bank and finally the drawee bank (PCIB) the aforesaid Check No. 275097 issued to you would have been honored because it would have been sufficiently funded at the time it was negotiated. It should be emphasized, however, that Mr. Arcelito B. Tan was in no way responsible for the dishonor of said PCIB Check No. 275097.

We hope that the foregoing will sufficiently explain the circumstances of the dishonor of PCIB Check No. 275097 and would clear the name and credit of Mr. Arcelito Tan from any misimpressions which may have resulted from the dishonor of said check.

Thank you.

x x x x x x x x x

[22] CA *rollo*, p. 121.

Although petitioner failed to specify in the letter the other details of this "postdated check," which passed undetected from the eyes of the payee down to the petitioner drawee bank, the Court finds that petitioner was evidently referring to no other than Check No. 275100 which was deposited to Solidbank, and was postdated May 30, 1992. As correctly found by the CA:

> In the aforequoted letter of its Manager, appellee Bank expressly acknowledged that Check No. 275097 (Exh. GGGG) which appellant paid to ANECO "was sufficiently funded at the time it was negotiated," but it was dishonored as a "result of an earlier negotiation to PCIB-Mandaue Branch through a deposit made on May 14, 1992 with SOLIDBANK xxx xxx xxx of a postdated check which xxx xxx passed undetected." He further admitted that "Mr. Arcelito B. Tan was in no way responsible for the dishonor of said PCIB Check No. 275097." Needless to state, since appellee's Manager has cleared appellant of any fault in the dishonor of the ANECO check, it [necessarily] follows that responsibility therefor or fault for the dishonor of the check should fall on appellee bank. Appellee's attempt to extricate itself from its inadvertence must therefore fail in the face of its Manager's explicit acknowledgment of responsibility for the inadvertent dishonor of the ANECO check.[23]

Evidently, the bank's negligence was the result of lack of due care required of its managers and employees in handling the accounts of its clients. Petitioner was negligent in the selection and supervision of its employees. In *Citibank, N.A. v. Cabamongan,*[24] the Court ruled:

> x x x Banks handle daily transactions involving millions of pesos. By the very nature of their works the degree of responsibility, care and trustworthiness expected of their employees and officials is far greater than those of ordinary clerks and employees. Banks are expected to exercise the highest degree of diligence in the selection and supervision of their employees.

We now resolve the question on the award of actual, moral and exemplary damages, as well as attorney's fees by the CA to the respondent.

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[23] *Rollo*, p. 35.

[24] G.R. No. 146918, May 2, 2006, 488 SCRA 517, 532.

The CA based the award of actual damages in the amount of ₱1,864,500.00 on the purchase orders[25] submitted by respondent. The CA ruled that:

> x x x In the case at bar, appellant [respondent herein] presented adequate evidence to prove losses consisting of unrealized income that he sustained as a result of the appellee Bank's gross negligence. Appellant identified certain Purchase Orders from various customers which were not met by reason of the disruption of the operation of his sawmills when ANECO and ASELCO disconnected their supply of electricity thereto. x x x

Actual or compensatory damages are those awarded in order to compensate a party for an injury or loss he suffered. They arise out of a sense of natural justice and are aimed at repairing the wrong done. Except as provided by law or by stipulation, a party is entitled to an adequate compensation only for such pecuniary loss as he has duly proven.[26] To recover actual damages, not only must the amount of loss be capable of proof; it must also be actually proven with a reasonable degree of certainty, premised upon competent proof or the best evidence obtainable.[27]

Respondent's claim for damages was based on purchase orders from various customers which were allegedly not met due to the disruption of the operation of his sawmills. However, aside from the purchase orders and his testimony, respondent failed to present competent proof on the specific amount of

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[25] Purchase Order No. 9906 of Coca-Cola Bottlers Inc. in the amount of ₱97,500 (Exhibit YYY, CA *rollo*, p. 248).

Purchase Order No. 9269 of Coca Cola Bottlers Inc. in the amount of ₱195,000 (Exhibit ZZZ, CA *rollo*, p. 249).

Purchase Order No. 147796 of Coca Cola Bottlers Inc. in the amount of ₱591,000 (Exhibit AAAA, CA *rollo*, p. 250).

Purchase Order No. 76000 of San Miguel Corporation in the amount of ₱882,000 (Exhibit BBBB, CA *rollo*, p. 252).

Job Order No. 1824 of Classic American Flavors Inc. in the amount of ₱99,000 (Exhibit CCCC, CA *rollo*, p. 251).

[26] *Spouses Villafuerte v. Court of Appeals,* 498 Phil. 105, 116 (2005).

[27] *Spouses Quisumbing v. Manila Electric Company,* 429 Phil. 727, 747 (2002).

actual damages he suffered during the entire period his power was cut off. No other evidence was provided by respondent to show that the foregoing purchase orders were not met or were canceled by his various customers. The Court cannot simply rely on speculation, conjecture or guesswork in determining the amount of damages.[28]

Moreover, an examination of the purchase orders and job orders reveal that the orders were due for delivery prior to the period when the power supply of respondent's two sawmills was cut off on June 1, 1992 to July 20, 1992 and May 28, 1992 to August 24, 1992, respectively. Purchase Order No. 9906[29] delivery date is May 4, 1992; Purchase Order No. 9269[30] delivery date is March 19, 1992; Purchase Order No. 147796[31] is due for delivery on January 31, 1992; Purchase Order No. 76000[32] delivery date is February and March 1992; and Job Order No. 1824,[33] dated March 18, 1992, has a 15 days duration of work. Clearly, the disconnection of his electricity during the period May 28, 1992 to August 24, 1992 could not possibly affect his sawmill operations and prior orders therefrom.

Given the dearth of respondent's evidence on the matter, the Court resolves to delete the award of actual damages rendered by the CA in favor of respondent for his unrealized income.

Nonetheless, in the absence of competent proof on the actual damages suffered, respondent is entitled to temperate damages. Under Article 2224 of the Civil Code of the Philippines, 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

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[28] *Dueñas v. Guce-Africa,* G.R. No. 165679, October 5, 2009, 603 SCRA 11, 22.

[29] CA *rollo*, p. 248.

[30] *Id.* at 249.

[31] *Id.* at 250.

[32] *Id.* at 252.

[33] *Id.* at 251.

cannot, from the nature of the case, be proved with certainty.[34] The allowance of temperate damages when actual damages were not adequately proven is ultimately a rule drawn from equity, the principle affording relief to those definitely injured who are unable to prove how definite the injury.[35]

It is apparent that respondent suffered pecuniary loss. The negligence of petitioner triggered the disconnection of his electrical supply, which temporarily halted his business operations and the consequent loss of business opportunity. However, due to the insufficiency of evidence before Us, We cannot place its amount with certainty. Article 2216[36] of the Civil Code instructs that assessment of damages is left to the discretion of the court according to the circumstances of each case. Under the circumstances, the sum of ₱50,000.00 as temperate damages is reasonable.

Anent the award of moral damages, it is settled that moral damages are meant to compensate the claimant for any physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation and similar injuries unjustly caused.[37] In *Philippine National Bank v. Court of Appeals*,[38] the Court held that a bank is under obligation to treat the accounts of its depositors with meticulous care whether such account consists only of a few hundred pesos or of millions of pesos. Responsibility arising from negligence in the performance of every kind of obligation is demandable. While

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[34] *Viron Transportation Co., Inc. v. Delos Santos,* 399 Phil. 243, 255, 256 (2000).

[35] *Republic v. Tuvera,* G.R. No. 148246, February 16, 2007, 516 SCRA 113, 152.

[36] No proof of pecuniary loss is necessary in order that moral, nominal, temperate, liquidated or exemplary damages may be adjudicated. The assessment of such damages, except liquidated ones, is left to the discretion of the Court, according to the circumstances of each case.

[37] *Samson, Jr. v. Bank of the Philippine Islands,* 453 Phil. 577, 583 (2003).

[38] 373 Phil. 942, 948 (1999).

petitioner's negligence in that case may not have been attended with malice and bad faith, the banks' negligence caused respondent to suffer mental anguish, serious anxiety, embarrassment and humiliation. In said case, We ruled that respondent therein was entitled to recover reasonable moral damages.

In this case, the unexpected cutting off of respondent's electricity, which resulted in the stoppage of his business operations, had caused him to suffer humiliation, mental anguish and serious anxiety. The award of ₱50,000.00 is reasonable, considering the reputation and social standing of respondent. As found by the CA, as an accredited supplier, respondent had been reposed with a certain degree of trust by various reputable and well- established corporations.

On the award of exemplary damages, Article 2229 of the Civil Code states:

> Art. 2229. 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.

The law allows the grant of exemplary damages to set an example for the public good. The banking system has become an indispensable institution in the modern world and plays a vital role in the economic life of every civilized society. Whether as mere passive entities for the safekeeping and saving of money or as active instruments of business and commerce, banks have attained an ubiquitous presence among the people, who have come to regard them with respect and even gratitude and most of all, confidence. For this reason, banks should guard against injury attributable to negligence or bad faith on its part. Without a doubt, it has been repeatedly emphasized that since the banking business is impressed with public interest, of paramount importance thereto is the trust and confidence of the public in general. Consequently, the highest degree of diligence is expected, and high standards of integrity and performance are even required of it.[39] Petitioner,

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[39] *Equitable PCI Bank v. Ong,* G.R. No. 156207, September 15, 2006, 502 SCRA 119, 138.

having failed in this respect, the award of exemplary damages in the amount of ₱50,000.00 is in order.

As to the award of attorney's fees, Article 2208[40] of the Civil Code provides, among others, that attorney's fees may be recovered when exemplary damages are awarded or when the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest.[41] Respondent has been forced to undergo unnecessary trouble and expense to protect his interest. The Court affirms the appellate court's award of attorney's fees in the amount of ₱30,000.00.

WHEREFORE, the petition is *PARTIALLY GRANTED.* The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 41928, dated May 31, 2004 and August 24, 2004, respectively, are *AFFIRMED* with the following *MODIFICATIONS*:

1. The award of One Million Eight Hundred Sixty-Four Thousand and Five Hundred Pesos (₱1,864,500.00) as actual damages, in favor of respondent Arcelito B. Tan, is *DELETED*; and

2. Petitioner Equitable PCI Bank is instead directed to pay respondent the amount of Fifty Thousand Pesos (₱50,000.00) as temperate damages.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

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[40] In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expense to protect his interest;

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[41] *Sandejas v. Ignacio, Jr.,* G.R. No. 155033, December 19, 2007, 541 SCRA 61, 83-84.

SECOND DIVISION

[G.R. No. 172724. August 23, 2010]

PHARMACIA AND UPJOHN, INC. (now PFIZER PHILIPPINES, INC.), ASHLEY MORRIS, ALEDA CHU, JANE MONTILLA & FELICITO GARCIA, *petitioners, vs.* **RICARDO P. ALBAYDA, JR.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE SUPREME COURT DOES NOT ENTERTAIN FACTUAL ISSUES; EXCEPTIONS; PRESENT.—** As a general rule, this Court does not entertain factual issues. The scope of our review in petitions filed under Rule 45 is limited to errors of law or jurisdiction. This Court leaves the evaluation of facts to the trial and appellate courts which are better equipped for this task. However, there are instances in which factual issues may be resolved by this Court, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the CA goes beyond the issues of the case, and its findings are contrary to the admissions of both appellant and appellees; (7) **the findings of fact of the CA are contrary to those of the trial court**; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record. In the present case, this Court is prompted to evaluate the findings of the LA, the NLRC, and the CA which are diametrically opposed.

2. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; MANAGEMENT PREROGATIVE; TRANSFER OF EMPLOYEES, WHEN CONSIDERED VALID.—** Jurisprudence recognizes the exercise of management

prerogative to transfer or assign employees from one office or area of operation to another, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. To determine the validity of the transfer of employees, the employer must show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal.

3. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE NATIONAL LABOR RELATIONS COMMISSION (NLRC), AFFIRMING THOSE OF THE LABOR ARBITER, ARE ENTITLED TO GREAT WEIGHT AND WILL NOT BE DISTURBED IF SUPPORTED BY SUBSTANTIAL EVIDENCE; ELABORATED.—** The rule in our jurisdiction is that findings of fact of the NLRC, affirming those of the LA, are entitled to great weight and will not be disturbed if they are supported by substantial evidence. Substantial evidence is an amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. As explained in *Ignacio v. Coca-Cola Bottlers Phils., Inc*: x x x Factual findings of the NLRC affirming those of the Labor Arbiter, both bodies being deemed to have acquired expertise in matters within their jurisdictions, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court. **As long as their decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the evidence proffered by the parties, all that is left is for the Court to stamp its affirmation and declare its finality**. Based on the foregoing, this Court rules that the CA had overstepped its legal mandate by reversing the findings of fact of the LA and the NLRC as it appears that both decisions were based on substantial evidence. There is no proof of arbitrariness or abuse of discretion in the process by which each body arrived at its own conclusions. Thus, the CA should have deferred to such specialized agencies which are considered experts in matters within their jurisdictions.

4. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; MANAGEMENT PREROGATIVE; ABSENT ARBITRARINESS, THE APPELLATE COURT SHOULD NOT HAVE LOOKED INTO THE WISDOM OF A MANAGEMENT PREROGATIVE.—** Moreover, what is objectionable with the CA decision is that in finding that the reassignment of respondent was arbitrary and unreasonable it had, in effect, imposed on petitioners its own opinion or judgment on what should have been a purely business decision. xxx In the absence of arbitrariness, the CA should not have looked into the wisdom of a management prerogative. It is the employer's prerogative, based on its assessment and perception of its employee's qualifications, aptitudes, and competence, to move them around in the various areas of its business operations in order to ascertain where they will function with maximum benefit to the company.

5. **ID.; ID.; ID.; TRANSFER OF EMPLOYEE; ABSENT A DEFINITE FINDING THAT THE EMPLOYER'S EXERCISE OF ITS PREROGATIVE TO TRANSFER ITS EMPLOYEE WAS TAINTED WITH ARBITRARINESS AND UNREASONABLENESS, THE APPELLATE COURT SHOULD LEAVE THE SAME TO THE EMPLOYER'S BETTER JUDGMENT; INTERFERENCE WITH AN EMPLOYER'S JUDGMENT IN THE CONDUCT OF HIS BUSINESS, DISCOURAGED.—** xxx. The foregoing illustrates why it is dangerous for this Court and even the CA to look into the wisdom of a management prerogative. Certainly, one can argue for or against the *pros* and *cons* of transferring respondent to another territory. Absent a definite finding that such exercise of prerogative was tainted with arbitrariness and unreasonableness, the CA should have left the same to petitioners' better judgment. The rule is well settled that labor laws discourage interference with an employer's judgment in the conduct of his business. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. As long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.

6. **ID.; ID.; ID.; ID.; RIGHT OF THE DRUG COMPANY TO TRANSFER OR REASSIGN ITS MEDICAL REPRESENTATIVE IN ACCORDANCE WITH ITS OPERATIONAL DEMANDS AND REQUIREMENTS, UPHELD.—** [T]his Court cannot agree with the findings of the CA that the transfer of respondent was unreasonable, considering he had not been remiss in his responsibilities. What the CA failed to recognize is that the very nature of a sales man is that it is mobile and ambulant. On this point, it bears to stress that respondent signed two documents signifying his assent to be assigned anywhere in the Philippines. xxx. In *Abbott Laboratories* (*Phils.*), *Inc. v. National Labor Relations Commission,* which involved a complaint filed by a medical representative against his employer drug company for illegal dismissal for allegedly terminating his employment when he refused to accept his reassignment to a new area, the Court upheld the right of the drug company to transfer or reassign its employee in accordance with its operational demands and requirements. The ruling of the Court therein, quoted hereunder, also finds application in the instant case: xxx By the very nature of his employment, a drug salesman or medical representative is expected to travel. He should anticipate reassignment according to the demands of their business**. It would be a poor drug corporation which cannot even assign its representatives or detail men to new markets calling for opening or expansion or to areas where the need for pushing its products is great. More so if such reassignments are part of the employment contract**.

7. **REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) WHICH ARE SUPPORTED BY SUBSTANTIAL EVIDENCE, AFFIRMED.—** Because of respondent's adamant refusal to be reassigned, the LA ruled that petitioners had valid grounds to terminate his employment xxx. In addition, the NLRC also ruled that respondent was guilty of insubordination xxx [T]his Court rules that the findings of the LA and the NLRC are supported by substantial evidence. The LA clearly outlined the steps taken by petitioners and the manner by which respondent was eventually dismissed. The NLRC, for its part, explained why respondent was guilty of insubordination. No abuse of discretion can, therefore, be attributed to both agencies, and

the CA was certainly outside its mandate in reversing such findings.

8. **LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; MANAGEMENT PREROGATIVE; TRANSFER AND REASSIGNMENT OF EMPLOYEE; OBJECTION TO THE TRANSFER ON GROUND OF PERSONAL INCONVENIENCE OR HARDSHIP THAT WILL BE CAUSED TO THE EMPLOYEE BY REASON THEREOF IS NOT A VALID REASON TO DISOBEY AN ORDER OF TRANSFER.—** This Court has long stated that the objection to the transfer being grounded solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer. Such being the case, respondent cannot adamantly refuse to abide by the order of transfer without exposing himself to the risk of being dismissed. Hence, his dismissal was for just cause in accordance with Article 282(a) of the Labor Code.

9. **ID.; ID.; ID.; THE APPELLATE COURT CANNOT SUBSTITUTE ITS OWN JUDGMENT AND INTERFERE WITH MANAGEMENT PREROGATIVES.—** The CA, however, ruled that respondent was not guilty of insubordination xxx. This Court cannot agree with the findings of the CA, in view of the fact that it was an error for it to substitute its own judgment and interfere with management prerogatives. No iota of evidence was presented that the reassignment of respondent was a demotion as he would still be a District Sales Manager in Cagayan de Oro City or in Metro Manila. Furthermore, he would be given relocation benefits in accordance with the Benefits Manual. If respondent feels that what he was given is less than what is given to all other district managers who were likewise reassigned, the onus is on him to prove such fact. Furthermore, records reveal that respondent has been harping on the fact that no additional remuneration would be given to him with the transfer. However, again, respondent did not present any evidence that additional remuneration were being given to other district managers who were reassigned to different locations, or that such was the practice in the company. x x x. [W]hile it is understandable that respondent does not want to relocate his family, this Court agrees with the NLRC when it observed that such inconvenience is considered an "employment" or "professional" hazard which

forms part of the concessions an employee is deemed to have offered or sacrificed in the view of his acceptance of a position in sales.

10. **ID.; TERMINATION OF EMPLOYMENT; PROCEDURAL DUE PROCESS; TWIN REQUIREMENTS OF NOTICE AND HEARING.—** 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.

11. **ID.; ID.; ID.; ID.; ABSENCE OF ACTUAL HEARING BEFORE THE DISMISSAL OF THE EMPLOYEE, NOT FATAL; EXPLAINED; REQUIREMENTS OF DUE PROCESS MET IN CASE AT BAR.—** While no actual hearing was conducted before petitioners dismissed respondent, the same is not fatal as only an "ample opportunity to be heard" is what is required in order to satisfy the requirements of due process. Accordingly, this Court is guided by *Solid Development Corporation Workers Association v. Solid Development Corporation* (Solid), where the validity of the dismissal of two employees was upheld notwithstanding that no hearing was conducted, to wit: [W]ell-settled is the dictum that the twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees. It is a cardinal rule in our jurisdiction that 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, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted. xxx In the case at bar, this Court finds that petitioners had complied with the requirements of law in effecting the dismissal of respondent.

12. **ID.; TERMINATION OF EMPLOYMENT; MANAGEMENT PREROGATIVE; TRANSFER OF EMPLOYEES; REASSIGNMENT OF THE RESPONDENT-EMPLOYEE TO ANOTHER TERRITORY IS A VALID EXERCISE OF MANAGEMENT PREROGATIVE.—** [I]t bears to stress that the CA should not have disturbed the factual findings of the LA and the NLRC in the absence of arbitrariness or palpable error. The reassignment of respondent to another territory was a valid exercise of petitioners' management prerogative and, consequently, his dismissal was for cause and in accordance with the due process requirement of law.

13. **ID.; ID.; SEPARATION PAY; RULE; A VALIDLY DISMISSED EMPLOYEE IS NOT ENTITLED TO ANY FINANCIAL ASSISTANCE.—** This Court, however, is not unmindful of previous rulings, wherein separation pay has been granted to a validly dismissed employee after giving considerable weight to long years of employment. An employee who is dismissed for cause is generally not entitled to any financial assistance. Equity considerations, however, provide an exception. Equity has been defined as justice outside law, being ethical rather than jural and belonging to the sphere of morals than of law. It is grounded on the precepts of conscience and not on any sanction of positive law, for equity finds no room for application where there is law.

14. **ID.; ID.; ID.; GUIDELINES IN THE GRANT THEREOF TO A LAWFULLY DISMISSED EMPLOYEE; APPLIED.—** In *Philippine Long Distance Telephone Co. v. National Labor Relations Commission,* the Court laid down the guidelines in the grant of separation pay to a lawfully dismissed employee, thus: We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice. In the instant case, this Court rules that an award to respondent of separation pay by way of financial assistance, equivalent to one-half (1/2) month's pay

for every year of service, is equitable. Although respondent's actions constituted a valid ground to terminate his services, the same is to this Court's mind not so reprehensible as to warrant complete disregard of his long years of service. It also appears that the same is respondent's first offense. While it may be expected that petitioners will argue that respondent has only been in their service for four years since the merger of Pharmacia and Upjohn took place in 1996, equity considerations dictate that respondent's tenure be computed from 1978, the year when respondent started working for Upjohn.

APPEARANCES OF COUNSEL

Romulo Mabanta Buenaventura Sayoc & Delos Angeles for petitioners.

Valencia Ciocon Dabao Valencia Dela Paz Dionela Ravina and Pandan Law Offices 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 November 30, 2005 Decision[2] and May 5, 2006 Resolution[3] of the Court of Appeals (CA), in CA-G.R. SP No. 00386.

The facts of the case are as follows:

Respondent Ricardo P. Albayda, Jr. (respondent) was an employee of Upjohn, Inc. (Upjohn) in 1978 and continued working there until 1996 when a merger between Pharmacia and Upjohn was created. After the merger, respondent was designated by petitioner Pharmacia and Upjohn (Pharmacia) as District Sales

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[1] *Rollo*, pp. 8-53.

[2] Penned by Associate Justice Mercedes Gozo-Dadole, with Associate Justices Pampio A. Abarintos and Enrico A. Lanzanas, concurring, *id.* at 55-63.

[3] *Rollo*, pp. 65-66.

Manager assigned to District XI in the Western Visayas area. During the period of his assignment, respondent settled in Bacolod City.

Sometime on August 9, 1999, a district meeting was held in Makati City wherein one of the topics discussed was the district territorial configuration for the new marketing and sales direction for the year 2000.

In December 1999, respondent received a Memorandum[4] announcing the sales force structure for the year 2000. In the said memorandum, respondent was reassigned as District Sales Manager to District XII in the Northern Mindanao area. One of the key areas covered in District XII is Cagayan de Oro City.

In response to the memorandum, respondent wrote a letter[5] dated December 27,1999 to Felicito M. Garcia (Garcia), Pharmacia's Vice-President for Sales and Marketing, questioning his transfer from District XI to District XII. Respondent said that he has always been assigned to the Western Visayas area and that he felt that he could not improve the sales of products if he was assigned to an unfamiliar territory. Respondent concluded that his transfer might be a way for his managers to dismiss him from employment. Respondent added that he could not possibly accept his new assignment in Cagayan de Oro City because he will be dislocated from his family; his wife runs an established business in Bacolod City; his eleven- year-old daughter is studying in Bacolod City; and his two-year-old son is under his and his wife's direct care.

On January 10, 2000, Garcia wrote a letter[6] to respondent denying his request to be reassigned to the Western Visayas area. Garcia explained that the factors used in determining assignments of managers are to maximize business opportunities and growth and development of personnel. Garcia stressed that

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[4] *Id.* at 141-142. See also Assignment of respondent to District XII, p. 155.

[5] *Id.* at 167-168.

[6] *Id.* at 169.

other people : both reprensentatives and district sales managers—have been re-located in the past and in the year 2000 re-alignment.

On February 16, 2000, respondent wrote a letter[7] to Aleda Chu (Chu), Pharmacia's National Sales and External Business Manager, reiterating his request to be reassigned to the Western Visayas area. Respondent alleged that during one conversation, Chu assured him that as long as he hits his sales target by 100%, he would not be transferred. Respondent again speculated that the real reason behind his transfer was that it was petitioners' way of terminating his employment. Respondent harped that his transfer would compel him to lose his free housing and his wife's compensation of ₱50,000.00 from her business in Bacolod City.

In a letter[8] dated March 3, 2000, Chu said that she did not give any assurance or commitment to respondent that he would not be transferred as long as he achieved his 100% target for 1999. Chu explained to respondent that they are moving him to Cagayan de Oro City, because of their need of respondent's expertise to build the business there. Chu added that the district performed dismally in 1999 and, therefore, they were confident that under respondent's leadership, he can implement new ways and develop the sales force to become better and more productive. Moreover, since respondent has been already in Bacolod and Iloilo for 22 years, Chu said that exposure to a different market environment and new challenges will contribute to respondent's development as a manager. Finally, Chu stressed that the decision to transfer respondent was purely a business decision.

Respondent replied through a letter[9] dated March 16, 2000. Respondent likened his transfer to Mindanao as a form of punishment as he alleged that even Police Chief General Panfilo Lacson transferred erring and non-performing police officers to Mindanao. Respondent argued that Chu failed to face and address the issues he raised regarding the loss of his family

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[7] *Id.* at 170-171.

[8] *Id.* at 172-173.

[9] *Id.* at 174-175.

income, the additional cost of housing and other additional expenses he will incur in Mindanao.

In a memorandum[10] dated May 11, 2000, Jane B. Montilla (Montilla), Pharmacia's Human Resource Manager, notified respondent that since he has been on sick leave since January 5, 2000 up to the present, he had already consumed all his sick leave credits for the year 2000. Montilla stated that per company policy, respondent would then be considered on indefinite sick leave without pay. In another memorandum[11] dated May 15, 2000, Montilla informed respondent of the clinic schedule of the company appointed doctor.

In a letter[12] dated May 17, 2000, respondent acknowledged his receipt of the letters from Montilla. Respondent informed Montilla that his doctors had already declared him fit for work as of May 16, 2000. Respondent stated that he was already ready to take on his regular assignment as District Sales Manager in Negros Occidental or in any district in the Western Visayas area.

In a letter[13] dated May 17, 2000, Chu expressed her disappointment on the way respondent viewed their reason for moving his place of assignment. Chu was likewise disappointed with respondent's opinion that with the movement, he be given additional remuneration, when in fact, such was never done in the past and never the practice in the industry and in the Philippines. Chu concluded that it appeared to her that respondent would not accept any reason for the movement and that nothing is acceptable to him except a Western Visayas assignment. Consequently, Chu referred the case to the Human Resource Department for appropriate action.

Montilla met with respondent to discuss his situation. After the meeting, Montilla sent respondent a memorandum[14] wherein

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[10] *Id.* at 177.

[11] *Id.* at 178.

[12] *Id.* at 180-181.

[13] *Id.* at 179.

[14] *Id.* at 182.

his request to continue his work responsibilities in Negros Occidental or in any district in the Western Visayas area was denied as there was no vacant position in those areas. Montilla stressed that the company needed respondent in Cagayan de Oro City, because of his wealth of experience, talent and skills. Respondent, however, was also given an option to be assigned in Metro Manila as a position in the said territory had recently opened when Joven Rodriguez was transferred as Government Accounts and Special Projects Manager. Montilla gave respondent until June 2, 2000 to talk to his family and weigh the pros and cons of his decision on whether to accept a post in Cagayan de Oro City or in Manila.

In a letter[15] dated May 31, 2000, respondent reiterated the concerns he raised in his previous letters.

Montilla sent respondent another memorandum[16] dated June 6, 2000, stating that it is in the best interest of the company for respondent to report to the Makati office to assume his new area of assignment.

In a letter[17] dated June 8, 2000, respondent told Montilla that he will be airing his grievance before the National Labor Relations Commission (NLRC).

In a memorandum[18] dated June 15, 2000, Montilla stated that contrary to the opinion of respondent, respondent is entitled to Relocation Benefits and Allowance pursuant to the company's Benefits Manual. Montilla directed respondent to report for work in Manila within 5 working days from receipt of the memorandum.

In another memorandum[19] dated June 26, 2000, Montilla stated that she had not heard from respondent since his June 8,

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[15] *Id.* at 183-184.

[16] *Id.* at 185.

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

[18] *Id.* at 188.

[19] *Id.* at 189.

2000 letter and that he has not replied to their last memorandum dated June 15, 2000. Respondent was warned that the same would be a final notice for him to report for work in Manila within 5 working days from receipt of the memo; otherwise, his services will be terminated on the basis of being absent without official leave (AWOL).

On July 13, 2000, Montilla sent respondent a memorandum[20] notifying him of their decision to terminate his services after he repeatedly refused to report for work despite due notice, the pertinent portions of which read:

> As I mentioned many times in our talks, you are in a Sales position for which you had signed up. Your employment contract actually states that you are willing to be assigned anywhere else in the Philippines, wherever the company needs you sees you fit.
>
> Metro Manila is the biggest and most advanced market we have in the Philippines. It is where the success or failure of our business lies. It is, therefore, the most competitive and significant area for sales. It is the most challenging and most rewarding of all areas. Only the best field managers are given the opportunity to manage a territory in Metro Manila. This is why I chose Manila over Cagayan de Oro for you in my letter dated June 6, 2000. And because you had assured us that you were fit to work, after being on sick leave for about five and a half months, I asked you to assume your new assignment in Metro Manila before June 16, 2000.
>
> Before June 16, 2000, you wrote us a letter advising us that you can not accept the new assignment in Manila. In response, we advised you that the assignment in Manila is a business need and for said reason you were requested to report for work within five working days from receipt of notice. However, you failed to comply. So we issued another memo dated June 26, 2000, instructing you to report for work and advising you that should you continue to fail to report for work, the company shall be constrained to terminate your employment.
>
> In view of the foregoing, we have no alternative but to terminate your services on the basis of absence without official leave (AWOL)

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[20] Records, pp. 159-160.

and insubordination pursuant to Article 282 of the Labor Code of the Philippines, which shall be effective on July 19, 2000.[21]

On August 14, 2000, respondent filed a Complaint[22] with the NLRC, Regional Arbitration Branch No. VI, Bacolod City against Pharmacia, Chu, Montilla and Garcia for constructive dismissal. Also included in the complaint was Ashley Morris, Pharmacia's President. Since mandatory conciliation failed between the parties, both sides were directed to submit their position papers.

On July 12, 2002, the Labor Arbiter (LA) rendered a Decision[23] dismissing the case, the dispositive portion of which reads:

> WHEREFORE, premises considered, the complaint against respondents in the above-entitled case is DISMISSED for lack of merit.
>
> SO ORDERED.[24]

Respondent appealed to the NLRC. In a Decision[25] dated July 26, 2004, the NLRC dismissed the appeal, the dispositive portion of which reads:

> WHEREFORE, premises considered, the appeal of complainant is hereby DISMISSED for lack of merit. The decision of the Labor Arbiter is AFFIRMED *en toto*.
>
> SO ORDERED.[26]

Respondent filed a Motion for Reconsideration,[27] which was denied by the NLRC in a Resolution[28] dated November 10, 2004.

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[21] *Id*.

[22] *Id.* at 1-2.

[23] *Rollo*, pp. 262-290.

[24] *Id.* at 290.

[25] *Id.* at 315-328.

[26] *Id.* at 327.

[27] *Id.* at 329-338.

[28] *Id.* at 352-353.

Aggrieved, respondent filed a Petition for *Certiorari*[29] before the CA.

On November 30, 2005, the CA rendered a Decision ruling in favor of respondent, the dispositive portion of which reads:

WHEREFORE, premises considered, this petition is hereby given due course and the Resolution dated November 10, 2004 and the Decision dated July 26, 2004 of the NLRC Fourth Division in NLRC Case No. V-000521-2000 (RAB Case No. 06-08-10650-2000), are hereby REVERSED and SET ASIDE. Accordingly, the case is REMANDED to the National Labor Relations Commission, Regional Arbitration Branch No. VI, Bacolod City, for the proper determination of the petitioner's claims.

SO ORDERED.[30]

Petitioners filed a Motion for Reconsideration, which was, however, denied by the CA in a Resolution dated May 5, 2006.

Hence, herein petition, with petitioner raising a lone assignment of error to wit:

WHETHER OR NOT THE COURT OF APPEALS (CEBU CITY) CAN REVERSE OR SET ASIDE THE FACTUAL AND LEGAL FINDINGS OF THE NLRC WHICH WAS BASED ON SUBSTANTIAL EVIDENCE WHEN THERE IS NO SHOWING OF PALPABLE ERROR OR THAT THE FINDINGS OF FACTS OF THE LABOR ARBITER IS CONTRARY TO THAT OF THE NLRC.[31]

The petition is meritorious.

As a general rule, this Court does not entertain factual issues. The scope of our review in petitions filed under Rule 45 is limited to errors of law or jurisdiction.[32] This Court leaves the

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[29] *Id.* at 354-380.

[30] *Id.* at 62-63.

[31] *Id.* at 25.

[32] *Coca-Cola Bottlers Phils., Inc. v. Daniel*, G.R. No. 156893, June 21, 2005, 460 SCRA 494, 503.

evaluation of facts to the trial and appellate courts which are better equipped for this task.

However, there are instances in which factual issues may be resolved by this Court, to wit: (1) the conclusion is a finding grounded entirely on speculation, surmise and conjecture; (2) the inference made is manifestly mistaken; (3) there is grave abuse of discretion; (4) the judgment is based on a misapprehension of facts; (5) the findings of fact are conflicting; (6) the CA goes beyond the issues of the case, and its findings are contrary to the admissions of both appellant and appellees; (7) **the findings of fact of the CA are contrary to those of the trial court**; (8) said findings of fact are conclusions without citation of specific evidence on which they are based; (9) the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; and (10) the findings of fact of the CA are premised on the supposed absence of evidence and contradicted by the evidence on record.[33]

In the present case, this Court is prompted to evaluate the findings of the LA, the NLRC, and the CA which are diametrically opposed.

Petitioners argue that the CA erred when it reversed the factual and legal findings of the NLRC which affirmed the decision of the LA. Petitioners contend that it is well established that factual findings of administrative agencies and quasi-judicial bodies are accorded great respect and finality and are not to be disturbed on appeal unless patently erroneous.

After a judicious examination of the records herein, this Court sustains the findings of the LA and the NLRC which are more in accord with the facts and law of the case.

On petitioners' exercise of management prerogative

Jurisprudence recognizes the exercise of management prerogative to transfer or assign employees from one office or area of operation to another, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and

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[33] *R & E Transport, Inc. v. Latag*, 467 Phil. 355, 365 (2004).

the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause.[34]

To determine the validity of the transfer of employees, the employer must show that the transfer is not unreasonable, inconvenient, or prejudicial to the employee; nor does it involve a demotion in rank or a diminution of his salaries, privileges and other benefits. Should the employer fail to overcome this burden of proof, the employee's transfer shall be tantamount to constructive dismissal.[35]

Both the LA and the NLRC ruled that the reassignment of respondent was a valid exercise of petitioners' management prerogative.

The LA shared petitioners' posture that the transfer of respondent was a valid exercise of a legitimate management prerogative to maximize business opportunities, growth and development of personnel and that the expertise of respondent was needed to build the company's business in Cagayan de Oro City which dismally performed in 1999.[36]

In addition, the LA explained that the reassignment of respondent was not a demotion as he will also be assigned as a District Sales Manager in Mindanao or in Metro Manila and that the notice of his transfer did not indicate that his emoluments will be reduced. Moreover, the LA mentioned that respondent was entitled to Relocation Benefits and Allowance in accordance with petitioners' Benefits Manual.

On respondent's allegation that his family stands to lose income from his wife's business, the LA ruled:

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[34] *Philippine Industrial Security Agency Corporation v. Aguinaldo*, G.R. No. 149974, June 15, 2005, 460 SCRA 229, 239; *Mendoza v. Rural Bank of Lucban*, G.R. No. 155421, July 7, 2004, 433 SCRA 756, 765-766.

[35] *Floren Hotel v. National Labor Relations Commission*, 497 Phil. 458, 473 (2005); *Jarcia Machine Shop and Auto Supply, Inc. v. NLRC*, 334 Phil. 84, 95 (1997).

[36] *Rollo,* p. 281.

The allegation of complainant that his income will be affected because his wife who is doing business in Bacolod City and earns ₱50,000.00, if true, should not be taken in consideration of his transfer. What is contemplated here is the diminution of the salary of the complainant but not his wife. Besides, even if complainant may accept his new assignment in Cagayan de Oro or in Metro Manila, his wife may still continue to do her business in Bacolod City. Anyway, Bacolod City and Manila is just one (1) hour travel by plane.[37]

Lastly, the LA pointed out that in respondent's contract of employment, he agreed to be assigned to any work or workplace as may be determined by the company whenever the operations require such assignment.

The NLRC affirmed *in toto* the findings of the LA. The NLRC ruled that petitioners' restructuring move was a valid exercise of its management prerogative and authorized under the employment contract of respondent, to wit:

We do not see in the records any evidence to prove that the restructuring move of respondent company was done with ill motives or with malice and bad faith purposely to constructively terminate complainant's employment. Such misinterpretation or misguided supposition by complainant is belied by the fact that respondent's officers had in several communications officially sent to complainant, expressly recognized complainant's expertise and capabilities as a top sales man and manager for which reason the respondent company needs his services and skills to energize the low-performing areas in order to maximize business opportunities and to afford complainant an opportunity for further growth and development. Complainant persistently refused instead of taking this opportunity as a challenge after all, the nature of employment of a sales man or sales manager is that it is mobile or ambulant being always seeking for possible areas to market goods and services. He totally forgot the terms and conditions in his employment contract, stated in part, thus:

xxx x x x xxx

You agree, during the period of employment, to be assigned to any work or workplace for such period as may be determined by the

[37] *Id.* at 284.

company and whenever the operations thereof require such assignment.[38]

The rule in our jurisdiction is that findings of fact of the NLRC, affirming those of the LA, are entitled to great weight and will not be disturbed if they are supported by substantial evidence.[39] Substantial evidence is an amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[40] As explained in *Ignacio v. Coca-Cola Bottlers Phils., Inc.*:[41]

x x x Factual findings of the NLRC affirming those of the Labor Arbiter, both bodies being deemed to have acquired expertise in matters within their jurisdictions, when sufficiently supported by evidence on record, are accorded respect if not finality, and are considered binding on this Court. **As long as their decisions are devoid of any unfairness or arbitrariness in the process of their deduction from the evidence proffered by the parties, all that is left is for the Court to stamp its affirmation and declare its finality**.[42]

Based on the foregoing, this Court rules that the CA had overstepped its legal mandate by reversing the findings of fact of the LA and the NLRC as it appears that both decisions were based on substantial evidence. There is no proof of arbitrariness or abuse of discretion in the process by which each body arrived at its own conclusions. Thus, the CA should have deferred to such specialized agencies which are considered experts in matters within their jurisdictions.

Moreover, what is objectionable with the CA decision is that in finding that the reassignment of respondent was arbitrary and unreasonable it had, in effect, imposed on petitioners its

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[38] *Id.* at 323-324.

[39] *Western Shipping Agency, Inc. v. NLRC*, 323 Phil. 479, 484 (1996).

[40] *Madlos v. NLRC*, G.R. No. 115365, March 4, 1996, 254 SCRA 248, 257.

[41] 417 Phil. 747 (2001).

[42] *Id.* at 753. (Emphasis supplied.)

own opinion or judgment on what should have been a purely business decision, to wit:

> Discussing the issues jointly, a perusal of the records shows that there was no overwhelming evidence to prove that petitioner was terminated for a just and valid cause. Public respondent had overlooked the fact that the reassignment of petitioner was arbitrary and unreasonable as the same was in contrast to the purposes espoused by private respondents. Undoubtedly, petitioner is a complete alien to the territory and as no established contacts therein, thus, he cannot be effective nor can he maximize profits. It cannot also contribute to his professional growth and development considering that he had already made a mark on his territory by virtue of his twenty-two (22) long years of valuable service. Considering the quality of his performance in his territory, the private respondents cannot therefore reason out that they are merely exercising their management prerogative for it would be unreasonable since petitioner has not been amiss in his responsibilities. Furthermore, it would undeniably cause undue inconvenience to herein petitioner who would have to relocate, disrupting his family's peaceful living, and with no additional monthly remuneration.[43]

In the absence of arbitrariness, the CA should not have looked into the wisdom of a management prerogative. It is the employer's prerogative, based on its assessment and perception of its employee's qualifications, aptitudes, and competence, to move them around in the various areas of its business operations in order to ascertain where they will function with maximum benefit to the company.[44]

As a matter of fact, while the CA's observations may be acceptable to some quarters, it is nevertheless not universal so as to foreclose another view on what may be a better business decision. While it would be profitable to keep respondent in an area where he has established contacts and therefore the probability of him reaching and even surpassing his sales quota is high, on the one hand, one can also make a case that since respondent is one of petitioners' best district managers, he is

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[43] *Rollo*, pp. 60-61.

[44] *PNOC-EDC v. Abella*, 489 Phil. 515, 537 (2005).

the right person to turn around and improve the sales numbers in Cagayan de Oro City, an area which in the past had been dismally performing. After all, improving and developing a new market may even be more profitable than having respondent stay and serve his old market. In addition, one can even make a case and say that the transfer of respondent is also for his professional growth. Since respondent has been already assigned in the Western Visayas area for 22 years, it may mean that his market knowledge is very limited. In another territory, there will be new and more challenges for respondent to face. In addition, one can even argue that for purposes of future promotions, it would be better to promote a district manager who has experience in different markets.

The foregoing illustrates why it is dangerous for this Court and even the CA to look into the wisdom of a management prerogative. Certainly, one can argue for or against the *pros* and *cons* of transferring respondent to another territory. Absent a definite finding that such exercise of prerogative was tainted with arbitrariness and unreasonableness, the CA should have left the same to petitioners' better judgment. The rule is well settled that labor laws discourage interference with an employer's judgment in the conduct of his business. Even as the law is solicitous of the welfare of employees, it must also protect the right of an employer to exercise what are clearly management prerogatives. As long as the company's exercise of the same is in good faith to advance its interest and not for the purpose of defeating or circumventing the rights of employees under the laws or valid agreements, such exercise will be upheld.[45]

In addition, this Court cannot agree with the findings of the CA that the transfer of respondent was unreasonable, considering he had not been remiss in his responsibilities. What the CA failed to recognize is that the very nature of a sales man is that it is mobile and ambulant. On this point, it bears to stress

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[45] *Union Carbide Labor Union v. Union Carbide Phils., Inc.,* G.R. No. L-41314, November 13, 1992, 215 SCRA 554, 557; *National Federation of Labor Unions (NAFLU) v. National Labor Relations Commission*, G.R. No. 90739, October 3, 1991, 202 SCRA 346.

that respondent signed two documents signifying his assent to be assigned anywhere in the Philippines. In respondent's Employment Application,[46] he checked the box which asks, "*Are you willing to be relocated anywhere in the Philippines*?"[47] In addition, in respondent's Contract of Employment,[48] item (8) reads:

> You agree, during the period of your employment, to be assigned to any work or workplace for such period as may be determined by the company and whenever the operations thereof require such assignment.[49]

Even if respondent has been performing his duties well it does not mean that petitioners' hands are tied up that they can no longer reassign respondent to another territory. And it is precisely because of respondent's good performance that petitioners want him to be reassigned to Cagayan de Oro City so that he could improve their business there.

In *Abbott Laboratories* (*Phils.*), *Inc. v. National Labor Relations Commission,*[50] which involved a complaint filed by a medical representative against his employer drug company for illegal dismissal for allegedly terminating his employment when he refused to accept his reassignment to a new area, the Court upheld the right of the drug company to transfer or reassign its employee in accordance with its operational demands and requirements. The ruling of the Court therein, quoted hereunder, also finds application in the instant case:

> Therefore, Bobadilla had no valid reason to disobey the order of transfer. He had tacitly given his consent thereto when he acceded to the petitioners' policy of hiring sales staff who are willing to be assigned anywhere in the Philippines which is demanded by petitioners' business.

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[46] *Rollo*, pp. 138-140.

[47] *Id.* at 139.

[48] *Id.* at 130-131.

[49] *Id.* at 131.

[50] G.R. No. 76959, October 12, 1987, 154 SCRA 713.

By the very nature of his employment, a drug salesman or medical representative is expected to travel. He should anticipate reassignment according to the demands of their business**. It would be a poor drug corporation which cannot even assign its representatives or detail men to new markets calling for opening or expansion or to areas where the need for pushing its products is great. More so if such reassignments are part of the employment contract**.[51]

On the existence of grounds to dismiss respondent from the service

Because of respondent's adamant refusal to be reassigned, the LA ruled that petitioners had valid grounds to terminate his employment, to wit:

As early as in December 27, 1999, complainant already signified his refusal to accept his new assignment in Cagayan de Oro. Complainant was on sick leave since January 5, 2000 up to May 11, 2000, for about four (4) months and he already consumed his leave credits up to March 2000. Hence, starting April 2000 he was already on indefinite leave without pay.

xxx x x x xxx

In his letter dated May 17, 2000, addressed to respondent Jane B. Montilla, complainant informed her that his doctors have already declared him fit for work as of May 16, 2000, and he was ready to assume to his regular assignment as District Sales Manager of Negros Occidental. This is a strong indication that complainant really does not want to accept his new assignment either in Cagayan de Oro or in Metro Manila, which is clearly a defiance of the lawful order of his employer, and a ground to terminate his services pursuant to Article 282 of the Labor Code.

Notwithstanding his adamant refusal to resume working to his new assignment in Metro Manila, complainant was still given by respondent Montilla another chance to think it over up to June 2, 2000. By way of reply, complainant, in his letter dated May 31, 2000 to Ms. Montilla, he clearly expressed his disagreement to his transfer and would rather seek justice elsewhere in another forum.

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[51] *Id.* at 719. (Emphasis supplied.)

But still the respondent company, notwithstanding the position taken by complainant in his letter dated May 31, 2000 that he is refusing his transfer gave complainant until June 16, 2000 to reconsider his position. In a letter dated June 5, 2000, respondent Montilla gave complainant a period of five (5) days from receipt thereof to report to Manila, but still complainant did not comply. Ms. Montilla sent complainant a final notice dated June 26, 2000 for him to report to Manila within five (5) working days from receipt of the same, with a warning that his failure to do so, the company would be constraint to terminate his services for being absent without official leave.

Finally, is (sic) was only on July 19, 2000, when the services of complainant was terminated by respondent company through its Human Resource Manager on the ground of absence without leave and insubordination pursuant to Article 282 of the Labor Code.

Clearly, the complainant had abandoned his work by reason of his being on AWOL as a consequence of vigorous objection to his transfer to either Cagayan de Oro or Metro Manila. The long period of absence of complainant without official leave from April to July 19, 2000 is more than sufficient ground to dismiss him. The refusal of complainant to accept his transfer of assignment is a clear willful disobedience of the lawful order of his employer and a ground to terminate his services under Article 282, par. (a) of the Labor Code, as amended. The series of chances given complainant to report for work, coupled by his adamant refusal to report to his new assignment, is a conclusive indication of willful disobedience of the lawful orders of his employer.[52]

In addition, the NLRC also ruled that respondent was guilty of insubordination, thus:

Apparently, complainant, by his unjustified acts of refusing to be transferred either to Mindanao or Manila for personal reasons, absent any bad faith or malice on the part of respondents, has deliberately ignored and defied lawful orders of his employer. An employee who refuses to be transferred, when such transfer is valid, is guilty of insubordination. x x x[53]

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[52] *Rollo*, pp. 286-287.

[53] *Id.* at 325.

Based on the foregoing, this Court rules that the findings of the LA and the NLRC are supported by substantial evidence. The LA clearly outlined the steps taken by petitioners and the manner by which respondent was eventually dismissed. The NLRC, for its part, explained why respondent was guilty of insubordination. No abuse of discretion can, therefore, be attributed to both agencies, and the CA was certainly outside its mandate in reversing such findings.

This Court has long stated that the objection to the transfer being grounded solely upon the personal inconvenience or hardship that will be caused to the employee by reason of the transfer is not a valid reason to disobey an order of transfer.[54] Such being the case, respondent cannot adamantly refuse to abide by the order of transfer without exposing himself to the risk of being dismissed. Hence, his dismissal was for just cause in accordance with Article 282(a)[55] of the Labor Code.

The CA, however, ruled that respondent was not guilty of insubordination, to wit:

> As to the findings of insubordination, the records show that petitioner was not guilty of such offense. For insubordination to exist, the order must be reasonable and lawful, sufficiently known to the employee and in connection to his duties. Where an order or rule is not reasonable, in view of the terms of the contract of employment and the general right of the parties, a refusal to obey does not constitute a just cause for the employee's discharge. It is undeniable that the order given by the company to petitioner to transfer to a place where he has no connections, leaving his family behind, and with no clear additional remuneration, can be considered unreasonable and petitioner's actuation cannot be considered insubordination.[56]

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[54] *Mercury Drug Corporation v. Domingo*, 497 Phil. 112, 125 (2005).

[55] ART. 282. *Termination by employer*.—An employer may terminate an employment for any of the following causes:

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

[56] *Rollo,* p. 61.

This Court cannot agree with the findings of the CA, in view of the fact that it was an error for it to substitute its own judgment and interfere with management prerogatives. No iota of evidence was presented that the reassignment of respondent was a demotion as he would still be a District Sales Manager in Cagayan de Oro City or in Metro Manila. Furthermore, he would be given relocation benefits in accordance with the Benefits Manual. If respondent feels that what he was given is less than what is given to all other district managers who were likewise reassigned, the onus is on him to prove such fact. Furthermore, records reveal that respondent has been harping on the fact that no additional remuneration would be given to him with the transfer. However, again, respondent did not present any evidence that additional remuneration were being given to other district managers who were reassigned to different locations, or that such was the practice in the company. This Court, therefore, is inclined to believe the statement of Chu in her May 17, 2000 letter to respondent that additional remuneration is never given to people who are reassigned, to wit:

x x x Likewise, I am disappointed that with the movement, you expect to be paid additional remuneration when in fact, this has never been done in the past and never a practice within the industry and the Philippines.[57]

Lastly, while it is understandable that respondent does not want to relocate his family, this Court agrees with the NLRC when it observed that such inconvenience is considered an "employment" or "professional" hazard which forms part of the concessions an employee is deemed to have offered or sacrificed in the view of his acceptance of a position in sales.

On the observance of due process

The CA ruled that respondent was denied due process in the manner he was dismissed by petitioners, to wit:

Furthermore, the finding that petitioner was afforded due process is bereft of any legal basis. An employee must be given notice and

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[57] *Id.* at 179.

an ample opportunity, prior to dismissal to adequately prepare for his defense. This is an elementary rule in labor law that due process in dismissal cases contemplates the twin requisites of notice and hearing. These procedural requirements have been mandatorily imposed to the employer to accord its employees the right to be heard. Failure of the employer to comply with such requirements renders its judgment of dismissal void and inexistent. A written notice from the employer containing the causes for the dismissal must be given. The employee is then given ample opportunity to be heard and to defend himself, appraising him of his right to counsel if he desires. Lastly, a written notice informing the employee of the decision of the employer, citing there reasons therefore, is given. The above procedure was not followed in the instant case and the series of communications and meetings cannot take the place and is therefore not sufficient to take the place of notice and hearing.[58]

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.[59]

While no actual hearing was conducted before petitioners dismissed respondent, the same is not fatal as only an "ample opportunity to be heard" is what is required in order to satisfy the requirements of due process.[60] Accordingly, this Court is guided by *Solid Development Corporation Workers Association v. Solid Development Corporation*[61] (Solid), where the validity

[58] *Id.* at 61-62.

[59] *Solid Development Corporation Workers Association (SDCWA-UWP) v. Solid Development Corporation*, G.R. No. 165995, August 14, 2007, 530 SCRA 132, 140-141.

[60] *Perez v. Philippine Telegraph & Telephone Company*, G.R. No. 152048, April 7, 2009, 584 SCRA 110.

[61] *Supra* note 59.

of the dismissal of two employees was upheld notwithstanding that no hearing was conducted, to wit:

> [W]ell-settled is the dictum that the twin requirements of notice and hearing constitute the essential elements of due process in the dismissal of employees. It is a cardinal rule in our jurisdiction that 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, on the other hand, is complied with as long as there was an opportunity to be heard, and not necessarily that an actual hearing was conducted.
>
> In separate infraction reports, petitioners were both apprised of the particular acts or omissions constituting the charges against them. They were also required to submit their written explanation within 12 hours from receipt of the reports. Yet, neither of them complied. Had they found the 12-hour period too short, they should have requested for an extension of time. Further, notices of termination were also sent to them informing them of the basis of their dismissal. In fine, petitioners were given due process before they were dismissed. Even if no hearing was conducted, the requirement of due process had been met since they were accorded a chance to explain their side of the controversy[62]

In the case at bar, this Court finds that petitioners had complied with the requirements of law in effecting the dismissal of respondent. Petitioners sent respondent a first notice in the form of a memorandum[63] dated June 26, 2000, warning him that the same would serve as a final notice for him to report to work in Manila within 5 working days from receipt thereof, otherwise, his services would be terminated on the basis of AWOL. After receiving the memorandum, respondent could have requested for a conference with the assistance of counsel, if he so desired. Like in *Solid,* had respondent found the time too short, he should have responded to the memorandum asking for more time. It, however, appears to this Court that respondent

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[62] *Id.* at 140-141.

[63] *Rollo*, p. 189.

made no such requests. On July 13, 2000, petitioners sent another memorandum[64] notifying respondent that they are terminating his services effective July 19, 2000, after he repeatedly refused to report to work despite due notice. Even if no actual hearing was conducted, this Court is of the opinion that petitioners had complied with the requirements of due process as all that the law requires is an ample opportunity to be heard.

In conclusion, it bears to stress that the CA should not have disturbed the factual findings of the LA and the NLRC in the absence of arbitrariness or palpable error. The reassignment of respondent to another territory was a valid exercise of petitioners' management prerogative and, consequently, his dismissal was for cause and in accordance with the due process requirement of law.

This Court, however, is not unmindful of previous rulings,[65] wherein separation pay has been granted to a validly dismissed employee after giving considerable weight to long years of employment.[66]

An employee who is dismissed for cause is generally not entitled to any financial assistance. Equity considerations, however, provide an exception. Equity has been defined as justice outside law, being ethical rather than jural and belonging to the sphere of morals than of law. It is grounded on the precepts of conscience and not on any sanction of positive law, for equity finds no room for application where there is law.[67]

In *Philippine Long Distance Telephone Co. v. National Labor Relations Commission,*[68] the Court laid down the guidelines

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[64] Records, pp. 159-160.

[65] See *Aparente Sr. v. National Labor Relations Commission*, 387 Phil. 96 (2000); *Firestone Tire and Rubber Co. v. Lariosa,* February 27, 1987, 148 SCRA 187.

[66] *Philippine Commercial International Bank v. Abad*, 492 Phil. 657, 667 (2005).

[67] *Aparente, Sr. v. National Labor Relations Commission*, *supra* note 65.

[68] G.R. No. 80609, August 23, 1988, 164 SCRA 671.

in the grant of separation pay to a lawfully dismissed employee, thus:

> We hold that henceforth separation pay shall be allowed as a measure of social justice only in those instances where the employee is validly dismissed for causes other than serious misconduct or those reflecting on his moral character. Where the reason for the valid dismissal is, for example, habitual intoxication or an offense involving moral turpitude, like theft or illicit sexual relations with a fellow worker, the employer may not be required to give the dismissed employee separation pay, or financial assistance, or whatever other name it is called, on the ground of social justice.[69]

In the instant case, this Court rules that an award to respondent of separation pay by way of financial assistance, equivalent to one-half (1/2) month's pay for every year of service, is equitable. Although respondent's actions constituted a valid ground to terminate his services, the same is to this Court's mind not so reprehensible as to warrant complete disregard of his long years of service. It also appears that the same is respondent's first offense. While it may be expected that petitioners will argue that respondent has only been in their service for four years since the merger of Pharmacia and Upjohn took place in 1996, equity considerations dictate that respondent's tenure be computed from 1978, the year when respondent started working for Upjohn.

WHEREFORE, premises considered, the petition is *PARTIALLY GRANTED.* The November 30, 2005 Decision and May 5, 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 00386 are *REVERSED* and *SET ASIDE.*

In view of the above disquisitions, petitioners are *ORDERED* to pay respondent separation pay by way of financial assistance equivalent to one-half (1/2) month pay for every year of service.

SO ORDERED.

Carpio (Chairperson), Nachura, Abad, and *Mendoza, JJ.,* concur.

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[69] *Id.* at 682.

SECOND DIVISION

[G.R. No. 182779. August 23, 2010]

VICTORINA (VICTORIA) ALICE LIM LAZARO, *petitioner, vs.* **BREWMASTER INTERNATIONAL, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS AND PRACTICES; MANNER OF MAKING ALLEGATIONS IN PLEADINGS; BASIC REQUIREMENT; ULTIMATE FACTS, EXPLAINED.—** Petitioner is correct in saying that no relief can be awarded to respondent if its complaint does not state a cause of action. Indeed, if the complaint does not state a cause of action, then no relief can be granted to the plaintiff and it would necessarily follow that the allegations in the complaint would not warrant a judgment favorable to the plaintiff. The basic requirement under the rules of procedure is that a complaint must make a plain, concise, and direct statement of the ultimate facts on which the plaintiff relies for his claim. Ultimate facts mean the important and substantial facts which either directly form the basis of the plaintiff's primary right and duty or directly make up the wrongful acts or omissions of the defendant. They refer to the principal, determinative, constitutive facts upon the existence of which the cause of action rests. The term does not refer to details of probative matter or particulars of evidence which establish the material elements.

2. **ID.; ID.; ID.; ID.; COMPLAINT STATES A CAUSE OF ACTION; INQUIRY IS INTO THE SUFFICIENCY, NOT THE VERACITY OF THE MATERIAL ALLEGATIONS IN THE COMPLAINT.—** The test of sufficiency of the facts alleged in a complaint to constitute a cause of action is whether, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the petition or complaint. To determine whether the complaint states a cause of action, all documents attached thereto may, in fact, be considered, particularly when referred to in the complaint. We emphasize, however, that the inquiry is into

the sufficiency, not the veracity of the material allegations in the complaint. Thus, consideration of the annexed documents should only be taken in the context of ascertaining the sufficiency of the allegations in the complaint.

3. **ID.; ID.; ID.; ID.; ID.; RESPONDENT'S COMPLAINT SUFFICIENTLY STATES A CAUSE OF ACTION FOR COLLECTION OF SUM OF MONEY; SALE INVOICES ARE NOT ACTIONABLE DOCUMENTS; CASE AT BAR.—** Contrary to petitioner's stance, we find that the Complaint sufficiently states a cause of action. The following allegations in the complaint adequately make up a cause of action for collection of sum of money against petitioner: (1) that petitioner and her husband obtained beer and other products worth a total of ₱138,502.92 on credit from respondent; and (2) that they refused to pay the said amount despite demand. As correctly held by the CA, the sales invoices are not actionable documents. They were not the bases of respondent's action for sum of money but were attached to the Complaint only to provide details on the alleged transactions. They were evidentiary in nature and not even necessary to be stated or cited in the Complaint. At any rate, consideration of the attached sales invoices would not change our conclusion. The sales invoices, naming Total as the purchaser of the goods, do not absolutely foreclose the probability of petitioner being liable for the amounts reflected thereon. An invoice is nothing more than a detailed statement of the nature, quantity, and cost of the thing sold and has been considered not a bill of sale. Had the case proceeded further, respondent could have presented evidence linking these sales invoices to petitioner.

APPEARANCES OF COUNSEL

Jose Paolo C. Armas for petitioner.
Montenegro Arcilla Cua & Kagaoan for respondent.

RESOLUTION

NACHURA, *J.*:

Before the Court is a petition for review on *certiorari* of the Court of Appeals (CA) Decision[1] dated September 4, 2007 and Resolution dated January 31, 2008, which awarded the amount sought by respondent in its Complaint. As held by the CA, to grant the relief prayed for by respondent is, in the words of Section 6 of the Revised Rule on Summary Procedure, the judgment "warranted by the facts alleged in the complaint."

Respondent, Brewmaster International, Inc., is a marketing company engaged in selling and distributing beer and other products of Asia Brewery, Inc. On November 9, 2005, it filed a Complaint for Sum of Money against Prescillo G. Lazaro (Prescillo) and petitioner, Victorina (also known as Victoria) Alice Lazaro, with the Metropolitan Trial Court (MeTC) of Makati City. The complaint alleged as follows:

> 6. During the period from February 2002 to May 2002, defendants obtained on credit from plaintiff beer and other products in the total amount of ONE HUNDRED THIRTY EIGHT THOUSAND FIVE HUNDRED TWO PESOS AND NINETY TWO CENTAVOS (Php 138,502.92), evidenced by sales invoices photocopies of which are hereto attached as Annexes "A", "A-1" to "A-11",
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> 7. Despite repeated demands, defendants have failed and refused, and up to now, still fail and refuse to pay their aforesaid obligation to plaintiff in the amount of ONE HUNDRED THIRTY EIGHT THOUSAND FIVE HUNDRED TWO PESOS AND NINETY TWO CENTAVOS (Php 138,502.92) as evidenced by the demand letters dated 21 April 2003, 12 May 2003, 5 August 2003 and 17 August 2005, photocopies of which are hereto attached as Annexes "B", "C", "C-1", "D", "D-1", "D-2", and "E", "E-1",
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> 8. Under the terms of the sales invoices, defendants agreed that in case of litigation, the venue shall only be at the proper courts of

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[1] Penned by Associate Justice Lucas P. Bersamin (now a member of this Court), with Associate Justices Portia Aliño Hormachuelos and Estela M. Perlas-Bernabe, concurring; *rollo,* pp. 24-34.

Makati City and to pay 24% interest on all overdue accounts.

WHEREFORE, it is respectfully prayed that judgment be rendered in favor of plaintiff and against the defendants, ordering the latter to pay the sum of Php138,502.92 representing plaintiff's claim and the sum of Php33,240.00 as interest.

Plaintiff prays for such other or further relief and remedies that are just and equitable in the premises.[2]

Annexes A, A-1 to A-11 are photocopies of sales invoices[3] indicating the amount of the goods purchased and showing that they were sold to "TOTAL" and received by a certain Daniel Limuco.

Prescillo filed an answer with counterclaim, denying any knowledge of the obligation sued upon. According to Prescillo, he and petitioner had lived separately since January 15, 2002 and he never authorized petitioner to purchase anything from respondent. He pointed out that the purchaser of the items, as borne out by the sales invoices attached to the complaint, was Total, which should have been the one sued by respondent.[4]

Petitioner, in her own answer with counterclaims, likewise denied having transacted with respondent, and averred that the documents attached to the complaint showed that it was Total which purchased goods from respondent.[5]

On June 14, 2006, during the scheduled preliminary conference, petitioner and her co-defendant did not appear. Hence, the MeTC declared the case submitted for decision.[6]

On August 22, 2006, the MeTC dismissed the complaint, ratiocinating that respondent, as plaintiff, failed to meet the burden of proof required to establish its claim by preponderance of evidence. The court *a quo* noted that the sales invoices

[2] *Id.* at 38.

[3] *Id.* at 40-50.

[4] *Id.* at 65.

[5] *Id.*

[6] *Id.* at 60.

attached to the complaint showed that the beer and the other products were sold to Total and were received by a certain Daniel Limuco; they did not indicate, in any way, that the goods were received by petitioner or her husband.[7]

Respondent elevated the case to the Regional Trial Court (RTC) through a notice of appeal. Attached to its Memorandum was additional evidence, showing that it transacted with petitioner and her husband, who were then the operators and franchisees of the Total gasoline station and convenience store where the subject goods were delivered, and that Daniel Limuco was their employee.[8]

Unmoved, the RTC found no reversible error in the assailed decision. It agreed with the MeTC that respondent failed to submit any evidence proving that petitioner and her husband were liable for the obligation. The RTC disregarded the documents attached to the memorandum on the ground that admission of such additional evidence would be offensive to the basic rule of fair play and would violate the other party's right to due process. Thus, the RTC affirmed the assailed decision *in toto*.[9]

Respondent then went to the CA through a petition for review. There, it succeeded in obtaining a judgment in its favor. Applying Section 7[10] of the Revised Rule on Summary Procedure, in

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

[8] *Id.* at 66.

[9] *Id.* at 64-66.

[10] Sec. 7 Preliminary conference; appearance of parties. – Not later than thirty (30) days after the last answer is filed, a preliminary conference shall be held. The rules on pre-trial in ordinary cases shall be applicable to the preliminary conference unless inconsistent with the provisions of this Rule.

The failure of the plaintiff to appear in the preliminary conference shall be a cause for the dismissal of his complaint. The defendant who appears in the absence of the plaintiff shall be entitled to judgment on his counterclaim in accordance with Section 6 hereof. All cross-claims shall be dismissed.

If a sole defendant shall fail to appear, the plaintiff shall be entitled to judgment in accordance with Section 6 hereof. This rule shall not apply where one of two or more defendants sued under a common cause of action who had pleaded a common defense shall appear at the preliminary conference.

conjunction with Section 6[11] thereof, the CA held that judgment should have been rendered "as may be warranted by the facts alleged in the complaint" considering that both defendants failed to appear during the preliminary conference. The appellate court said that "by instead referring to the sales invoices and bypassing [the] ultimate facts [alleged in the complaint], the MeTC contravened the evident purposes of the [*Revised*] *Rule on Summary Procedure* directing that the judgment be based on the allegations of the complaint, which were, firstly, to avoid delay and, secondly, to consider the non-appearance at the preliminary conference as an admission of the ultimate facts." The CA judiciously pronounced that:

In fact, evidentiary matters (like the sales invoices attached to the complaint) were not yet to be considered as of that early stage of the proceedings known under the *Rule on Summary Procedure* as the preliminary conference. The evidentiary matters and facts are to be required only upon the termination of the preliminary conference and only if further proceedings become necessary to establish factual issues defined in the order issued by the court. (citing Section 9, Rule on Summary Procedure)

Thus, finding the amount claimed to be warranted by the allegations in the complaint, the CA, in its September 4, 2007 Decision, reversed the trial court's decision and ordered petitioner and her husband to pay the said amount plus interests, thus:

WHEREFORE, the **DECISION DATED MARCH 12, 2007** is **REVERSED AND SET ASIDE**.

The respondents are **ORDERED** to pay, jointly and severally, to the petitioner the amount of ₱138,502.92, plus interest of 6% *per annum* from the filing of the complaint until this judgment becomes

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[11] Sec. 6. *Effect of failure to answer*. – Should the defendant fail to answer the complaint within the period above provided, the court, *motu proprio*, or on motion of the plaintiff, shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein: *Provided*, *however*, That the court may in its discretion reduce the amount of damages and attorney's fees claimed for being excessive or otherwise unconscionable. This is without prejudice to the applicability of Section 4, Rule 18 of the Rules of Court, if there are two or more defendants.

final and executory, and 12% *per annum* upon finality of this judgment until full payment.

The respondents are also **ORDERED** to pay the costs of suit.

SO ORDERED.[12]

Petitioner filed a motion for reconsideration of the said Decision but the same was denied by the CA in its January 31, 2008 Resolution.[13]

Petitioner submits the following issues to this Court for resolution:

Petitioner respectfully submits that the Honorable Court of Appeals erred in the interpretation of Section 6 of the Revised Rules of Summary Procedure when it reversed the Decision of the RTC, Branch 162 of Makati in Civil Case [N]o. 06-944.

Petitioner further submits that the Court of Appeals erred in giving relief to the private respondent despite the lack of cause of action in its complaint against the petitioner herein.[14]

Petitioner contends that the Revised Rule on Summary Procedure does not warrant the automatic grant of relief in favor of the plaintiff when the complaint fails to state a cause of action. She avers that respondent's complaint fails to state a cause of action; hence, no relief can be given to respondent. Petitioner points out that the sales invoices formed part of the complaint and should be considered in determining whether respondent has a cause of action against her. Consideration of the said sales invoices, she avers, would show that there is no contractual relationship between her and respondent; the invoices did not indicate in any way that petitioner was liable for the amount stated therein.

Petitioner is correct in saying that no relief can be awarded to respondent if its complaint does not state a cause of action. Indeed, if the complaint does not state a cause of action, then

[12] *Rollo,* pp. 33-34.

[13] *Id.* at 36.

[14] *Id.* at 14.

no relief can be granted to the plaintiff and it would necessarily follow that the allegations in the complaint would not warrant a judgment favorable to the plaintiff.

The basic requirement under the rules of procedure is that a complaint must make a plain, concise, and direct statement of the ultimate facts on which the plaintiff relies for his claim.[15] Ultimate facts mean the important and substantial facts which either directly form the basis of the plaintiff's primary right and duty or directly make up the wrongful acts or omissions of the defendant.[16] They refer to the principal, determinative, constitutive facts upon the existence of which the cause of action rests. The term does not refer to details of probative matter or particulars of evidence which establish the material elements.[17]

The test of sufficiency of the facts alleged in a complaint to constitute a cause of action is whether, admitting the facts alleged, the court could render a valid judgment upon the same in accordance with the prayer of the petition or complaint.[18] To determine whether the complaint states a cause of action, all documents attached thereto may, in fact, be considered, particularly when referred to in the complaint.[19] We emphasize, however, that the inquiry is into the sufficiency, not the veracity of the material allegations in the complaint.[20] Thus, consideration of the annexed documents should only be taken in the context of ascertaining the sufficiency of the allegations in the complaint.

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[15] REVISED RULES OF COURT, Rule 8, Section 1.

[16] *Locsin v. Sandiganbayan,* G.R. No. 134458, August 9, 2007, 529 SCRA 572, 597.

[17] *Barcelona v. Court of Appeals,* 458 Phil. 626, 635 (2003).

[18] *Parañaque Kings Enterprises, Inc. v. Court of Appeals,* 335 Phil. 1184, 1195 (1997).

[19] *Fluor Daniel, Inc.-Philippines v. E.B. Villarosa & Partners Co., Ltd.,* G. R. No. 159648, July 27, 2007, 528 SCRA 321, 327.

[20] *AC Enterprises, Inc. v. Frabelle Properties Corporation,* G.R. No. 166744, November 2, 2006, 506 SCRA 625, 666.

Petitioner argues that the complaint fails to state a cause of action since reference to the sales invoices attached to and cited in paragraph six of the Complaint shows that it was not her who purchased and received the goods from respondent.

Contrary to petitioner's stance, we find that the Complaint sufficiently states a cause of action. The following allegations in the complaint adequately make up a cause of action for collection of sum of money against petitioner: (1) that petitioner and her husband obtained beer and other products worth a total of ₱138,502.92 on credit from respondent; and (2) that they refused to pay the said amount despite demand.

As correctly held by the CA, the sales invoices are not actionable documents. They were not the bases of respondent's action for sum of money but were attached to the Complaint only to provide details on the alleged transactions. They were evidentiary in nature and not even necessary to be stated or cited in the Complaint.

At any rate, consideration of the attached sales invoices would not change our conclusion. The sales invoices, naming Total as the purchaser of the goods, do not absolutely foreclose the probability of petitioner being liable for the amounts reflected thereon. An invoice is nothing more than a detailed statement of the nature, quantity, and cost of the thing sold and has been considered not a bill of sale.[21] Had the case proceeded further, respondent could have presented evidence linking these sales invoices to petitioner.

In *Peña v. Court of Appeals*,[22] petitioners therein likewise argued that the sales invoices did not show that they had any involvement in the transactions covered by the same. What the Court said in reply to this argument bolsters our view in this petition:

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[21] *Norkis Distributors, Inc. v. Court of Appeals,* G.R. No. 91029, February 7, 1991, 193 SCRA 694, 698.

[22] 484 Phil. 705, 706 (2004).

Although it appears in the other sales invoices that the petitioners were the salespersons who brokered the sales of the products covered by the said sales invoices to the vendees therein named, the said entries are **not conclusive** of the extent and the nature of the involvement of the petitioners in the sales of the products under the said sales invoices which are not absolutely binding. They may be explained and put to silence by all the facts and circumstances characterizing the true import of the dealings to which they refer. The facts contained in the said sales invoices may be contradicted by oral testimony.[23]

WHEREFORE, premises considered, the Court of Appeals Decision dated September 4, 2007 and Resolution dated January 31, 2008 are *AFFIRMED.*

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 186094. August 23, 2010]

PACIENCIA A. DALEON[1] **and CLARO EDUARDO D. JAVIER, JR., represented by their Attorney-in-Fact, GLORIA BAYONA, AXEL LEONARD DALEON, GINA DALEON, BENJAMIN A. DALEON, JR., for himself and as Attorney-in-Fact of NOELA DALEON VELOSO, LUCY ANN DALEON-BREVA and PETER A. DALEON,** *petitioners, vs.* **MA. CATALINA P. TAN, FIDEL P. TAN and MANUEL P. TAN,** *respondents.*

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[23] *Id.* at 722. (Emphasis supplied.)

[1] Also referred to as Pacencia A. Daleon in some parts of the records.

SYLLABUS

1. **CIVIL LAW; SPECIAL CONTRACTS; SALES; CONTRACT TO SELL; AUTOMATIC FORFEITURE CLAUSE CONSIDERED VALID PROVIDED THE PARTIES CLEARLY AGREE ON IT; FOREFEITURE CLAUSE IN CONTRACT OF SALE IS CONSTRUED *STRICTISSIMI JURIS*; APPLICATION TO CASE AT BAR.—** The Court has in a number of cases affirmed the validity of this legal creature with an ominous name— forfeiture of initial payments, provided the parties clearly agree on it. We said in *Valarao v. Court of Appeals*: **As a general rule, a contract is the law between the parties. Thus, "from the moment the contract is perfected, the parties are bound not only to the fulfillment of what has been expressly stipulated but also to all consequences which, according to their nature, may be in keeping with good faith, usage and law." Also, "the stipulations of the contract being the law between the parties, courts have no alternative but to enforce them as they were agreed [upon] and written, there being no law or public policy against the stipulated forfeiture of payments already made." However, it must be shown that private respondent-vendee failed to perform her obligation, thereby giving petitioners-vendors the right to demand the enforcement of the contract. We concede the validity of the automatic forfeiture clause, which deems any previous payments forfeited and the contract automatically rescinded upon the failure of the vendee to pay three successive monthly installments or any one yearend lump sum payment. However, petitioners failed to prove the conditions that would warrant the implementation of this clause.** But a forfeiture clause in a contract of sale, which in a sense is punitive and confiscatory, is to be construed *strictissimi juris* and, in resolving a controversy involving it, the principles of equity must apply to the end that exact justice is achieved. Here, the Daleons assumed that they were ready to hand over a clean title to the Tans had the latter not placed a stop payment order on their checks. This was not the case. The Tans had to place that stop payment for a valid reason. They agreed to buy the property believing that the seller's title was unblemished by any lien or unfavorable claim. Bartolome Sy's adverse claim, which came shortly after the execution of the contract and the initial payment to the Daleons of ₱10.861 million, was certainly distressing. Its annotation on the title served as warning to

third parties like the Tans that someone claimed an interest or a better right to the property than the registered owner. Certainly, the Tans were justified in placing a stop payment order on their checks to avoid greater loss since it may be assumed that they did not want to buy such an expensive property that had a cloud on its title.

2. **ID.; ID.; ID.; ID.; FORFEITURE OF BUYER'S DOWNPAYMENT UNWARRANTED, WHERE THE REFUSAL OF THE BUYER TO PAY THE BALANCE OF THE PURCHASE PRICE WAS DUE TO FAILURE OF THE SELLER TO FULFILL HIS OBLIGATION TO TRANSFER A CLEAN TITLE TO THE BUYER.—** Besides, the Tans had the right to hold the Daleons to their warranties as sellers under Article 1547 of the Civil Code that the property was free from charges or encumbrances not known to the buyers. Further, Article 1545 of the Code provides that "where the ownership in the thing has not passed, the buyer may treat the fulfillment by the seller of his obligation to deliver the same as described and as warranted expressly or by implication in the contract of sale as a condition of the obligation of the buyer to perform his promise to accept and pay for the thing." The Daleons deposited the initial checks issued to them before they filed a belated action to have the adverse claim removed from their title. More, they ignored the Tans' repeated demand to know what they were doing regarding that claim. In *Tan v. Benolirao*, the buyer of land in a contract to sell refused to pay the balance of the purchase price because of the sudden appearance of an annotation on the sellers' title, judicially placed by excluded co-heirs, thus creating a legal lien on the property in favor of such co-heirs. The Court held that, because of the annotation, the sellers could no longer compel the buyer to pay the balance of the purchase price since they could not fulfill their obligation to transfer a clean title to the latter. The Court held that the buyer's refusal to pay the balance cannot justify the sellers' forfeiture of his downpayment. Thus: **We, therefore, hold that the contract to sell was terminated when the vendors could no longer legally compel Tan to pay the balance of the purchase price as a result of the legal encumbrance which attached to the title of the property. Since Tan's refusal to pay was due to the supervening event of a legal encumbrance on the property and not through his own fault or negligence, we find and so hold that the forfeiture of**

Tan's down payment was clearly unwarranted. The above ruling in *Tan* applies to the present case.

3. ID.; DAMAGES; INTEREST; RETURN OF THE RESPONDENTS' DOWNPAYMENT, WARRANTED; 6% INTEREST PER ANNUM, IMPOSED; DEMAND TO RETURN THE DOWNPAYMENT MUST BE ESTABLISHED WITH REASONABLE CERTAINTY.— As to the rate of interest that may be awarded on the obligation to return the downpayment made in this case, the Court takes bearing from the decision in *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corporation.* Thus, when as in this case an obligation – not constituting a loan or forbearance of money – is breached, the court may impose interest on the damages awarded (the return of the downpayment made) at the rate of 6% *per annum*. But such interest cannot be adjudged except when the demand to return the downpayment can be established with reasonable certainty. Here, such demand may be found in the counterclaim that the Tans filed in the action against them on January 12, 1999. The Court also held that, when the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest 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.

APPEARANCES OF COUNSEL

Mañacop Law Office for petitioners.
Gilbert D. Camaligan for respondents.

D E C I S I O N

ABAD, *J.*:

This case is about the contractual right of the seller to forfeit the buyer's downpayment on the property sold because of the buyer's refusal to pay subsequent installments, which refusal had been prompted by a subsequent adverse claim to the property.

The Facts and the Case

On November 6, 1997 petitioners Paciencia A. Daleon, Claro Eduardo D. Javier, Jr., Axel Leonard Daleon, Gina Daleon, Benjamin A. Daleon, Jr., Noela Daleon Veloso, Lucy Ann Daleon-Breva, and Peter A. Daleon (the Daleons), on the one hand, and the respondents Ma. Catalina P. Tan, Fidel P. Tan and Manuel P. Tan (the Tans), on the other, executed a contract to sell[2] covering the Daleons' 9.383-hectare of registered land at Ibabang Dupay, Lucena City,[3] which they owned *pro indiviso*, for the price of ₱18.766 million. The contract included a provision, inserted by hand as its paragraph 15-A, which stated that "in the event that any of the checks paid by the [buyers] should [bounce], this contract shall be rescinded and the [sellers] shall forfeit 50% of the amount already paid by the [buyers], while the remaining 50% shall be returned x x x or placed as outstanding lien [on] the said title."[4]

Pursuant to the terms of their agreement, the Tans gave the Daleons a downpayment of ₱10.861 million and issued in their favor 12 postdated checks dated December 5, 1997 through November 5, 1998 in the amount of ₱658,750.00 per check to cover the remaining balance of ₱7.905 million.

On November 14, 1997, eight days after the parties executed their agreement, one Bartolome Sy caused to be annotated on the title to the property an adverse claim on the undivided share of one of the Daleons. For this reason, the Tans placed a stop payment order on their first postdated check and repeatedly wrote the Daleons that, until the adverse claim on the property was canceled, they were stopping payment on their checks. They invoked their right as buyers in good faith to receive the property free from all liens and encumbrances. They also noted the Daleons' misrepresentation regarding the clean status of the property. On February 19, 1998 a *Consulta* was further

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[2] *Rollo*, pp. 32-38.

[3] Covered by Transfer Certificate of Title (TCT) T-80623.

[4] *Rollo*, p. 36.

annotated on the property's title relative to Bartolome Sy's claim.

The Daleons deposited the first three checks in their bank but these were returned for the reason "SPO/DAIF" or "stop payment order/drawn against insufficient funds." Meanwhile, the Daleons succeeded in getting a court order that directed the cancellation of Bartolome Sy's adverse claim on their title to the property. They then deposited the other checks that the Tans gave them but these, too, were returned for the reason "SPO/DAIF."

On March 18, 1998 the Tans wrote the Daleons, informing them that they were ready to make good on their checks provided the Daleons presented to them a clean title to the property. In addition, they requested the Daleons to submit to them the documents specified in paragraph 9 of the contract to sell as a prerequisite to the payment of the last two checks.[5] Meanwhile, the Tans' stop payment order on their checks remained in force.

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[5] 9. That in addition to consideration stated in the preceding paragraph, the SECOND PARTY (respondents) is given the right to stop the payment of the last two (2) checks herein above-identified without any liability to the FIRST PARTY (petitioners) until the latter has completed the submission of the following documents to the SECOND PARTY:

a. Certified Copy of the Death Certificates of Socorro A. Daleon and Benjamin A. Daleon;

b. Original Copy of the Special Power of Attorney constituted in favor of BENJAMIN DALEON, JR. by the heirs of Benjamin Daleon;

c. Original Copy of the Extra-Judicial Settlement of the Estate of Benjamin A. Daleon;

d. Original Copy of the Extra-Judicial Settlement of the heirs of Socorro A. Daleon;

e. Original Copy of the Waiver of the Tenants of the property;

f. Sworn undertaking of all the co-owners respecting their aggregate landholding;

g. Original Receipts of Updated Tax Payments;

h. Original Tax Declaration for TCT No. T-80623;

i. BARC Clearance;

On October 3, 1998 the Tans wrote the Daleons, stating that the Tans had not yet received from the Daleons any news about the status of the Bartolome Sy issue. The Tans gave the Daleons five days within which to deliver the documents mentioned in paragraph 9 of the contract to sell.

In response, on November 18, 1998 the Daleons filed an action against the Tans for rescission of their agreement and enforcement of the penalty of forfeiture of half of what the Tans already paid pursuant to paragraph 15-A of such agreement on the ground that the Tans' breached its terms by placing a stop payment order on the postdated checks.[6] The Daleons likewise filed a criminal complaint for violation of the bouncing checks law or *Batas Pambansa Bilang* 22 (B.P. 22) against the Tans relative to the dishonored checks.

The Tans filed their answer with a counterclaim for unrealized income as a result of their inability to use their downpayment of ₱10.861 million. They sought the award to them of specific amounts of moral damages, exemplary damages, attorney's fees, and expenses of litigation.

While the criminal complaint against the Tans did not prosper,[7] the RTC rendered a decision in the rescission case against them dated February 26, 2007.[8] The RTC a) rescinded the contract to sell between the parties; b) ordered the forfeiture in favor of the Daleons of ₱5,430,500.00 or 50% of what the Tans paid them; c) ordered the Daleons to return to the Tans the remaining

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j. Original Special Power of Attorney duly executed by CLARO EDUARDO JAVIER, JR. before the Consular Official of the Philippine Embassy or before a duly appointed NOTARY PUBLIC in Lucena City, in case of his return to the Philippines.

[6] Civil Case 98-164 entitled *"Paciencia Daleon, et al. v. Ma. Catalina Tan, et al.,"* Regional Trial Court of Lucena City, Branch 59.

[7] In a Resolution dated January 6, 2001, the Daleons' complaint for violation of B.P. 22 in I.S. 2000-1032 was dismissed by the Lucena City Prosecutor's Office on the ground that the 12 postdated checks issued were sufficiently funded, contrary to the Daleons' claim that the accounts from which they were drawn had insufficient funds.

[8] *Rollo*, pp. 97-106.

50% or ₱5,430,500.00 or have this obligation inscribed as an outstanding lien on the title; and d) ordered the Tans to pay the Daleons ₱250,000.00 in attorneys fees and expenses of litigation and to pay the costs.[9]

The Tans appealed the case to the Court of Appeals (CA), which on May 29, 2008 rendered a decision,[10]reversing the RTC judgment, ordering the Daleons to return to the Tans the ₱10,861,000.00 the latter paid with legal interests of 6% *per annum* from date of the filing of complaint until its full payment and further ordering the Daleons to pay the Tans attorney's fees and expenses of litigation of ₱300,000.00 and to pay the cost of suit.

The CA held in substance that in a contract to sell where the seller retains ownership until the buyer pays the price in full, such full payment is a positive suspensive condition. In this situation, the buyer's failure to pay the full price does not constitute a contractual breach, but merely an event that prevents the seller from relinquishing ownership and delivering the title. Thus, said the CA, rescission is not available in such case; the buyer's failure to complete payment merely prevented the obligation of the seller to convey title.[11]

Following this theory, the CA held that the Daleons can only cancel the contract to sell but not rescind it. The Tans failure to pay the balance of the purchase price merely resulted in setting aside the contract to sell, placing the parties in the same situation as they were before the execution of the contract to sell. Paragraph 15-A, said the CA, lost its efficacy as a result of this setting aside of the contract to sell. Consequently, the

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[9] *Id.* at 106.

[10] *Id.* at 162-176; docketed as CA-G.R. CV 89223 entitled "*Paciencia Daleon, et al. v. Ma. Catalina Tan, et al.*" penned by former Associate Justice Lucenito N. Tagle, with the concurrence of Associate Justices Amelita G. Tolentino and Marlene Gonzales-Sison.

[11] *Rivera v. Del Rosario*, 464 Phil. 783, 801 (2004); *Leaño v. Court of Appeals*, 420 Phil. 836, 846 (2001); *Ong v. Court of Appeals*, 369 Phil. 243, 253-254 (1999); *Roque v. Lapuz*, 185 Phil. 525, 537 (1980); *Manuel v. Rodriguez*, 109 Phil. 1, 10 (1960).

Daleons were duty bound to return the full amount of ₱10.861 million with 6% interest *per annum*, on the principle that no person shall unjustly enrich himself at the expense of another.

On January 13, 2009 the CA denied the Daleons' motion for reconsideration,[12] prompting the latter to come to this Court.

The Issue Presented

The only issue presented in this case is whether or not the CA erred in ruling that the Daleons were not entitled under the circumstances to rescind the contract to sell and forfeit in their favor 50% of the Tans' downpayment of ₱10.861 million pursuant to paragraph 15-A of that contract.

The Court's Ruling

The Daleons point out that since the parties agreed to the insertion in their contract to sell of paragraph 15-A, then its provisions should apply given that the Tans' checks covering subsequent payments were dishonored upon presentation to the bank. The Tans cannot object to the Daleons' retention of 50% of the ₱10.861 million downpayment or ₱5,430,500.00 since this was what paragraph 15-A authorized. Relying on the principle of mutuality of contracts, the Daleons claim that no legal impediment stood in the way of implementing the provision since it is not contrary to law, morals, good customs, public order, or public policy.

The Court is not prepared to accept the CA's reason for reversing the RTC decision in the case. The Court has in a number of cases affirmed the validity of this legal creature with an ominous name—forfeiture of initial payments, provided the parties clearly agree on it. We said in *Valarao v. Court of Appeals*:[13]

As a general rule, a contract is the law between the parties. Thus, "from the moment the contract is perfected, the parties are bound not only to the fulfillment of what has been

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[12] *Rollo*, pp. 191-192.

[13] 363 Phil. 495 (1999).

expressly stipulated but also to all consequences which, according to their nature, may be in keeping with good faith, usage and law." Also, "the stipulations of the contract being the law between the parties, courts have no alternative but to enforce them as they were agreed [upon] and written, there being no law or public policy against the stipulated forfeiture of payments already made." However, it must be shown that private respondent-vendee failed to perform her obligation, thereby giving petitioners-vendors the right to demand the enforcement of the contract.

We concede the validity of the automatic forfeiture clause, which deems any previous payments forfeited and the contract automatically rescinded upon the failure of the vendee to pay three successive monthly installments or any one yearend lump sum payment. However, petitioners failed to prove the conditions that would warrant the implementation of this clause.[14]

But a forfeiture clause in a contract of sale, which in a sense is punitive and confiscatory, is to be construed *strictissimi juris*[15] and, in resolving a controversy involving it, the principles of equity must apply to the end that exact justice is achieved.[16]

Here, the Daleons assumed that they were ready to hand over a clean title to the Tans had the latter not placed a stop payment order on their checks. This was not the case. The Tans had to place that stop payment for a valid reason. They agreed to buy the property believing that the seller's title was unblemished by any lien or unfavorable claim. Bartolome Sy's adverse claim, which came shortly after the execution of the contract and the initial payment to the Daleons of ₱10.861 million, was certainly distressing. Its annotation on the title served as warning to third parties like the Tans that someone claimed an interest or a better right to the property than the

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[14] *Id.* at 506.

[15] *Carpenter v. Blanford*, 8 B. & C., 575, 108 Eng. Rep., 1156 (1828).

[16] *Gray v. Maier etc. Brewery*, 2 Cal.App. 653, [84 Pac. 280] (1906).

registered owner.[17] Certainly, the Tans were justified in placing a stop payment order on their checks to avoid greater loss since it may be assumed that they did not want to buy such an expensive property that had a cloud on its title.

Besides, the Tans had the right to hold the Daleons to their warranties as sellers under Article 1547 of the Civil Code[18] that the property was free from charges or encumbrances not known to the buyers. Further, Article 1545 of the Code provides that "where the ownership in the thing has not passed, the buyer may treat the fulfillment by the seller of his obligation to deliver the same as described and as warranted expressly or by implication in the contract of sale as a condition of the obligation of the buyer to perform his promise to accept and pay for the thing." The Daleons deposited the initial checks issued to them before they filed a belated action to have the adverse claim removed from their title. More, they ignored the Tans' repeated demand to know what they were doing regarding that claim.

In *Tan v. Benolirao*,[19] the buyer of land in a contract to sell refused to pay the balance of the purchase price because of the sudden appearance of an annotation on the sellers' title, judicially placed by excluded co-heirs, thus creating a legal lien on the property in favor of such co-heirs. The Court held that, because

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[17] *Sajonas v. Court of Appeals*, 327 Phil. 689, 701-702 (1996).

[18] Article 1547. In a contract of sale, unless a contrary intention appears, there is:

(1) An implied warranty on the part of the seller that he has the right to sell the thing at the time when the ownership is to pass, and that the buyer shall from that time have and enjoy the legal and peaceful possession of the thing;

(2) An implied warranty that the thing shall be free from any hidden faults or defects, or any charge or encumbrance not declared or known to the buyer.

This article shall not, however, be held to render liable a sheriff, auctioneer, mortgagee, pledgee, or other person professing to sell by virtue of authority in fact or law, for the sale of a thing in which a third person has a legal or equitable interest.

[19] G.R. No. 153820, October 16, 2009, 604 SCRA 36.

of the annotation, the sellers could no longer compel the buyer to pay the balance of the purchase price since they could not fulfill their obligation to transfer a clean title to the latter. The Court held that the buyer's refusal to pay the balance cannot justify the sellers' forfeiture of his downpayment. Thus:

> **We, therefore, hold that the contract to sell was terminated when the vendors could no longer legally compel Tan to pay the balance of the purchase price as a result of the legal encumbrance which attached to the title of the property. Since Tan's refusal to pay was due to the supervening event of a legal encumbrance on the property and not through his own fault or negligence, we find and so hold that the forfeiture of Tan's down payment was clearly unwarranted.**[20]

The above ruling in *Tan* applies to the present case.

Although the Daleons later on successfully dealt with Sy's adverse claim, they failed and refused to inform the Tans about it despite the latter's several written demands for the Daleons to update them on the issue. Apparently, although the Tans were still interested in consummating the sale, the Daleons interest was in keeping their land and forfeiting 50% of the Tan's downpayment of ₱10.861 million. Thus, instead of seeing the sale through to its end—which was then within reach—the Daleons took what they thought was a promising prospect offered by paragraph 15-A. The Court cannot, however, tolerate such covetousness.

As to the rate of interest that may be awarded on the obligation to return the downpayment made in this case, the Court takes bearing from the decision in *Trade & Investment Development Corporation of the Philippines v. Roblett Industrial Construction Corporation.*[21] Thus, when as in this case an obligation – not constituting a loan or forbearance of money – is breached, the court may impose interest on the damages awarded (the return of the downpayment made) at the rate of 6% *per annum*. But such interest cannot be adjudged except when the demand to

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[20] *Id.* at 54.

[21] G.R. No. 139290, November 11, 2005, 474 SCRA 510.

return the downpayment can be established with reasonable certainty. Here, such demand may be found in the counterclaim that the Tans filed in the action against them on January 12, 1999.

The Court also held that, when the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest 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.

WHEREFORE, the Court *DENIES* the petition and *AFFIRMS* the decision dated May 29, 2008 and resolution dated January 13, 2009 of the Court of Appeals in CA-G.R. CV 89223 but with *MODIFICATION* on the interest that petitioners Paciencia A. Daleon, Claro Eduardo D. Javier, Jr., Axel Leonard Daleon, Gina Daleon, Benjamin A. Daleon, Jr., Noela Daleon Veloso, Lucy Ann Daleon-Breva, and Peter A. Daleon are to pay the respondents Ma. Catalina P. Tan, Fidel P. Tan, and Manuel P. Tan on the sum of ₱10.861 million that the former are to return to the latter. Such interest shall be at the rate of 6% *per annum* from the date the Tans filed their counterclaim in the case or from January 12, 1999 and at the rate of 12% *per annum* based on the accrued amount, from the time the judgment of this Court becomes final and executory until the obligation is fully satisfied.

SO ORDERED.

Carpio (Chairperson), Nachura, Peralta, and *Mendoza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 186175. August 23, 2010]

3A APPAREL CORPORATION and RAY SHU, *petitioners, vs.* **METROPOLITAN BANK AND TRUST CO., JAIME T. DEE, ENRIQUETO MAGPANTAY, REGISTER OF DEEDS FOR SAN JUAN, METRO MANILA, SHERIFF VICTOR S. STA. ANA, *EX-OFFICIO* SHERIFF GRACE S. BELVIS and SEVERAL JOHN DOES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; DISMISSAL OF ACTIONS; DISMISSAL FOR FAILURE TO PROSECUTE IS AN ADJUDICATION UPON THE MERITS; EXCEPTION; NOT PRESENT IN CASE AT BAR. —** Section 3 of Rule 17 of the Rules of Court is indeed clear that a dismissal for failure to prosecute is an adjudication upon the merits, unless otherwise declared by the court. No such declaration was made by the trial court, hence, its dismissal of the corporation's petition should be challenged by appeal within the reglementary period. x x x For the dismissal of a case for failure to prosecute is addressed to the sound discretion of the trial court and where, as here, the plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude in the prosecution of its case, and absent grave abuse on the part of the trial court, the dismissal must be upheld. Indeed, a plaintiff is duty-bound to prosecute its action with utmost diligence and with reasonable dispatch in order to obtain the relief prayed for and, at the same time, minimize the clogging of court dockets. The expeditious disposition of cases is as much the duty of the plaintiff as the court's.

2. **ID.; APPEALS; PERFECTION OF APPEAL, REQUIREMENT. —** . . . In order to perfect an appeal all that is required is a *pro forma* notice of appeal. Perhaps due to failure to file a notice of appeal within the remaining two days of the appeal period, petitioner's counsel instead filed the instant petition. The rules of procedure, however, do not exist for the convenience of

> the litigants. These rules are established to provide order to and enhance the efficiency of our judicial system. They are not to be trifled with lightly or overlooked by mere expedience of invoking "substantial justice."

APPEARANCES OF COUNSEL

Caraan & Associates Law Offices for petitioners.
Corpuz Ejercito Macasaet & Rivera Law Offices for respondents.

D E C I S I O N

CARPIO MORALES, *J.*:

The present petition for review on *certiorari* dwells on what remedy a litigant, whose complaint was dismissed by the trial court for failure to prosecute, has to challenge the same.

Petitioner 3A Apparel Corporation (the corporation) mortgaged its condominium unit to respondent Metropolitan Bank and Trust Company (MBTC) to secure a loan. For failure to settle its obligation, MBTC extrajudicially foreclosed the mortgage, drawing the corporation, represented by its president Ray Shu, to file a complaint for petition for annulment of real estate mortgage, promissory note, foreclosure of sale, and related documents[1] before the Regional Trial Court (RTC) of Pasig against MBTC and its officers.

After almost two years from the time the case was scheduled for presentation of the corporation's evidence, without it having presented any evidence, Branch 264 of the Pasig, RTC, upon motion of MBTC, dismissed[2] the corporation's complaint for failure to prosecute.

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[1] Records, p. 1.

[2] *Id.* at 203.

The corporation's motion for reconsideration[3] having been denied[4] by the trial court, it filed a petition for *certiorari* before the Court of Appeals, positing that substantial justice must prevail over mere technicalities. By Decision[5] of July 18, 2008, the appellate court dismissed the petition, it holding that dismissal on the ground of failure to prosecute has, citing Section 3 of Rule 17, the effect of an adjudication on the merits, unless otherwise declared by the court.

The appellate court went on to hold:

> The Order of September 29, 2003 is couched in such a way as to show that the dismissal of herein petitioners' complaint was an adjudication upon the merits. The dismissal of the complaint is **appealable**. The remedy of appeal being available to petitioners, resort to . . . petition [for *certiorari*] is precluded. (emphasis and underscoring supplied)

Petitioners' Motion for Reconsideration[6] having been denied,[7] the present petition for review on *certiorari* was filed, the corporation raising the following issues:

> 1. Whether the appellate court erred when it dismissed the petition for *certiorari* for being the wrong remedy; and
> 2. Whether the appellate court erred when it upheld the trial court's dismissal of Civil Case No. 67416 for failure to prosecute under Section 3, Rule 17 of the Rules of Court.

The petition fails.

Section 3 of Rule 17 of the Rules of Court[8] is indeed clear that a dismissal for failure to prosecute is an adjudication upon

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[3] CA *rollo*, pp. 311-343.

[4] *Id.* at 344-346.

[5] *Id.* at 301-304.

[6] *Supra* note 3.

[7] *Supra* note 4.

[8] Section 3. *Dismissal due to fault of plaintiff.* – If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence

the merits, unless otherwise declared by the court. No such declaration was made by the trial court, hence, its dismissal of the corporation's petition should be challenged by appeal within the reglementary period.[9]

The invocation of "justice and fair play" by the corporation does not impress.

> . . . In order to perfect an appeal all that is required is a *pro forma* notice of appeal. Perhaps due to failure to file a notice of appeal within the remaining two days of the appeal period, petitioner's counsel instead filed the instant petition. The rules of procedure, however, do not exist for the convenience of the litigants. These rules are established to provide order to and enhance the efficiency of our judicial system. They are not to be trifled with lightly or overlooked by mere expedience of invoking "substantial justice."[10] (underscoring supplied)

Even on the merits, the petition just the same fails.

To justify the delay in the presentation of its evidence, the corporation recites the following schedules of hearings and what transpired therein before the trial court:

10 October 2001 – both parties were not ready for hearing and agreed for a resetting;

25 October 2001 – witness, Ray Shu was not available to testify because of "Acute Viral Gastroentiritis;

22 November 2001 – hearing was reset by agreement of both parties;

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in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court.

[9] *Ko v. Philippine National Bank*, 479 SCRA 298, 303, January 20, 2006.

[10] *Ibid.*

17 January 2002 – petitioners' witness, Ray Shu was present but Atty. Caraan was not present as he had an emergency at home according to his representative Jaime Fellicen;

11 April 2002 – petitioners were ready to present their evidence, but the hearing was reset as the presiding Judge was on official leave;

20 June 2002 – petitioners were ready, however, the court reset all hearings due to semestral docket inventory and also because the presiding judge was busy due to his application as Justice to the Court of Appeals;

7 August 2002 – no petitioners' witness was available at that time since most of them are from the National Bureau of Investigation (NBI) and they had conflict in their schedule;

3 October & 11 December 2002 – Atty. Caraan sent Jaime Felicen to inform the court of his emergency leave of absence due to his father's unstable condition.

26 March and 30 April 2003 – Ray Shu attended without Atty. Caraan;

9 July 2003 – Atty. Caraan sent Oliver Bautista to inform the court of his father's serious and unstable condition. (underscoring supplied)

This Court finds the foregoing "justifications" insufficient to warrant a finding that the trial court gravely abused its discretion when it dismissed Civil Case No. 67416. For the dismissal of a case for failure to prosecute is addressed to the sound discretion of the trial court and where, as here, the plaintiff is chargeable with want of due diligence in failing to proceed with reasonable promptitude[11] in the prosecution of its case, and absent grave abuse on the part of the trial court, the dismissal must be upheld.

Indeed, a plaintiff is duty-bound to prosecute its action with utmost diligence and with reasonable dispatch in order to obtain the relief prayed for and, at the same time, minimize the clogging of court dockets. The expeditious disposition of cases is as much the duty of the plaintiff as the court's.[12]

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[11] *Producers Bank of the Philippines v. Cotton (Phil.) Corp., Lan Shing Chin, Shin May Wan and Nelson Kho*, G.R. No. 125468, October 9, 2000, 342 SCRA 327, 334.

[12] *Ko v. PNB*, *supra* note 9.

The corporation's attempt to attribute part of the blame to the trial court which cancelled the hearing on April 15, 2002 when the presiding judge was on official leave, and that on June 20, 2002 during the semestral docket inventory of cases, at which times the corporation claims to have been ready to present evidence does not impress too. If indeed that were the case, it could have presented its evidence during the succeeding scheduled hearings. Yet, it did not. Instead, it caused the postponement of the subsequent six scheduled hearings from August 7, 2002 to July 9, 2003 inclusive for unjustifiable reasons.

WHEREFORE, the petition is *DENIED.*

SO ORDERED.

Brion, Bersamin, Villarama, Jr., and *Sereno, JJ.,* concur.

SECOND DIVISION

[G.R. No. 189971. August 23, 2010]

FREDDIE CABILDO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; TESTIMONY OF A SINGLE YET CREDIBLE AND TRUSTWORTHY WITNESS SUFFICES TO SUPPORT A CONVICTION. –** It is settled that the testimony of a single yet credible and trustworthy witness suffices to support a conviction. This principle finds more compelling application when the lone witness is the victim himself whose direct and positive identification of his assailants is almost always regarded with indubitable credibility, owing to the natural tendency of victims to seek justice, and thus strive to remember

the faces of their malefactors and the manner in which they committed the crime.

2. CRIMINAL LAW; CONSPIRACY; CONSTRUED. – Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. The agreement need not be proven by direct evidence; it may be inferred from the conduct of the parties before, during, and after the commission of the offense, pointing to a joint purpose and design, concerted action, and community of interest. Complicity of the accused in the criminal design may be determined by their concerted action at the moment of consummating the crime and the form and manner in which assistance is rendered to the person inflicting the wound.

3. ID.; ATTEMPTED HOMICIDE; COMMISSION OF; CASE AT BAR. – We likewise agree with the CA that the crime committed was attempted homicide and not frustrated homicide. The stab wound sustained by Daquer was considerably superficial, hence, not life-threatening. This is clear from the medical certificate issued by Dr. Vicente stating that the stab wound was only 2 centimeters long and 5 centimeters deep. The doctor also testified that no vital organ of Daquer was hit.

4. ID.; ID.; PENALTY. – The imposable penalty for attempted homicide is *prision correccional,* which is two degrees lower than *reclusion temporal*, the penalty for homicide. The maximum of the indeterminate penalty shall be taken from the imposable penalty of *prision correccional*, taking into account the modifying circumstances, if any. There being no mitigating or aggravating circumstances, the maximum penalty should be imposed in its medium period (Art. 64, Revised Penal Code). To determine the minimum of the indeterminate penalty, the penalty of *prision correccional* has to be reduced by one degree, which is *arresto mayor*. The minimum of the indeterminate penalty shall be taken from the full range of *arresto mayor* in any of its periods. Hence, petitioner was correctly sentenced to suffer an indeterminate penalty from four (4) months of *arresto mayor,* as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

APPEARANCES OF COUNSEL

Hernani T. Barrios for petitioner.
The Solicitor General for respondent.

D E C I S I O N

NACHURA, *J.*:

This Petition for Review on *Certiorari* assails the January 15, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR No. 30871, finding petitioner Freddie Cabildo (Cabildo) and his co-accused Jesus Palao, Jr. (Palao) and Rodrigo Abian (Abian) guilty of attempted homicide. Likewise assailed is the CA's October 7, 2009 Resolution[2] denying the motion for reconsideration.

The CA Decision affirmed with modification the February 5, 2007 decision[3] of the Regional Trial Court (RTC) of Palawan and Puerto Princesa City, Branch 47, finding Cabildo and his co-accused guilty of frustrated homicide.

The RTC and the CA similarly arrived at the following factual findings:

On March 19, 1999, at 11:00 p.m., a certain Joy Herrera was driving a tricycle bound for Barangay Rizal, Magsaysay, Palawan. On board were students of St. Joseph Academy who just came from their school's "Seniors' Night." Upon reaching Poblacion, Cuyo in Barangay Tenga-Tenga, petitioner Cabildo, his co-accused Palao and Abian, and another companion, Rene Tamba, blocked their path. After confirming Herrera's identity,

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[1] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Teresita Dy-Liacco Flores and Sixto C. Marella, Jr., concurring; *rollo,* pp. 45-55.

[2] Penned by Associate Justice Rosmari D. Carandang, with Associate Justices Japar B. Dimaampao and Sixto C. Marella, Jr., concurring; *id.* at 60-61.

[3] Penned by Presiding Judge Jocelyn Sundiang Dilig; *id.* at 86-99.

petitioner and his group forcibly pulled Herrera from the tricycle and mauled him.[4]

Meanwhile, Rocky Daquer passed by the same road on board his own tricycle with passengers John Ryan Macula, Cris Magdayao, and Dary Puno. Daquer noticed the commotion, so he alighted from his tricycle and approached the group to pacify them. Instead, Palao turned his ire to Daquer and threatened: *"Putang-ina mo Rocky, papatayin kita!"* before drawing a fan knife from his waist. This prompted Herrera and Daquer to run away in separate directions.[5]

The group pursued Daquer and after covering about 10 meters, petitioner was able to grab Daquer's jacket, causing the latter to fall down on one knee. While petitioner held on to Daquer by his jacket, Palao thrust his knife at the latter but missed. Palao stabbed again and hit Daquer at the lower left side of his back causing him to fall face down on the ground. Petitioner and his group then proceeded to maul Daquer until the police arrived.[6]

The responding police officers brought petitioner and his group to the police station. The knife recovered at the crime scene was turned over to the Office of the Prosecutor. On the other hand, the wounded Daquer was brought to the Cuyo District Hospital where he was treated by Dr. Joselito Vicente.[7] Medical findings showed that Daquer sustained an abrasion on his left knee and a stab wound at his left lumbar area which, barring unforeseen complications, would both heal in 15 days.[8]

On June 1, 1999, Cabildo, Palao, and Abian were charged with frustrated homicide. The accusatory portion of the Information reads:

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[4] *Id.* at 46, citing TSN, September 20, 2001, p. 8.

[5] *Id.* at 87-88, citing the testimony of Joy Herrera, TSN, September 20, 2001.

[6] *Id.*, citing the testimony of Rocky Daquer, TSN, July 3, 2003.

[7] *Id*.

[8] *Id.* at 89.

That on or about the 19th day of March, 1999, more or less 11:00 o' clock in the evening, at Barangay Tenga-Tenga, Municipality of Cuyo, Province of Palawan, Philippines and within the jurisdiction of this Honorable Court, the above named accused, conspiring, confederating together and mutually helping each other, while armed with a bladed weapon and with intent to kill, did then and there willfully, unlawfully and feloniously attack, assault, box and stab with a knife, one ROCKY DAQUER, hitting him in the vital parts of his body and inflicting upon him injuries which would ordinarily cause his death thus performing all the acts of execution which would have produced the crime of Homicide, as a consequence, but nevertheless did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said Rocky Daquer, which prevented his death.

CONTRARY TO LAW.[9]

When arraigned, petitioner Cabildo and Palao both pleaded not guilty. Their co-accused Abian remained at large.[10] Cabildo and Palao denied any complicity in the stabbing of Daquer, and submitted different versions of the story.

Petitioner Cabildo claimed that, on his way home from watching the "Seniors' Night" show, he saw Tamba, Palao and Abian blocking the tricycle of Herrera. He saw Tamba box Herrera, after which Abian boxed Daquer and the latter ran away. After seeing this, he left the scene and went home.[11]

According to Palao, he and Abian watched the Seniors' Night together on March 19, 1999. On their way home, they saw their friend Tamba engaged in a fistfight with Herrera. Palao admitted seeing Daquer that night while the latter was being chased by Abian. He further testified that Abian caught up with Daquer and the latter fell down. Thereafter, the two engaged in a fistfight until the police arrived. When the police brought Abian to the police station, Palao allegedly went with him because he wanted to look after his friend.[12]

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[9] *Id.* at 86.

[10] *Id.* at 87.

[11] *Id.* at 92.

[12] *Id.*

The RTC accorded more weight to the positive testimony of the prosecution witnesses over the denial and inconsistent declarations of the accused. The trial court declared them to have conspired and connived with one another in committing frustrated homicide. The accused were sentenced to suffer the indeterminate penalty of imprisonment of two (2) years, four (4) months and one (1) day, which is the medium of *prision correccional*, as the minimum, to eight (8) years, which is the medium of *prision mayor*, as maximum. They were likewise ordered to jointly and severally pay Daquer ₱3,190.00 for his medical expenses and ₱6,000.00 for loss of earnings.[13]

On appeal, the CA sustained the trial court's finding of conspiracy but modified the conviction of the accused to attempted homicide, noting that the wounds inflicted on Daquer were not fatal.[14]

Consequently, the accused were meted the new sentence of imprisonment of four (4) months of *arresto mayor* medium, as minimum, to four (4) years and two (2) months of *prision correccional* medium, as maximum. The rest of the trial court's disposition was affirmed.[15]

Accused-appellants Cabildo and Palao moved for the reconsideration[16] of the foregoing decision but the same was denied.[17] Hence, the present petition interposed solely by petitioner Cabildo.

We deny the petition.

Petitioner insists on an acquittal by impugning the credibility of prosecution witnesses Macula and Magdayao, who were not consistent in declaring whether Herrera was a passenger or a driver of the tricycle blocked by petitioner and his cohorts. Petitioner also questions the competency of prosecution witness

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[13] *Id.* at 98.

[14] *Id.* at 54.

[15] *Id.*

[16] *Id.* at 63-76.

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

Herrera who admittedly did not witness the stabbing of Daquer, and who proffered contradicting declarations as to the length of the knife he saw on Palao. Petitioner further posits that his guilt was not established by the requisite quantum of evidence.

We do not agree.

First, we emphasize that the findings of fact of the trial court, its assessment of the credibility of witnesses and their testimonies, and the probative weight thereof, as well as its conclusions based on the said findings, will not be disturbed on appeal unless it appears that the trial court overlooked or misconstrued cogent facts and circumstances which, if considered, would alter the outcome of the case.[18]

In the present case, the inconsistencies pointed out by petitioner are too trivial and immaterial as to considerably affect the trial court's conclusions. Whether Herrera was a driver or a passenger of the blocked tricycle does not relate to the essential elements of the crime committed against Daquer. Meanwhile, the competency of Herrera as a witness to the stabbing incident should have been raised at the most opportune time, that is, during trial and not on appeal.

At any rate, Herrera's testimony was merely intended to establish the fact that a commotion preceded the attack on Daquer and not the stabbing incident itself. Also, Herrera's contradicting estimates of the length of the knife brandished by Palao do not detract from the undisputed fact that a stab wound was inflicted on Daquer.

More importantly, the RTC's conclusions, as affirmed by the CA, were based mainly on the testimony of the victim himself, who clearly and positively identified his assailants and the manner by which they committed the crime. We quote the pertinent testimony of Daquer as summarized by the RTC:

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[18] *People v. Amazan, et al.*, 402 Phil. 247-271 (2001), citing *People v. Perez*, 372 Phil. 425 (1999); *People v. Tan*, 373 Phil. 990, 991 (1999); *People v. Accion*, 371 Phil. 176, 177 (1999); *People v. Pulusan*, 352 Phil. 953, 954 (1998).

Daquer saw accused Abian, Palao and Cabildo flag down the tricycle of Herrera. Since Daquer could not drive on, he alighted from his tricycle and approached the group of Palao and he saw that the accused were mauling Herrera. Daquer tried to stop Palao and his group from hurting Herrera, but instead of stopping, the accused turned to Daquer and Palao threatened to stab Daquer. Daquer stepped back when accused Palao and Abian faced him. Then Daquer ran away but Palao and Abian chased him. After running a distance of about ten (10) meters accused Cabildo held on to his jacket so he fell down on one knee. While Cabildo was holding Daquer, he (Daquer) looked back and saw Palao thrust a twenty-two (22) inch fan knife at him but missed. Then Palao stabbed him again and this time Daquer was hit on the lower left side of his back and he fell face down on the sand. While on the ground all the accused still boxed Daquer until the police arrived.[19]

It is settled that the testimony of a single yet credible and trustworthy witness suffices to support a conviction.[20] This principle finds more compelling application when the lone witness is the victim himself whose direct and positive identification of his assailants is almost always regarded with indubitable credibility, owing to the natural tendency of victims to seek justice, and thus strive to remember the faces of their malefactors and the manner in which they committed the crime. [21]

Petitioner tenaciously argues that conspiracy was not established sufficiently, as the CA merely inferred the same from the hollow threat made by Palao to Daquer. Petitioner further claims that the attack on Daquer was a spontaneous outburst of violence when the latter unexpectedly intervened in the skirmish between

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[19] *Rollo*, p. 88, citing the testimony of Rocky Daquer, TSN, July 9, 2003.

[20] *Ureta, et al. v. People*, 436 Phil. 148, 163 (2002), citing *People v. Hinault*, 427 Phil. 486, 498 (2002); *People v. Toyco*, *Sr*., G.R. No. 138609, January 17, 2001, 349 SCRA 385; *People v. Pascual*, 387 Phil. 266, 268 (2000); *People v. Pirame*, 384 Phil. 286, 289 (2000).

[21] *People v. Hamton, et al.*, 443 Phil. 198, 200 (2003); *People v. Bacungay,* 428 Phil. 798, 799 (2002); *People v. Garcia*, 424 Phil. 158, 164-165 (2002); *People v. Lieterio*, 390 Phil. 337 (2000); *People v. Aquino*, 385 Phil. 887-888 (2000); *People v. Candelario*, 370 Phil. 506, 515 & 523 (1999); *People v. Teves*, 321 Phil. 837 (1995); *People v. Teehankee*, G.R. Nos. 111206-08, October 6, 1995, 249 SCRA 54.

petitioner, his cohorts and their original target, Herrera. As such, there was no opportunity for the assailants to conspire and hatch a deliberate plan to attack or even attempt to kill Daquer.

We disagree.

First, the threat uttered by Palao to Daquer was not at all empty or, as petitioner puts it, a mere angry remark. Records show that after throwing invectives at and threatening to kill Daquer, Palao almost simultaneously pulled out the fan knife tucked in the waistband of his pants. Palao clearly intended to make good his threat; and if he merely wanted to warn Daquer not to meddle in the commotion, he would not have chased the latter, who ran away upon seeing the knife. Cabildo and Abian agreed with Palao when they assisted him in carrying out his illicit purpose – Abian in chasing Daquer, and herein petitioner Cabildo in holding Daquer by his jacket, thus depriving him the chance to parry the knife and emboldening Palao to execute his devious plan with ease.

True, if taken alone, the words *"Putang-ina mo Rocky, papatayin kita!*" would hardly lend support to a finding of criminal intent or common criminal design among the accused. But the acts they performed simultaneous with and subsequent to such utterance spell the difference between a harmless outburst of anger and an injurious retaliation.

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.[22] The agreement need not be proven by direct evidence;[23] it may be inferred from the conduct of the parties before, during, and after the commission of the offense,[24] pointing

[22] REVISED PENAL CODE, Art. 8.

[23] *People v. Tejero*, 431 Phil. 91 (2002); *People v. Pacificador*, 426 Phil. 563, 565 (2002); *People v. Garcia*, *supra* note 21; *Erquiaga v. Court of Appeals*, 419 Phil. 641, 647 (2001).

[24] *People v. Matic*, 427 Phil. 564, 573 (2002); *People v. Bejo*, 427 Phil. 143, 160 (2002); *People v. Macabales*, 400 Phil. 1221, 1223 (2000); *People v. Gungon*, G.R. No. 119574, March 19, 1998, 287 SCRA 618, 619; *People v. Lumiwan*, 356 Phil. 521, 524 (1998); *People v. Quitlong*, 354 Phil. 372, 390 (1998); *People v. Alas,* G.R. Nos. 118335-36, June 19, 1997; 274 SCRA 310.

to a joint purpose and design, concerted action, and community of interest.[25] Complicity of the accused in the criminal design may be determined by their concerted action at the moment of consummating the crime and the form and manner in which assistance is rendered to the person inflicting the wound.[26]

Here, the CA correctly affirmed the RTC's finding that conspiracy can be deduced from the concerted acts of petitioner Cabildo, Palao, and Abian towards the realization of their common unlawful goal of stabbing Daquer, *viz.*:

> Palao unequivocally announced his intention to kill Daquer and immediately drew his batangas knife and ran after the latter, while Cabildo and Abian readily agreed with this desire by pursuing Daquer and actually catching up with him. Cabidlo's act of grabbing Daquer's jacket and pulling him to the ground provided the opportunity for Palao to stab him twice. After getting hit on the second try Cabildo and Abian readily proceeded to maul him together with Palao.[27]

We likewise agree with the CA that the crime committed was attempted homicide and not frustrated homicide. The stab wound sustained by Daquer was considerably superficial, hence, not life-threatening. This is clear from the medical certificate issued by Dr. Vicente stating that the stab wound was only 2 centimeters long and 5 centimeters deep. The doctor also testified that no vital organ of Daquer was hit.

The CA imposed the correct penalty. The imposable penalty for attempted homicide is *prision correccional,* which is two degrees lower than *reclusion temporal*, the penalty for homicide. The maximum of the indeterminate penalty shall be taken from the imposable penalty of *prision correccional*, taking into account the modifying circumstances, if any. There being no mitigating or aggravating circumstances, the maximum penalty should be imposed in its medium period (Art. 64, Revised Penal Code).

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[25] *People v. Licayan*, 415 Phil. 459, 475 (2001); *People v. Domasian*, G.R. No. 95322, March 1, 1993, 219 SCRA 245, 247.

[26] *Li v. People,* 471 Phil. 129, 148 (2004), citing *People v. Mozar, et al.,* 215 Phil. 501, 511 (1984).

[27] *Rollo,* p. 52.

To determine the minimum of the indeterminate penalty, the penalty of *prision correccional* has to be reduced by one degree, which is *arresto mayor*. The minimum of the indeterminate penalty shall be taken from the full range of *arresto mayor* in any of its periods. Hence, petitioner was correctly sentenced to suffer an indeterminate penalty from four (4) months of *arresto mayor,* as minimum, to four (4) years and two (2) months of *prision correccional*, as maximum.

WHEREFORE, foregoing considered, the Petition is *DENIED*. The January 15, 2009 Decision and the October 7, 2009 Resolution of the Court of Appeals are hereby *AFFIRMED in toto*.

SO ORDERED.

Carpio (Chairperson), Peralta, Abad, and *Mendoza, JJ.,* concur.

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Record on appeal — Filing thereof is mandatory and counsel's mistake or lack of knowledge of the existing rules does not warrant the relaxation of the rule. (Ong *vs*. PDIC, G.R. No. 175116, Aug. 18, 2010) p. 557

Right to appeal — A statutory right, not a natural right. (Commissioner of Internal Revenue *vs*. Fort Bonifacio Dev't. Corp., G.R. No. 167606, Aug. 11, 2010) p. 251

— Failure to comply with the requirements of the rules often leads to the loss of the right. *(Id.)*

Rule on appeal — Failure to meet the requirements of an appeal deprives the appellate court of jurisdiction to entertain any appeal; relaxation of the rule is not justified. (Commissioner of Internal Revenue *vs*. Fort Bonifacio Dev't. Corp., G.R. No. 167606, Aug. 11, 2010) p. 251

— Proper mode of appeal of cases which were formerly under the jurisdiction of the Securities and Exchange Commission, clarified under A.M. No. 04-9-07-SC. (China Banking Corp. *vs*. Cebu Printing and Packaging Corp., G.R. No. 172880, Aug. 11, 2010) p. 308

ARREST

Warrantless arrest — Valid when arrest was made during an entrapment operation. (People *vs*. Sembrano, G.R. No. 185848, Aug. 16, 2010) p. 476

ATTORNEYS

Suspension — In case of two or more suspensions, the same shall be served successively. (Reyes *vs*. Atty. Vitan, A.C. No. 5835, Aug. 10, 2010) P. 1

— The Court may withhold the privilege to practice law it it is shown that an attorney as an officer of the Court, is still not worthy of the trust and confidence of his clients and of the public. *(Id.)*

BANKS

Bank personnel — Burdened with a high level of responsibility in the custody and management of funds. (Dycoco, Jr. *vs*. Equitable PCI Bank, G.R. No. 188271, Aug. 16, 2010) p. 494

— Commits gross negligence in case of repeated failure to observe basic procedure. *(Id.)*

Duties — Collecting bank is required to exercise extraordinary diligence to scrutinize checks deposited with it to determine their genuineness and regularity. (Go *vs*. Metropolitan Bank and Trust Co., G.R. No. 168842, Aug. 11, 2010) p. 264

Fiduciary relationship with depositors — A bank should bear the responsibility for the negligence committed by its employee in the handling of its depositors' account. (Citytrust Banking Corp. *vs*. Cruz, G.R. No. 157049, Aug. 11, 2010) p. 178

Liability of — Act of banks in accepting for deposit the crossed checks without indorsement and failure to verify the authenticity of the negotiation of the checks constitute negligence. (Go *vs*. Metropolitan Bank and Trust Co., G.R. No. 168842, Aug. 11, 2010) p. 264

— Drawee bank is under strict liability to pay to the order of the payee in accordance with the drawer's instructions as reflected on the face and by the terms of the check. (Equitable PCI Bank *vs*. Tan, G.R. No. 165339, Aug. 23, 2010) p. 657

BILL OF RIGHTS

Due process — Decision rendered without due process is void ab initio and may be attacked at anytime directly or indirectly by means of a separate action or by resisting such decision in any action where it is invoked. (Garcia *vs*. Molina, G.R. No. 157383, Aug. 10, 2010) p. 6

— Where the denial of the fundamental right to due process is apparent, a decision rendered in disregard of that right is void for lack of jurisdiction; rule is applicable to quasi-judicial and administrative proceedings. *(Id.)*

CANCELLATION OR CORRECTION OF ENTRIES IN THE CIVIL REGISTRY

Registration of a foreign divorce decree — Procedure. (Corpuz *vs*. Sto. Tomas, G.R. No. 186571, Aug. 11, 2010) p. 420

CERTIORARI

Grave abuse of discretion — Defined as a capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. (People *vs*. Sandiganbayan [4th Div.], G.R. Nos. 153952-71, Aug. 23, 2010) p. 640

— Not present when the trial judge dismissed an appeal for failure to file a record on appeal. (Ong *vs*. PDIC, G.R. No. 175116, Aug. 18, 2010) p. 557

Petition for — Filing of a motion for reconsideration is a condition sine qua non; exceptions. (People *vs*. Sandiganbayan (4th Div.), G.R. Nos. 153952-71, Aug. 23, 2010) p. 640

— Issues on the admissibility of the testimonies of witnesses are questions of facts that are beyond the ambit of the petition. (Ong *vs*. PDIC, G.R. No. 175116, Aug. 18, 2010) p. 557

CIVIL REGISTRY LAW (ACT NO. 3753)

Registry of civil status — A judgment of divorce is a judicial decree affecting a person's legal capacity and status that must be recorded; requirements for registration. (Corpuz *vs*. Sto. Tomas, G.R. No. 186571, Aug. 11, 2010) p. 420

CIVIL SERVICE

Approval of appointment — When may be recalled, cited. (Maniebo *vs*. CA, G.R. No. 158708, Aug. 10, 2010) p. 25

False representation of eligibility — Penalty of dismissal is proper and length of service is not mitigating. (Maniebo *vs*. CA, G.R. No. 158708, Aug. 10, 2010) p. 25

Temporary employee — Before he/she is automatically deemed to be a permanent employee after rendering at least seven years of service in the Government, the Civil Service

Commission still needs to evaluate whether the employee is qualified to avail himself or herself of the privilege granted by R.A. No. 6850. (Maniebo *vs.* CA, G.R. No. 158708, Aug. 10, 2010) p. 25

CIVIL SERVICE DECREE OF THE PHILIPPINES (P.D. NO. 807)

Heads of departments, agencies and instrumentalities — Have the authority to investigate and decide matters involving disciplinary action against officers and employees under their jurisdiction. (Garcia vs. Molina, G.R. No. 157383, Aug. 10, 2010) p. 6

— It is mandatory for the disciplining authority to conduct a preliminary investigation or the employee should be given the opportunity to comment and explain his side prior to the issuance of a formal charge. *(Id.)*

COCONUT INDUSTRY CODE, REVISED (P.D. NO. 1468)

Philippine Coconut Authority — Granted the power to impose and collect fees to defray its operating expenses. (Soloil, Inc. *vs*. Phil. Coconut Authority, G.R. No. 174806, Aug. 11, 2010) p. 337

COLLECTIVE BARGAINING AGREEMENT

Closed shop — Cannot prevail over the fundamental Constitutional right of a worker to join or not to join a union. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Carpio, J., dissenting opinion*) p. 47

— Defined as an enterprise in which, by agreement between the employer and his employees or their representatives, no person may be employed in any or certain agreed departments of the enterprise unless he or she is, becomes, and, for the duration of the agreement, remains a member in good standing of a union entirely comprised of or of which the employees in interest are a part. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010) p. 47

— Employees who are not union members at the time of the signing of the contract need not join the union, but all workers hired thereafter must join. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Carpio, J., dissenting opinion*) p. 47

— Must be strictly construed and doubts must be resolved against it. *(Id.)*

Effect of — Employees of an appropriate collective bargaining unit who are not members of the recognized collective bargaining agent may be assessed a reasonable fee equivalent to the dues and other fees paid by members of the recognized collective bargaining agent, if such non-union members accept the benefits under the agreement. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Carpio, J., dissenting opinion)* p. 47

Union security — Absorbed employees and those who are hired as immediate regulars, distinguished. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Brion, J., dissenting opinion*) p. 47

— An employee's permanent and regular employment status in itself does not necessarily exempt him from the coverage thereof. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010) p. 47

— Applies to regular employees hired after probationary status and regular employees hired after the merger. *(Id.)*

— Classification of absorbed employees of the dissolved corporation, explained. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Brion, J., dissenting opinion*) p. 47

— Distinguished from maintenance of membership shop. *(Id.)*

— Its purpose is to afford protection to the certified bargaining agent and ensure that the employer is dealing with a union that represents the interests of the legally mandated percentage of the members of the bargaining unit. (BPI *vs.* BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010) p. 47

— New employees refer to those employees whose position fall within the bargaining unit and who are subsequently given regular status; they must join the union as a condition of their continued employment. (BPI *vs.* BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Brion, J., dissenting opinion*) p. 47

— Not a restriction of the right of freedom of association guaranteed by the Constitution. (BPI *vs.* BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010) p. 47

— Present when all new regular employees are required to join the union within a certain period as a condition for their continued employment. *(Id.)*

— Who are exempted from the coverage thereof, cited. *(Id.)*

COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657)

Acquisition of land by the government — Procedure. (Land Bank of the Phils. *vs.* Heir of Trinidad S. Vda. de Arieta, G.R. No. 161834, Aug. 11, 2010) p. 198

Just compensation — The authority of the Department of Agrarian Reform to determine just compensation is merely preliminary. (Land Bank of the Phils. *vs.* Heir of Trinidad S. Vda. de Arieta, G.R. No. 161834, Aug. 11, 2010) p. 198

Land valuation — The initial valuation of the Land Bank of the Philippines becomes the basis of the deposit of provisional compensation pending final determination of just compensation. (Land Bank of the Phils. *vs.* Heir of Trinidad S. Vda. de Arieta, G.R. No. 161834, Aug. 11, 2010) p. 198

— The Land Bank of the Philippines is primarily responsible for the determination of the land valuation and compensation and may question before the Special Agrarian Court, the Department of Agrarian Reform's determination of just compensation. *(Id.)*

— The Land Bank of the Philippines may challenge the land valuation and determination of just compensation by a party, the DAR or the courts, before the Court of Appeals or to the Supreme Court, if appropriate. *(Id.)*

— The Land Bank of the Philippines' valuation of lands covered by the CARL is not conclusive; final determination of just compensation is essentially a judicial function vested with the Regional Trial Court, sitting as a Special Agrarian Court. *(Id.)*

— The Special Agrarian Court (SAC) may not order the Land Bank of the Philippines to deposit or deliver the much higher amount adjudged by the DARAB where it already complied with the deposit of provisional compensation by depositing the amount of its initial valuation which was rejected by the landowner. *(Id.)*

CONSPIRACY

Existence of — Established when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. (Cabildo *vs*. People, G.R. No. 189971, Aug. 23, 2010) p. 737

CONTRACTS

Reduction in Scope Agreement (RISA) — Contractor should be deemed to have already waived whatever rights or interests it may have been entitled to as a result of the client's shortcomings by virtue of entering into the RISA. (ALC Industries, Inc. *vs*. DPWH, G.R. Nos. 173219-20, Aug. 11, 2010) p. 327

Rescission of — Proper in case of failure of the contractor to keep up with the rate of progress as contractually mandated which is a substantial and fundamental breach which

would defeat the very purpose of the Reduction in Scope Agreement (RISA). (ALC Industries, Inc. *vs*. DPWH, G.R. Nos. 173219-20, Aug. 11, 2010) p. 327

CORPORATE REHABILITATION

Petition for — Its dismissal is unwarranted if the rehabilitation is being implemented. (BPI vs. Shemberg Biotech Corp., G.R. No. 162291, Aug. 11, 2010) p. 225

CORPORATIONS

Merger of corporations — Absorption of the employees of the non-surviving entity of the merger is not mandatory on the surviving corporation. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010) p. 47

— After the merger, the absorbed employee should be given the right to choose whether to join or not to join a union. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Carpio, J., dissenting opinion*) p. 47

— Becomes effective only upon the approval by the Securities and Exchange Commission of the Articles of Merger. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010) p. 47

— Effect in the employment conditions of the employees absorbed by the surviving corporation. *(Id.)*

— Legal effects, illustrated. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Brion, J., dissenting opinion*) p. 47

— Mode of transfer of corporate assets and liabilities, discussed. *(Id.)*

— The surviving corporation became the employer of the absorbed employees only after the effectivity of the merger, notwithstanding that the latter's years of service with the dissolved corporation were voluntarily recognized by the

surviving corporation. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010) p. 47

— The surviving corporation is liable for the payment of separation pay, retirement pay, or other benefits to the employees of the dissolved entity who chose not to be absorbed. *(Id.)*

— The surviving or consolidated corporation assumes ipso jure the liabilities of the dissolved corporations regardless of whether the creditors consented to the merger or consolidation. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Brion, J., dissenting opinion*) p. 47

— Unless expressly assumed, employment contracts and collective bargaining agreements are not enforceable against a transferee of an enterprise. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010) p. 47

Right of the corporation over its human resources — Can be classified as corporate assets. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Brion, J., dissenting opinion*) p. 47

COURT OF APPEALS

Court of Appeals Divisions — Cases already submitted for decision as of the effectivity of R.A. No. 8246 were no longer included for re-raffle to the newly-created Court of Appeals Visayas and Mindanao Divisions. (Equitable PCI Bank *vs*. Tan, G.R. No. 165339, Aug. 23, 2010) p. 657

Transmittal of records — Not mandatory but only discretionary upon the Court of Appeals. (Maniebo *vs*. CA, G.R. No. 158708, Aug. 10, 2010) p. 25

COURTS

Courts of concurrent or coordinate jurisdiction — No court has the power to interfere by injunction with the judgments of a court of concurrent or coordinate jurisdiction; exceptions. (Reyes *vs*. Judge Ortiz, G.R. No. 137794, Aug. 11, 2010) p. 158

DAMAGES

Actual damages — Competent proof of the actual amount of loss is necessary. (Equitable PCI Bank *vs*. Tan, G.R. No. 165339, Aug. 23, 2010) p. 657

Attorney's fees — Awarded when a bank failed to exercise the required diligence and meticulousness in the handling of the account of its depositors. (Citytrust Banking Corp. *vs*. Cruz, G.R. No. 157049, Aug. 11, 2010) p. 178

— Awarded when a party is compelled to litigate to protect their rights and proved that the adverse party acted in bad faith. (Equitable PCI Bank *vs*. Tan, G.R. No. 165339, Aug. 23, 2010) p. 657

Civil indemnity — Awarded in case of statutory rape. (People *vs*. Alfonso, G.R. No. 182094, Aug. 18, 2010) p. 572

Exemplary damages — Awarded in cases of statutory rape. (People *vs*. Alfonso, G.R. No. 182094, Aug. 18, 2010) p. 572

— Awarded when a bank failed to exercise the required diligence and meticulousness in the handling of the account of its depositors. (Equitable PCI Bank *vs*. Tan, G.R. No. 165339, Aug. 23, 2010) p. 657

(Citytrust Banking Corp. *vs*. Cruz, G.R. No. 157049, Aug. 11, 2010) p. 178

— Shall be awarded to the depositor for the damage to his reputation due to the negligence of the bank, even absent proof of malice or bad faith on the bank's part. *(Id.)*

Moral damages — Awarded in case of statutory rape. (People *vs*. Alfonso, G.R. No. 182094, Aug. 18, 2010) p. 572

— Awarded to depositors for failure of the bank to exercise extraordinary diligence in the course of its business which is imbued with public interest. (Go *vs.* Metropolitan Bank and Trust Co., G.R. No. 168842, Aug. 11, 2010) p. 264

Nominal damages — For failure to comply with the due process requirement, the employer is liable for nominal damages even if the dismissal is for a just cause. (Phimco Industries, Inc. *vs*. Phimco Industries Labor Ass'n., G.R. No. 170830, Aug. 11, 2010) p. 275

Temperate 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 proved with certainty. (Equitable PCI Bank *vs*. Tan, G.R. No. 165339, Aug. 23, 2010) p. 657

DANGEROUS DRUGS ACT OF 1972 (R.A. No. 6425)

Illegal possession of prohibited or regulated drugs — Elements of the crime are: (1) that the accused is in possession of the object identified as a prohibited or regulated drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug. (People *vs*. Sembrano, G.R. No. 185848, Aug. 16, 2010) p. 476

(People *vs*. Tuan, G.R. No. 176066, Aug. 11, 2010) p. 379

— Imposable penalty. (People vs. Sembrano, G.R. No. 185848, Aug. 16, 2010) p. 476

(People *vs*. Tuan, G.R. No. 176066, Aug. 11, 2010) p. 379

Illegal sale of dangerous drugs — Elements that must concur are: (1) the identity of the buyer and the seller, the object and consideration; and (2) the delivery of the thing sold and the payment therefor. (People *vs*. Sembrano, G.R. No. 185848, Aug. 16, 2010) p. 476

— Imposable penalty. *(Id.)*

DECLARATORY RELIEF

Action for — Not a proper remedy to assail denial of the motion to suspend proceedings. (Reyes vs. Judge Ortiz, G.R. No. 137794, Aug. 11, 2010) p. 158

Definition — The first paragraph of Sec. 1, Rule 63 of the 1997 Rules of Court is defined as a special civil action by any person interested under a deed, will, contract or other written instrument or those rights are affected by a statute, ordinance, executive order or regulation to determine any question of construction or validity arising under the instrument, executive order or regulations, or statute and for a declaration of his rights and duties thereunder. (Reyes *vs*. Judge Ortiz, G.R. No. 137794, Aug. 11, 2010) p. 158

— The second paragraph of Sec. 1, Rule 63 of the 1997 Rules of Court pertains to: (1) an action for the reformation of an instrument; (2) an action to quiet title; and (3) an action to consolidate ownership in a sale with a right to repurchase. *(Id.)*

DOUBLE JEOPARDY

Concept — A judgment acquitting the accused is final and immediately executory upon its promulgation and that the state may not seek its review without placing the accused in double jeopardy. (People *vs*. Tuan, G.R. No. 176066, Aug. 11, 2010) p. 379

E.O. NO. 228 (DECLARING FULL LAND OWNERSHIP TO QUALIFIED FARMER BENEFICIARIES COVERED BY P.D. NO. 27)

Alienation of property acquired under the law — Land reform beneficiaries were allowed to transfer ownership of their lands provided their amortizations with the Land Bank of the Phils. had been paid in full. (Heirs of Paulino Atienza *vs*. Espidol, G.R. No. 180665, Aug. 11, 2010) p. 408

EJECTMENT

Proceedings — Pendency of annulment/reversion case shall not ipso facto suspend an ejectment proceeding; exception. (Reyes *vs*. Judge Ortiz, G.R. No. 137794, Aug. 11, 2010) p. 158

EMPLOYER-EMPLOYEE RELATIONSHIP

Management's prerogatives — Absent arbitrariness, the appellate court should not look into the wisdom of a management prerogative. (Pharmacia and Upjohn, Inc. *vs*. Albayda, Jr., G.R. No. 172724, Aug. 23, 2010) p. 680

EMPLOYMENT CONTRACT

Effect of — An individual employee can walk away from his employment contract subject only to the adjustment of the obligations he has incurred under the contractual relationship that binds him. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Brion, J., dissenting opinion*) p. 47

— Employment contracts should be held to be continuing, unless rejected by the employees themselves or declared by the merging parties to be subject to the authorized causes for termination of employment. *(Id.)*

EMPLOYMENT, TERMINATION OF

Due process requirement — Consists of the twin requirements of notice and hearing. (Pharmacia and Upjohn, Inc. *vs*. Albayda, Jr., G.R. No. 172724, Aug. 23, 2010) p. 680

— For failure to comply with the requirement, the employer is liable for nominal damages even if the dismissal is for a just cause. (Phimco Industries, Inc. *vs*. Phimco Industries Labor Ass'n., G.R. No. 170830, Aug. 11, 2010) p. 275

— Two (2) written notices are required. *(Id.)*

Illegal dismissal — An illegally dismissed employee is entitled to reinstatement without loss of seniority rights and other privileges and to his full backwages, inclusive of allowances, and other benefits or their monetary equivalent, computed from the time the compensation was withheld up to the time of his actual reinstatement. (Wensha SPA Center, Inc. and/or Xu Zhi Jie *vs*. Yung, G.R. No. 185122, Aug. 16, 2010) p. 460

— Officers of a corporation are not liable unless they acted in bad faith. *(Id.)*

Just causes — A union shop agreement is not a just or authorized cause to terminate a permanent employee. (BPI vs. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Carpio, J., dissenting opinion*) p. 47

— Absent a just cause or authorized cause, the merger of two corporations does not authorize the surviving corporation to terminate the employees of the absorbed corporation. *(Id.)*

Loss of trust and confidence — Applies to situations where the employee is routinely charged with the care and custody of the employer's money or property. (Dycoco, Jr. *vs.* Equitable PCI Bank, G.R. No. 188271, Aug. 16, 2010) p. 494

— Must be based on a willful breach of trust and founded on clearly established facts. (Wensha SPA Center, Inc. and/or Xu Zhi Jie *vs.* Yung, G.R. No. 185122, Aug. 16, 2010) p. 460

Reinstatement — If no longer feasible due to strained relationship between the employer and the illegally dismissed employee, payment of separation pay is in order. (Wensha SPA Center, Inc. and/or Xu Zhi Jie *vs.* Yung, G.R. No. 185122, Aug. 16, 2010) p. 460

Separation pay — Guidelines in the grant of separation pay to a lawfully dismissed employee. (Pharmacia and Upjohn, Inc. *vs.* Albayda, Jr., G.R. No. 172724, Aug. 23, 2010) p. 680

Valid termination — Dismissal must be for a just or authorized cause, and the employee must be afforded an opportunity to be heard and to defend himself. (Wensha SPA Center, Inc. and/or Xu Zhi Jie *vs.* Yung, G.R. No. 185122, Aug. 16, 2010) p. 460

ESTAFA THROUGH MISREPRESENTATION

Commission of — Elements in case of sale of real property. (Llamas *vs.* CA, G.R. No. 149588, Aug. 16, 2010) p. 452

EXPROPRIATION

Just compensation — If just compensation is not settled prior to the passage of R.A. No. 6657, it should be computed in accordance with said law even if the property was acquired under P. D. No. 27. (Land Bank of the Phils. *vs*. Barrido, G.R. No. 183688, Aug. 18, 2010) p. 595

— While the determination thereof is essentially a judicial function, the judge cannot abuse his discretion by not taking into full consideration the factors specifically identified by law. *(Id.)*

FAMILY HOME

Levy on execution over family home — Execution or forced sale of a family home is allowed for debts secured by mortgages on the premises before or after such constitution. (Equitable PCI Bank *vs*. OJ-Mark Trading , Inc., G.R. No. 165950, Aug. 11, 2010) p. 234

FORGERY

Presumption of — Absent satisfactory explanation, the person in possession of the forged document, or who had used it, is presumed to be the forger thereof, or who had caused its forgery. (Maniebo *vs*. CA, G.R. No. 158708, Aug. 10, 2010) p. 25

FRAME-UP

Defense of — Considered self-serving and uncorroborated and must fail in the light of straightforward and positive testimony. (People *vs*. Sembrano, G.R. No. 185848, Aug. 16, 2010) p. 476

GENERAL BANKING LAW OF 2000 (R.A. NO. 8791)

Declaration of policy — High standard of diligence is required of banks. (Equitable PCI Bank *vs*. Tan, G.R. No. 165339, Aug. 23, 2010) p. 657

Right of redemption of mortgagor — Mortgagors who have judicially or extrajudicially sold their real property for the full or partial payment of their obligation have the right

to redeem the property within one year after the sale. (Equitable PCI Bank *vs*. OJ-Mark Trading , Inc., G.R. No. 165950, Aug. 11, 2010) p. 234

GOVERNMENT SERVICE INSURANCE SYSTEM ACT OF 1977 (R.A. NO. 8291)

GSIS President and General Manager's authority to discipline its personnel for cause — Must be exercised in accordance with Civil Service Rules. (Garcia *vs*. Molina, G.R. No. 157383, Aug. 10, 2010) p. 6

HOMICIDE

Attempted homicide — Committed when the stab wound sustained by the victim was considerably superficial and not life-threatening. (Cabildo *vs*. People, G.R. No. 189971, Aug. 23, 2010) p. 737

— Imposable penalty. *(Id.)*

INTELLECTUAL PROPERTY CODE (R.A. NO. 8293)

Likelihood of confusion — The tests in determining likelihood of confusion are: a) Dominancy Test and b) Holistic or Totality Test. (Dermaline, Inc. *vs*. Myra Pharmaceuticals, Inc., G.R. No. 190065, Aug. 16, 2010) p. 503

— The two types of confusion of marks and trade names are: (a) confusion of goods and (b) confusion of business. *(Id.)*

Registered trademark owner — Has the exclusive right to prevent third parties from using a trademark, or similar signs or containers for goods or services, without its consent, identical or similar to its registered trademark, where such use would result in a likelihood of confusion. (Dermaline, Inc. *vs*. Myra Pharmaceuticals, Inc., G.R. No. 190065, Aug. 16, 2010) p. 503

— Protection to which a registered trademark owner is entitled extends to protection in product and market areas that are the normal potential expansion of his business. *(Id.)*

Trademark — Defined as any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by others. (Dermaline, Inc. *vs*. Myra Pharmaceuticals, Inc., G.R. No. 190065, Aug. 16, 2010) p. 503

Trademark controversies — Each case must be scrutinized according to its peculiar circumstances, such that jurisprudential precedents should only be made to apply if they are specifically in point. (Dermaline, Inc. *vs*. Myra Pharmaceuticals, Inc., G.R. No. 190065, Aug. 16, 2010) p. 503

INTERESTS

Interest for late payment of Phil. Coconut Authority fees — Imposition of 14 % interest is proper under P.D. No. 1468 and P.D. No. 1854. (Soloil, Inc. vs. Phil. Coconut Authority, G.R. No. 174806, Aug. 11, 2010) p. 337

JUDGES

Duties — Judges are required to decide all cases within three (3) months from date of submission. (*Re*: Request of Judge Salvador M. Ibarreta, Jr., RTC, Br. 8, Davao City, for Extension of the Time to Decide Civil Case Nos. 30, 410-04, 30-998-05, 7286-03 and 8278-5, A.M. No. 07-1-05-RTC, Aug. 23, 2010) p. 635

Undue delay in rendering a decision or order — Sanctions, cited. (*Re*: Request of Judge Salvador M. Ibarreta, Jr., RTC, Br. 8, Davao City, for Extension of the Time to Decide Civil Case Nos. 30, 410-04, 30-998-05, 7286-03 and 8278-5, A.M. No. 07-1-05-RTC, Aug. 23, 2010) p. 635

JUDGMENTS

Foreign judgment — No sovereign is bound to give effect within its dominion to a judgment rendered by a tribunal of another country; elucidated. (Corpuz *vs*. Sto. Tomas, G.R. No. 186571, Aug. 11, 2010) p. 420

— The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows: a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title of the thing; and b) In case of a judgment or final judgment against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title. *(Id.)*

Validity of — Judgment shall state, clearly and distinctly the facts and the law on which it is based. (People *vs*. Sandiganbayan (4th Div.), G.R. Nos. 153952-71, Aug. 23, 2010) p. 640

KIDNAPPING AND SERIOUS ILLEGAL DETENTION WITH FRUSTRATED MURDER

Commission of — Imposable penalty. (People *vs*. Roxas, G.R. No. 172604, Aug. 17, 2010) p. 522

LABOR

Labor statutes — If based on statutes in foreign jurisdiction, the decision of the high courts in those jurisdictions construing and interpreting the act are given persuasive effects in the application of Philippine Law. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Carpio, J.,dissenting opinion*) p. 47

LABOR RELATIONS

Right to self-organization — A species of the broader constitutional right of the people "to form unions, associations, or societies for purposes not contrary to law," which right "shall not be abridged." (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Carpio, J., dissenting opinion*) p. 47

— Freedom to join unions necessarily includes the freedom not to join a union. *(Id.)*

— The right to abstain from joining a labor organization is subordinate to the policy of encouraging unionism as an instrument of social justice. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010) p. 47

— The right to form an association does not include the right to compel others to form or join one. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Carpio, J., dissenting opinion*) p. 47

Transfer of employees — Absent a definite finding that the employer's exercise of its prerogative to transfer its employee was tainted with arbitrariness and unreasonableness, the appellate court should leave the same to the employer's better judgment. (Pharmacia and Upjohn, Inc. *vs*. Albayda, Jr., G.R. No. 172724, Aug. 23, 2010) p. 680

— Objection to the transfer on ground of personal inconvenience or hardship that will be caused to the employee by reason thereof is not a valid reason to disobey an order of transfer. *(Id.)*

— Valid, provided there is no demotion in rank or diminution of salary, benefits, and other privileges, and the action is not motivated by discrimination, made in bad faith, or effected as a form of punishment or demotion without sufficient cause. *(Id.)*

LABOR UNIONS

Concept — An instrumentality utilized to achieve the objective of protecting the rights of workers. (BPI *vs*. BPI Employees Union-Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Carpio, J., dissenting opinion*) p. 47

Effect of merger of a corporation — The absorbed employees may come within the coverage of the bargaining unit but still be exempt from compulsory union membership under the union security clause. (BPI *vs*. BPI Employees Union-

Davao Chapter-Federation of Unions in BPI Unibank, G.R. No. 164301, Aug. 10, 2010; *Brion, J., dissenting opinion*) p. 47

LACHES

Nature — Laches is evidentiary in nature and it may not be established by mere allegations in the pleadings and cannot be resolved in a motion to dismiss. (Limos *vs*. Sps. Odones, G.R. No. 186979, Aug. 11, 2010) p. 438

MARRIAGE, VOID

Petition for declaration of nullity of void marriage — Absence of a provision in the old and new Civil Codes on when a party is allowed to file a petition to declare the nullity of a marriage cannot be construed as giving license to just any person to bring the action to declare the absolute nullity of a marriage. (Ablaza *vs*. Rep. of the Phils., G.R. No. 158298, Aug. 11, 2010) p. 183

— May be filed solely by the husband or wife; exceptions. *(Id.)*

— Rule on exclusivity of the parties to the marriage as having the right to initiate the action for declaration of nullity of marriage is not applicable to a marriage solemnized under the regime of the old Civil Code. *(Id.)*

— Surviving wife is an indispensable party in the petition. *(Id.)*

— The action to seek the declaration of nullity of the marriage of the decedent may be filed by his alleged heir. *(Id.)*

Psychological incapacity as a ground— A clinical psychologist's or psychiatrist's diagnoses that a person has a personality disorder is not automatically believed by the courts. (Camacho-Reyes *vs*. Reyes-Reyes, G.R. No. 185286, Aug. 18, 2010) p. 602

— A recommendation for therapy does not automatically imply curability. *(Id.)*

— Doctors can diagnose the psychological make-up of person based on a number of factors culled from various sources. *(Id.)*

— Each case must be judged according to its own case. *(Id.)*

— Factors characterizing psychological incapacity to perform the essential marital obligations are: (a) gravity, (b) juridical antecedence, and (3) incurability. *(Id.)*

— The lack of personal examination and interview of a person diagnosed with personality disorder, does not per se, invalidate the testimonies of the doctors. *(Id.)*

MARRIAGES

Dissolution of — The second paragraph of Article 26 of the Family Code provided the Filipino spouse a substantive right to have his or her marriage to the alien spouse considered as dissolved, capacitating him or her to remarry. (Corpuz *vs*. Sto. Tomas, G.R. No. 186571, Aug. 11, 2010) p. 420

Validity of — Tested according to the law in force at the time the marriage is contracted. (Ablaza *vs*. Rep. of the Phils., G.R. No. 158298, Aug. 11, 2010) p. 183

MORTGAGES

Foreclosure of mortgage — A necessary consequence of non-payment of a mortgage indebtedness. (Equitable PCI Bank *vs*. OJ-Mark Trading , Inc., G.R. No. 165950, Aug. 11, 2010) p. 234

MOTION FOR RECONSIDERATION

Denial of — Proper in case of non-compliance with the procedural requirement. (Maniebo *vs*. CA, G.R. No. 158708, Aug. 10, 2010) p. 25

Second motion for reconsideration — Not allowed under Section 4, Rule 43 and Section 2, Rule 52 of the Rules of Court; exception. (Maniebo *vs*. CA, G.R. No. 158708, Aug. 10, 2010) p. 25

MOTIONS

Motion to suspend proceedings — In case of denial thereof, the proper remedy is a motion for reconsideration and if, denied, a petition for certiorari. (Reyes *vs*. Judge Ortiz, G.R. No. 137794, Aug. 11, 2010) p. 158

MURDER

Frustrated murder — Committed when medical findings show that had it not been due to the timely and proper medical attention given to the victim, the gunshot wound sustained by the victim would have been fatal. (People *vs*. Roxas, G.R. No. 172604, Aug. 17, 2010) p. 522

NEGOTIABLE INSTRUMENTS LAW

Check — A bill of exchange drawn on a bank payable on demand. (Go *vs*. Metropolitan Bank and Trust Co., G.R. No. 168842, Aug. 11, 2010) p. 264

Crossed checks — A check is crossed generally when only the words "and company" are written or nothing is written at all between the parallel lines. (Go *vs*. Metropolitan Bank and Trust Co., G.R. No. 168842, Aug. 11, 2010) p. 264

— A check is crossed specially when the name of a particular banker or a company is written between the parallel lines drawn. *(Id.)*

— A crossed check is one where two parallel lines are drawn across its face or across the corner thereof. *(Id.)*

— An indorsement is necessary for the proper negotiation of checks especially if the payee named therein or holder thereof is not the one depositing or encashing it. *(Id.)*

— It is a warning that the check should be deposited only in the payee's account; it is the duty of the collecting bank to ascertain that the check be deposited to the payee's account only. *(Id.)*

OBLIGATIONS

Breach of obligation — Damages to be imposed. (Maceda, Jr. *vs*. DBP, G.R. No. 174979, Aug. 11, 2010) p. 349

— Six percent (6%) interest per annum shall be imposed, reckoned from the time of the filing of the complaint. *(Id.)*

— The aggrieved party may choose between specific performance and rescission with damages in either case. *(Id.)*

— The court may order rescission with damages to the injured party where the specific performance becomes impractical or impossible. *(Id.)*

P.D. NO. 1854 (LAW AUTHORIZING AN ADJUSTMENT OF THE FUNDING OF THE PHILIPPINE COCONUT AUTHORITY (PCA) AND INSTITUTING A PROCEDURE FOR THE MANAGEMENT OF SUCH FUND)

PCA fees — Automatically attaches upon purchase of copra by copra exporter, whether for domestic or for export sale of coconut products. (Soloil, Inc. *vs*. Phil. Coconut Authority, G.R. No. 174806, Aug. 11, 2010) p. 337

— Intended to provide PCA with adequate financial resources to carry out its mandate of promoting the rapid growth of the country's coconut industry while making coconut farmers direct beneficiaries of this growth. *(Id.)*

PARTIES TO CIVIL ACTIONS

Indispensable parties — Omission to implead an indispensable party is not fatal; amendment of the initiatory pleading to implead the indispensable parties is proper. (Ablaza *vs*. Rep. of the Phils., G.R. No. 158298, Aug. 11, 2010) p. 183

— Surviving wife is an indispensable party in the petition for nullification of her marriage with her deceased spouse. *(Id.)*

Real party-in-interest — In an action for annulment of title, it is the person claiming title or ownership adverse to that

of the registered owner. (Limos *vs*. Sps. Odones, G.R. No. 186979, Aug. 11, 2010) p. 438

PLEADINGS

Complaint — Must make a plain, concise, and direct statement of the ultimate facts on which the plaintiff relies for his claim. (Lazaro *vs*. Brewmaster Int'l., Inc., G.R. No. 182779, Aug. 23, 2010) p. 710

— To determine whether the complaint states a cause of action, all documents attached thereto may, in fact, be considered, particularly when referred to in the complaint. *(Id.)*

Duties of plaintiff — A plaintiff or principal party to a complaint or other initiatory pleading is obliged to inform the court of the filing of the same or similar action within five days from such filing. (Anib *vs*. Coca-Cola Bottlers Phils., Inc. and/or Rhogie Feliciano, G.R. No. 190216, Aug. 16, 2010) p. 516

Ultimate facts — Defined as the important and substantial facts which either directly form the basis of the plaintiff's primary right and duty or directly make up the wrongful acts or omissions of the defendant. (Lazaro *vs*. Brewmaster Int'l., Inc., G.R. No. 182779, Aug. 23, 2010) p. 710

PRELIMINARY INJUNCTION

Application of injunctive relief — Construed strictly against the pleader. (Equitable PCI Bank *vs*. OJ-Mark Trading, Inc., G.R. No. 165950, Aug. 11, 2010) p. 234

Writ of — Issuance of the writ to enjoin an extrajudicial foreclosure of a mortgage due to debtors' non-payment of their obligation is improper. (Equitable PCI Bank *vs*. OJ-Mark Trading, Inc., G.R. No. 165950, Aug. 11, 2010) p. 234

— Issuance thereof is generally not interfered with except in cases of manifest abuse. *(Id.)*

— May be issued only upon clear showing of an actual existing right to be protected during the pendency of the principal action. *(Id.)*

— To be entitled thereto, the right to be protected and the violation against that right must be shown. *(Id.)*

PRESUMPTIONS

Regularity in the performance of official duties — Stands absent ill-motive to falsely testify against the accused. (People *vs*. Sembrano, G.R. No. 185848, Aug. 16, 2010) p. 476

PROPERTY REGISTRATION DECREE (P.D. NO. 1529)

Application for registration — Applicant must prove that the subject land forms part of the disposable and alienable lands of public domain and that he has been in open, continuous, exclusive, and notorious possession and occupation of the same under a bona fide claim of ownership since June 12, 1945, or earlier. (Rep. of the Phils. *vs*. Guinto-Aldana, G.R. No. 175578, Aug. 11, 2010) p. 364

— Submission of a duly executed blueprint of the survey plan and technical description of the property is considered a substantial compliance with the legal requirements of ascertaining the identity of the properties applied for registration. *(Id.)*

— Submission of the original or duplicate copies of the muniments of title and the duly approved survey plan of the land sought to be registered is imperative in an application for original registration. *(Id.)*

— Tax declarations and realty payments are not conclusive evidence of ownership but they are a good indication of possession in the concept of owner. *(Id.)*

PUBLIC OFFICERS AND EMPLOYEES

Administrative complaint against public employees — Non-compliance with the mandated preliminary investigation prior to the filing of formal charges against the employees concerned constitutes a violation of their right to due process. (Garcia *vs*. Molina, G.R. No. 157383, Aug. 10, 2010) p. 6

Dishonesty — Presumption of good faith will not apply in the face of a showing of the genuineness of the entries made in the official records. (Maniebo *vs*. CA, G.R. No. 158708, Aug. 10, 2010) p. 25

Payment of backwages — Warranted during the period of the employees' unjustified suspension. (Garcia *vs*. Molina, G.R. No. 157383, Aug. 10, 2010) p. 6

Preventive suspension — Considered null and void when it was imposed in the same formal charges without the employee knowing that there were pending administrative cases against them. (Garcia *vs*. Molina, G.R. No. 157383, Aug. 10, 2010) p. 6

RAPE

Rape by sexual assault — Committed by any person who, under any of the circumstances mentioned in paragraph 1 of Article 266-A(2) of the Revised Penal Code, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object. (People *vs*. Alfonso, G.R. No. 182094, Aug. 18, 2010) p. 572

— Imposable penalty. *(Id.)*

Statutory rape — Committed by a man who shall have carnal knowledge of a woman who is under twelve (12) years of age. (People *vs*. Alfonso, G.R. No. 182094, Aug. 18, 2010) p. 572

— Imposable penalty. *(Id.)*

REALTY INSTALLMENT BUYER PROTECTION ACT (R.A. NO. 6552)

Cancellation of the contract to sell — In the absence of any stipulation, the seller is bound to return the amount paid by the buyer, the purpose for which it was given not having been attained. (Heirs of Paulino Atienza *vs*. Espidol, G.R. No. 180665, Aug. 11, 2010) p. 408

— Notice of cancellation of a notarial act is required only in case of extrajudicial cancellation of the contract to sell. *(Id.)*

REGIONAL TRIAL COURT

As a land registration court — May not order the Land Bank of the Philippines to deposit or deliver the much higher amount adjudged by the RARAD where it already complied with the deposit of provisional compensation by depositing the amount of its initial valuation which was rejected by the landowner. (Land Bank of the Phils. *vs*. Heir of Trinidad S. *Vda. d*e Arieta, G.R. No. 161834, Aug. 11, 2010) p. 198

RULES OF PROCEDURE

Application— May be suspended where matters of life, liberty, honor, or property, among other instances, are at stake. (Llamas *vs*. CA, G.R. No. 149588, Aug. 16, 2010) p. 452

— Should not be belittled or dismissed for their non-observance as it might have resulted in prejudicing a party's substantive rights. (Maniebo *vs*. CA, G.R. No. 158708, Aug. 10, 2010) p. 25

— Strict and rigid application especially on technical matters, which tend to frustrate rather than promote substantial justice, must be avoided. (Anib *vs*. Coca-Cola Bottlers Phils., Inc. and/or Rhogie Feliciano, Aug. 16, 2010)

SALES

Contract to sell — Automatic forfeiture clause is considered valid provided the parties clearly agree on it. (Daleon *vs*. Tan, G.R. No. 186094, Aug. 23, 2010) p. 719

— Distinguished from a contract of sale. (Heirs of Paulino Atienza *vs*. Espidol, G.R. No. 180665, Aug. 11, 2010) p. 408

— The seller can validly cancel the contract to sell where the buyer failed to pay the installment on a day certain fixed in their agreement. *(Id.)*

— The seller is relieved of any obligation to hold the property in reserve for the buyer where the latter failed to pay the

price of the property within the period provided in their agreement. *(Id.)*

Dacion en pago — Negotiations for settlement of the mortgage debt by dacion en pago do not extinguish the same nor forestall the creditor-mortgagee's exercise of its right to foreclose as provided in the mortgage contract. (Equitable PCI Bank *vs*. OJ-Mark Trading , Inc., G.R. No. 165950, Aug. 11, 2010) p. 234

Forfeiture clause — Construed *strictissimi juris*. (Daleon *vs.* Tan, G.R. No. 186094, Aug. 23, 2010) p. 719

— Forfeiture of buyer's downpayment is unwarranted, where the refusal of the buyer to pay the balance of the purchase price was due to failure of the seller to fulfill his obligations to transfer a clean title to the buyer. (Daleon *vs*. Tan, G.R. No. 186094, Aug. 23, 2010) p. 719

SEARCH AND SEIZURE

Search warrant — A description of the place to be searched is sufficient if the officer serving the warrant can, with reasonable effort, ascertain and identify the place intended and distinguish it from other places in the community. (People *vs*. Tuan, G.R. No. 176066, Aug. 11, 2010) p. 379

— Items seized as a result of the search conducted by virtue of a valid search may be presented as evidence against the accused. *(Id.)*

— Magistrate's determination of probable cause for the issuance of a search warrant is paid great deference by a reviewing court, as long as there was substantial basis for the determination. *(Id.)*

— Not required in case of search incident to a lawful arrest. (People *vs*. Sembrano, G.R. No. 185848, Aug. 16, 2010) p. 476

— Requisites for valid issuance thereof are: (1) probable cause is present; (2) such probable cause must be determined personally by the judge; (3) the judge must examine, in writing and under oath or affirmation, the

complainant and the witnesses he or she may produce; (4) the applicant and the witnesses testify on the facts personally known to them; and (5) the warrant specifically describes the place to be searched and the things to be seized. (People *vs*. Tuan, G.R. No. 176066, Aug. 11, 2010) p. 379

SETTLEMENT OF ESTATE OF A DECEASED PERSON

Declaration of heirship — Can be made only in a special proceeding and not in a civil action for annulment of title. (Limos *vs*. Sps. Odones, G.R. No. 186979, Aug. 11, 2010) p. 438

STRIKES

Cooling-off period — The 15 to 30 day cooling-off period is designed to afford the parties the opportunity to amicably resolve the dispute with the assistance of the National Conciliation and Mediation Board. (Phimco Industries, Inc. *vs*. Phimco Industries Labor Ass'n., G.R. No. 170830, Aug. 11, 2010) p. 275

Illegal strike — The services of a participating union officer, on the other hand, may be terminated, not only when he actually commits an illegal act during a strike, but also if he knowingly participates in an illegal strike. (Phimco Industries, Inc. *vs*. Phimco Industries Labor Assn., G.R. No. 170830, Aug. 11, 2010) p. 275

— The services of an ordinary striking worker cannot be terminated for mere participation in an illegal strike; proof must be adduced showing that he or she committed illegal acts during the strike. *(Id.)*

— While the law protects the right of the laborer, it authorizes neither the oppression nor the destruction of the employer. *(Id.)*

Picket — Considered unlawful where the same was carried on with violence, coercion, or intimidation. (Phimco Industries, Inc. *vs*. Phimco Industries Labor Ass'n., G.R. No. 170830, Aug. 11, 2010) p. 275

— Simply means to march to and from the employer's premises, usually accompanied by the display of placards and other signs making known the facts involved in a labor dispute. *(Id.)*

— Tainted with illegality even if it was moving, peaceful, and not attended by violence, where the same effectively blocked entry to and exit from the company premises. *(Id.)*

Prohibited activities during a strike — Blocking of the free ingress to and egress from the employer's premises is prohibited. (Phimco Industries, Inc. *vs*. Phimco Industries Labor Ass'n., G.R. No. 170830, Aug. 11, 2010) p. 275

Seven-day strike ban — Intended to give the Department of Labor and Employment an opportunity to verify whether the projected strike really carries the imprimatur of the majority of the union members. (Phimco Industries, Inc. *vs*. Phimco Industries Labor Ass'n., G.R. No. 170830, Aug. 11, 2010) p. 275

Validity of — Requisites. (Phimco Industries, Inc. *vs*. Phimco Industries Labor Ass'n., G.R. No. 170830, Aug. 11, 2010) p. 275

— To be legitimate, the strike should not be antithetical to public welfare, and must be pursued within legal bounds. *(Id.)*

SUPREME COURT

Original and exclusive jurisdiction — Does not include a petition for declaratory relief; exceptions. (Reyes *vs*. Judge Ortiz, G.R. No. 137794, Aug. 11, 2010) p. 158

THEFT

Commission of — Established, in the absence of evidence that the taking was employed with the use of force, violence, or intimidation. (People *vs*. Roxas, G.R. No. 172604, Aug. 17, 2010) p. 522

WITNESSES

Credibility of — Determination of the trial court, especially when affirmed by the appellate court is accorded great respect; exceptions. (People *vs*. Roxas, G.R. No. 172604, Aug. 17, 2010) p. 522

(People *vs*. Sembrano, G.R. No. 185848, Aug. 16, 2010) p. 476

(People *vs*. Tuan, G.R. No. 176066, Aug. 11, 2010) p. 379

— Not affected by discrepancies in their testimonies referring to minor details and collateral matters. *(Id.)*

— Testimony of a single yet credible and trustworthy witness suffices to support a conviction. (Cabildo *vs*. People, G.R. No. 189971, Aug. 23, 2010) p. 737

Corroborative witness — Non-presentation thereof does not constitute suppression of evidence and is not fatal to the prosecution's case. (People *vs*. Tuan, G.R. No. 176066, Aug. 11, 2010) p. 379

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